EQUAL EMPLOYMENT OPPORTUNITY

1332-4

HEARINGS

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT, MANPOWER, AND POVERTY

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE

UNITED STATES SENATE

NINETIETH CONGRESS

FIRST SESSION

ON

S. 1308

A BILL TO FURTHER PROMOTE EQUAL EMPLOYMENT OPPORTUNITIES OF AMERICAN WORKERS

S. 1667

A BILL TO PROHIBIT MORE EFFECTIVELY DISCRIMINATION IN EMPLOYMENT BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN, AND FOR OTHER PURPOSES

MAY 4 AND 5, 1967

Printed for the use of the
Committee on Labor and Public Welfare

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EQUAL EMPLOYMENT OPPORTUNITY

THURSDAY, MAY 4, 1967

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT,
MANPOWER, AND POVERTY OF THE
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:35 a.m., in room 4232, New Senate Office Building, Senator Joseph S. Clark (chairman of the subcommittee) presiding.

Present: Senators Clark, Pell, Kennedy of Massachusetts, Javits, and Prouty.

Committee staff members present: Stewart E. McClure, chief clerk; William C. Smith, counsel to the subcommittee; and Peter C. Benedict, minority labor counsel.

Senator CLARK. The subcommittee will be in session.

Will the spectators please take their seats so we can proceed.

I have a brief opening statement which I should like to read.

Today the Subcommittee on Employment, Manpower, and Poverty begins hearings on S. 1308, dealing with equal opportunity in employment.

This subcommittee is also presently engaged in an intensive study of the war on poverty, in which it is our purpose to assess the strengths and weaknesses of that effort so as to enhance its effectiveness. We have already held poverty hearings in two States—Mississippi and New Mexico—and the District of Columbia, and we had a week of general hearings on the poverty war in Washington earlier this year. On Monday we resume our antipoverty study in New York, and go from there to California. By the time we get through in the early days of June we will have visited 10 States and held hearings in 15 different places.

While it would be premature now to state any firm conclusions about the war on poverty, one recurring theme has been the close interrelationship between the effort to obtain equal employment opportunity and the effort to wipe out poverty. If we are to attain the goal of equal economic opportunity—which is the mission of the war on poverty—we must see to it that such artificial barriers to job placement and job advancement as race, religion, and sex are abolished.

The bill on which we shall be taking testimony today is identical to the text of title III of S. 1026, the administration's omnibus civil rights bill, which was introduced by Senator Hart with the cosponsorship of 26 other Senators earlier this year. That bill was referred to the Senate Committee on the Judiciary, where as you all know the chances of its emerging within the foreseeable future are reasonably slim.

It was therefore felt that the title of the bill dealing with equal employment opportunity should be referred to the Labor and Public Welfare Committee and by it to this subcommittee in order that we

might have adequate hearings and possibly bring a bill to the floor covering just this title in the event the Judiciary Committee fails to make a prompt report of the omnibus bill.

With the enactment of title VII of the Civil Rights Act of 1964, the Congress committed itself for the first time to the goal of equal opportunity in employment. The Federal Equal Employment Opportunity Commission was created by that legislation to carry out the national policy of abolishing discrimination in the job market.

Obviously it is essential that the Commission be provided with powers adequate to its task. The administration, in the pending bill, is proposing that the enforcement powers of the Commission be augmented by the addition of the power to issue cease-and-desist orders.

This morning we shall hear testimony from the Attorney General, the Secretary of Labor, and the Chairman of the Equal Employment Opportunity Commission. After a recess for lunch, we shall reconvene to take testimony from a panel of distinguished representatives of organizations active in the field of civil rights.

Tomorrow morning we shall receive testimony from representatives of other interested groups, and tomorrow afternoon we shall hear the comments of a panel of State and local fair employment administrators.

The subject of equal employment opportunity is not new to this subcommittee. Four years ago we held hearings on this subject and unanimously reported a bill introduced by the then Senator, and now Vice President, Hubert H. Humphrey. That bill was subsequently reported by the full Committee on Labor and Public Welfare, but was never acted upon by the Senate, which chose instead to take up and pass the omnibus civil rights bill approved by the House of Representatives.

In opening those hearings 4 years ago, I said:

> It is a commonplace that unemployment falls most heavily on minority groups. More than any other Americans, Negroes know what it means to look for work and not find it. The unemployment rate among Negroes is more than twice as high as that for the country as a whole.

Regrettably that statement is as true today as it was 4 years ago. I make this observation, not to belittle the efforts which have been made in the intervening period, but rather to underline the plain need to make it possible for our future efforts to be more effective than our past efforts have been.

It is my hope that this subcommittee, upon careful consideration of the testimony which we are about to receive, will act to provide the means to achieve true equality of opportunity in employment.

Yesterday Senator Javits introduced into the Senate on behalf of himself and Senators Case and Kuchel a bill to amend the equal employment opportunity provisions of the Civil Rights Act of 1964 in a manner substantially different from the proposals of the administration.

I would like to have printed in the record at this point the text of S. 1308 to be followed by the text of Senator Javits' bill, which is S. 1667. Obviously, since the Javits bill was only introduced yesterday, our witnesses would not have had an opportunity to comment on it.

I would also ask to have printed in the record at this point the statement beginning on page S6226 of the Congressional Record for May 3, which Senator Javits made in support of his bill, along with any departmental reports we have received.

(The materials referred to follow:)

90TH CONGRESS
1ST SESSION

S. 1308

IN THE SENATE OF THE UNITED STATES

MARCH 16, 1967

Mr. CLARK (for himself and Mr. JAVITS) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities of American workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Employment Opportunities Enforcement Act".

SEC. 2. Section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5) is amended to read as follows:

"(a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

"(b) Whenever it is charged by a person claiming to be aggrieved, or a charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred, that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall notify such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") of such charge and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

"(c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

"(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant

or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

"(e) A charge under subsection (b) shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (c), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

"(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that further efforts are unwarranted, which determination shall not

be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof. Related proceedings may be consolidated for hearing.

"(g) A respondent may file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents shall be parties and may appear at any stage of the proceedings, with or without counsel. Persons aggrieved may submit briefs or other written submissions on each occasion when such are permitted or directed, may be present to observe at any stage of the proceedings, with or without counsel, and may appeal or petition for review to the same extent as a party, but without the permission of the Commission persons aggrieved may not otherwise participate in the proceedings. The Commission may grant such other persons a right to intervene as respondents or persons aggrieved or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

"(h) If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commis-

sion shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: *Provided*, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.

"(i) After a complaint has been issued and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the respondent for the elimination of

the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it.

"(j) Findings of fact and orders made or issued under subsections (h) or (i) of this section shall be determined on the record.

"(k) The Commission may petition any United States court of appeals wherein the unlawful employment practice occurred, or wherein the respondent resides or transacts business, for enforcement of its order. The Commission shall, within thirty days after filing such petition, file in the court of appeals certified copies of the record in the proceedings before the Commission and the findings and order of the Commission. Upon timely application, the court may permit any interested person to intervene in the proceeding. Upon such filing, the court shall conduct further proceedings in conformity with sections 701 through 706 of title 5, United States Code, and shall cause notice thereof to be served upon the respondent and thereupon shall have jurisdiction of the proceeding and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper and to make and enter upon the record a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

No objection that has not been urged before the Commission, its member, or agent shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or agent, the court may order such additional evidence to be taken before the Commission, its member, or agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken, and it shall file with the reviewing court such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of

title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

"(l) Any respondent or person aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice was alleged to have been engaged in or wherein such person resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such court a petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission and thereupon the Commission shall file in the court certified copies of the record of the proceedings before the Commission and the findings and order of the Commission. Upon timely application the court may permit any interested person to intervene in the proceeding. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported

by substantial evidence shall be conclusive, and the court shall have the same jurisdiction to grant to the petitioners or to the Commission such temporary relief, restraining order, or other order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

"(m) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to (1) proceedings under subsections (k) or (l) of this section, (2) proceedings under section 707 of this title, or (3) any other proceedings brought by the United States or any agency thereof to prevent discrimination in employment on account of race, color, religion, or national origin.

"(n) The Attorney General shall conduct all litigation to which the Commission is a party pursuant to this title.

"(o) (1) An aggrieved person may institute a civil action against the respondent named in the charge in the appropriate United States district court, without regard to the amount in controversy, or in any state or local court of competent jurisdiction if—

"(A) one hundred and eighty days after filing a

charge the Commission has, for any reason whatsoever, failed or declined to issue a complaint or has terminated proceedings (including charges with respect to which the Commission has secured voluntary compliance satisfactory to it), within sixty days thereafter, or within sixty days following receipt of notice from the Commission that it declines to issue a complaint, whichever is earlier, and provided such a complaint is not issued in the interim; or

"(B) the Commission ends the proceeding by agreement pursuant to subsection (i) of this section and the aggrieved person has not consented in writing to such agreement, within sixty days following receipt of notice of such agreement.

Upon timely application, the Commission shall have the right to intervene in actions brought pursuant to this subsection.

"(2) In civil actions brought pursuant to this subsection, the court shall give no effect to the fact that the Commission has (A) terminated proceedings with respect to the charge without issuing a complaint, or (B) failed or declined to issue a complaint for any other reason, or (C) ended the proceeding by agreement pursuant to subsection (i) of this section. If the court finds that the respondent has engaged in an unlawful employment practice, the court may enjoin

the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable.

SEC. 3. Section 707 of the Civil Rights Act of 1964 (78 Stat. 261; 42 U.S.C. 2000e–6) is amended by adding a new subsection (c) as follows:

"(c) Any record or paper required by section 709 (c) of this title to be preserved or maintained shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying by the Attorney General or his representative. Unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress and any committee thereof,

governmental agencies, and in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper."

SEC. 4. Section 708 of the Civil Rights Act of 1964 (78 Stat. 262: 42 U.S.C. 2000e–7) is amended by designating all of the present text of such section 708 as subsection "(a)" thereof and adding new subsections "(b)" and "(c)" as follows:

"(b) Neither the Commission nor any court acting pursuant to this title shall dismiss or stay proceedings on the ground that a charge has been filed with the National Labor Relations Board arising from the same matters.

"(c) Nothing in this title shall preclude any person from pursuing any other available remedy for the enforcement of any law prohibiting discrimination in employment on account of race, color, religion, sex, or national origin."

SEC. 5. Sections 709 (b), (c), and (d) of the Civil Rights Act of 1964 (78 Stat. 263; 42 U.S.C. 2000e–8 (b)–(d)) are amended to read as follows:

"(b) The Commission may cooperate with State and local agencies charged with the administration of State fair

employment practices laws and, with the consent of such agencies, may for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements and under which no person may bring a civil action under section 706 in any cases or class of cases so specified, or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

"(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and

keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation of orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in

the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.

"(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 6. Section 710 of the Civil Rights Act of 1964 (78

Stat. 264; 42 U.S.C. 2000e–9) is amended to read as follows:

"INVESTIGATORY POWERS

"SEC. 710. (a) In conducting an investigation the Commission shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record, and copy such materials and take and record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation. The Commission may issue subpenas to compel access to or the production of such materials, or the appearance of such persons, and may issue interrogatories to a respondent, to the same extent and subject to the same limitations as would apply if the subpenas or interrogatories were issued or served in aid of a civil action in the United States district court for the district in which the investigation is taking place. The Commission may administer oaths.

"(b) Upon written application to the Commission, a respondent shall be entitled to the issuance of a reasonable number of subpenas by and in the name of the Commission to the same extent and subject to the same limitations as subpenas issued by the Commission. Subpenas issued at the request of a respondent shall show on their face the name

and address of such respondent and shall state that they were issued at his request.

"(c) Witnesses summoned by subpena of the Commission shall be entitled to the same witness and mileage fees as are witnesses in proceedings in United States district courts. Fees payable to a witness summoned by a subpena issued at the request of a respondent shall be paid by him.

"(d) Within five days after service of a subpena upon any person, such person may petition the Commission to revoke or modify the subpena. The Commission shall grant the petition if it finds that the subpena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

"(e) In case of contumacy or refusal to obey a subpena, the Commission or other person at whose request it was issued may petition for its enforcement in the United States district court for the district in which the person to whom the subpena was addressed resides, was served or transacts business.

"(f) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce

records, documents, or other evidence, if in his power to do so, in obedience to the subpena or lawful order of the Commission, shall be fined not more than $5,000 or imprisoned not more than one year, or both. Any person who, with intent thereby to mislead the Commission, shall make or cause to be made any false entry or statement of fact in any report, account, record, or other document submitted to the Commission pursuant to its subpena or other order, or who shall willfully neglect or fail to make or cause to be made full, true, and correct entries in such reports, accounts, records, or other documents, or shall willfully remove out of the jurisdiction of the United States or willfully mutilate, alter, or by any other means falsify any documentary evidence, shall be fined not more than $5,000 or imprisoned not more than one year, or both."

SEC. 7. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is further amended as follows:

(a) Add the phrase "or applicants for employment" after the phrase "his employees" in section 703 (a) (2) (78 Stat. 255; 42 U.S.C. 2000e-2 (a) (2)).

(b) Add the phrase "or applicants for membership" after the word "membership" in section 703 (c) (2) (78 Stat. 255; 42 U.S.C. 2000e-2 (c) (2)).

(c) Amend the fourth sentence of section 705 (a) to read as follows: "The Chairman shall be responsible on be-

half of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(d) Add the phrase "and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b))" to section 705 (g) (1) between the word "individuals" and the semicolon.

(e) Strike out the phrase "intervention in a civil action brought by an aggrieved party under section 706, or for" in section 705 (g) (6).

(f) Insert a semicolon in lieu of the period at the end of section 705 (g) and add the following subparagraph "(7)" to such section: "(7) to accept and employ or dispose of in furtherance of the purposes of this title any money

or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise."

(g) Add a new subsection "(c)" to section 713 as follows:

"(c) The Commission may delegate any of its functions, duties, and powers to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter."

(h) Strike out the phrase "section 111" and substitute therefor the phrase "sections 111 and 1114" in section 714.

(i) Repeal section 715.

90TH CONGRESS
1ST SESSION

S. 1667

IN THE SENATE OF THE UNITED STATES

MAY 3, 1967

Mr. JAVITS (for himself, Mr. CASE, and Mr. KUCHEL) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To prohibit more effectively discrimination in employment because or race, color, religion, sex, or national origin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 701 (a) of the Civil Rights Act of 1964 is amended by inserting "a State or political subdivision of a State or an agency of one or more States or political subdivisions and" after "includes".

(b) Section 701 (b) of such Act is amended to read as follows:

"(b) The term 'employer' means (1) a person engaged

in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, and (2) a State or political subdivision of a State, or an agency of one or more States or political subdivisions, but such term does not include the United States, or an Indian tribe: *Provided,* That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and the President shall utilize his existing authority to effectuate this policy."

(c) Section 701 (c) of such Act is amended by striking out "or an agency of a State or political subdivision of a State,".

(d) Section 701 (e) of such Act is amended by striking out "(A)" and all that follows down to and including "thereafter" in the matter preceding paragraph (1) and inserting in lieu thereof "eight or more."

SEC. 2. Title VII of the Civil Rights Act of 1964 is amended by deleting section 706 and inserting in lieu thereof the following:

"PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

"SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging

in any unlawful employment practice as set forth in section 703 or 704.

"(b) Whenever a written charge has been filed by or on behalf of any person claiming to be aggrieved, or a written charge has been filed by a member of the Commission, that any employer, employment agency, or labor organization has engaged in any unlawful employment practice, the Commission shall notify the employer, employment agency, or labor organization charged with the commission of an unlawful employment practice (hereinafter referred to as the 'respondent') of such charge and shall investigate such charge. If the Commission shall determine that there is not probable cause for crediting such charge it shall state its determination and notify any person claiming to have been aggrieved and the respondent of such determination. Each such determination shall be deemed to be a final order of the Commission. If the Commission shall determine after such preliminary investigation that probable cause exists for crediting such written charge, it shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

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"(c) (1) If within a period of thirty days after a charge is filed with the Commission, the Commission fails to secure an agreement between the parties for the elimination of such unlawful practice on mutually satisfactory terms, approved by the Commission, the Commission shall issue and cause to be served upon the respondent a complaint stating the charges in that respect, together with a notice of hearing before the Commission, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. Whenever the Commission is required to endeavor to secure voluntary compliance with this title and it determines that circumstances warrant an early hearing, the Commission may issue a complaint, in the same manner as provided in the preceding sentence, prior to the expiration of such thirty-day period. No complaint shall issue based upon any unlawful employment practice occurring more than one year prior to the filing of the charge with the Commission unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the one-year period.

"(2) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing

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in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

"(d) (1) The Commission or a member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

"(2) All testimony shall be taken under oath.

"(3) The member of the Commission who filed a charge shall not participate in a hearing thereon, except as a witness.

"(e) (1) At the conclusion of a hearing before a member or designated agent of the Commission, such member or agent shall transfer the entire record thereof to the Commission, together with his recommended decision and copies thereof shall be served upon the parties. The Commission, or a panel of three qualified members designated by it to sit and act as the Commission in such case, shall afford the parties an opportunity to be heard on such record at a time and place to be specified upon reasonable notice. In its discretion, the Commission upon notice may take further testimony.

"(2) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Com-

mission by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

"(f) If, upon the preponderance of the evidence, including all the testimony taken, the Commission shall find that the respondent engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent and other parties an order requiring such respondent to cease and desist from such unlawful employment practice and to take such affirmative action as will effectuate the policies of this title, including, but not limited to, establishing on-the-job training for any persons aggrieved by such unlawful employment practice, or payment of damages, or reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the discrimination): *Provided*, That interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Commission shall find that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact

and shall issue and cause to be served on such respondent and other parties an order dismissing the complaint.

"(g) From the time a hearing is held before the Commission, or in the case of a hearing before a member or designated agent of the Commission, from the time of the transfer of the record thereof to the Commission, until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Commission, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

"(h) (1) The proceedings held pursuant to the preceding subsections of this section shall be conducted in public sessions and in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

"(2) In addition to the authority conferred upon the Commission by the other provisions of this title, the Commission is authorized, in carrying out its functions under this title, to—

"(A) receive money and other property donated,

bequeathed, or devised, without condition other than that it be used in furtherance of the conditions of this title; and to use, sell, or otherwise dispose of such property for the purpose of carrying out the provisions of this title; and

"(B) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by law (5 U.S.C. 736–2) for persons in the Government service employed without compensation.

"(3) For the purposes of the preceding subsections of this section the Commission is authorized to utilize the available services of the Department of Labor and the employees thereof, with the consent of the Secretary of Labor, in (A) conducting a preliminary investigation with respect to any charge filed with the Commission, (B) endeavoring to secure voluntary compliance with this title, (C) conducting a hearing resulting from the issuance of a complaint by the Commission, and (D) obtaining advice and pertinent information concerning any occupational training programs financed in whole or in part by the Federal Government. Within the limitation of funds appropriated to the Commission, it may make agreements, with the Secretary of Labor, establish such procedures, and make such payments, either in advance or by way of reimbursement, to the Department

of Labor or the employees thereof, as the Commission deems necessary to carry out the provisions of this paragraph. For the purposes of this paragraph, the Secretary of Labor is authorized to cooperate with the Commission and to provide such services as the Commission may request. Nothing contained herein shall be construed to authorize the Commission to delegate any of its authority to make determinations with respect to charges filed with it, to issue complaints, or to make final orders and findings of fact.

"(i) (1) Whenever the Commission makes a finding that any respondent has engaged in any unlawful employment practice and issues an order requiring such respondent to cease and desist from such unlawful employment practice or whenever the Commission has probable cause for belief that any respondent is not in compliance with the terms of any voluntary agreement for the elimination of an unlawful employment practice entered into pursuant to subsection (b), (e), or (g) of this section, the Commission shall have power to petition any United States court of appeals or, if the court of appeals to which application might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order or

voluntary agreement and for appropriate temporary relief or restraining order and for the entry of an order directing the respondent to forfeit and pay to the United States a civil penalty of not more than $5,000 for any violation of such order of the Commission, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission or a true copy of such voluntary agreement. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon shall have jurisdiction of the proceeding and the question determined therein and shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission or the voluntary agreement between the parties, or directing the respondent to forfeit and pay to the United States a civil penalty of not more than $5,000 for any violation of the

order of the Commission, which penalty shall accrue to the United States. For the purposes of this subsection, each separate violation of such a final order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense.

"(3) No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

"(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

"(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or agent, the court may order such additional evidence to be taken before the Commission, its member, or agent, and to be made a part of the transcript.

"(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional

evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

"(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

"(j) Whenever a written charge has been filed pursuant to subsection (b) alleging that any respondent has engaged in any unlawful employment practice and, after preliminary investigation, the Commission has determined that probable cause exists for crediting such written charge, the Commission may petition any United States court of appeals or, if the court of appeals to which application might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question is alleged to have occurred, or wherein the respondent resides or transacts business, for appropriate

injunctive relief pending the final adjudication of the Commission, or the securing of a voluntary agreement between the parties under subsection (b), (e), or (g) of this section, with respect to the matter in question. Upon the filing of any such petition the court shall cause notice thereof to be served upon the respondent and thereupon shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Such respondent shall be given an opportunity to appear by counsel and present any relevant testimony. Notwithstanding any other provision of this subsection, a temporary restraining order may be issued without notice if a petition alleges that substantial and irreparable injury to the alleged aggrieved party will be unavoidable and any such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period.

"(k) (1) Any person or party aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person or party resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modi-

fied or set aside. A copy of such petition shall be forthwith served upon the Commission and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Commission, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (i), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part the order of the Commission.

"(2) Upon such filing by a person or party aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"(l) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"(m) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in

whole or in part an order of the Commission, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115).

"(n) Petitions filed under this title shall be heard expeditiously."

SEC. 3. The second sentence of section 709(b) of the Civil Rights Act of 1964 is amended by striking out "and under which no person may bring a civil action under section 706 in any case or class of cases so specified,".

SEC. 4. Title VII of the Civil Rights Act of 1964 is amended by deleting section 710 and inserting in lieu thereof the following:

"INVESTIGATORY POWERS

"SEC. 710. (a) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission, except that the attendance of a witness may not be required outside of the States where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

"(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its request, all records, papers, and information in their possession relating to any matter before the Commission."

SEC. 5. Title VII of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new section:

"SURVEY BY COMMISSION OF APPRENTICESHIP OR OTHER TRAINING PROGRAMS

"SEC. 717. (a) The Commission shall conduct a continuing survey of the operation of apprenticeship or other training or retraining programs, including on-the-job training programs, to determine if the employers, labor organizations, or joint labor-management committees controlling such programs are engaged in unlawful employment practices with respect to the operation of such programs.

"(b) Notwithstanding any provisions of section 709, in conducting such survey the Commission shall at all reasonable times have access to any records maintained by an employer, labor organization, or joint labor-management committee pursuant to (1) the regulations prescribed by the Commission under the second sentence of section 709(c), or (2) any fair employment practice law of a State or political subdivision thereof.

"(c) The Commission shall make a full and complete quarterly report to the Congress, containing the results of such survey during the preceding three months, and such report shall be made available to the public upon request."

SEC. 6. The provisions of this Act shall not affect suits commenced prior to the date of enactment of this Act by an aggrieved person pursuant to section 706(e) of the Civil Rights Act of 1964, or by the Attorney General pursuant to section 707 of such Act, and all such suits shall be continued by such aggrieved person or the Attorney General, as the case may be, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed.

[From the Congressional Record, May 3, 1967]

IMPROVING THE ENFORCEMENT PROCEDURES OF THE CIVIL RIGHTS ACT OF 1964

Mr. JAVITS. Mr. President, I send to the desk a bill introduced for myself, the Senator from New Jersey [Mr. Case], and the Senator from California [Mr. Kuchel] to amend the provisions of the Civil Rights Act of 1964 concerning the enforcement powers of the Equal Employment Opportunity Commission. I ask that the bill be appropriately referred and printed in the Record.

This bill is similar to the bill, S. 3092, which I and Senators Case and Kuchel introduced last year, concerning the same subject. This year I am pleased, also to be the cosponsor, with the Senator from Pennsylvania [Mr. Clark], of S. 1308, which embodies, as a separate bill, the amendments concerning the Equal Employment Opportunity Commission proposed in title III of the administration's civil rights bill, and which is one of those bills that have resulted from the splitup of the administration civil rights bill. We are hoping this splitup will facilitate the passage of the bills separately, as they go to different committees and will have different fates.

Mr. President, S. 1308, good as it is, does not go quite far enough. The problems which the EEOC has encountered in handling its caseload as well known. Its performance so far has been excellent—within the budgetary and staff limitations which have been imposed on it. But because of these limitations it has been forced to spend far too much time handling individual cases, and this has not been able to turn its efforts toward sponsoring affirmative programs to end racial discrimination in employment. The recently published first annual report of the EEOC describes the plight of the Commission well. It states:

"Budget and staffing for the new Commission was predicated on estimates that 2,000 job discrimination complaints would be received in the first year. By June, 1966, the Commission had been deluged with 8,854 individual complaints—more than twice the number all state fair employment practice agencies receive in a year.

"This dramatic response to the new law reflected the confidence of civil rights organizations and minority persons in this new avenue to relief from discrimination. It also almost swamped the small Commission staff. In the midst of establishing investigation procedures and organizing the new agency, thousands of hours of uncompensated overtime were devoted to the flood of charges. Despite these dedicated efforts—and co-operation of charging parties and parties charged—the Commission's first year ended with many hundreds of unreached cases. Even though this backlog bore heavily on limited resources, the Commission and staff, nevertheless, did accomplish noteworthy results with the new law—many of which were far-reaching and precedent-setting."

A major feature of the bill which I am now introducing which is not included in S. 1308, is the strong link it would provide between the EEOC and the nationwide resources of the Department of Labor, particularly the investigative manpower of the vast existing network of its Wage-Hour Division. That division now handles compliance surveys of over 30,000 companies each year. By allowing the Commission to utilize the manpower of the Labor Department for investigatory work, the bill we are introducing would increase its resources immeasureably. The Commission's staff would then be able to concentrate more on its primary role of developing a general, affirmative antidiscrimination program. To aid the Commission even further in this respect, the bill would also authorize the Commission to accept volunteer assistance, particularly from business and industry.

The bill also goes further than S. 1308 in several other ways. It would, for example, extend the coverage of the law to all employers having eight or more employees. S. 1308 would leave present coverage unchanged, present law, at its widest, will cover only employers with 25 or more employees, and even that coverage will be delayed until July 1, 1968. Existing law will cover only 259,000 employers, only 8 percent of the total, and 29 million employees, only 40 percent of the total. Extending coverage to all employers with eight or more employees would expand the coverage of the law to 700,000 employers employing 40 million employees, or 21 percent of the Nation's employers and 54 percent of its employees.

The present bill will also extend coverage to employees of State and local governmental units. S. 1308 neglects entirely the highly important area of coverage of State and local government employees. The U.S. Commission on Civil

Rights in its 1965 report on law enforcement in the South, made the following recommendation:

"In order to help assure that justice is administered in a nondiscriminatory manner, employment in law-enforcement agencies should be available to all persons, regardless of race, color, religion, or national origin. Title VII of the Civil Rights Act of 1964, providing for equal employment opportunities, does not cover public employment. Although discrimination in public employment can be challenged in private lawsuits, administrative and judicial remedies also should be provided. The Commission recommends that Congress consider amending title VII to extend its coverage to public employment."

The bill also goes further than S. 1308 in providing speedier, and more effective relief for violations of the act, or the orders of the Commission. The time which may elapse between the filing of a charge and the issuance of a complaint is limited to 30 days. Temporary injunctions may be obtained prior to the entry of a final order. The Commission is given power to issue final cease and desist orders which may require the establishment of on-the-job training programs, and to award damages. A civil penalty of $5,000 may be levied upon persons who violate Commission orders.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. JAVITS. Mr. President, I ask unanimous consent that I may proceed for 3 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, the following is a summary of all the major changes in present law which would be effected by the bill. It would:

First. Give the EEOC the power to issue cease-and-desist orders which all other regulatory agencies have, but also retains the power of the Attorney General under the existing title VII to initiate civil suits against patterns or practices of discrimination in employment.

Second. Expand the coverage of title VII to employers and labor unions which have eight or more employees or members.

Third. Require the EEOC to conduct a continuing survey of apprenticeship or other training or retraining programs and to report quarterly to the Congress its findings.

Fourth. Give the EEOC the same investigatory powers which the Federal Trade Commission had under section 10 of the Federal Trade Commission Act.

Fifth. Expand the coverage of title VII to employees of State and local governments, including State employment agencies.

Sixth. Limit precomplaint investigation and conciliation to not more than 30 days after a charge has been filed with the EEOC. This would prevent dilatory tactics on a respondent's part from prolonging the precomplaint proceedings. Other regulatory statutes do not require such precomplaint proceedings, and in this field particularly there is a need for rapid relief if it is to be at all effective.

Seventh. Authorize the EEOC to order affirmative action including the establishment of on-the-job training for anyone discriminated against. This is a significant remedy particularly where the defense is that there have been no qualified minority group applicants.

Eighth. Authorize the EEOC to order the payment of damages. This is needed particularly where no other relief is available to a particular grievant found to have been discriminated against.

Ninth. Authorize the EEOC to utilize the services of the Labor Department in conducting investigations, seeking voluntary compliance, conducting hearings, and coordinating training programs. This would help to overcome the serious limitations upon the EEOC's ability to handle its caseload, which has far exceeded expectations, by utilizing particularly the nationwide network of the Labor Department's Wage and Hour Division local offices and staff, and the staff of the Manpower Administration.

Tenth. Authorize the EEOC to receive donations of services and funds as so many other Federal agencies are authorized to do. This could be a highly useful source of expertise from the private sector.

Eleventh. Authorize the EEOC to obtain interlocutory relief, a temporary injunction, or restraining order, in the U.S. Circuit Court of Appeals prior to a final order to avoid dilatory practices or repeated violations of the law or to afford relief where otherwise there would be irreparable injury.

Twelfth. Authorize the U.S. Circuit Court of Appeals to order a civil penalty or no more than $5,000 in appropriate cases. The Federal Trade Commission Act provides a similar remedy.

Thirteenth. Make judicially reviewable findings of "no probable cause" by the EEOC and require that notice of such findings be given to complainants.

Fourteenth. Make consent agreements enforceable in the courts as EEOC final orders.

Fifteenth. Require complainants' consent to a finding of voluntary compliance prior to a hearing. It is now required only during a hearing.

Sixteenth. Permit a Commissioner who files a charge to participate as a witness in the hearing upon it, as is now authorized generally under the Administrative Procedure Act.

Mr. President, we are seeking to correct centuries of injustice with respect to discrimination in employment. The three major types of discrimination which we must eradicate are discrimination in employment, discrimination in education, and discrimination in housing.

This bill would go all the way in one area—employment—as is essential if we are to cope with the serious situation, which still finds millions of workers unprotected by antidiscrimination laws. It has been shown that these laws can work well. For example, in New York we have had such a law for 20 years, and it has been remarkably successful. Many other States of the Union have had similar success. Such laws are an essential and basic tool in our continuing war against poverty and racial injustice.

It is shocking that we still have widespread discrimination in employment. We have had it in the trade unions, such as the building trade unions. We have had it elsewhere, and we still have it, wherever we find it we must fight it.

The Equal Employment Opportunity Commission is a great weapon for that purpose. We should give it the power it needs to do the job.

Mr. President, the Subcommittee on Employment, Manpower, and Poverty of the Committee on Labor and Public Welfare begins hearings tomorrow on S. 1308. It is my hope that this year, at least, we can enact legislation to put some teeth in the Civil Rights Act of 1964. That act was the beginning; now it is up to us to finish the job.

Mr. President, I ask that the bill be received and appropriately referred, and printed in the Record.

The PRESIDING OFFICER (Mr. Montoya in the chair). The bill will be received and appropriately referred; and, without objection, the bill will be printed in the Record.

The bill (S. 1667) to prohibit more effectively discrimination in employment because of race, color, religion, sex, or national origin, and for other purposes, introduced by Mr. Javits (for himself and other Senators), was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the Record, as follows:

"S. 1667

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That (a) section 701(a) of the Civil Rights Act of 1964 is amended by inserting 'a State or political subdivision of a State or an agency of one or more States or political subdivisions and' after 'include'.

"(b) Section 701(b) of such Act is amended to read as follows:

"'(b) The term "employer" means (1) a person engaged in an industry affecting commerce who has eight or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, (2) a State or political subdivision of a State, or an agency of one or more States or political subdivisions, but such term does not include the United States, or an Indian tribe: *Provided*, That it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and the President shall utilize his existing authority to effectuate this policy.'

"(c) Section 701(c) of such Act is amended by striking out 'or an agency of a State or political subdivision of a State,'.

"(d) Section 701(e) of such Act is amended by striking out '(A)' and all that follows down to and including 'thereafter' in the matter preceding paragraph (1) and inserting in lieu thereof 'eight or more.'

"SEC. 2. Title VII of the Civil Rights Act of 1964 is amended by deleting section 706 and inserting in lieu thereof the following:

"'PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

"'SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704.

"'(b) Whenever a written charge has been filed by or on behalf of any person claiming to be aggrieved, or a written charge has been filed by a member of the Commission that any employer, employment agency, or labor organization has engaged in any unlawful employment practice, the Commission shall notify the employer, employment agency, or labor organization charged with the commission of an unlawful employment practice (hereinafter referred to as the "respondent") of such charge and shall investigate such charge. If the Commission shall determine that there is not probable cause for crediting such charge it shall state its determination and notify any person claiming to have been aggrieved and the respondent of such determination. Each such determination shall be deemed to be a final order of the Commission. If the Commission shall determine after such preliminary investigation that probable cause exists for crediting such written charge, it shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be used as evidence in any subsequent proceeding.

"'(c)(1) If within a period of thirty days after a charge is filed with the Commission, the Commission fails to secure an agreement between the parties for the elimination of such unlawful practice on mutually satisfactory terms, approved by the Commission, the Commission shall issue and cause to be served upon the respondent a complaint stating the charges in that respect, together with a notice of hearing before the Commission, or a member thereof, or before a designated agent, at a place therein fixed, not less than ten days after the service of such complaint. Whenever the Commission is required to endeavor to secure voluntary compliance with this title and it determines that circumstances warrant an early hearing, the Commission may issue a complaint, in the same manner as provided in the preceding sentence, prior to the expiration of such thirty-day period. No complaint shall issue based upon any unlawful employment practice occurring more than one year prior to the filing of the charge with the Commission unless the person aggrieved thereby was prevented from filing such charge by reason of service in the Armed Forces, in which event the period of military service shall not be included in computing the one-year period.

"'(2) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

"'(d)(1) The Commission or a member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

"'(2) All testimony shall be taken under oath.

"'(3) The member of the Commission who filed a charge shall not participate in a hearing thereon, except as a witness.

"'(e)(1) At the conclusion of a hearing before a member or designated agent of the Commission, such member or agent shall transfer the entire record thereof to the Commission, together with his recommended decision and copies thereof shall be served upon the parties. The Commission, or a panel of three qualified members designated by it to sit and act as the Commission in such case, shall afford the parties an opportunity to be heard on such record at a time and place to be specified upon reasonable notice. In its discretion, the Commission upon notice may take further testimony.

"'(2) With the approval of the member or designated agent conducting the hearing, a case may be ended at any time prior to the transfer of the record thereof to the Commission by agreement between the parties for the elimination of the alleged unlawful employment practice on mutually satisfactory terms.

"'(f) If, upon the preponderance of the evidence, including all the testimony taken, the Commission shall find that the respondent engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent and other parties an order requiring such respondent to cease and desist from such unlawful employment practice and to take such affirmative action as will effectuate the polices of this title, including, but not limited to, establishing on-the-job training for any person aggrieved by such unlawful employment practice, or payment of damages, or

reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the discrimination) : *Provided*, That interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which it has complied with the order. If the Commission shall find that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on such respondent and other parties an order dismissing the complaint.

"'(g) From the time a hearing is held before the Commission, or in the case of a hearing before a member or designated agent of the Commission from the time of the transfer of the record thereof to the Commission, until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the case may at any time be ended by agreement between the parties, approved by the Commission, for the elimination of the alleged unlawful employment practice on mutually satisfactory terms, and the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

"'(h)(1) The proceedings held pursuant to the preceding subsections of this section shall be conducted in public sessions and in conformity with the standards and limitations of sections 5, 6, 7, 8, and 11 of the Administrative Procedure Act.

"'(2) In addition to the authority conferred upon the Commission by the other provisions of this title, the Commission is authorized, in carrying out its functions under this title, to—

"'(A) receive money and other property donated, bequeathed, or devised, without condition other than that it be used in furtherance of the conditions of this title; and to use, sell, or otherwise dispose of such property for the purpose of carrying out the provisions of this title; and

"'(B) accept and utilize the services of voluntary and uncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by law (5 U.S.C. 736–2) for persons in the Government service employed without compensation.

"'(3) For the purposes of the preceding subsections of this section the Commission is authorized to utilize the available services of the Department of Labor and the employees thereof, with the consent of the Secretary of Labor, in (A) conducting a preliminary investigation with respect to any charge filed with the Commission, (B) endeavoring to secure voluntary compliance with this title, (C) conducting a hearing resulting from the issuance of a complaint by the Commission, and (D) obtaining advice and pertinent information concerning any occupational training programs financed in whole or in part by the Federal Government. Within the limitation of funds appropriated to the Commission, it may make agreements, with the Secretary of Labor, establish such procedures, and make such payments, either in advance or by way of reimbursement, to the Department of Labor or the employees thereof, as the Commission deems necessary to carry out the provisions of this paragraph. For the purposes of this parargaph, the Secretary of Labor is authorized to cooperate with the Commission and to provide such services as the Commission may request. Nothing contained herein shall be construed to authorize the Commission to delegate any of its authority to make determinations with respect to charges filed with it, to issue complaints, or to make final orders and findings of fact.

"'(i)(1) Whenever the Commission makes a finding that any respondent has engaged in any unlawful employment practice and issues an order requiring such respondent to cease and desist from such unlawful employment practice or whenever the Commission has probable cause for belief that any respondent is not in compliance with the terms of any voluntary agreement for the elimination of an unlawful employment practice entered into pursuant to subsection (b), (e) or (g) of this section, the Commission shall have the power to petition any United States court of appeals, or if the court of appeals to which applications might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question occurred, or wherein the respondent resides or transacts business, for the enforcement of such order or voluntary agreement and for appropriate temporary relief or restraining order and for the entry of an order directing the respondent to forfeit and pay to the United States a civil penalty of not more than $5,000 for any violation of such

order of the Commission, and shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such an order was entered and the findings and the order of the Commission or a true copy of such voluntary agreement. Upon such filing, the court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"'(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have the power to grant such temporary relief or restraining order as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission or the voluntary agreement between the parties, or directing the respondent to forfeit and pay to the United States a civil penalty of not more than $5,000 for any violation of the order of the Commission, which penalty shall accrue to the United States. For the purposes of this subsection, each separate violation of such a final order shall be a separate offense, except that in the case of a violation through continuing failure or neglect to obey a final order of the Commission each day of continuance of such failure or neglect shall be deemed a separate offense.

"'(3) No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

"'(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

"'(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or agent, the court may order such additional evidence to be taken before the Commission, its member, or agent, and to be made a part of the transcript.

"'(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

"'(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court or other United States court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

"'(j) Whenever a written charge has been filed pursuant to subsection (b) alleging that any respondent has engaged in any unlawful employment practice and, after preliminary investigation, the Commission has determined that probable cause exists for crediting such written charge, the Commission may petition any United States court of appeals or, if the court of appeals to which application might be made is in vacation, any district court within any circuit or district, respectively, wherein the unlawful employment practice in question is alleged to have occurred, or wherein the respondent resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Commission, or the securing of a voluntary agreement between the parties under subsection (b), (e), or (g) of this section, with respect to the matter in question. Upon the filing of any such petition the court shall cause notice thereof to be served upon the respondent and thereupon shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper. Such respondent shall be given an opportunity to appear by counsel and present any relevant testimony. Notwithstanding any other provision of this subsection, a temporary restraining order may be issued without notice if a petition alleges that substantial and irreparable injury to the alleged aggrieved party will be unavoidable and any such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period.

"'(k) (1) Any person or party aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals of the judicial circuit wherein the unlawful employment practice in question was alleged to have been engaged in or wherein such person or party resides or transacts business or the Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding certified by the Commission, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (i), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part the order of the Commission.

"'(2) Upon such filing by a person or party aggrieved the reviewing court shall conduct further proceedings in conformity with the standards, procedures, and limitations established by section 10 of the Administrative Procedure Act.

"'(l) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

"'(m) When granting appropriate temporary relief or a restraining order, or making and entering a decrée enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Commission, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (29 U.S.C. 101–115).

"'(n) Petitions filed under this title shall be heard expeditiously.'

"SEC. 3. The second sentence of section 709(b) of the Civil Rights Act of 1964 is amended by striking out 'and under which no person may bring a civil action under section 706 in any case or class of cases so specified,'.

"SEC. 4. Title VII of the Civil Rights Act of 1964 is amended by deleting section 710 and inserting in lieu thereof the following:

"'INVESTIGATORY POWERS

"'SEC. 710. (a) For the purposes of any investigation provided for in this title, the provisions of sections 9 and 10 of the Federal Trade Commission Act of September 16, 1914, as amended (15 U.S.C. 49, 50), are hereby made applicable to the jurisdiction, powers, and duties of the Commission, except that the attendance of a witness may not be required outside of the State where he is found, resides, or transacts business, and the production of evidence may not be required outside the State where such evidence is kept.

"'(b) The several departments and agencies of the Government, when directed by the President, shall furnish the Commission, upon its requests, all records, papers, and information in their possession relating to any matter before the Commission.'

"SEC. 5. Title VII of the Civil Rights Act of 1964 is amended by adding at the end thereof the following new section:

"'SURVEY BY COMMISSION OF APPRENTICESHIP OR OTHER TRAINING PROGRAMS

"'SEC. 717. (a) The Commission shall conduct a continuing survey of the operation of apprenticeship or other training or retraining programs, including on-the-job training programs, to determine if the employers, labor organizations, or joint labor-management committees controlling such programs are engaged in unlawful employment practices with respect to the operation of such programs.

"'(b) Notwithstanding any provisions of section 709, in conducting such survey the Commission shall at all reasonable times have access to any records maintained by an employer, labor organization, or joint labor-management committee pursuant to (1) the regulations prescribed by the Commission under the second sentence of section 709(c), or (2) any fair employment practice law of a State or political subdivision thereof.

"'(c) The Commission shall make a full and complete quarterly report to the Congress, containing the results of such survey during the preceding three months, and such report shall be made available to the public upon request.'

"SEC. 6. The provisions of this Act shall not affect suits commenced prior to the date of enactment of this Act by an aggrieved person pursuant to section 706(e) of the Civil Rights Act of 1964, or by the Attorney General pursuant to section 707 of such Act, and all such suits shall be continued by such aggrieved person or the Attorney General, as the case may be, proceedings therein had, appeals therein taken, and judgments therein rendered, in the same manner and with the same effect as if this Act had not been passed."

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C.

Hon. LISTER HILL,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of March 20 asking the Equal Employment Opportunity Commission to submit a report on S. 1308, the equal employment opportunity legislation introduced by Senators Clark and Javits.

The Equal Employment Opportunity Commission strongly recommends the adoption of this legislation. We believe that passage of S. 1308 is necessary to make the Commission a more effective agent in ensuring true equal employment opportunity.

The major feature of this proposal is the provision to grant cease and desist order powers to the Equal Employment Opportunity Commission. In our judgment, the availability of this power would do much not only to ensure minority employment rights under the law but also to enhance the conciliation process which is fundamental to the successful operation of the Commission.

Some 40 percent of the cases in which the Commission has found probable cause to believe discrimination was practiced have not been successfully conciliated under the present law, with the result that a sizeable minority of persons whose rights to equal employment opportunity have been violated do not receive redress from the Commission. The availability of the cease and desist order powers would both improve the possibility of the complainant obtaining a legal remedy and serve to increase the respondent's willingness to cooperate in arriving at a satisfactory conciliation.

Procedures in the existing legislation make for a situation where a uniform standard of equal employment will evolve only through appeal of individual cases to the Supreme Court. With the passage of S. 1308, the Commission will be able to issue cease and desist orders which will make for such a uniform standard in the first instance. The burden on individual complainants and on individual district judges will also be reduced.

The Equal Employment Opportunity Commission is therefore eager to see this proposal enacted into law and hopeful that hearings will begin at your earliest convenience.

The Bureau of the Budget informs us that this legislation is in accord with the program of the President.

Yours sincerely,

STEPHEN N. SHULMAN, *Chairman.*

Senator CLARK. Senator Kennedy, do you have something to add?

Senator KENNEDY of Massachusetts. Thank you, Mr. Chairman. I have a brief opening statement and I would ask if we could have my opening remarks follow the chairman's opening remarks.

Senator CLARK. Go right ahead, Senator Kennedy.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY of Massachusetts. Thank you, Mr. Chairman. I am most pleased that this subcommittee will have the opportunity to review the work of the Equal Employment Opportunity Commission

and to see what steps ought to be taken to strengthen that Commission and make more effective the important work it has been assigned.

Certainly, equal access to jobs is one of the most central elements in our struggle for total equality of opportunity. It is also vital to our efforts to combat poverty, and essential to our program for prevention of crime and rehabilitation of offenders.

If a man cannot get a job because of his race, his religion, or his national origin, it is not only a tragedy for the one individual, who cannot support himself or his family, who must endure the feeling of rejection and frustration at having been rebuffed by the society in which he lives, it is also a tragedy for society has lost the benefit of the contribution which that man was prepared to make, and society has turned away unsatisfied a person who wanted to have a stake in the society. And most simply, but most tellingly, society has demonstrated that prejudice and unreasoned reflex actions are still capable of outweighing fairness, rationality, and the principles of equality on which the foundations of our democracy were laid.

We, in Massachusetts, have a special interest in equal employment opportunity. Our State was the third in the Nation to pass a fair employment practices law more than 20 years ago. Enforcement of that law is now in the hands of the Massachusetts Commission Against Discrimination under the able leadership of Malcolm Webber, whom we will be hearing from tomorrow afternoon.

The Massachusetts commission covers not only employment, but also housing, public accommodations, and public facilities. It received 638 complaints of all kinds in 1965 and 706 complaints in 1966. Of these about one-fifth involved employment practices.

The Massachusetts commission has worked very closely with the Federal Equal Employment Opportunity Commission, practically from the day that title VII became law. The State legislature led the way in this regard when it moved quickly to make its law correspond to the Federal law by adding a prohibition against discrimination on account of sex.

Since then there has been frequent contact and continuing cooperation between the two commissions, culminating in a joint research project in 1965. Some of the findings and proposals which came out of that project have been the basis for a grant from the EEOC to the Massachusetts commission, which I am sure will be productive for both parties.

In connection with the bill before the committee, S. 1308, which is title III of the proposed Civil Rights Act of 1967, S. 1026, of which I am a cosponsor, I should mention that the Massachusetts commission has a cease-and-desist authority similar to that which the bill would grant to the EEOC.

I am told that this power to secure cease-and-desist orders, although it is rarely used in the Massachusetts commission, has enabled it to do a more effective job of conciliation. Of the more than 600 cases presented to the commission in 1965, in only one did the commission go through the hearing and cease-and-desist procedure.

I hope this subcommittee will have a chance tomorrow to explore with Mr. Webber the workings of this provision in Massachusetts, and to see what some of its benefits and some of its problems have been.

I thank the Chair.

Senator CLARK. Thank you very much, Senator Kennedy.

Our first witness this morning is Attorney General Ramsey Clark, whom we are most happy to welcome before the subcommittee.

Mr. Attorney General, I have had an opportunity to read your excellent prepared statement, which I think is a fine argument in support of S. 1308. I will ask to have it printed in full in the record at this point and if you care to add anything to your prepared statement, I will be glad to hear from you. But I think the statement speaks for itself.

(The prepared statement of Attorney General Clark follows:)

PREPARED STATEMENT OF ATTORNEY GENERAL RAMSEY CLARK, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee, President Theodore Roosevelt told us that "far and away the best prize that life offers is the chance to work hard at work worth doing." Some Americans are denied this prize simply because of race, color, religion, national origin or sex.

In recent years, the Congress has acted to eliminate racial discrimination in voting, in education and in access to public accommodations and facilities. While Congress has also acted to eliminate discrimination in employment, enforcement has proved relatively ineffectual because of inadequate sanctions. Yet, without an equal opportunity to obtain employment many other opportunities may mean little.

More effective action is needed to secure equal opportunity in employment. While the unemployment rate in 1965 was twice as high for nonwhites as for whites, the disparity increased to a ratio of 2.2 to 1 by the end of 1966. At least one reason for this is racial discrimination in employment.

Equal employment opportunity is vital to the accomplishment of many important national goals. Efforts to reduce crime are hampered by frustrations resulting from discrimination in employment. Indeed, one of the recommendations of the President's Crime Commission was to eliminate barriers to employment posed by discrimination. Hence, the bill could be called an anti-crime measure. The war on poverty is hindered when jobs are not open on an equal basis to those who make up a substantial percentage of the poor in our land. Hence, the bill could be called an anti-poverty measure. To reduce the alarming number of school dropouts is more difficult when many have reason to believe that education leads nowhere for them. Hence, the bill could be called an education measure. An end to job discrimination would permit full use of our nation's manpower and increase the national productivity. Hence, the bill could be called an economic measure.

Title VII of the Civil Rights Act of 1964 makes it an unlawful employment practice for employers, labor organizations, joint-apprenticeship committees and employment agencies to engage in enumerated acts of discrimination based upon race, color, religion, national origin or sex. The Act established an Equal Employment Opportunity Commission to receive claims of unlawful discrimination. However, the Commission is authorized to seek compliance only by informal methods of conference, conciliation and persuasion. Where these methods prove unsuccessful, the victim of discrimination is left to seek relief in the federal courts.

S. 1308 retains the Commission's present functions under Title VII of the 1964 Act and continues to give priority to enforcement by these informal, non-public methods. Where these methods fail, however, the Commission will have enforcement powers. The Commission will be authorized to issue a complaint against the party charged with unlawful discrimination and to hold a public hearing. Respondents at such hearings will be entitled to all the protections afforded by the Administrative Procedure Act, including the right to counsel and the right to call and examine witnesses. If, based on the evidence presented at such hearing, the Commission determined that the law had been violated, it can issue an order requiring the respondent to cease and desist its discriminatory practices. The Commission's orders will be enforceable or reviewable in the courts of appeals, both as to the Commission's findings of fact under the usual "substantial evidence" rule, and the Commission's interpretations of law.

The enforcement authority to be conferred on the Commission by S. 1308 closely parallels that given to and long exercised by federal agencies, such as the National

Labor Relations Board, Federal Trade Commission and Federal Power Commission.

The present authority of the Department of Justice to institute civil suits to restrain patterns and practices of discrimination is retained. This authority—lodged in a Department with years of experience in the enforcement of civil rights—is an important supplemental tool in the attack on a widespread national problem.

The bill will permit the Department of Justice to inspect employment records prior to institution of suit. This provision is patterned after one in the Civil Rights Act of 1960 which was helpful in combatting racial discrimination in voting. The determination by investigation of whether a pattern of discrimination exists is extremely difficult without an analysis of employment records. The bill at the same time provides safeguards to protect these records from public disclosure.

That S. 1308 will create more effective enforcement machinery is clear. It will permit a more expeditious handling of cases by an administrative agency dealing solely with discrimination in employment than is possible by courts whose dockets are already overcrowded with other cases.

The bill will reduce costs for an aggrieved person. Under the current law, the aggrieved may have to pay fees, security and costs for himself and, if unable to prove discrimination, for the defendant. Most victims of employment discrimination are in no position to take such an economic risk.

The experience of the Equal Employment Opportunity Commission substantiates the need for this legislation. The Commission has had only limited success in obtaining voluntary compliance. Enforceable cease and desist authority will undoubtedly lead to greater success. The Commission's effectiveness as a conciliator would be enhanced. Those subject to the Act will be more willing to negotiate. Experience of the State fair employment agencies support this proposition.

Of the 36 states with enforceable FEP legislation, 31 provide enforcement by means of agency cease and desist powers. So do the District of Columbia and Puerto Rico.

Several of these 31 states—including Kansas, Nevada, Colorado, Wisconsin, Indiana, and most recently, West Virginia—whose statutes did not originally confer such enforcement powers later found it necessary to amend their laws to provide for such powers. The Model Anti-Discrimination Act of the Commissioners for Uniform State Laws, which is directed at employment discrimination, also contains enforcement provisions of the type proposed by S. 1308.

Three states—Arizona, Oklahoma, and Tennessee—currently have FEP provisions which are either completely or partially unenforceable. The responsible agencies in all three of these states have informed us of the handicap under which they work and the need for agency enforcement power to help solve the problem of discrimination in their states. In at least one of these states, legislation is now pending which would provide these agencies with enforceable cease and desist authority.

Enactment of this bill will lead to development of a needed expertise in the area of equal employment. Charges of discrimination under Title VII often raise complex issues concerning company structure, seniority and promotion. Expertise will help resolve these. The legislation would also achieve a greater uniformity of result and legal interpretation—a more unified implementation of a truly national policy.

This policy recognizes that it is not easy for a man who is unemployed solely because of his color to maintain his faith in this nation's institutions. He cannot support his family, he cannot afford a suitable place to live, he cannot enjoy the material benefits of his society. Worst of all, he cannot hope to improve his condition—and in that respect he is denied the most valuable opportunity America has in the past held out to the deprived and dispossessed.

I urge the prompt, favorable consideration of S. 1308.

STATEMENT OF HON. RAMSEY CLARK, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General CLARK. Unless there are some questions or something, Mr. Chairman, the statement, I believe, adequately expresses the affirmative case.

Senator CLARK. Thank you very much, Mr. Attorney General. I know how busy you are and we certainly appreciate your coming down here and the fact that we do not ask you to testify verbally at length is not the slightest indication that I at least am not impressed by the validity of your argument.

I appreciate your coming down.

Attorney General CLARK. Thank you very much, Mr. Chairman. You know how strongly we feel about this measure and how urgent it is to the administration.

Thank you.

Senator CLARK. The subcommittee will now take a 10-minute recess in order to permit the chairman to make a very brief appearance before the Appropriations Committee. I will hope to be back here in 10 minutes.

(Whereupon, a brief recess was taken.)

Senator PELL (presiding, pro tempore). The Subcommittee on Manpower, Employment, and Poverty will resume its hearing and the next witness will be the Honorable Stephen Shulman, Chairman of the Equal Employment Opportunity Commission.

Mr. Shulman, come forward please. Do you have a prepared statement?

Mr. SHULMAN. Yes, Senator, I do have a prepared statement.

Senator PELL. Would you like to read it or place it in the record?

Mr. SHULMAN. Whatever you wish. I would like to have my fellow Commissioners come up and join me. The statement would take approximately 15 minutes. I could summarize it, if you prefer.

Senator PELL. We have time. Please go ahead and read it.

Would you please identify your colleagues.

STATEMENT OF STEPHEN N. SHULMAN, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY LUTHER HOLCOMB, VICE CHAIRMAN; AND SAMUEL C. JACKSON, MEMBER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. SHULMAN. Mr. Chairman, on my left is Dr. Luther Holcomb, vice chairman of the Commission; and on my right, Mr. Samuel C. Jackson, Commissioner.

While I will present testimony for the Commission, my fellow Commissioners will be pleased to join me in answering any questions the subcommittee may have.

The Equal Employment Opportunity Commission was established by title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination because of race, color, religion, sex, or national origin in all aspects of employment. Enforcement of this prohibition was entrusted to a bipartisan Commission, to become operational on July 2, 1965, and to be composed of five members, appointed by the President, with the advice and consent of the Senate. These Commissioners serve staggered 5-year terms.

Title VII prohibits four major groups affecting commerce from engaging in discriminatory practices: employers, public and private employment agencies, labor organizations, and joint labor-management apprenticeship and training programs.

Employers of 100 or more persons, labor unions with 100 or more members or operating hiring halls, and employment agencies dealing with employers of 100 or more persons were covered in the first year of the law's operation, with the number dropping in each succeeding year to 75, 50, and finally 25. The stepdown process thus ends with employers and labor unions of 25 persons or more being covered on July 2, 1968.

The Commission has two major assignments under title VII. The compliance program, which is fundamentally affected by S. 1308, provides for the investigation, determination of reasonable cause, and conciliation of complaints of employment discrimination.

The technical assistance program offers advice and assistance, educational aids, and affirmative projects for voluntary efforts to promote the objectives of the act. To carry out these assignments, the Commission has an authorized staff of 314 persons and a fiscal year 1967 budget of $5.2 million. A majority of the Commission personnel serve in 11 field offices covering the entire country. These field offices work closely with other Federal agencies which have related responsibilities and also with State and local fair employment practices commissions.

Under the existing legislation, the complaint procedure works as follows:

The aggrieved person files a sworn, written charge with the Commission.

If the charge involves an employment practice committed in a State or political subdivision which has an effective fair employment practices law, the Commission must defer to the State or local agency for a period of 60 days, extended to 120 days during the first year of the State or local law.

A charge must be filed within 90 days after the alleged unlawful practice has occurred, or 210 days if a State or local agency was involved.

The Commission then investigates the charge, makes a finding of reasonable cause, if indicated, and attempts to obtain voluntary compliance. Investigation and conciliation are undertaken by agents of the Commission; reasonable cause is determined by the Commission itself.

Within 30 days of filing with the Commission, the charging party may bring a civil action in the Federal courts. This period may be extended to 60 days by the Commission.

The Attorney General may also bring a civil action in the Federal courts to correct a pattern or practice of discrimination. The EEOC may refer cases to the Attorney General with the recommendation that he institute such a civil action, and it may also recommend that he intervene in a civil action brought by an aggrieved party.

Since the Commission has gone into operation, it has received over 16,000 charges. More than 60 percent of these charges have been based on racial discrimination; some one-third have involved sex discrimination; roughly 3 percent cite discrimination based on national origin; and somewhat over 1 percent, religious discrimination.

Omitting those complaints that were deferred to State or local commissions, closed for lack of jurisdiction or other reasons, or re-

turned for additional information, the number of charges that had been scheduled for investigation through April 12 of this year was over 7,000. Of this 7,000 approximately 3,500 charges were in the process of or pending investigation, and investigations had been completed on the other 3,500. Of the approximately 3,500 charges where investigations had been completed, conciliation had been completed on 819.

The breakdown of these 819 is as follows:

In fiscal year 1966 conciliation of 191 charges was completed. Of these, 131 were successful or partially successful; or 69 percent of the total.

So far during fiscal year 1967, conciliation has been completed for 628 charges, of which 357 were successful or partially successful, for a rate of 57 percent of the total.

As you can see, the percentage of successful conciliations has decreased, and the trend continues in that direction. With added resources and improved procedures, we anticipate a significant increase in the number of charges for which conciliation will be completed.

In any event, a sizable minority of persons whose rights to equal employment opportunity have been violated do not at present receive redress from the Commission. Their only recourse is to initiate private suits, unless the Attorney General finds that a pattern or practice of discrimination exists.

The legislation on which I am testifying today, S. 1308, would serve as a vital contribution to insuring that the equal employment rights of these individuals are protected and to facilitating conciliations. The major provision of S. 1308 is the one that grants power to EEOC to issue cease-and-desist orders.

Under the bill, after the Commission determines that further conciliation efforts are unwarranted, the following steps would take place:

The Commission would issue and cause to be served upon the respondent a complaint stating the facts on which discrimination is alleged.

A hearing would then be held before the EEOC or its member or agent.

After the hearing, if the Commission found that the respondent had engaged in an unlawful employment practice, it would state its findings of fact and issue a cease-and-desist order. This order could include appropriate affirmative relief, such as reinstatement and payment of back wages, and could also require the respondent to make reports from time to time on the extent of his compliance. If the Commission found that no unlawful employment practice occurred, the complaint would of course be dismissed.

Once a cease-and-desist order was issued, the EEOC could petition a court of appeals where the unlawful employment practice occurred or wherein the respondent resided or transacted business for enforcement of the Commission's order. The Attorney General would then litigate the case.

Any respondent or person aggrieved by a Commission order could likewise obtain review of the order in an appropriate court of appeals.

The aggrieved person would have the right to bring a civil action in an appropriate Federal district or State court if within 180 days of filing his charge the Commission had for any reason failed to issue a complaint or upon receipt of a notice from the Commission of its intention not to issue a complaint, whichever is earlier. This would include the situation where failure to issue a complaint resulted from the achievement of voluntary compliance satisfactory to the Commission, but not to the aggrieved person.

The availability of this procedure will make the Commission a far more effective agent in insuring equal employment opportunity. It will give the Commission not only the power that is ordinarily afforded to Federal regulatory agencies in general, but it will bring the Commission's authority and procedures into harmony with those traditionally held by State agencies in this field.

Of the 38 State laws presently on the books, 25 have always provided enforcement procedures. Six other States, which did not originally provide enforcement, have since amended their statutes to do so. The Federal Commission should certainly have this traditional enforcement power.

In the words of the executive director of the Tennessee Commission on Human Relations:

We worked very hard in the area of equal employment opportunity, advising Negroes of their rights under title VII of the Federal Civil Rights Act of 1964 and helping complainants file complaints with the Equal Employment Opportunity Commission. We had a good deal of experience with the operation of the EEOC on the local grassroots level.

I became convinced that the EEOC could not effectively perform the duties entrusted to it without the power to hold hearings and issue enforceable cease-and-desist orders. The EEOC representatives who came into Tennessee had basically nothing behind them in their efforts to conciliate cases. If the employer could not be persuaded to comply with the law, the EEOC representative had to go back to Washington, or Atlanta [the appropriate EEOC regional office], and the complaining Negro was forced to hire a lawyer to bring a suit in Federal Court.

This is a thoroughly inadequate procedure for administrating fair employment provisions. The administering agency should be able to carry out the whole process of enforcement from initial investigation to final imposition of penalties if an agreement is impossible. Under the present system, too much of the burden still rests on the backs of those who are discriminated against. The government must carry the whole burden of proceeding against racial discrimination.

On the basis of the Tennessee experience, I certainly believe that Congress should give the Equal Employment Opportunity Commission the power to hold hearings and issue enforceable cease-and-desist orders.

Senator CLARK (presiding). I have had an opportunity to read your statement and so if you want to put it in full in the record, you might do that and then you might summarize what you think needs to be said again.

I have some questions and I suspect Senator Pell does, too.

Mr. SHULMAN. That is fine, Mr. Chairman.

(The prepared statement of Mr. Shulman follows:)

PREPARED STATEMENT OF STEPHEN N. SHULMAN, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you this mornnig to support S. 1308 which is designed to strengthen the enforcement powers of the Equal Employment Opportuntiy Commission (EEOC). May I begin by introducing my fellow members of the Commission: Dr. Luther Hol-

comb, Vice Chairman, and Mr. Samuel C. Jackson, Commissioner. As you know, the nomination of Mr. Vicente T. Ximenes to fill one of the Commission's two vacancies is pending before the Senate.

While I will present the testimony for the Commission, my fellow Commissioners will be pleased to join me in answering any questions the Subcommittee may have.

The Equal Employment Opportunity Commission was established by Title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination because of race, color, religion, sex, or national origin in all aspects of employment. Enforcement of this prohibition was entrusted to a bipartisan Commission, to become operational on July 2, 1965, and to be composed of five members, appointed by the President, with the advice and consent of the Senate. These Commissioners serve staggered five-year terms.

Title VII prohibits four major groups affecting commerce from engaging in discriminatory practices: employers, public and private employment agencies, labor organizations, and joint labor-management apprenticeship and training programs. Employers of 100 or more persons; labor unions with 100 or more members or operating hiring halls; and employment agencies dealing with employers of 100 or more persons were covered in the first year of the law's operation, with the number dropping in each succeeding year to 75, 50, and finally 25. The step-down process thus ends with employers and labor unions of 25 persons or more being covered on July 2, 1968.

The Commission has two major assignments under Title VII. The compliance program, which is fundamentally affected by S. 1308, provides for the investigation, determination of reasonable cause, and conciliation of complaints of employment discrimination.

The technical assistance program offers advice and assistance, educational aids, and affirmative projects for voluntary efforts to promote the objectives of the Act. To carry out these asignments, the Commission has an authorized staff of 314 persons and a Fiscal Year 1967 budget of $5.2 million. A majority of the Commission personnel serve in eleven field offices covering the entire country. These field offices work closely with other Federal agencies which have related responsibilities and also with state and local fair employment practices commissions.

Under the existing legislation, the complaint procedure works as follows:

The aggrieved person files a sworn, written charge with the Commission.

If the charge involves an employment practice committed in a state or political subdivision which has an effective fair employment practices law, the Commission must defer to the state or local agency for a period of 60 days, extended to 120 days during the first year of the state or local law.

A charge must be filed within 90 days after the alleged unlawful practice has occurred, or 210 days if a state or local agency was involved.

The Commission then investigates the charge, makes a finding of reasonable cause, if indicated, and attempts to obtain voluntary compliance. Investigation and conciliation are undertaken by agents of the Commission; reasonable cause is determined by the Commission itself.

Within 30 days of filing with the Commission, the chraging party may bring a civil action in the Federal courts. This period may be extended to 60 days by the Commission.

The Attorney General may also bring a civil action in the Federal courts to correct a pattern or practice of discrimination. The EEOC may refer cases to the Attorney General with the recommendation that he institute such a civil action, and it may also recommend that he intervene in a civil action brought by an aggrieved party.

Since the Commission has gone into operation, it has received over 16,000 charges. More than 60 percent of these charges have been based on racial discrimination; some one-third have involved sex discrimination; roughly 3 percent cite discrimination based on national origin; and somewhat over 1 percent, religious discrimination. Omitting those complaints that were deferred to state or local commissions, closed for lack of jurisdiction or other reasons, or returned for additional information, the number of charges that had been scheduled for investigation through April 12, 1967, was over 7,000. Of this 7,000, approximately 3500 charges were in the process of or pending investigation, and investigations had been completed on the other 3500. Of the approximately 3500 charges where investigations had been completed, conciliation had been completed on 819. The breakdown of these 819 is as follows: In Fiscal Year 1966, conciliation of 191 charges was completed. Of these, 131 were successful or partially successful, or 69

percent of the total. So far during Fiscal Year 1967, conciliation has been completed for 628 charges, of which 357 were successful or partially successful for a rate of 57 percent of the total. As you can see, the percentage of successful conciliations has decreased, and the trend continues in that direction. With added resources and improved procedures, we anticipate a significant increase in the number of charges for which conciliation will be completed.

In any event, a sizable minority of persons whose rights to equal employment opportunity have been violated do not at present receive redress from the Commission. Their only recourse is to initiate private suits, unless the Attorney General finds that a pattern or practice of discrimination exists.

The legislation on which I am testifying today, S. 1308, would serve as a vital contribution to ensuring that the equal employment rights of these individuals are protected and to facilitating conciliations. The major provision of S. 1308 is the one that grants power to EEOC to issue cease and desist orders. Under the bill, after the Commission determines that further conciliation efforts are unwarranted, the following steps would take place:

The Commission would issue and cause to be served upon the respondent a complaint stating the facts on which discrimination is alleged.

A hearing would then be held before the EEOC or its member or agent.

After the hearing, if the Commission found that the respondent had engaged in an unlawful employment practice, it would state its findings of fact and issue a cease and desist order. This order could include appropriate affirmative relief, such as reinstatement and payment of back wages, and could also require the respondent to make reports from time to time on the extent of his compliance. If the Commission found that no unlawful employment practice occurred, the complaint would of course be dismissed.

Once a cease and desist order were issued, the EEOC could petition a Court of Appeals where the unlawful employment practice occurred or wherein the respondent resided or transacted business for enforcement of the Commission's order. The Attorney General would then litigate the case.

Any respondent or person aggrieved by a Commission order could likewise obtain review of the order in an appropriate Court of Appeals.

The aggrieved person would have the right to bring a civil action in an appropriate Federal District or State Court if within 180 days of filing his charge the Commission had for any reason failed to issue a complaint or upon receipt of a notice from the Commission of its intention not to issue a complaint, whichever is earlier. This would include the situation where failure to issue a complaint resulted from the achievement of voluntary compliance satisfactory to the Commission but not to the aggrieved person.

The availability of this procedure will make the Commission a far more effective agent in ensuring equal employment opportunity. It will give the Commission not only the power that is ordinarily afforded to Federal regulatory agencies in general, but it will bring the Commission's authority and procedures into harmony with those traditionally held by state agencies in this field. Of the 38 state laws presently on the books, 25 have always provided enforcement procedures. Six other states, which did not originally provide enforcement, have since amended their statutes to do so. The Federal Commission should certainly have this traditional enforcement power. In the words of the Executive Director of the Tennessee Commission on Human Relations:

"We worked very hard in the area of equal employment opportunity, advising Negroes of their rights under Title VII of the Federal Civil Rights Act of 1964 and helping complainants file complaints with the Equal Employment Opportunity Commission. We had a good deal of experience with the operation of the EEOC on the local grass roots level.

"I became convinced that the EEOC could not effectively perform the duties entrusted to it without the power to hold hearings and issue enforceable cease and desist orders. The EEOC representatives who came into Tennessee had basically nothing behind them in their efforts to conciliate cases. If the employer could not be persuaded to comply with the law, the EEOC representative had to go back to Washington, or Atlanta [the appropriate EEOC regional office], and the complaining Negro was forced to hire a lawyer to bring a suit in Federal Court. This is a thoroughly inadequate procedure for administering fair employment provisions. The administering agency should be able to carry out the whole process of enforcement from initial investigation to final imposition of penalties if an agreement is impossible. Under the present system, too much of the burden still rests on the backs of those who are discriminated against.

The government must carry the whole burden of proceeding against racial discrimination.

"On the basis of the Tennessee experience, I certainly believe that Congress should give the Equal Employment Opportunity Commission the power to hold hearings and issue enforceable cease and desist orders."

Perhaps the most compelling justification for giving the Commission enforcement power is that it would improve the conciliation process. This has been the experience of the states. Highly relevant is the experience of the Kansas Antidiscrimination Commission, which moved from an unenforceable to an enforceable law. The Executive Director during that period reports as follows:

"In 1959 I became Executive Director of the Kansas Antidiscrimination Commission which since 1953 had been administering a nonenforceable fair employment law. The record was dismal. The Commission processed formal complaints which were marked with delay throughout the investigatory process through lack of cooperation from respondents.

"In 1961 the Kansas act against discrimination became enforceable including the power to issue cease and desist orders after a public hearing. The picture changed. Investigations proceeded without undue delay through the cooperation of respondents. Only two public hearings were held from 1961 until I left in April, 1966. Public hearings were not necessary because the possibility of a cease and desist order encouraged respondents to cooperate during the period of conference and conciliation leading to satisfactory adjustment of ceases where probable cause had been found to credit the allegations of discrimination.

"During the 'nonenforceable' period from 1953 to 1961 only 89 complaints had been filed with 23 complaint cases remaining open because 'Respondent Uncooperative.' The period from 1961 through 1964 revealed 137 complaints processed with not a single case open for lack of cooperation from respondents."

The Pennsylvania experience is similar. The Executive Director of that state's Human Relations Commission sums it up thus:

"The Pennsylvania Human Relations Commission has been in operation since 1956. During this eleven-year period, through December 31, 1966, there have been 51 hearings covering the jurisdiction of employment, housing, public accommodation, and education.

"Of these 51 public hearings, the complaint was dismissed in four of them because of lack of evidence to definitely prove the respondent was guilty of discrimination. In the remaining 47 cases, definite Cease and Desist Orders were issued.

"While the total number of such orders appears to be small, an intimate relation exists between these 47 orders and the 3,838 complaints processed successfully and adjusted without going to a public hearing and issuing an order.

"It is our feeling that the mere existence of the Cease and Desist provision has lent weight to our deliberations and has led, therefore, to this large number of successful adjustments. We believe that if we did not have these provisions as part of our law, our total program would have produced a low level of accomplishment with the evident disillusion of our entire program a most likely result."

By the same token, the success rate of EEOC conciliations would increase if persuasion could be backed up by the power of enforcement. By providing enforcement power, the Congress would enhance, not degrade, the Commission's conciliation role. It would produce more, not fewer, conciliation agreements.

There are a number of other improvements which S. 1308 would make over the present provisions of Title VII. I will be happy to answer any questions the members of the Subcommittee have about them. The provisions regarding cease and desist orders, however, constitute the basic change.

I might make one other point, Mr. Chairman. The Commission has just concluded two days of public hearings, on May 2 and 3, on three areas of particular difficulty involving discrimination on the basis of sex: (1) the relationship between Title VII and state or local laws and regulations respecting the employment of women; (2) the question of separate male and female columns in job opportunities advertising; and (3) the status of private retirement and pension plans which provide different benefits for men and women. It is obviously too soon for the Commission to have reviewed and digested the material obtained during these hearings, but we would like to offer a copy of the hearing record to the Subcommittee, and we may also possibly want to offer some suggestions on these or other areas at a later time.

Mr. Chairman, I believe that President Johnson in his Message to the Congress on Equal Justice on February 15, 1967, succintly summed up the need for cease and desist order powers when he said:

"Unlike most other Federal regulatory agencies, the Equal Employment Opportunity Commission was not given enforcement powers. If efforts to conciliate or persuade are unsuccessful, the Commission itself is powerless. For the individual discriminated against, there remains only a time-consuming and expensive lawsuit."

The Commission recognizes that Title VII at present emphasizes its fundamental role as a conciliator. We believe that the addition of cease and desist order powers would reenforce that role.

Mr. Chairman, we are most appreciative of your responding to the urgency of this matter by holding these hearings in the midst of extensive poverty hearings, and I want to thank you and the other members of this Subcommittee for your long history of constructive concern about this problem.

Mr. SHULMAN. Let me say the only point I would like to emphasize is that we believe providing the Commission with enforcement power, the ability to issue cease-and-desist orders, will result in greater numbers of conciliations.

We think we will achieve better and more successful conciliation through having that power, a power that is traditional in this field.

Senator CLARK. Thank you very much, sir.

I have a few questions I would like to ask you.

How long have you been chairman?

Mr. SHULMAN. I have been Chairman since September 21, 1966.

Senator CLARK. Were you a member before that?

Mr. SHULMAN. No, I was not, Senator.

Senator CLARK. You have had a little over 6 months' experience.

Mr. SHULMAN. That is correct.

Senator CLARK. Several years ago Vice President, then-Senator Humphrey, prepared a bill which we processed through this subcommittee and the full committee and brought to the Calendar. That bill called for a different administrative setup from the present one and different, too, from the proposals of S. 1308. It called in general for a quasi-judicial commission with a strong executive director, who was given substantial administrative authority, including investigatory power. He was to bring before the commission complaints which either had been made by aggrieved persons or those who felt they were aggrieved, or complaints which he dug up on his own.

It always seemed to me that that was a preferable form of organization. I note the administration has rejected it. I don't know to what extent your lips are sealed, but to the extent you can comment, can you tell us whether you have found any difficulties which appear to have plagued various other commissions which try to operate both administratively, on the policy level, and quasijudicially as well, and whether you think the provisions of the Humphrey bill, as we called it, would be an improvement?

Mr. SHULMAN. Of course, I have to preface my comment, Senator, by pointing out that we have never had cease-and-desist order power, so I cannot say for certain how that would work if we had it.

Senator CLARK. That bill did have it.

Mr. SHULMAN. Given the absence of cease-and-desist order power, I have found no reason to believe that the procedure envisioned by the Humprey bill would be preferable. The Commission is set up on a basis that has administration as the responsibility of the chairman and not the Commission, and the adjudication functions are the responsibility of the Commission.

The procedure that the Humphrey bill envisions is like the NLRB. Our procedures, I suppose, are more like other Federal regulatory agencies——

Senator CLARK. Or the Interstate Commerce Commission.

Mr. SHULMAN. Or the SEC, and we do have the capacity to bring charges on our own motion through individual Commissioners. If an individual Commissioner does file a charge, he does not participate in the adjudication of that charge.

Senator CLARK. How do you assign duties—or how does the Commission, under your chairmanship, assign duties to the individual Commissioners? Perhaps at some point the two Commissioners with you would like to comment on their own duties. Perhaps you would speak first as to who you tell to do what or who does the Commission tell to do what, or do you just act as a group of five without any individual responsibility?

Mr. SHULMAN. The major role that the Commissioners have, and I certainly think, as you do, that they should have the opportunity to comment on that role, is in the process of deciding individual cases.

We have a caseload, as I indicated, of some 10,000 complaints a year, and at the present time we make reasonable cause determinations as a Commission. The writing of those decisions is an enormous task, one in which I regret to say we are currently backlogged and one that keeps our Commissioners quite busy.

Senator CLARK. It is kind of the way a court would do it, isn't it?

Mr. SHULMAN. Yes, very much that way.

In addition, we have used individual Commissioners in a series of administrative assignments on an ad hoc basis. For example, Commissioner Jackson is currently leading a task force which is reviewing our investigation procedures and developing improved formats for use in speeding up that process.

Vice Chairman Holcomb shares the administration responsibility with me. We have two vacancies at the moment and so those slots are not performing anything.

Senator CLARK. There is one appointment which has not yet been confirmed; is that correct? In due course hopefully you only will have one vacancy. You really need five, don't you?

Mr. SHULMAN. The statute calls for five and we can use five.

Senator CLARK. Is there any distinction between the Commissioners on a geographical basis?

Mr. SHULMAN. Each Commissioner at one time had a geographic orientation, when there were five. Now with three, the Commissioners take a greater or lesser degree of interest in given regions of the country, as they reflect their own background and experience, but we do not divide cases up in any geographical manner.

Senator CLARK. I would like to hear briefly from Commissioner Jackson and then Commissioner Holcomb as to your reactions to the job and any frustrations you may find in it and my rewarding parts that you find in it, too.

I would like to get something on the record as to how you gentlemen think this present process is working, whether it needs any legislative overhaul. I am fairly sure it does need some legislative oversight.

Mr. JACKSON. Senator, in terms of the structure itself, I believe that it is working well. I believe that S. 1308, the bill that is before us, will

permit us to do our job much more effectively. I do not feel that the Humphrey bill approach would enable the Commission to better perform its job. Indeed, I have found that the experience of five Commissioners with our varied backgrounds is essential to the development of the processes of the Commission, and I think it would be a setback to the success that the Commission has enjoyed to date to separate it by having a strong executive director handle the prosecutorial role, as you have suggested.

Senator CLARK. Mr. Holcomb?

Mr. HOLCOMB. Senator, I think the frustrations that you mentioned are to be expected with an agency being so new. I am in hearty accord with what Commissioner Jackson has just said. At different times I felt it could be good if there could be a clarification as to the intent of Congress, such as on matters whether we are to preempt State laws, especially in regard to the sex provision.

Senator CLARK. Thank you, Commissioner.

Mr. Shulman, in your statement you refer to your budget, the size of your authorized staff, and then you state that most of the Commission personnel serve eleven field offices covering the entire country and work closely with other Federal agencies and with the local and State fair employment practices commissions.

What are the administrative lines of control by which the work of the 11 field offices is coordinated from Washington? What is the workflow from the field offices up to Washington?

Mr. SHULMAN. The Commission, Mr. Chairman, is staffed relevantly for this purpose with the following key positions: Staff Director, Deputy Staff Director, Director of Compliance, which is——

Senator CLARK. Director of what?

Mr. SHULMAN. Compliance, which is the complaint program; and Director of Technical Assistance.

The Director of Technical Assistance and the Director of Compliance oversee in a policy sort of way what is done in the field in the voluntary program of technical assistance or in the compliance program of complaint processing.

The regional directors report to the Deputy Staff Director. Through the Staff Director's overall administrative control of the Commission and through the regional directors reporting to his deputy, we feel we have achieved a good administrative control and understanding of what is going on in the field and relating it to what is going on in headquarters.

Senator CLARK. Do the field offices do anything with respect to the investigation of complaints?

Mr. SHULMAN. Yes, excuse me, Senator, I should have brought that out. All investigations are conducted in the field.

The Commission is essentially a field organization and it is in the process of flux in that regard. We started out as a headquarters organization, as we learned what we were doing, and are gradually moving to the field. The investigation process is now entirely in the field.

The reasonable cause determination process is entirely at headquarters with the Commission, and the conciliation process is now moving to the field. It had been at headquarters.

Senator CLARK. At the end of a field investigation of a complaint, is a recommendation with respect to reasonable cause forwarded to

Washington or does the case just come up without any recommendation from the field?

Mr. SHULMAN. There is a recommendation made by the regional director; the Director of Compliance also makes a recommendation; and the Commission then makes a determination.

Senator CLARK. Without a hearing?

Mr. SHULMAN. There is no hearing. It makes it on the basis of the investigation report.

Senator CLARK. I note you say that the number of charges which have been scheduled for investigation through April 12, 1967, was over 7,000, of which 3,500 were in the process of or pending investigation, and the other 3,500 had been completed. Conciliation had been completed in 819.

Does conciliation precede a determination of reasonable cause?

Mr. SHULMAN. No, exactly the opposite, sir. The system is investigation in the field, determination of reasonable cause by the Commission——

Senator CLARK. On recommendation from the field?

Mr. SHULMAN. Yes, but the recommendation is rejected in many instances.

Senator CLARK. Yes.

Mr. SHULMAN. And then conciliation——

Senator CLARK. Return to the field for conciliation.

Mr. SHULMAN. We are in the process of making the basic procedure. Up until now the system has been that persons staffing a national office of conciliations go into the field to do the conciliation, but the process of conciliation will henceforth be done mostly in the field.

Senator CLARK. Now, is there any geographical pattern with respect to those complaints where you find a reasonable cause? Are there certain areas of the country which have far fewer complaints than others?

Mr. SHULMAN. I have a detailed breakdown of complaints by State which I would be happy to give you, Senator, or I can read off some of the statistics to you right now, if you would like.

Senator CLARK. I would like to have you file with the subcommittee the detailed statement which you have in your possession, but I would like to ask you the general question as to whether there is a disproportionate number of complaints and findings of reasonable cause from any particular geographical area of the country.

Mr. SHULMAN. I would say that it would be difficult, indeed, for the Commission to conclude that the problem of employment discrimination is regional; that all the indexes are that it is a national problem. We receive complaints from every State, and I would hesitate greatly to draw any conclusions on the basis of 2 years' experience.

For example, the State from which we received the greatest number of complaints in our first year was not at all the State from which we received the greatest number of complaints in our second year.

Senator CLARK. Why don't you tell us what those two States were?

Mr. SHULMAN. I will have to dig that out. The State in our first year with the greatest number of complaints was North Carolina.

Senator CLARK. Perhaps a staff member behind you could dig that out while we go ahead.

Mr. SHULMAN. Fine.

Senator CLARK. Do you find any evidence in any section of the country of a reluctance to file complaints because of an alleged fear of repercussions which might be adverse to the complainant if he stood up and asked to be counted?

Mr. SHULMAN. We have encountered relatively little experience in this regard in a quantitative sense. We have a provision which requires Commission approval to withdraw a complaint. The reason for that was to try to come to grips with the intimidation issue.

We have had a very, very small number of cases in which an effort was made to withdraw a complaint by reason of intimidation.

Senator CLARK. I would be more concerned about cases which would be very hard to run down in which a complaint was not filed because of the fear of intimidation.

Mr. SHULMAN. Yes, the only way we would be able to run that down, Mr. Chairman, would be if we took a count of the anonymous charges that we have received which might or might not end up as the basis of a commissioner's charge. We have not kept a record of those charges by State and so I couldn't answer that.

Senator CLARK. I would like to ask you to furnish the subcommittee with a State-by-State analysis of the number of complaints filed by year, the number of complaints where there was a finding of reasonable cause, and the number of complaints where there was no such finding.

I would assume that—you can tell me if I am wrong—that in States where there is a relatively small Negro, Spanish-American, Mexican-American population, you would have very few complaints, but that the States where you have a heavy Negro population or Spanish- and Mexican-American population would be the States where you got your most complaints.

Is that a fair assumption?

Mr. SHULMAN. Yes, that is a fair statement, Mr. Chairman.

Senator CLARK. This statement, when it is filed with the committee, will be made a part of the record.

(The information subsequently supplied follows:)

MEMORANDUM FROM EEOC RE DISPOSITION OF COMPLAINTS RECOMMENDED FOR INVESTIGATION

All complaints received by the Commission are analyzed to determine whether allegations charged fall under statutory jurisdiction. If the complaints appear to be actionable, they are referred to an appropriate EEOC field office for investigation of the alleged discrimination in employment practices. Under established procedures, a report of the results of the investigation is submitted to the Commission for finding of reasonable cause or no cause to believe that discrimination was practiced.

If reasonable cause is found, the case is referred for conciliation where attempts are made to obtain compliance through voluntary agreement to discontinue the discriminatory practice. If conciliation efforts are unsuccessful, the complainant is advised of his right to bring a civil suit against the respondent.

The following tables break down by State, the complaints recommended for investigation during the first 18 months of Commission operation and indicate the processing stages described above. Entries shown in the column entitled "Attorney General Suit Recommended" however pertain to respondents, not complainants, against whom EEOC has specifically recommended the initiation of pattern or practices suits. In these cases, if adjudicated, the Government would be bringing suit on behalf of all employees adversely affected by the unlawful practice and not merely those employees whose complaints are included in this analysis.

[Fiscal year 1966]

50 States and the District of Columbia	Complaints recommended	Investigation stage		Review stage				Conciliation stage			Attorney General suit recommended (respondents)
		Investigation completed	Investigation pending or in process at yearend	Cause found	No cause found	No jurisdiction or withdrawn by complainant	Pending decision at yearend	Successful conciliations	Unsuccessful conciliation	Pending conciliation at yearend	
Alabama	457	171	286	94	6	4	67	26	4	64	3
Alaska											
Arkansas	39	33	6	9		3	21	3	6		
Arizona	2	1	1	1						1	
California	65	11	54	8	1		2	1	2	5	
Colorado	10	2	8	1		1				1	
Connecticut	6	5	1	5				2		3	
Delaware	2		2								
District of Columbia	4		4								
Florida	38	15	23		5	5	5				
Georgia	70	34	36	18	8		6	7		11	1
Hawaii											
Idaho											
Illinois	55	49	6	28		1	20		1	27	
Iowa	216	32	184	14			18	3		11	
Indiana	40	24	16	18			6		14	4	
Kansas	488	9	479	4	3		2			4	
Kentucky	30	9	21	9						9	
Louisiana	145	97	48	50	15	3	29	13	6	31	
Massachusetts	3		3								

Maine	1		1								
Maryland	1		1								
Michigan	45	12	33	7			5	2		5	
Minnesota	23	11	12	1		2	8		1		
Mississippi	79	64	15	36	18	3	7	13	5	18	1
Missouri	21	18	3	5	12		1			5	1
Montana											
Nebraska											
Nevada	1		1								
New Hampshire	1	1		1						1	
New Jersey	426	26	400	15	1	1	9	3		12	
New Mexico	2		2								
New York	11	2	9			2					
North Carolina	615	514	101	183	215	23	93	25	5	153	1
North Dakota											
Ohio	173	59	114	48		1	10			48	
Oklahoma	6	2	4				2				
Oregon	2		2								
Pennsylvania	44	30	14	28	1		1	2		26	
Rhode Island	2	2			2						
South Carolina	88	82	6	37	3	2	40	3		34	
South Dakota											
Tennessee	212	195	17	18	24	8	145	16	2		1
Texas	104	69	95	24	12	7	26	2		22	
Utah											
Vermont											
Virginia	169	76	93	58	7	5	6	10	14	34	2
Washington	5	2	3	1	1					1	
West Virginia	10	1	9	1						1	
Wisconsin	2	1	1			1					
Wyoming											
Total	3,773	1,659	2,114	722	334	74	529	131	60	531	10

Disposition of Complaints Recommended for Investigation, Fiscal Year 1967 (6 Months Period 7/1–12/31/66)

Totals shown under the "Investigation Stage" caption include complaints attributable to both fiscal year 1966 and fiscal year 1967 and accordingly exceed the total shown in the "Complaints Recommended" column which pertains only to new charges received in the first 6 months of fiscal year 1967.

50 States and the District of Columbia	Complaints recommended	Investigation stage		Administratively closed	Review stage				Conciliation stage			Attorney General suit recommended
		Investigation completed	In process or pending investigations as of Dec. 31, 1966		Cause found	No cause found	No jurisdiction or withdrawn by complainant	Pending decision as of Dec. 31, 1966	Successful conciliations	Unsuccessful conciliation	Pending conciliation as of Dec. 31, 1966	
Alabama	212								1	30	228	1
Alaska	4											
Arizona	6									1		
Arkansas	9									10	10	
California	181									3	2	
Colorado	7											
Connecticut	2								2			
Delaware												
District of Columbia	7											
Florida	51									5	6	
Georgia	210								8	2	24	
Hawaii												
Idaho												
Illinois	136								6	2	6	
Indiana	30								1	1	13	
Iowa	25								51			
Kansas	32								1			
Kentucky	15								9	1		
Louisiana	101								23	8	37	1
Maine	2								1			
Maryland	5											
Massachusetts	1											
Michigan	71								1	6		
Minnesota	50											

Mississippi	56								5	3	2		
Missouri	17										2		
Montana	1												
Nebraska													
Nevada	8												
New Hampshire													
New Jersey	7								8		123		
New Mexico	6												
New York	21									1	2		
North Carolina	117								27	27	84		
North Dakota													
Ohio	154								2	7	14		
Oklahoma	6										2		
Oregon	5												
Pennsylvania	82								3		8		
Rhode Island	1												
South Carolina	111								4	1	120		
South Dakota													
Tennessee	132								4	9	209		
Texas	205								6	5	44	1	
Utah	7												
Vermont													
Virginia	128								8	2	4		
Washington	15									1			
West Virginia	30												
Wisconsin	1												
Wyoming													
Total	2,267	[1] 1,660	[1] 2,084	[1] 637	[1] 724	[1] 125	[1] 75	[1] 776	171	125	941	[2] 3	

[1] Breakdown by State not available.
[2] Between Dec. 31, 1966, and May 15, 1967, 24 additional pattern or practice suits have been recommended for Attorney General action.

Senator CLARK. Do you find any difference with respect to complaints which come to you from States where there are State fair employment practice commissions with adequate enforcement power? My State is one—Pennsylvania.

Mr. SHULMAN. We receive a number of complaints in States with fair employment practice commissions that have enforcement powers. For some reason there is a great desire on the part of individuals to bring their complaints to our attention irrespective of the presence of a State agency.

Senator CLARK. The Federal complaint has more status?

Mr. SHULMAN. That's right, and we are required by law, as you know, not to handle a case that comes from a State until the State agency has had an opportunity to handle it.

I can give you some figures here that are of interest in that regard.

We have received, in fiscal 1967, 1,049 complaints which we have deferred to State agencies, and we have received back from the State agencies or back from complainants who exhausted the time limit with the State agency, 879.

Senator CLARK. That is a deplorable record, isn't it?

Mr. SHULMAN. The 879, of course, come also from fiscal 1966 charges that were deferred. There is a good deal of movement from the State agency back which comes about in two ways: Either by reason of the fact that the State agency failed to bring about a result satisfactory to the individual or by reason of the fact that the individual did not want to wait for the State agencies' processes to be exhausted and brought it back to us. There is also a substantial number of cases in which the individual fails to file with the State agency. These are included in the 879 figure in that they moved back to the Commission for closing.

Senator CLARK. The State processes are slower that yours, in general, are they?

Mr. SHULMAN. I would hesitate to condemn any agency as to speed when we are having the backlog problems we have.

Senator CLARK. That is not what I asked you. [Laughter.]

Well, it must be true, because you get 800 out of somewhat over a thousand back on which the State agency hasn't acted.

Mr. SHULMAN. But the 800 were also deferred in a previous year. I was giving you the number we deferred to them in fiscal 1967; the 800 came back in 1967, but they may have been fiscal 1966 charges. And a substantial number involved charging parties who did not even attempt to pursue the State remedy. We deferred 919 in fiscal 1966.

Senator CLARK. How many so far in fiscal 1967?

Mr. SHULMAN. 1,049.

Senator CLARK. Not much difference, is there?

Mr. SHULMAN. We still have 2 months to go in fiscal 1967.

Senator CLARK. In your statement and also in Secretary Wirtz' statement there are general figures indicating, as I recall it, that 38 of 50 States now have FEPC statutes. That 31 of the 38 have some enforcement powers, and seven do not.

I would like to ask you, if you will, to furnish the subcommittee, to be made a part of the record, an alphabetical listing of those States which have a fair employment practice act commission or its equivalent; those States which you could indicate, I guess, by an asterisk,

which have what in your judgment are adequate enforcement powers, those which do not; and then correlate that, if you will, with your table as to the number of complaints by each State.

And if you would be good enough to do it, with some evaluation on the part of the Commission as to what, if any, trends these statistics reveal. Would you do that?

Mr. SHULMAN. We would be happy to do that, Mr. Chairman.

(The information subsequently supplied follows:)

MEMORANDUM FROM EEOC RE COMPARISON OF COMPLAINTS ORIGINATING IN STATES WITH AND WITHOUT STATUTES OUTLAWING DISCRIMINATION IN EMPLOYMENT

The statistics on complaints received by the Commission in the following table exclude those which have been closed because of failure to receive additional information needed to proceed or withdrawn at the request of the complainant.

50 States, District of Columbia, and Puerto Rico	Has enacted a fair employment practice statute	Has cease and desist powers	EEOC defers complaints	Complaints received by EEOC	
				Fiscal year 1966	Fiscal year 1967 (July 1-Dec. 31, 1966)
Alabama				614	299
Alaska	X	X	X	7	9
Arizona	X	X		21	19
Arkansas				89	30
California	X	X	X	347	409
Colorado	X	X	X	46	30
Connecticut	X	X	X	57	44
Delaware	X	X	X	16	3
District of Columbia	X	X	X	91	56
Florida				134	87
Georgia				173	318
Hawaii	X	X	X	3	2
Idaho	X			5	3
Illinois	X	X	X	329	328
Indiana	X	X	X	152	112
Iowa	X	X	X	236	44
Kansas	X	X	X	534	58
Kentucky	X	X	X	66	61
Louisiana				229	167
Maine	X			8	5
Maryland	X	X	X	166	54
Massachusetts	X	X	X	70	46
Michigan	X	X	X	154	183
Minnesota	X	X	X	50	93
Mississippi				124	96
Missouri	X	X	X	259	98
Montana	X			8	7
Nebraska	X	X	X	89	16
Nevada	X	X	X	13	17
New Hampshire	X	X	X	4	
New Jersey	X	X	X	537	80
New Mexico	X	X	X	30	49
New York	X	X	X	327	238
North Carolina				784	222
North Dakota				5	1
Ohio	X	X	X	435	320
Oklahoma	X			29	34
Oregon	X	X	X	29	10
Pennsylvania	X	X	X	294	248
Puerto Rico	X	X	X	1	
Rhode Island	X	X	X	4	6
South Carolina				215	144
South Dakota				3	3
Tennessee	X			506	270
Texas				399	403
Utah	X	X	X	14	10
Vermont	X			5	
Virginia				274	194
Washington	X	X	X	54	30
West Virginia	X	(1)	(1)	46	62
Wisconsin	X	X	X	44	16
Wyoming	X	X	X	4	
Total				8,133	5,034

[1] Law enacted March 1967; becomes effective July 1967.

These statistics indicate that States which have not enacted FEP laws have a larger proportion of complaints than States which have enacted such laws. However, this comparison is based on absolute figures and does not take account of any qualitative differences such as population; minority and total.

Deferral to State or Local Fair Employment Practice Agencies

Title VII provides that the Equal Employment Opportunity Commission shall defer investigation of a case arising in a state with an enforceable fair employment practice law for a period of not less than 60 days and, in the case of a newly established state FEP organization for a period of not more than 120 days.

The Commission has agreements to defer action on complaints with 30 states, the District of Columbia, Puerto Rico, and two cities with fair employment practice laws.

The following tables show to which states we have deferred thus far. The two cities, Philadelphia, and Pittsburgh, have not been shown separately but are included in the data for Pennsylvania.

The tables show: the total number of cases deferred; those which have been closed by Equal Employment Opportunity Commission after the deferral period because the complainant did not pursue the state remedy or did not or would not request our jurisdiction; those upon which Equal Employment Opportunity Commission is acting subsequent to the deferral period, and last: those upon which the states are still working.

Deferred on fiscal year 1966—Period July 2, 1966–Dec. 13, 1966

State	Total deferred	Closed after deferral	Being acted upon by EEOC	Being acted upon by FEPC
California	96	23	47	24
Colorado	3	1	1	1
Connecticut	9	0	1	8
Delaware	6	1	1	4
District of Columbia	26	16	2	8
Illinois	70	31	8	31
Indiana	36	19	1	16
Iowa	1	0	0	1
Kansas	19	8	4	7
Maryland	101	11	5	85
Massachusetts	13	4	1	8
Michigan	26	8	3	15
Minnesota	2	2	0	0
Missouri	180	13	17	150
Nebraska	6	3	0	3
Nevada	5	1	0	4
New Jersey	38	8	4	26
New Mexico	6	1	1	4
New York	119	67	18	34
Ohio	87	33	19	35
Oregon	3	2	0	1
Pennsylvania	93	11	4	28
Utah	2	0	1	1
Washington	11	3	54	4
Wisconsin	16	5	0	11
Wyoming	3	2	1	0
Total	977	275	193	509

Action Taken on Deferrals in FY 1967—Period 7/1-12/31/66

The table for fiscal year 1967 is incomplete in that neither the charges which were closed by the Equal Employment Opportunity Commission, nor the charges which are being acted upon by the State or local Commissions are broken down by State. This data is unavailable at this time. It should also be noted that the charges which were not completed by the State/local Commission at the end of FY 1966 are shown under the total deferred column as well as the new

deferrals in FY 67. The two are then shown as the total deferral charges being acted upon in FY 67.

State	Deferred			Closed after deferral period	Being acted upon by EEOC	Being acted upon by FEPC
	Fiscal year 1966	1967	Total			
California	24	45	69		8	
Colorado	1	7	8		1	
Connecticut	8	10	18			
Delaware	4		4			
District of Columbia	8	26	34		1	
Illinois	31	89	120		4	
Indiana	16	25	41		1	
Iowa	1	3	4			
Kansas	7	17	24			
Kentucky		4	4			
Maryland	85	28	113		3	
Massachusetts	8	15	23		2	
Michigan	15	24	39		1	
Minnesota		3	3		1	
Missouri	150	49	199		7	
Nebraska	3	9	12		2	
Nevada	4	4	8		1	
New Jersey	26	10	45			
New Mexico	4	23	27		3	
New York	34	48	82		11	
Ohio	35	40	75		4	
Oregon	1	1	2		1	
Pennsylvania	28	23	51		8	
Utah	1		1		1	
Washington	4	1	5		2	
Wisconsin	11	5	16		1	
Total	509	518	1,027	454	66	507

Senator CLARK. Off the record.

(Discussion off the record.)

Senator CLARK. On the record.

Senator Pell has a question.

Senator PELL. I have one question for Mr. Shulman, whom I congratulate for having the good sense to have Rhode Island forbears.

Do you find that the craft unions are moving ahead with regard to letting Negroes into apprenticeship programs, or has the Commission received complaints against them? How good a job are the craft unions doing?

Mr. SHULMAN. We have actually had a very interesting experience with regard to craft unions which is that in instance after instance it appears that the craft unions are the practitioners of great discrimination in the country and yet we receive very, very, very few complaints against craft unions. We have received, I would say in rough terms, some 200 complaints against craft unions.

On the other hand, the complaints that we have received are rather fundamental, indeed, and one of the lawsuits that the Attorney General has brought which we referred to him was against a craft union.

We expect to be in a position of knowing much more about the practices of craft unions after we issue our new form EEO-2 and EEO-3, the first of which will apply to joint apprenticeship programs and the second of which will apply to unions and the operations of their hiring halls.

When those forms are issued, which we hope will be later this year, we will have full information on that.

Senator PELL. Would you say the situation has improved in the last couple of years, or since you have been Chairman, within the last year?

Mr. SHULMAN. My experience with the problem has been sufficiently short, Senator Pell, that I am unable to detect any change or trend.

Senator PELL. Evidently, from your testimony, the problems which do exist in the unions are of less magnitude than I thought was the case. Is it true that they are mainly with the craft unions, and not with the industrial unions?

Mr. SHULMAN. No; that is not correct.

We have encountered many difficulties with industrial unions. These difficulties are usually of a joint nature, however. In many cases we will find a complaint filed against both the employer and the union that represents the employees, complaining about a matter that might be embodied, for example, in the collective bargaining agreement.

Through that vehicle we have had a number of complaints against industrial unions. The craft unions are generally by reason of their hiring hall operations in a different context from industrial unions and complaints would more frequently come against them only.

I would be happy to submit to the committee a listing of the complaints that we have received against unions as well as against unions and employers and we can include that, perhaps, Senator Clark, in the breakdown that we furnish you.

Senator CLARK. I would like to have it, but I would like you to break it down by category, too, if you will, because I am frankly very surprised at what you have just told us.

I think there is a feeling that the building trades are the worst transgressors against FEPC, and if what you say is true, you have just vindicated them.

Mr. SHULMAN. I did not intend to vindicate the building trades. The number of complaints we have received is not necessarily an indication of what is going on, as you know.

(The information subsequently supplied follows:)

RESPONSE OF CHAIRMAN SHULMAN TO THE REQUEST FOR A LISTING OF COMPLAINTS RECEIVED BY THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AGAINST BOTH INDUSTRIAL AND CRAFT UNIONS

Because of confidentiality requirements, the Equal Employment Opportunity Commission is unable to provide for the public record a listing of charges filed with it against specific unions or unions and employers. The EEOC has examined its records and is able to provide totals for such charges.

Complaints brought against craft unions, with a membership of 2.7 million persons, total 182 (116 union complaints and 66 union and company complaints). There have also been 34 Commissioner charges brought against craft unions. With regard to industrial unions, with a membership of almost 7 million persons, there have been 564 complaints (170 union complaints and 394 union and company complaints). There have also been 16 Commissioner charges. There are several unions which have both craft and industrial elements, against which complaints have been filed with the EEOC. These unions have about 1.8 million members and a total 72 complaints have been received (54 union complaints and 18 union and company complaints). There have also been 25 Commissioner charges filed.

These figures reveal that the EEOC has received approximately 8 complaints per 100,000 members of industrial unions and 6.6 complaints per 100,000 members of craft unions.

For those unions with both craft and industrial elements, the ratio is 4 complaints per 100,000 members.

Senator CLARK. Of course, you would have to relate the complaint to the size of the union. For example, it would be abusurd to say you have no more complaints against the carpenters than you have against the auto workers. You would say, therefore, that there is no more discrimination.

There is some factor by which the size of the union and the number of people employed is built into your statistics, isn't it?

Mr. SHULMAN. That is correct.

Commissioner Jackson would like to reply to this, if he may.

Mr. JACKSON. I think the main distinction as to why we have not had as many complaints against the building trades unions depends on the access an individual has to know the practices of a particular union.

In the industrial setting the complaint would be filed by someone already employed, therefore he would have an opportunity since he is under the bargaining agreement or in the plant to know the practices that exist.

Senator CLARK. You mean his complaint is largely that he has not been given adequate consideration for promotion?

Mr. JACKSON. It could very well be in regard to promotions, transfers, access to better jobs within the industry.

Senator CLARK. But if he was complaining because he was not hired, he would not be inside the plant and he would not know; isn't that right?

Mr. JACKSON. Yes, but the difference I was trying to make, Mr. Chairman, is that in the case of Negroes or any other group who have not had equal opportunity or at least do not believe they have equal opportunity in the building trades, they are not a part of the union; they have no opportunity to know what the specifics are, the dynamics of the exclusion. So, therefore, they are not in a position to file a complaint.

If you are not in the apprenticeship program or in the referral system or not a member of the union, you do not have access to the information that would permit you to file a complaint. So there are few complaints filed by individuals in this regard because they have very little information from which a complaint could flow. All they could say generally is, we do not believe there are any in the union. Whereas in the industrial setting where you have people already in the plant, they are likely to know the practices and dynamics and are able to articulate a charge.

Senator CLARK. That is interesting and certainly contributes to my education, but sometimes we have to get our noses out of the figures and look around and see what the facts of life are.

Isn't it generally true there is no discrimination in most of the industrial unions such as the steelworkers and autoworkers, and there is discrimination with respect to most of the building trades, or is this just a figment of my imagination just from reading the newspapers?

Mr. SHULMAN. I would have to say this. If you view the matter in terms of the complaints that we actually received——

Senator CLARK. I don't want you to. You are a citizen of the United States; you read the newspapers. Let's get away from complaints you actually receive.

You gentlemen have a far better opportunity than Senator Javits, Senator Pell or I to know what the real situation is with respect to equal opportunity. Can you not give us some of your conclusions without going back to the number of complaints you received?

Mr. SHULMAN. Yes, getting away from the number of complaints that we received, I would think the comments that Commissioner Jackson made would tend to say what the general picture is, which is that the problems of discrimination associated with the building trades are problems of exclusion from participation.

The problems of discrimination associated with industrial unions are generally problems of treatment once employed.

Now, when you realize that the problems of exclusion mean that the person exercising the exclusionary power has greater control, you get to a position where you can point the finger, if you will, more at the building trades, whereas the industrial unions share control with the employer when the employee is already hired.

Senator CLARK. Would you care to add anything, Mr. Holcomb?

Mr. HOLCOMB. No.

Senator CLARK. I have one final question which I think will be of particular interest to Senator Pell because of his ancestry.

I have just returned from a trip, in connection with the poverty program, to New Mexico, where we visited the reservation of the Santo Domingo Indians. Have you had many complaints about job discrimination with respect to American Indians?

Mr. SHULMAN. We have had very few complaints from American Indians, Mr. Chairman. We do have a program in two instances for American Indians conducted by State FEPC's through our grants.

Senator CLARK. Thank you, sir. Senator Javits?

Senator JAVITS. I would like to pursue with you for a moment this question of the trade unions.

I heard your answer; I don't think you identified any order of magnitude. I think what the Chair was interested in, what I am interested in, what Senator Pell is interested in, is where is the big burden of discrimination in the trade union field, if it exists?

Two questions: (a) Does it exist; (b) if it is a real factor, where is the burden of the violation?

You made the distinction in the case of one, its exclusion; in the case of the other it is promotion or whatever might be the incidental difficulties of being employed, even though you are a union member. That still doesn't tell us about the volume and that is what we want to know.

Where is there heavy discrimination in employment in the trade union field, if any?

Mr. SHULMAN. Well, to begin with, Senator Javits, there are many more bodies involved on the industrial union side than on the building trades side in terms of the volume of work opportunities. A figure that occurs to me is that the registered construction apprenticeship

programs involve some 40,000 new entrants per year nationwide, whereas industrial unions involve millions and millions of people.

The bite that is involved in the building trade program is perhaps the hardest bite, because it determines whether the person discriminated against will have the opportunity of working or will be unemployed. That does not mean that on the industrial union side where minorities can be employed there is no problem. That is what we are trying to emphasize.

Now, quantitatively, there is a larger discrimination problem on the industrial union side because it is dealing with a larger base.

Senator JAVITS. Now, relative to the number of operators in total, in each category, that is the industrial union side and the building trade side, can you give us any concept of the percentage of complaints?

Mr. SHULMAN. I cannot do that off the top of my head. I would be delighted to give you something for the record. Commissioner Jackson apparently would like to add to this.

Mr. JACKSON. I would just want to say this, Senator, in regard to the building trades versus industrial unions.

The Commission will be in a much better position to give you the specifics once we have these reporting forms EEO-2 and EEO-3, which we propose to mail out this year and we will have the actual statistics on the building trades.

From the information called to us by letters, we would have to say that the Negro community considers the building trades to have a more egregious situation than the industrial unions, but in terms of formal complaints filed with us or the actual statistics we have before us, we cannot support that. We do not now have sufficient complaints or information to determine a trend.

From those cases that we have investigated, there is no question but that there exists a major practice of exclusion on the part of many building trade unions; not all, but many.

Senator JAVITS. Now, Mr. Shulman, would you be good enough to do the following? I hope you will agree to this, because I think it is very helpful.

The building trades unions testified before us some couple of weeks ago. Would you be good enough to read their testimony and to give us any comment based upon the experience of the Commission that you think is warranted by its experience, whatever that experience may indicate, because they gave us very blanket assurances and it left us very skeptical because it simply seemed to defy everything which we—I am wrong about the source of the testimony—it was before our Committee on Executive Reorganization of the Government Operations Committee, Senator Ribicoff's subcommittee. I am a member of that, too, and we will give that testimony to you.

For this record would you give us a comment on it? Because, as I say, it left even the members of that committee very skeptical, but nonethless there it was, flatly out, that they had minority groups and they welcomed them and didn't discriminate against them and yet when you looked at the figures, it was absolutely miniscule, the number that got in their apprenticeship programs, and they had us pretty much stymied.

Would you undertake that?

Mr. SHULMAN. Certainly, we would like to.

Senator CLARK. Without objection, that may be done.

(The information subsequently supplied follows:)

STATEMENT BY STEPHEN N. SHULMAN, CHAIRMAN OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, CONCERNING TESTIMONY GIVEN BY REPRESENTATIVES OF THE BUILDING TRADES AND CONSTRUCTION UNIONS BEFORE THE SENATE GOVERNMENT OPERATIONS SUBCOMMITTEE ON EXECUTIVE REORGANIZATION—APRIL 18, 1967

The two main relevant points of the testimony appear to be: (1) that minority group applicants are welcome in but not attracted to the building trades, and (2) that they frequently lack qualifications required to enter apprenticeship programs.

The first point underscores what the Commission has found in its experience to be a most fundamental problem. Minority groups, accustomed to being unwanted, do not seek out opportunities previously closed without substantial recruitment effort being expended to attract them. The building trades were traditionally closed to minority group applicants. Practices as stringent as the ones employed cannot be discounted simply by stating that they are discontinued. It would not be surprising at all if minority group applicants failed to show interest in the building trades.

At the same time, the apprenticeship programs have become a major symbol of discrimination in the minds of minority group persons. As an avenue to journeyman positions which they have traditionally not been allowed to fill, apprenticeship programs expectably are a focal point for minority groups.

But apprenticeship programs are small, and do not constitute the sole route to the journeyman position. Indeed, the majority of journeymen today did not or could not have been graduated from apprenticeship programs.

With so large a proportion of journeymen who are white not having been required to complete apprenticeship programs, the validity of the standards required for apprenticeship is understandably questioned by minority group persons. The testimony in question brings out that it is these standards that serve as the major barrier to minority participation in the journeyman ranks. Yet, the minorities see a majority of the journeymen not having met these standards themselves.

In order to gain far more information than we now have, the EEOC is planning to require reports on apprenticeship programs and on labor organization information. These reports are designated EEO–2 and EEO–3, respectively, and will be maintained concurrent with EEO–1 which is now being implemented to obtain relevant information from employers.

The EEO–2 will be filed annually by all joint labor-management apprenticeship committees in all industries and by employers and labor organizations in the construction industry which operate unilateral apprenticeship programs.

The new Form EEO–3 is designed to obtain information about discriminatory patterns in labor organizations. It will furnish data on the membership and job referral practices involved.

Senator JAVITS. I would like, first, to thank the Chair for the Chair's customary cooperative and gracious spirit in being willing to consider the bill which was introduced only yesterday by Senators Case and Kuchel and myself as a bill which I would not say is in any way oppositional to the administration's bill. We think it goes further in a number of respects which are essential, and the Chair was kind enough to put in my statement as well as the bill.

I am very grateful.

Now, one of the key things in the bill which we have sponsored is that you should have, this Commission of yours should have, the authority to utilize the services of the Department of Labor, especially in its regional wage and hour enforcement offices, for investigations, for initial hearing and for voluntary compliance efforts.

Now, do you have any opinion as to the desirability of that or is it too early? If you do not feel you can answer it, I will of course understand.

Mr. SHULMAN. Well, I would say this. First, we have used persons from the Department of Labor Wage and Hour Division in the past.

In the early days of the Commission which, of course, preceded my chairmanship, all investigators were loaned from the various departments. We feel that the investigations that we undertake involve special training and special aptitudes in the field that we cover, and would not expect that the Wage and Hour Division people would have those aptitudes or that training necessarily.

Obviously, in a backlog condition we are anxious to get help wherever we can get it and would not be inclined to want to discard any help of manpower that was tendered. However, our experience has been that our investigations are improving within our own resources by our own people as they become better and better trained and I don't see any reason to believe that the Wage and Hour Division experience would necessarily contribute toward an expertise of the type we need.

Senator Javits, I regret the length of this, but if the result were that our resources were held back in the appropriations process by reason of the availability of the Wage and Hour Division people, I think that would be an unfortunate impact. If the result were that we had an opportunity to get more people whom we could train ourselves to use, that would be a happy effect.

Senator JAVITS. It seems to me, Mr. Shulman, that we will have to hear from the Department later. I appreciate your desire to control your investigators, et cetera, and to give them your own expertise. What we must determine is whether the amount of service which you will need is available in governmental surplus, as it were, so we could use it and thus effect a real economy and give you a very much broader ranging staff than you are very likely to get.

As for the appropriation problem, as you well know, you are a much stickier agency than many others for very obvious reasons. There are some friends of ours who don't like what you do, and who are in large and powerful numbers in both the Senate and House.

You ought to bear that in mind.

Mr. SHULMAN. Senator Javits, if I may, I notice that Commissioner Jackson would like to make an input into your question. If it is all right, I would like to have him do it.

Mr. JACKSON. I just wanted to state, Senator, that our experience in using investigators from other agencies suggests that we had to have cases reinvestigated at the rate of about 40 to 45 percent. Therefore, we find that really it adds very little to the reduction of our backlog to borrow them in great number. Not only is there a difference in expertise, but we have found on our overall experience that all do not have an empathy with our program.

We cannot always assume we can pick up people from other agencies who have necessarily an empathy for the program we are administering. That led in large part to reinvestigation of numerous cases.

I would just say we would want to carefully examine whether or not we would actually aid in the reduction of our backlog by the use of investigators from other agencies on a regular basis.

On a backlog basis it is good; in fact, I believe we are using approximately 20 investigators that we have borrowed from other agencies, but on a regular basis it would not be the appropriate way to handle our backlog.

Senator JAVITS. Thank you very much, Mr. Jackson.

Mr. Shulman, would you tell us now whether you feel your agency is able to do the job assigned to it by the Congress unless you get the new powers, to wit, the cease-and-desist powers, et cetera, which are contemplated by our bill and the administration bill?

Mr. SHULMAN. The answer to that question is, no, we are not able to do the job that the Congress has assigned to us without having cease-and-desist order power.

Senator JAVITS. So that flatly, if we expect the mandate of the Congress to be carried out, we must give you this additional type of power?

Mr. SHULMAN. That is correct.

Senator JAVITS. And that is the reason it is the breaking point, you either do the job because we give you the power or you cannot do an adequate job because you do not have the power?

Mr. SHULMAN. Correct.

Senator JAVITS. And this is now based upon your experience in actual operation?

Mr. SHULMAN. Our experience in actual operation, Senator Javits, demonstrates that our effectiveness through conciliation, which has been greater than we would have expected, is diminishing. We have succeeded in a lesser percentage of cases this year than we succeeded in the first year, and there is every reason to believe that we will succeed in a still lesser percentage of cases in a future year.

Senator JAVITS. Now, do you believe that the range of coverage of the act should also be extended to employees of State and local governments, including State employment agencies?

Mr. SHULMAN. It is difficult for me in a context of a backlog of the type we have to want to reach out for any additional coverage. We do, however, receive a number of complaints against State and local government agencies which, of course, we do not handle by reason of not having jurisdiction over them.

Senator JAVITS. So that from the demand there would be an indicated need; is this right?

Mr. SHULMAN. There is an indicated demand; yes, Senator.

Senator JAVITS. Now, I notice in that same connection that 38 State laws are presently on the books, with 25 of the 38 having cease-and-desist order procedures. That is your testimony.

Senator CLARK. Thirty-one. The Secretary of Labor says 31. We went into this before you came in. Thirty-eight have FEPC laws, 31 have powers to issue cease-and-desist orders; Mr. Shulman didn't have which State has what and is going to furnish it for the record.

Senator JAVITS. Fine.

Now, can you tell us the effect upon your operation of such a widespread net of State laws? Does it make your operation less necessary, more necessary? Are you just a tail on the kite? What effect do you feel the State law network has on your operation?

Mr. SHULMAN. Senator Clark had asked me earlier to provide a breakdown of our complaints, determinations of probable cause, and conciliation successes that would indicate whether or not there was a trend that could be discerned with regard to States which had fair employment practice laws and States which did not.

If I may, I would prefer to answer that question through that breakdown rather than try to do it off the top of my head.

Senator JAVITS. That would be fine. Could you give us any general observation as to what happens as you meet the impact of State law? If you cannot, don't do it. I want you to answer these questions, if you would please.

Senator CLARK. I asked him that.

Sentor JAVITS. There is nothing in opposition to this, too. We want to get from you the best possible analysis of the case.

Senator CLARK. We already covered that.

Senator JAVITS. Let's see if he has it.

Mr. SHULMAN. The best general feeling that I could give you, Senator Javits, is that we do not notice a particular difference.

Senator JAVITS. Between the States that have such laws and the States that do not?

Mr. SHULMAN. That is correct. But I would very much want the opportunity to refer to our actual experience before I confirm that view.

Senator JAVITS. We agree.

Now, do you feel any need in respect of your activities for time limitations to be introduced in the various processes which you carry on? For example, under existing law you have 60 days to investigate and conciliate a charge.

Now, that may be too little. At the same time there are other—there is an omission of any time limit by which you are required to make a decision once a complaint has been filed.

Now, do you think that it would be desirable to beef up the administration bill by dealing with the question of time limits and can you make us any recommendations on that score?

Mr. SHULMAN. Again I have to begin my comment by acknowledging an inadequancy within the Commission, and that is that we have failed to live up to the time limits that we already have, and that, of course, creates a reluctance in my mind to ask for any more.

The bill, S. 1308, does contain a time limit with regard to the issuance of the complaint in that the private party is authorized to bring a suit after 180 days if the Commission has failed to file a complaint.

The only remaining aspect where a time limit might appropriately be introduced as a result of that would be through the conciliation process or up to the issuance of a complaint.

Our experience has been such that the time limits that we currently work with are too short. A time limit on the order of 120 days from the filing of a charge through conciliation might be a workable time limit. In the absence of such a time limit in the bill as it now stands, we might well introduce such a time limit administratively.

Senator JAVITS. Now, I notice that there is a difference in type of enforcement between S. 1308 and the Civil Rights Act, the discrimination in employment provisions of the Civil Rights Act of 1964, in that under S. 1308 the Attorney General is given complete discretion and selectivity. He can take and reject what he pleases, whereas in the Civil Rights Act of 1964, section 706, he has the right to intervene in all cases, whether filed by an individual or whether filed by the Commission, whenever there is an issue, you know, of real public importance, et cetera.

Do you feel, comparing the two provisions, assuming that you may not get the cease-and-desist order authority, that you would like to

see at least the enforcement provision as far as the Attorney General is concerned beefed up?

Mr. SHULMAN. I am really not sure that I can answer that question, Senator. As matters now stand, the Attorney General has the capability of intervening in a private suit or he can bring a pattern or practice suit. If we were to get cease-and-desist order power, the question of intervening in private suits would not be a terribly relevant need, because the governmental determination would have been not to pursue the subject of the private suit since the pursuit would be by cease and desist if there was to be one.

Senator JAVITS. Will you consider and give us for the record a statement in the alternative, should you not get cease-and-desist power, how you suggest the authority of the Attorney General may best be strengthened to serve you better if the Congress should decide it will not give you cease-and-desist authority?

Mr. SHULMAN. Certainly.

Senator JAVITS. Now, I am getting to the end of these questions. I just have one or two more.

Do you consider that the administration bill, if you got cease-and-desist power, would give you the authority to order affirmative action on the part of an employer so that damages could be ordered or an on-the-job training program could be ordered as well as a reinstatement or hiring with or without back pay?

In other words, do you feel that you should have and do you get under the bill as filed a flexibility of remedies such as I have described?

Mr. SHULMAN. Yes, we do.

Senator JAVITS. Under the bill as filed, under the administration bill?

Mr. SHULMAN. Yes, Senator Javits.

Senator JAVITS. And you feel you need it?

Mr. SHULMAN. Very much so; yes.

Senator JAVITS. To what extent do you have it now?

Mr. SHULMAN. We have no power now at all. What we have is the flexibility that comes from a capability to ask only—and we can ask, if you will, for whatever we want, but we are not likely to get it.

Senator JAVITS. Now, in the enforcement procedure by the Attorney General, to what extent does he have of flexibility of remedy under your statute?

Mr. SHULMAN. I would, if I might, like to answer that question at the same time that I answer the one that you asked earlier through a submission regarding what improvements might be made in the powers of the Attorney General.

Senator JAVITS. Very good. Thank you very much.

(The information subsequently supplied follows:)

RESPONSE OF CHAIRMAN SHULMAN TO REQUEST THAT HE PROVIDE THE SENATE EMPLOYMENT, MANPOWER AND POVERTY SUBCOMMITTEE WITH RECOMMENDATIONS AS TO WAYS THE POWER OF THE ATTORNEY GENERAL COULD BE STRENGTHENED IF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION DID NOT RECEIVE CEASE AND DESIST ORDER POWERS

There are several devices that might be employed to strengthen the powers of the Attorney General, if the Equal Employment Opportunity Commission were not given cease and desist order powers:

1. The powers given to the Attorney General in Section 707(c) of S. 1308 to obtain necessary records should be broadened to enable him to obtain all relevant

documentary evidence instead of simply the records required by Section 709(c) of the Act.

2. The opportunity for intervention contained in Section 706(e) should be made a matter of right.

3. The powers given to the Attorney General to bring pattern or practice suits contained in Section 707 should be broadened to include cases of general public importance.

4. In cases where the efforts of the Commission to obtain satisfactory conciliation have failed, the EEOC should be given the power to certify the case to the Attorney General who would be authorized to bring suit against the named respondents on behalf of the United States.

Senator JAVITS. Now, do you have the power to get a temporary injunction now in the case of a flagrant violation? Obviously you do not, right?

Mr. SHULMAN. We have no power to do that.

Senator JAVITS. No such power. Do you feel you should have such power? Because as we read the administration bill, it does not provide for it? That is, you cannot move for temporary injunction upon the filing of a charge.

Mr. SHULMAN. That might be a good idea for us to have that power, Senator Javits. I would have to consider that because I am not sure exactly where it should be introduced, whether we should have it upon the filing of a charge or upon the determination of probable cause or what. But it might be a very useful power.

Senator JAVITS. Well, in our bill it is based upon a determination of probable cause, but give us your opinion of that in a letter, as I gather you would rather look that over before you jump.

Mr. SHULMAN. Right.

(The information subsequently supplied follows:)

RESPONSE OF CHAIRMAN SHULMAN TO INQUIRY AS TO WHAT POINT IN THE PROCESS OF COMMISSION ACTIVITY IT SHOULD RECEIVE THE POWER TO OBTAIN INTERLOCUTORY RELIEF, A TEMPORARY INJUNCTION, OR RESTRAINING ORDER, ASSUMING THE COMMISSION IS GRANTED THIS POWER IN LEGISLATION

The Commission has come to the conclusion that it should have the power to obtain interlocutory relief, a temporary injunction or restraining order, at any time following the filing of a charge. It does not believe that there should be a fixed point at which it must act, but rather, thinks that maximum flexibility would be desirable. The Commission would then be able to obtain interlocutory relief from the charge stage, through investigation, after finding reasonable cause, during conciliation, or when issuing a complaint. The Commission believes that it should employ its best judgment in each case in determining at what point to obtain interlocutory relief. Before the court would issue such an order, the Commission would, of course, be required to produce the traditional quantum of proof by affidavit or otherwise that a violation was occurring or was likely to occur.

Senator JAVITS. Now, last, this is my last question.

We think that you need a direct mandate to undertake continuing surveys of apprenticeship programs, of training programs, of what is going on in the field. I gather that you are issuing a questionnaire sometime this year. We think that you need to do this periodically and as a mandatory aspect of the laws, because this seems to us to be critically essential to your work rather than to wait to receive complaints alone.

Now, do you have any opinions on that, or again would you rather comment later?

Mr. SHULMAN. Well, I might comment at more length later, but I could say right now that we believe that we should conduct such surveys and that is why we have gone into our EEO–1 form which has been issued and the two and three forms, which we hope will be issued later this year.

If the Congress were to make it mandatory for us to do so, that would remove all questions of our authority to do so and so I would think that is something we would welcome.

Senator JAVITS. I thank you very much, Mr. Shulman.

I gather it is implicit in all of this discussion that you feel that the functions which are being performed by this Commission which you now wish to have strengthened represent a really major need in terms of implementing the guarantees of the 14th amendment to the Constitution and the Nation. Would you care to say anything about that?

Mr. SHULMAN. Yes; we feel very srongly that that is so. We feel that it is essential that individuals who have a right not only to general due process and equal protection under the 14th amendment, but to specific equal employment opportunity under title VII of the Civil Rights Act, have that right vindicated by the Government that extended it to them, and in the absence of our having cease-and-desist order power, the only vindication that comes to the individual is a lawsuit he can bring for himself.

Senator JAVITS. And you feel there is widespread denial of that right in the United States?

Mr. SHULMAN. Yes.

Senator JAVITS. Would you wish to characterize the extent of that denial as representing a crisis in the civil rights field or a widespread injustice or in any other way, because as you know, all these things carry tags and that is the only way they become meaningful to people?

Mr. SHULMAN. Well, I would say that in a free-enterprise society, where work is essential to dignity, the existence of discrimination in employment is a fundamental sickness in the country and it is something that we would like very much to be able to cure, and cannot in the absence of having cease-and-desist power.

Senator JAVITS. Do you have any figures on how many individual suits have been filed under the law?

Mr. SHULMAN. I will supply you with figures, Senator. I believe it is on the order of 50.

Senator JAVITS. Thank you, that will be fine.

(The information subsequently supplied by Chairman Shulman follows:)

MEMORANDUM FROM EEOC RE NUMBER OF INDIVIDUAL SUITS FILED UNDER TITLE VII

The law does not require notification of the Commission when a private suit is brought under Section 706. In the absence of a requirement that it be notified, the Commission has been able to find out about approximately fifty individual suits filed under this section.

The Attorney General has brought five suits based on the pattern or practice provisions of Section 707. Two of these had been referred by the Commission.

Mr. SHULMAN. Commissioner Jackson would like to say one thing.

Mr. JACKSON. I wanted to respond to the question regarding the seriousness of the problem. I would say as related to teenagers, those

between the ages of 14 and 19 especially, that the crisis in unemployment is of major proportions and, indeed, it is the largest contributory factor to the tensions and disorders that have occurred in our cities in the last 2 years and could very well occur in our cities this summer and future summers.

It is of such grave nature that we feel this power that we are asking the Congress to give us certainly is a major remedy toward making job opportunities available on an equal basis to them.

Senator JAVITS. I will tell you gentlemen I am certainly with you, as indicated by the introduction of the bill. I think a majority of Congress is with you, in both Houses, and again you will be up against this dreadful filibuster and if the people of the Nation are aroused, the filibuster will yield to cloture; and if the people are not aroused, it will not.

It is simply a question of the alertness of the people of the Nation and letting their legislators know that they understand that the principal civil rights vote is not a vote for your bill, but a vote for cloture in the Senate. That is where it will make it or break it. Thank you.

Senator CLARK. Let me suggest to the Senator, as I am sure he agrees, that the critical civil rights vote comes every other year on changing rule 22.

Senator JAVITS. There is no question about that.

Senator CLARK. Thank you, gentlemen. You have been on the defensive for a little over an hour now. I don't want to hold you any longer, because the Secretary of Labor is here. Perhaps one or all of you would like to make a brief statement with respect to your aspirations, hopes and goals, if you get this legislation which you have recommended passed.

Mr. HOLCOMB. May I commend for the record the statement of Senator Kennedy this morning on this question of cease-and-desist.

Senator CLARK. Thank you very much.

Mr. SHULMAN. I would say, Mr. Chairman, if I might, I would like to emphasize the point we made at the outset: We feel that giving us this power, which will enable us to do the job, will in reality enable us to do the job through increased conciliation.

Senator CLARK. Thank you very much, gentlemen. We appreciate your coming here.

Our next witness will be Secretary of Labor Wirtz. We will take a 5-minute recess.

(Whereupon, a brief recess was taken.)

Senator CLARK. The subcommittee will resume its session.

Our next witness is Secretary of Labor W. Willard Wirtz.

Mr. Wirtz, we welcome you here. We are happy to have your views. I have had an opportunity to read your statement, so I think it is unnecessary for you to repeat it and I will ask to have it printed in full in the record at this point in my remarks.

(The prepared statement of Secretary Wirtz follows:)

PREPARED STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR

Mr. Chairman, and Members of the Subcommittee: Three years ago, the question before the country was whether we were willing to write our conscience about the equalness of people into our laws. The Civil Rights Act of 1964 gave history the answer. We were.

Today the question is whether we mean what we said—enough to provide for the effective, hard-muscled enforcement of the Civil Rights Act.

S. 1308 says that we do. I am grateful for the opportunity to testify in support of it.

The Attorney General has already testified and the Chairman of the Equal Employment Opportunity Commission will testify regarding the detailed provisions of S. 1308 and with respect to the enforcement problems which these amendments will meet.

My purpose is to provide, as context for that more specific testimony, the fullest possible picture of the unemployment situation as it exists today, the extent to which it shows a disproportionate burden upon minority groups, and the degree to which this may be attributable to discriminatory employment practices which S. 1308 would help reduce and eliminate.

This is the general picture:

There has been a significant reduction in unemployment during the past three years.

There remains, however, a substantial amount of unemployment, and it is increasingly clear that most of this remaining unemployment will not be eliminated or materially affected by the increasing growth rate of the economy.

There is a materially higher rate of unemployment among non-white and Spanish-speaking minorities than among others; and a higher unemployment rate among women than among men.

These differences result from *past* as well as *current* discrimination, and it is difficult to distinguish—at least statistically—between the two.

There is a distinctly reduced amount of deliberate "discrimination" in the *hiring at entry-level jobs* of non-whites, Spanish-speaking, and female members of the work force; but a good deal of this remains.

There is much less evidence of substantial improvement so far as the *up-grading and promotion* of minority group members (and women) is concerned.

The net of it is, relying on facts, statistical evidence and firsthand experience, that there is substantial violation of Title VII of the Civil Rights Act and that its amendment as provided in S. 1308 is almost a test of our sincerity in passing that Act.

Here are some of the relevant statistics:

Non-white workers comprise over 10 percent of the labor force, but about 22 percent of the unemployed, they are 25 percent of those jobless for 6 months or longer, and 18 percent of those working part time involuntary. In general, the rate of unemployment among non-white workers is twice or more the rate for white workers.

The March, 1967 unemployment rate for men 20 years old or over was 2.0 percent for whites, 5.0 percent for non-whites. Among teenagers (16 to 19 years) the unemployment rate is 23.6 percent for non-white youth compared to 9.1 for white youth.

For women, the story is the same—with both white and non-white unemployment levels standing higher than male rates.

Adult white women currently have a 3.6 unemployment rate; for non-white adult women the rate is at 7.0 percent. The rate is 10.0 percent for white teenage girls and 23.5 percent for non-white teenage girls.

A most discouraging fact is that education is frequently not reflected adequately in occupational progress. For example, over 10 percent of all non-white men with a college education were in blue-collar or service work in March 1966—twice the proportion of college educated white men.

In addition, since 1964, surprisingly little progress has been made in the range of jobs held by non-whites. While they represented 10.6 percent of the work force in 1964 and 10.8 percent in 1966, they were:

5.8 percent of the Nation's professional and technical workers in 1964 and 5.5 percent in 1966;

3.1 percent of salesworkers in both 1964 and 1966;

8.1 percent of all construction craftsmen (except carpenters) in 1964 and 8.2 percent in 1966; and

6.6 percent of mechanics and repairmen in 1964 and 6.7 percent in 1966.

Finally, in 1966 as in 1964, this group still provided over 40 percent of our private household workers, over 25 percent of our nonfarm laborers, over 25

percent of our service workers and only 2.8 percent of our managers, officials and proprietors.

Another dimension of this situation emerges when attention is directed not at the over-all national figures (which average success with failure) but at those for the urban and rural slums.

The Department of Labor made an intensive survey last November of the slum areas in eight cities.

The population in these areas turned out to be 70 percent Negro, 10 percent Puerto Rican, 8 percent Mexican American; 12 percent "other".

This survey showed that if the traditional statistical concept of "unemployment" (which produced the 3.6 percent unemployment rate for March of this year) is applied to the urban slum situation, the "unemployment rate" in these areas is about 10 percent.

But this leaves out a person who is working only part-time, although he is trying to find full-time work; gives no consideration to the amount of earnings; omits those who are not "actively looking for work"—even though the reason for this is their conviction (whether right or wrong) that they can't find a job; and disregards the "undercount" factor—those who are known to be present but simply don't show up at all in present surveys.

When these factors are taken into account, the "*sub-employment*" rate for these slum areas is 33.9 percent. This means that one out of every three of those in slums who are or ought to be working has a serious employment problem. In one slum area where over 80 percent of the population was Mexican American, almost one out of every two persons had this problem.

How much of this results from current "discrimination" in violation of Title VII of the Civil Rights Act—which S. 1308 would help stop?

The figures set out above do *not* answer this. Furthermore it cannot be measured statistically—at least from data presently at hand.

There is an increasing, and dangerous, tendency to do something about only what we can measure. It is part of the inclination to let the computers take over.

These facts are clear to everyone working with the equal employment rights problems:

The great majority of employers are according infinitely larger entry-level employment opportunities to minority group members than they were three years ago.

It is probably true that in many parts of the country there are at least equal—and in some instances larger—opportunities for entry-level jobs for non-white as compared with white applicants.

But the rest of this picture is that there are still a substantial percentage of employers—and some labor unions, and some employment agencies (both public and private)—in which there is subtle, but no less illegal, violation of the equal opportunities principle and law.

When it comes to up-grading, promotions, and hiring in higher level jobs, hardly more than a dent has been made. And if lack of training and adequate qualication is part of the reason for this, it is *only* part of it. The basement doors have been opened, but the doors on the stairs are still locked.

There are, however, numerous examples of progress in upgrading minority group employees where the Government has the power to invoke sanctions and penalties, as under Executive Order 11246.

Some indication of this potential is found in the upgrading that followed conciliation efforts of the Equal Employment Opportunity Commission and the Departments of Justice, Defense and Labor with the world's largest shipbuilding company.

In the one year since these efforts, promotions have been given to 3,890 of the company's 5,000 Negro employees, 34 have been or are to be promoted to supervisory jobs, 65 others are on promotional lists for supervisory jobs as they develop and 42 Negro employees have entered the apprenticeship program, compared with a total of six in the previous 81-year history of the company. In addition, seven hundred and eighty-five Negroes have entered other formal educational and training programs to improve their chances for promotion.

In March 1966, an informal hearing was held with another Government contractor. By January, 1967, a massive minority group recruitment program and personal visits to the field by the corporate president had increased the number of minority group employees by over 50 percent from 278 to 429.

Three out of every four new hires were minority employees and the number of minority group reporters and supervisors more than doubled—from 13 to 33.

As a final example—a Government contractor's Negro employees with long term seniority could not advance in lines of progression because of discrimination. The company has since placed Negroes in jobs they would be holding if they had not been discriminated against since 1961. If the job still remained the same, the company credited seniority to the individual in that job back to 1961. About 85–100 Negroes now have been given such seniority proportionate with service.

I testify from what are now literally hundreds of personal experiences in this situation. The clear lesson from them is that there *is* a big difference, that there *is* a change of mind and heart, that there *is* infinitely more eqality of opportunity than there was before—but that we have gone perhaps about as far as the present legislative vehicles will carry us, that there is still a long way to go, and that the more effective enforcement provisions in S. 1308 are essential.

Particular importance must be attached to the additional enforcement authority and procedures which are proposed for the Equal Employment Opportunity Commission. For the lesson of experience is that an agency charged with the responsibilities given the Commission can discharge that responsibility effectively only when it is also given enforcement authority. And it cannot be expected that many complainants will undertake the burden of an individual suit.

Of the 38 States which have passed fair employment practice laws, 31 provide for enforcement through administrative agencies. The State experience also demonstrates that where these agencies have adequate enforcement powers, nearly all cases are disposed of without court proceedings.

A 1962 report on the structure and operations of the former President's Committee on Equal Employment Opportunity (the predecessor organization to the Office of Federal Contract Compliance) also pointed out that experience proves that conciliation, coupled with potential power to apply legal or administrative sanctions, is the most effective means of achieving voluntary compliance.

The National Labor Relations Board has had experience with the power to issue cease and desist orders for over 30 years. The experience of this agency shows that strong enforcement power often leads to voluntary settlement. The latest Annual Report of the NLRB states that a large proportion of the cases coming before the Board are voluntarily settled. In fiscal 1965, only 6.2 percent of the unfair labor practice cases went to the Board for decision. The others were withdrawn, settled, or dismissed.

The bill gives the EEOC power to issue cease and desist orders in the case of "unfair employment practices" which is very similar to the cease and desist power given the National Labor Relations Board to remedy "unfair labor practices."

The Equal Employment Opportunity Commission is, like the labor Board, equipped to deal with a specialized field of knowledge. However, at the present time, the Commission is not empowered to exercise its expertise in a meaningful way. Administrative enforcement is best suited for the complicated questions which arise and makes possible uniformity of applications throughout the country.

It has been determined that there is a public interest in remedying unfair labor practices. The Supreme Court has pointed out that the NLRB "was created not to adjudicate private controversies but to advance the public interest. . . ." *NLRB v. Fant Milling Co.*, 360 U.S. 301, 307–8 (1959). In contrast, the Civil Rights Act of 1964 puts emphasis on the individual's resolution of his grievances instead of the vindication of public rights.

Unfair employment practices, like an unfair labor practice or unfair trade practice, injure the public as well as the individual. The Government and not the individual should bear the burden of redressing his injury to the public. There can be no doubt that discrimination is sufficiently injurious to the community to justify judicial enforcement by an agency of the Federal Government.

It is clear that discrimination in employment has an adverse effect on the economy. Purchasing power is not fully developed; manpower is not efficiently used; welfare costs increase; underutilization of the Nation's manpower resources prevents the attainment of full national productivity and economic growth. As President Johnson pointed out in his Civil Rights Message, "If Negroes today had the same skills as other Americans, and if they were free from discrimi-

nation in employment, our Gross National Product could become $30 billion higher."

Yet it is the loss within the individual which counts most—the loss of the chance for usefulness. When that happens as the result of someone else's prejudice, or bigotry, or cowardice, the public must—through government—exercise its stewardship. The injury is not alone to the individual. Nor does the offending party act wholly without the influence of a century's too slowly changing mores. There is a public responsibility here, and the public should act.

S. 1308 represents a proper and necessary assumption of public responsibility for what is more than an individual offense, and more than an individual injury.

Senator CLARK. I have a few questions, after which I shall defer to Senator Prouty.

Mr. Secretary, we had a rather extensive discussion with Mr. Shulman and his colleagues a few moments ago as to the extent and variety of discrimination in the labor movement with the distinctions made between the industrial unions and craft unions of the old AFL.

Mr. Shulman appeared to be of the view that he could not tell from complaints filed whether the discrimination in the building trades was any greater or any less than in the industrial unions. He did hedge that some under aggressive questioning from Senator Javits.

Do you have any comments on that?

STATEMENT OF HON. W. WILLARD WIRTZ, SECRETARY OF LABOR

Secretary WIRTZ. There would be these, Mr. Chairman: In general, I think that the racial discrimination as far as the labor unions are concerned permits this fair judgment. I believe there has been less discrimination on the part of labor unions as a whole than any institution I know of.

I say that regretfully, because that includes our schools, churches, business organizations, our sororities and fraternities, and everybody else.

Your question refers to the craft and industrial organizations. There is another breakdown that seems probably more basic and that is between skilled jobs and unskilled jobs.

Now the craft unions, most of them, involve skilled jobs, so do some of the industrial unions.

Senator CLARK. We have to use that word "skilled" pretty carefully.

Secretary WIRTZ. Yes.

Senator CLARK. Vocationally and technologically skilled. You are not talking about professional skills?

Secretary WIRTZ. No; I am not. I am talking in general about the crafts.

My guess is that if you take the distinction between skilled and unskilled, you will find no more discrimination on the part of the craft unions than you do on the part of the industrial unions; or putting it differently, that there is as much discrimination remaining in the one area as in the other.

But I don't mean to avoid for a moment the suggestion which is implicit in your question and is clear in the public's mind. There has been an identification of particular responsibility for racial discrimination on the part of the building trades and the metal trades unions.

With respect to that, I would say only this: There is discrimination on the part of some locals of some of those international organizations,

and I mean current discrimination and prejudice and bigotry. That is far and away the laggard, the minority position, and the basic position of those unions is against discrimination. I think it is true that with respect to all except two or three of the craft unions now there is equal apprenticeship opportunity.

The problem is more the disadvantage of the minority groups in meeting the qualifications for apprenticeship than it is anything else. Now, that is discrimination, but it is the disadvantage which comes from past discrimination.

Putting it differently: I don't believe that there is much today in any craft union of discrimination against qualified people. There is some—we have two or three cases before us right now—but in general the position is today, as far as the apprenticeship training programs are concerned, that the same rules are applied. It is just that there is a century of difference in getting ready to meet those rules and that results in what seems discrimination.

Senator CLARK. This points up a need, does it not, for further intensified efforts to upgrade the caliber of the schools to which disadvantanged children go and also to put renewed emphasis on manpower development and training activities, including, of course, on-the-job training?

Secretary WIRTZ. Yes, sir; and I don't think there is any question but that we have to recognize an obligation to give preferred education and training to make up for the lag which has developed, and that doesn't bother me one bit.

Senator CLARK. You say in your statement that the Department of Labor made an intensive survey—the top of the page—last November, in the slum areas in eight cities.

Can you tell us what cities those were?

Secretary WIRTZ. In November 1966, a series of intensive surveys were made in slum areas in eight U.S. cities: three areas in New York City, and one each in Boston, New Orleans, Philadelphia, Phoenix, St. Louis, San Antonio, and San Francisco. The information obtained was supplemented by previous but recent studies covering unemployment in the slum areas of Cleveland, Detroit, Los Angeles, and Oakland.

Senator CLARK. That is a pretty good geographical spread so you ought to be able to draw some conclusions from the data you received.

Secretary WIRTZ. We are confident of being able to do so.

Senator CLARK. You further state that the subemployment rate for these slum areas is 33.9 percent, which means that one out of every three of those in the slums who are or ought to be working has a serious employment problem.

There is a close relationship between that figure, which I find startling—I didn't realize it was that bad—and our efforts under the poverty program to do something effective about upgrading the skills in these ghetto areas, is that not right?

Secretary WIRTZ. Yes, sir.

Senator CLARK. And I suspect if you made studies of rural poverty in certain parts of this country, you would find the same thing existed there. Don't you think so?

Secretary WIRTZ. Yes, we do. The comparable figure in the Mississippi Delta area right now on a subemployment basis would be about 70 percent.

Senator CLARK. That is about what we found—Senator Javits, Senator Murphy, Senator Kennedy, and I. We were down there not too long ago. I will not detain you now with what we might do about that. I will discuss it with you at some later date.

It seems to me that the situation in the delta is tragic. I am glad to see that the President, you, Mr. Shriver, Secretary Gardner, and Secretary Freeman are about to do something about it and I want to congratulate you for what you are doing in that regard.

I want to commend you on your statement that there is an increasing and dangerous tendency to do something about only what we can measure, and that this is part of the inclination to let the computers take over. I think this subcommittee ought to pay very serious attention to what you say here, because so much of what we need to know about job discrimination and also about poverty cannot be measured with a computer; you have to look at it in human terms and you really have to go out and see it in order to have a real understanding of what the situation is, and therefore I think this is a most useful statement to us. I don't know whether you want to elaborate on it or not.

Secretary WIRTZ. No, sir.

Senator CLARK. Now I notice also a statement which seems, to me, to be very important indeed:

> When it comes to upgrading, promotions and hiring in higher level jobs, hardly more than a dent has been made. And if lack of training and adequate qualification is part of the reason for this, it is *only* part of it. The basement doors have been opened, but the doors on stairs are still locked.

This emphasizes, does it not, your view that the major problem today with respect to equal opportunity in employment comes after and not before a job has been secured? Is that correct?

Secretary WIRTZ. That is correct.

Senator CLARK. And you certainly buttress that with your statement and the statistics which you give.

Secretary WIRTZ. My statement also includes an expression of the conviction that that problem, too, subtle as it may be, can be met if there is enforcement power to back it up.

Senator CLARK. I think that is correct. I am also pleased with the example which you gave of the quite heartening progress in upgrading minority group employees which has occurred where the Government has the power to invoke sanctions and penalties under Executive Order 11246. This does, I think, buttress very much the request for the cease-and-desist power with the right to enforce through courts of appeals which you advocate in your statement.

I am making these comments just to stress, since you are not reading your statement, for the press and others who might be listening, the important points you have made, with which I find myself in accord.

Secretary WIRTZ. Mr. Chairman, might I just improve the opportunity that you just presented to mention that in connection with the Office of Federal Contract Compliance, I think the committee should know that there is being—these are all illustrations of the work of that office—there is being done what is in my judgment

an extraordinarily competent job at this point, by a very small staff headed up by Mr. Ed Sylvester.

I would like to note we are making real gains in that area.

Senator CLARK. Thank you.

I would like to emphasize your statement that we have gone about as far as the legislative vehicle could carry us. There is still a long way to go; I think the more effective enforcement provisions of S. 1308 are essential. That point was stressed also by Attorney General Clark and by Mr. Shulman and his colleagues on the Equal Employment Opportunity Commission.

To me this is very clear.

Now, later on you refer to the fact that of the 38 States which have passed fair employment practice laws, 31 provide for enforcement through administrative agencies. Do you happen to have handy—Mr. Shulman did not—the 12 States that have no State enforceable FEPC laws?

Secretary WIRTZ. Which have no——

Senator CLARK. Yes, you have 38 which do, so there must be 12 that do not.

Secretary WIRTZ. We have that list someplace.

Senator CLARK. While they are looking for it, perhaps they will also look for the seven States where there is no adequate enforcement procedure. I would like to have that for the record if I might.

(The following information was subsequently supplied for the record:)

STATES HAVING NO FAIR EMPLOYMENT PRACTICES STATUTES AND STATES WITH FEP STATUTES WITHOUT ADEQUATE ENFORCEMENT PROCEDURE

The following 12 States have no FEP statutes:

(1) Alabama
(2) Arkansas
(3) Florida
(4) Georgia
(5) Louisiana
(6) Mississippi
(7) North Carolina
(8) North Dakota
(9) South Carolina
(10) South Dakota
(11) Texas
(12) Virginia

The following seven States with FEP laws do not provide for adequate enforcement procedure (States to which EEOC does not defer):

(1) Arizona
(2) Idaho
(3) Maine
(4) Montana
(5) Oklahoma
(6) Tennessee
(7) Vermont

Secretary WIRTZ. All right, I would be glad to add to the record, if that would complete that point, Mr. Chairman, a very recent summary of the State fair employment practice acts, which does list them on a State-by-State basis, does divide them into the grouping which you have just requested.

They are listed here in terms of those which do have them, so I would have to go through them and check out those who don't. But I would be glad to add to the record a succinct summary of those laws entitled, "Summary of State Fair Employment Practice Acts."

Would that be helpful?

Senator CLARK. It would be; Mr. Shulman undertook to work up a similar statement and we will see if you agree.

Secretary WIRTZ. I will see that we do. [Laughter.]

Senator CLARK. Coordination is a great thing in the executive branch of the Government.

Secretary WIRTZ. Would you like that list now?

Senator CLARK. Yes. I will take a look at its while my colleagues have an opportunity to ask some questions.

No, I think that is all, Mr. Wirtz.

Senator Prouty?

Senator PROUTY. Thank you, Mr. Chairman.

Mr. Secretary, I have had an opportunity to read your statement and I wish to commend you for it. It is obvious from comparison and from your testimony that many procedures in S. 1308 are patterned after the NLRB.

Secretary WIRTZ. Yes, sir.

Senator PROUTY. Under S. 1308, a charging party is given the right to bring his own suit in the U.S. district court if the Commission has not acted or has refused to act on his charge after 180 days; is that correct?

Secretary WIRTZ. That with some modifications preserves the present opportunity.

Senator PROUTY. Isn't that different from procedures under the National Labor Relations Act?

Secretary WIRTZ. Yes, sir; it is.

Senator PROUTY. What is the reason for that?

Secretary WIRTZ. The Commission would be more competent than I to answer the question of whether, given the enforcement procedure which is proposed in S. 1308, the other would remain equally important. I can only suspect that it is a matter of preserving what's already there until we are sure of the rest and I could personally not offer you an answer to the question as to why that should be necessary in addition to the others.

You are correct, from my own knowledge, that there is not that as far as the National Labor Relations Act is concerned.

Senator PROUTY. I was unable to be present when the previous witnesses testified, so I was unable to ask this question of the chairman and members of the Commission.

Secretary WIRTZ. Yes, sir; I would not know a reason for both.

Senator PROUTY. Mr. Secretary, just one more question.

It appears that at least one witness will testify that enforcement powers will decrease voluntary compliance and that public formal hearings will lessen the Commission's effectiveness in obtaining settlements on a voluntary basis.

I know you don't agree with that; you suggest otherwise in your statement. Perhaps you could elaborate a little more on that.

Secretary WIRTZ. Senator Prouty, it would only be an abuse of enforcement authority which would lead to that conclusion. If given enforcement authority and somebody came in with a steel fist, it may have that result. Many would tend not to conciliate, not to mediate, if they knew they were going to be hit over the head, so I am talking about a qualitative judgment and about a responsible use of authority.

Again, with regard to the use of authority with the responsibility of restraint, it is my experience in the labor field (and in other fields,

including this field) that the realization on the part of the parties that you can follow up if they make you, does prompt them to come along, just as if they feel that you are going to exercise your enforcement power without restraint, they will not come along.

But the feeling on the part of the parties that you will use your authority responsibly does, I think, increase the effectiveness of mediation and conciliation.

Senator PROUTY. Thank you, I have no further questions.

Senator CLARK. Senator Javits?

Senator JAVITS. I have just one question, Mr. Secretary.

We noticed that chart in your statement, speaking about the building trades unions, you say, 8.1 percent of all construction craftsmen except carpenters, and so on.

Now, carpenters are one-third of all the construction craftsmen and would really knock a hole in that figure. Now, how about getting the figures for that?

Secretary WIRTZ. I will supply it. I am frank to say that I don't know personally at the moment the reason for the exception, but I would add this, that the carpenters' union is today one of the most completely cooperative in opening up, in most places, its apprenticeship programs and in developing programs of this sort. In fact, I will inquire as to whether there is some reason for not including the figure here.

(The following information was subsequently supplied for the record.)

The only reason for not including the figure for carpenters was that it is collated separately from the other construction crafts. In both 1964 and 1966 the percentage of non-whites among carpenters was about 6 percent.

Senator JAVITS. I am convinced there is something wrong somewhere in this building trades apprenticeship opportunity, because the figures just do not jibe with all the vaselinelike statements we get to justify the situation.

Everything sounds very smooth and very kind, but when you break it down, there are just no Negroes in the construction trade.

Now, would you be good enough to analyze and file a statement for the record on the testimony of the building trades unions before the Subcommittee on Executive Reorganization of the Government Operations Committee just here 10 days ago and let us know what you think stops minority people from even applying for apprenticeship trianing, because I am confident that it is wrong and that somehow or other the opportunity is not afforded to the real minority group applicant in this field, but I cannot, frankly, find out what is wrong, and who is responsible.

I think a great job has been done, incidentally, in fuzzing that one up, and I would greatly appreciate it, as one Senator, if you would help us. And I might tell you, too, Mr. Secretary, because I know we are of the same mind—it will help the unions because if there is a clear indication of what needs to be done, then I know there are great influences within those unions that want it done.

There are other influences that do not, and I want to fortify the hands of those who want to give the minorities a break in the building trades.

Secretary WIRTZ. So do I, Senator; and if it is all right with you, I will file such a statement. But there are two or three things I would like to say about it right now, if that's all right.

Senator JAVITS. Sure.

Secretary WIRTZ. One would be that the statements to which you refer suggesting that there had been no enlistment of the cooperation of the building trades by the various Government agencies involved in this situation are utterly and completely without basis. There has been the fullest attempt on the part of all the agencies involved to enlist that cooperation.

Second, I think that the general answer in this situation, the problem to which you refer, includes two elements. One is, and I don't think of this as vaseline, the element of disadvantage which has resulted from previous discrimination and which does bring the Negro boy to the apprenticeship program without the advantage of training which most of the white boys have had; but that is only part of it.

I have on my desk now, having received it just very recently, a report of a situation in Cleveland, Ohio, involving Local 38 of the IBEW. We had worked with them there on a very extensive preapprenticeship training program—worked with 17 boys to the point where they were ready for the apprenticeship tests.

They took the examination and many of them, who did as well on the objective part—written tests and certain objective qualifications—as some of the white applicants who were accepted, were excluded after an oral interview.

Now, I mention that case not to excoriate a particular union, but to set it off against what is going on in most of the other apprenticeship programs; and the second part of the answer to your question is that there is just enough of that kind of thing to poison the whole atmosphere about this and in terms of your question to discourage Negro boys from applying other places.

If we can just get across the fact that there are still aberrations of that kind, but that the opportunity in most situations is now there, a great service will have been rendered. I will be delighted to supply the statement to which you refer.

(Subsequently Secretary Wirtz supplied the subcommittee with a copy of "Negro Participation in Apprenticeship Programs," by Profs. F. Ray Marshall and Vernon Briggs, University of Texas, prepared under contract for the U.S. Department of Labor, which may be found in the files of the subcommittee.)

Senator JAVITS. I have two observations to make in return, if you will allow me.

One is here is an area where the manpower training which you also run can tie right into getting the boys knowledgeable about the opportunity and eligible in terms of a preliminary; and second, that it is critically important that you examine their tests.

That, too, can be discriminatory; you don't need a Ph. D. to be a carpenter or to be a plumber, and the fellows who are there now, who have these vested rights, they were not Ph. D.'s when they got in and their children and their nephews and their cousins who do get in are not Ph. D.'s, so there is something wrong somewhere, and Mr. Secretary, I am delighted you will attempt to answer some of there ques-

tions. I think my colleagues feel this way, too—most of us are very partial to those unions. I know them well, they give me great support, speaking as a politician. But that doesn't change the fact that somehow or other you know that the end-result shows something is wrong, and we have to find out what it is.

Thank you, very much.

Senator CLARK. I would like to have printed in the record the "Summary of State Fair Employment Practice Acts," which the Secretary has handed me. It is Labor Law Series No. 6–A, June 1966, published by the Bureau of Labor Standards of the U.S. Department of Labor. I would like to have that printed at the conclusion of Secretary Wirtz' testimony.

(The document referred to follows:)

SUMMARY OF STATE FAIR EMPLOYMENT PRACTICE ACTS

Labor Law Series No. 6-A
June 1966

U. S. DEPARTMENT OF LABOR
Bureau of Labor Standards
Washington, D. C. 20210

SUMMARY OF STATE FAIR EMPLOYMENT PRACTICE ACTS

State laws against discrimination in employment are designed to promote equal job opportunities among employees or applicants of equal ability.

Mandatory laws against discrimination in private employment because of race, color, religious creed, national origin, or ancestry, commonly called fair employment practice acts, have been enacted in 35 States and Puerto Rico, and a local ordinance has been adopted in the District of Columbia:

Alaska	Iowa	New Jersey
Arizona	Kansas	New Mexico
California	Kentucky	New York
Colorado	Maine	Ohio
Connecticut	Maryland	Oregon
Delaware	Massachusetts	Pennsylvania
District of Columbia	Michigan	Puerto Rico
Hawaii	Minnesota	Rhode Island
Idaho	Missouri	Utah
Illinois	Montana	Vermont
Indiana	Nebraska	Washington
	Nevada	Wisconsin
	New Hampshire	Wyoming

In two other States, Oklahoma and West Virginia, laws against discrimination in employment provide for conciliation and persuasion but not for mandatory compliance.

MANDATORY LAWS

All of the laws prohibit employment discrimination on the basis of race, color, religious creed, national origin, or ancestry. Some also prohibit discrimination on other bases, such as age in 14 laws (Alaska, Connecticut, Delaware, Hawaii, Maine, Massachusetts, Michigan, New Jersey, New York, Oregon, Pennsylvania, Puerto Rico, Washington, and Wisconsin) 1/ and sex in 11 laws (Arizona, the District of Columbia,

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1/ In addition, California, Colorado, Idaho, Indiana, Louisiana, Massachusetts, Nebraska, North Dakota, Ohio, and Rhode Island have separate laws prohibiting employment discrimination based on age. See Fact Sheet No. 65-5, Brief Summary of State Laws Prohibiting Discrimination in Employment Because of Age, issued by the Bureau of Labor Standards.

Hawaii, Maryland, Massachusetts, Missouri, Nebraska, New York, Utah, Wisconsin, and Wyoming).2/ Discrimination is also prohibited if based on birth, social position, or political affiliation in Puerto Rico; on liability for military service in New Jersey; and on handicap in Wisconsin.

Coverage and exemptions

The laws of Delaware, Hawaii, Idaho, Maine, Montana, and Puerto Rico cover all private employment. The other 31 contain specific exemptions.

Both domestic service and employment of a person by his parent, spouse, or child are exempted in 18 jurisdictions:

California	Kentucky	New York
Connecticut	Massachusetts	Oregon
District of Columbia	Minnesota	Pennsylvania
Indiana	Nebraska	Rhode Island
Kansas	New Hampshire	Vermont
	New Jersey	Washington
	New Mexico	

In addition, Wisconsin exempts such family employment, and Alaska, Colorado, Illinois, Iowa, Michigan, Ohio, and Utah exempt domestic service. Iowa also exempts "personal services."

Agricultural labor is exempted in California, Illinois, and Pennsylvania. (California has suspended this exemption for 2 years for workers hired between September 18, 1965 and September 17, 1967.)

Nonprofit social clubs and religious, fraternal, charitable, or certain educational organizations are exempted in 9 laws (Alaska, California, Illinois, Indiana, Massachusetts, New Hampshire, New Jersey, Oregon, and Rhode Island), and these organizations are exempted under the Pennsylvania law with respect to practices based on religion only. Religious organizations are exempt under the laws of Colorado, Missouri, New Mexico, Utah, Washington, Wisconsin, and Wyoming, and certain private clubs or fraternal organizations in Arizona, Kansas, Nebraska, Nevada, New Mexico, Utah, and Wisconsin.

2/ In addition, the Colorado law prohibits discrimination in apprenticeship because of sex, and the Alaska and Vermont antidiscrimination laws contain equal pay provisions. (For information on State equal pay provisions or laws, see Digest of Equal Pay Laws, published by the Women's Bureau.)

Employers having fewer than a specified number of employees are exempted under 26 laws:

Wyoming	fewer than	2
Iowa, Kansas, New Mexico, New York, Ohio, Rhode Island	fewer than	4
California, Connecticut	fewer than	5
Colorado, Indiana, Massachusetts, New Hampshire, New Jersey, Oregon, Pennsylvania	fewer than	6
Kentucky, Michigan, Washington	fewer than	8
Nevada	fewer than	15
Arizona	fewer than	20
Missouri, Utah	fewer than	25
Illinois	fewer than	50
Maryland, Nebraska (75 second year; 50 third year; 25 thereafter)	fewer than	100

Discriminatory practices prohibited

Some of the laws contain general prohibitions. For example, the Indiana law defines "discriminate" as meaning "to exclude from or fail or refuse to extend to a person equal employment opportunities because of race, creed, color, national origin, or ancestry." Most of the laws make specific employment practices unlawful. 3/

By employers.--Most of the laws specifically prohibit such practices as refusing to hire or employ; barring; discharging; or otherwise discriminating with respect to compensation, terms, conditions, or privileges of employment.

By labor organizations.--The laws generally prohibit labor organizations from discriminating against members, employers, or employees. For example, 34 laws (all except Idaho, Maine, and Montana) provide that a union may not discriminatorily exclude or expel such person from membership.

3/ The New Hampshire law prohibits specific practices and also indicates that "unlawful discriminatory practices" includes practices prohibited by the Federal Civil Rights Act of 1964.

By employment agencies.--Employment agencies are prohibited from discriminating against job applicants. For example, 20 laws specifically prohibit failing or refusing to classify persons properly or to refer them for employment:

Colorado	Kentucky	New York
Connecticut	Maryland	Ohio
District of Columbia	Michigan	Pennsylvania
Illinois	Minnesota	Rhode Island
Iowa	Missouri	Utah
Kansas	Nebraska	Vermont
	Nevada	Washington

Advertising, application forms, and inquiries.--Discriminatory advertising is prohibited in 30 jurisdictions. Under 23 laws employers and employment agencies are forbidden to print or circulate any advertisement or publication, to use any application form, or to make any inquiry which expresses any unlawful limitation, specification, or discrimination:

Alaska	Kansas	New York
Arizona	Massachusetts	Ohio
California	Michigan	Oregon
Colorado	Minnesota	Pennsylvania
Delaware	Missouri	Puerto Rico
District of Columbia	New Hampshire	Rhode Island
Hawaii	New Jersey	Utah
	New Mexico	Washington

Connecticut, Iowa, Kentucky, Maryland, Nebraska, Nevada, and Vermont prohibit discriminatory advertising, but not discriminatory application forms or inquiries.

These prohibitions also apply to labor organizations in about half of the laws; to applicants for employment or membership in a few; and to apprenticeship committees or training schools in a few. None of the provisions apply specifically to newspapers; however, newspapers have been determined to be in violation of the "aiding and abetting" provisions if they accept discriminatory advertisements.

Most of the States which prohibit discriminatory inquiries have issued "pre-employment inquiry guides" indicating discriminatory questions that job applicants may not be asked, such as their complexion or color of skin. The guides prohibit requests for religious references, birth certificates, or photographs, as well as inquiries about membership in organizations that may reveal race, religion, or nationality.

Massachusetts amended its law to authorize the keeping of records that reflect race or national origin if necessary to comply with the reporting requirements of Federal law.

Apprenticeship and other training programs.--Sixteen of the laws directly or indirectly prohibit discrimination in admission to or employment in apprenticeship training programs:

Alaska	Iowa	Nebraska
Arizona	Kentucky	Nevada
Colorado	Maryland	New Jersey
District of Columbia	Minnesota	New York
Illinois	Missouri	Ohio
		Utah

In addition, in 13 of these laws (all but Illinois, Minnesota, and Ohio) the prohibition applies to other training or retraining programs.

The Colorado law as well as that of Rhode Island prohibits discrimination by any training school or center.

Other prohibitions.--Discharging or otherwise discriminating against a person because he has opposed discriminatory practices or has made a charge, testified, or assisted in proceedings under the law is prohibited by nearly all of the laws. In addition, they forbid any person to aid, abet, incite, coerce, or compel the doing of unlawful practices, or to attempt to do so.

When the law does not apply

All of the laws except those of Idaho, Indiana, Iowa, Montana, Puerto Rico, Vermont, and Wisconsin specify that employment practices which are otherwise prohibited are allowed if based on a bona fide occupational qualification, sometimes referred to as the "Chinese restaurant exemption."

The manner in which an exception is permitted varies from State to State. In some, the employer must ask the Commission to grant the request in advance of its application, while in others the employer must simply be prepared to justify the preference in the event a complaint is made against him.

In addition to the laws exempting religious organizations, 11 laws specifically allow religious organizations to require employees to be of the same religion--Arizona, District of Columbia, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Nebraska, Nevada, New York, and Vermont--and Delaware does so by ruling.

Some States specify that inquiries otherwise discriminatory may be made where State or Federal security regulations require the information.

Six of the laws (those of Arizona, Illinois, Kentucky, Missouri, Nebraska, and Nevada) specify that giving, or acting upon the results of, ability tests is not prohibited unless such tests are designed or used to discriminate.

The Kansas law may not be invoked by adherents to a religious creed whose practices include refusal to recognize the flag of the United States or refusal to serve in the Armed Forces. The laws of Arizona, the District of Columbia, Nebraska, or Nevada may not be invoked by Communists.

The Nevada law exempts Indian tribes from the definition of employer, while the Arizona, Nebraska, and Utah laws specifically allow preferential treatment of Indians for work on or near a reservation.

Administration and enforcement

Most of the States have placed administration of the laws in agencies created especially to administer them. Although such an agency was originally known as a Fair Employment Practice Commission, the usual term now is State Commission Against Discrimination or Civil Rights Commission, as employment discrimination is being handled with such other areas as discrimination in public accommodations or housing. In 24 jurisdictions the laws are administered by such commissions.

In eight other States (California, Delaware, Hawaii, Maine, Oregon, Pennsylvania, Utah, and Wisconsin) and Puerto Rico, administration is under the department of labor, generally by a special division. In New Jersey, administration is vested in the Division on Civil Rights in the Department of Law and Public Safety. No administrator is named in the Idaho, Montana, and Vermont laws.

Enforcement procedures are very similar in 31 jurisdictions (all except Delaware, Idaho, Maine, Montana, Puerto Rico, and Vermont). The laws provide for complaints to be filed by aggrieved persons. Generally, an employer may also file a complaint if any of his employees refuse to cooperate with the provisions of the law, asking for assistance by conciliation or other remedial action. The laws of Colorado, Iowa, Minnesota, and Utah specify that labor organizations may file complaints, and the Colorado and Utah laws extend this authority to joint apprenticeship committees and vocational schools.

Complaints may be initiated by the administrative agency in 18 jurisdictions 4/ and by the Attorney General of the State in 15 jurisdictions 5/. In Rhode Island complaints may also be initiated

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4/ Alaska, Colorado, Connecticut, Iowa, Kentucky, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Washington, and Wyoming. (In New Jersey the Attorney General heads the administrative agency.)

5/ California, Colorado, Hawaii, Iowa, Kansas, Kentucky, Maine, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, New York, Oregon, and Pennsylvania.

by civil rights organizations; in New Jersey by the Commissioners of Labor and of Education; and in New Mexico and New York by the Industrial Commissioner.

Upon receipt of a complaint the administrator is required to make a preliminary investigation to determine whether evidence of discrimination exists. If so, he must attempt to eliminate the unlawful practice by conference, conciliation, and persuasion. Commission members and staff are generally forbidden to disclose what has occurred during conciliation conferences.

If conciliation attempts fail, the administrator may hold a hearing. If he finds that the person charged has engaged in any unlawful practice, he may issue an order requiring that person to cease and desist from the practice, and to take affirmative action, such as hiring, reinstatement with or without back pay, or restoration to union membership. A person aggrieved by the administrator's action may obtain judicial review, and the administrator may seek court enforcement of his order. Many of the laws specify a penalty for violation of commission orders, or for other offenses, which is generally a fine or imprisonment, or both.

The District of Columbia ordinance provides that after hearing the administrator may issue "recommendations for correction." If violation is not corrected in 15 days the case shall be referred to the Corporation Counsel for civil or criminal action.

The laws of Delaware, Idaho, Maine, Montana, and Vermont do not specify administrative procedures and are enforceable only by penalties. However, a ruling in Delaware requires the administrator to endeavor to eliminate the unlawful practice by conciliation prior to the application of penalties, although further administrative procedures are not provided.

The Puerto Rico law provides for civil suits for damages and also makes violation a misdemeanor, punishable by fine and/or imprisonment. The Secretary of Labor may bring such civil or criminal suits against violators in behalf of the employee or applicant. The administrator may issue affirmative orders, and in civil suits the court may issue cease-and-desist and affirmative orders.

Educational programs

Most of the laws (all but those of Delaware, Hawaii, Idaho, Maine, Montana, Nebraska, Puerto Rico, Vermont, and Wyoming) require the administrator to study the problems of prejudice and discrimination and to prepare an educational program designed to eliminate

discrimination in employment. A separate Civil Rights Commission has been created in Puerto Rico to carry on this program, although the Labor Department enforces the law. The laws authorize the administrator to conduct or sponsor studies and research, and to issue publications designed to promote equal employment opportunities. Citizen participation is encouraged both through advisory committees, and, in several States, by specific authorization to the administrator to make use of voluntary services of private individuals or organizations. The laws require the administrator to submit annual reports to the Governor and the State legislature of their activities during the year, which may include recommendations for further legislative action.

HISTORY

The first of the 37 current laws was passed in New York in 1945, following 8 years of study and wartime regulation of discriminatory practices within the State. The New Jersey act was also passed in 1945. Massachusetts followed in 1946; Connecticut in 1947; New Mexico, Oregon, Rhode Island, and Washington in 1949; Alaska, in 1953; Michigan, Minnesota, and Pennsylvania in 1955; and Colorado and Wisconsin in 1957. Colorado and Wisconsin had each previously had the voluntary type of law. California, Ohio, and Puerto Rico passed laws in 1959; and Delaware followed in 1960. In 1961 the Idaho, Illinois, and Missouri laws were enacted and the Kansas law was changed from voluntary to mandatory. In 1963 the Indiana law was changed from voluntary to mandatory, and laws were enacted in Hawaii, Iowa, and Vermont. Following the enactment of the Federal Civil Rights Act of 1964, laws were enacted in Arizona, Maine, Maryland, Montana, Nebraska, New Hampshire, Utah, and Wyoming in 1965. In addition, the Nevada law was made mandatory and an ordinance was issued in the District of Columbia. The Kentucky law was made mandatory in 1966, effective July 1, 1966.

LAWS PROVIDING FOR VOLUNTARY COMPLIANCE

Antidiscrimination laws relying on educational measures to promote fair employment were passed by Indiana and Wisconsin in 1945, by Colorado in 1951, by Kansas in 1953, by Kentucky in 1960, by Nevada and West Virginia in 1961, and by Oklahoma in 1963. Six of these have since been made mandatory, as shown above. Thus there are now two States--Oklahoma and West Virginia--that have "voluntary" laws, depending primarily on conciliation and educational measures for enforcement. The agencies administering these laws may investigate complaints and make recommendations to the parties, and are directed to make studies and plan educational programs.

FAIR EMPLOYMENT ORDINANCES

More than 200 cities have adopted ordinances which prohibit discrimination in employment or set up local bodies to encourage nondiscrimination in employment in the community. Many of these ordinances preceded the enactment of a State antidiscrimination law.

In enacting the State laws, or after enactment, some States such as California, Michigan, and New Jersey, held that the State had preempted the field, and local ordinances were no longer valid. In others, such as Minnesota, the prevailing interpretation is that ordinances are not invalidated by the passage of the State law. The Arizona, Iowa, Kentucky, and Pennsylvania laws specify that local ordinances are not repealed by the law, but that the remedy under either the law or an ordinance is exclusive. In some cases the ordinance may set a higher standard. For example, the Philadelphia ordinance applies to employers of more than one employee, while the Pennsylvania law applies only to employers of 12 or more persons.

FEDERAL CIVIL RIGHTS ACT

Title VII of the Civil Rights Act of 1964, effective July 2, 1965, prohibits specified discriminatory employment practices based on race, color, religion, sex, or national origin by employers, labor organizations, and employment agencies whose activities affect interstate commerce. The law exempts employers and labor organizations with fewer employees or members than: 100 the first year; 75 the second year; 50 the third year; and 25 thereafter. There are a number of other situations where the law does not apply.

The act specifies that in States or localities with fair employment practice laws, complaints must initially be referred to the State agency. If adjustment fails, a charge may then be filed with the Equal Employment Opportunity Commission, which must attempt to obtain voluntary settlement, as it is directed to do in States not having nondiscrimination laws. If the Commission fails to obtain settlement, civil suit may be brought in a Federal court by the person making the complaint. The act also authorizes the Commission to cooperate with State and local agencies charged with the administration of such laws and under certain conditions to utilize the services of these agencies. In furtherance of such cooperative efforts, the Commission may enter into written agreements with the State or local agencies and such agreements may include provisions authorizing the Commission to transfer its authority under certain cases to the State or local agencies.

EXECUTIVE ORDER 11246

Executive Order 11246, issued on September 24, 1965, declares the Federal executive policy against discrimination in employment because of race, creed, color, or national origin.

Discrimination in employment by the Federal Government is prohibited. A positive, continuing program to promote equal employment opportunity is required of each executive department and agency, under the supervision of the Civil Service Commission. The agencies must review all complaints of discrimination and the Commission is directed to consider all appeals thereon.

Discrimination in employment under Government contracts and subcontracts, including federally-assisted construction contracts, is also prohibited. The Secretary of Labor is responsible for the administration of this program.

Compliance Reports are required from contractors, which must include information as to the practices and policies of labor unions and of agencies referring workers to the contractor or providing or supervising apprenticeship or training for his workers.

Complaints may be filed with the Secretary of Labor or with the contracting agency involved. Compliance officers are required to seek compliance by conference, conciliation, mediation, or persuasion. If such efforts fail, sanctions may be imposed, including publishing the names of violators, cancelling or suspending the contract, or barring the contractor from future Government contracts; or the case may be referred to the Justice Department for enforcement by civil or criminal proceedings. The Secretary of Labor or any executive agency may hold public or private hearings if deemed advisable, for compliance, enforcement, or educational purposes.

SUMMARIES OF STATE LABOR LAWS

Labor Law Series

No. 1	Outline of Labor Law Development in the United States
No. 2	Status of Agricultural Workers Under State and Federal Labor Laws
No. 3-A	State Child Labor Laws
No. 3-B	Questions and Answers on Child Labor Laws
No. 3-C	State Compulsory School Attendance Laws
No. 4-A	State Minimum Wage Laws
No. 4-B	State Wage Payment and Wage Collection Laws
No. 4-C	State Prevailing Wage Laws
No. 4-D	State Provisions Exempting Wages from Garnishment
No. 4-E	State Laws Prohibiting or Regulating the Business of Debt Pooling
No. 4-F	Debt Pooling and Garnishment in Relation to Consumer Indebtedness
No. 5	State Laws Regulating Private Employment Agencies
No. 6-A	State Fair Employment Practice Acts
No. 6-B	State Laws Prohibiting Discrimination in Employment Based on Age
No. 6-C	Age Discrimination Prohibited Under State Laws--A Table
No. 7-A	State Labor Relations Acts
No. 7-B	State Mediation Laws
No. 7-C	State Union Regulatory Provisions
No. 8	State Laws Regulating Industrial Homework
No. 9-A	State Occupational Safety and Health Legislation
No. 9-B	State Laws and Regulations for the Control of Radiation Hazards
No. 10	State Workmen's Compensation Laws

Senator CLARK. I have only one more question, Mr. Secretary. When Mr. Shulman was here, I pressed him pretty hard, and without success, as to whether there was any evidence of a pattern of geographical discrimination in employment, and his initial answer was that they could not tell any such pattern from the complaints that were filed and then later that he wasn't prepared to say on the basis of what he knew that there was any such geographical pattern.

And finally, he did admit that in States where there were no perceptible numbers of Negroes, Puerto Ricans, Spanish Americans and Mexican Americans, there tended to be fewer complaints than in other places.

Then I raised with him the question of intimidation, as to why complaints might not have been filed, and he was not prepared to answer that. I don't want to put you on the spot.

Do you have any feeling, empirically or on the basis of the statistics, that there is a geographical pattern of discrimination? And let me help you out a little by saying I know that in the Commonwealth of Pennsylvania there is much more discrimination in Philadelphia and in Pittsburgh than there is in the rural counties where these problems rarely arise.

It doesn't mean that I don't think we have pretty good State FPEC's; it doesn't mean that I don't think the Equal Employment Opportunity Commission has done a pretty good job with its limited power. I think it has.

Can you help the subcommittee out in this area at all?

Secretary WIRTZ. I find it more and more necessary to distinguish between two pairs of things: "Discrimination" in the active current sense of the exercise of prejudice today; and, on the other hand, "disadvantage" accumulating from the past and taking the form of current unqualification.

Senator CLARK. The net effect is the same?

Secretary WIRTZ. Yes; but my answer to your question would suggest a difference between the two. Although I don't have the statistics on hand to prove it, I think that the factor of discrimination—in the sense of actually taking a prejudiced action on the basis of just the fact of race—is probably still more prevalent in the Southern part of the country than it is in the North. However, the impact of being disadvantaged, in the sense of unqualified is probably greater in the North than it is in the South, because of the migration from the South to the North. I cannot temporize with the problem of the disadvantaged any more than I can with discrimination because it seems to me there is an obligation to eliminate that disadvantage. I would find a larger burden on that point, just as you suggest, in those areas in which there is a large number now of minority groups, and that includes the large cities in the North more than any other.

Putting it differently and in terms of what to do about it, I would bore in on the concentrated problem of unemployment and the disadvantaged, which is characteristic at least in terms of total numbers more of the northern metropolitan areas than it is of any the others, because that is where the real hard problem of disadvantage is centered.

One other point, and that has to do with the difference between hiring and the promotion. I think that there there is no indication

as far as a large number of the Southern States are concerned, no indication of a willingness to go beyond, as far as most employers are concerned, the elimination of discrimination in hiring and extend it to promotions. Putting it differently, these employers don't bar the entry of minority group workers into jobs but then they just don't go anyplace.

So on the entry hiring, I think that is pretty well licked throughout the country, the discrimination on that; but when it comes to promotion and upgrading, I think there is some regional distinction.

Senator CLARK. Thank you very much. We are grateful to you for appearing before us.

The subcommittee will stand in recess until 2:30 this afternoon.

(Whereupon, at 11:45 a.m., the subcommittee recessed, to reconvene at 2:30 p.m. on the same day.)

AFTERNOON SESSION

Senator CLARK: The subcommittee will resume its session.

Our witnesses this afternoon are five distinguished leaders in the civil rights movement: Mr. Roy Wilkins, chairman of the Leadership Conference on Civil Rights; Mr. Jack Greenberg, director of the NAACP Legal Defense and Educational Fund; Mr. Clarence M. Mitchell, director, Washington Bureau of the National Association for the Advancement of Colored People; Mr. Joseph L. Rauh, Jr., general counsel of the Leadership Conference on Civil Rights, and Mr. Whitney M. Young, Jr., executive director of the National Urban League, Inc.

On behalf of the subcommittee I would like to welcome all of you gentlemen to our hearings. We are looking forward with great pleasure to any help you can give us regarding this legislation and your views about it.

Mr. Young, Mr. Greenberg, and Mr. Wilkins have submitted prepared statements which I have had an opportunity to read. I will ask that each of them be printed in the record at this point in full.

(The prepared statements referred to follow:)

PREPARED STATEMENT OF JACK GREENBERG, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

My name is Jack Greenberg. I am testifying pursuant to an invitation extended by Senator Clark to participate in a panel of witnesses representing civil rights organizations and to express my views on the equal employment provisions of the Civil Rights Act of 1964 and proposed amendments to the Act.

I am Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. Our organization has a deep interest in the vindication of fundamental human rights through the legal process, having devoted ourselves totally to such a program since we were formed in 1939. Perhaps the most celebrated example of the capacity of the law to start a country moving on fundamental problems in race relations is the Supreme Court decision in the School Segregation Cases, which were brought under the leadership of Thurgood Marshall, my predecessor as Director-Counsel of the Legal Defense Fund.

Following the passage of Title VII of the Civil Rights Act in 1964 and its becoming effective in 1965, we filed 37 cases in the United States District Courts. I would like to share with you our experiences with these cases because they are virtually all of the litigation now pending under the Act. Several other organizations have four or five cases among them, and the Attorney General of the United States, I believe, filed two cases. Two kinds of experiences have

stemmed from these filings. The first is rather gratifying because it demonstrates the capacity of the statute and men of good will to work out differences which will secure employment to Negro workers who have been victims of racial discrimination and until passage of the law had no remedy. The first category of outcome consists of favorable settlements we have obtained. The first case which we filed was against the A & P in Wilmington, North Carolina.

The settlement of that case secured the plaintiff an immediate placement as a cashier in the A & P store in Wilmington, in addition to the assurance of the company to place other Negroes in similar and other positions in both North and South Carolina. Following this, more than 60 Negroes have been employed by A & P in jobs that they had theretofore not been able to hold.

Another indication of the capacity of a lawsuit to lay the basis for effective settlement of civil rights claims is the much celebrated *Newport News Shipbuilding* case. Even though the shipbuilding company came under the jurisdiction of the Office of Federal Contract Compliance and had been under investigation by OFCC for many years, there was no effective movement towards settlement of outstanding claims of racial discrimination until after we filed the lawsuit. With the case pending, counsel for the plaintiffs and representatives of the United States for the first time were able to work out an effective settlement with the company whereby hundreds of Negro workers moved into craft and supervisory positions theretofore barred to them.

Similarly in the case of *Wilson* v. *Friedman-Marks Clothing Company*, in Richmond, Virginia, we filed suit on behalf of Negro workers who had theretofore been limited to lower paying and menial jobs in one or two departments in a men's clothing manufacturing plant. On the eve of the trial, a settlement was worked out whereby the company agreed to allow Negroes to transfer to departments and jobs theretofore limited to white employees.

Similarly, we have just settled a case with The Monsanto Company involving its Eldorado, Arkansas facilities. As a result of this settlement, Negroes will be enjoying jobs that theretofore had been barred to them because of race.

On the other hand, many of the cases are beginning to follow the classic pattern of prolonged and difficult school segregation litigation. Every procedural technicality imaginable must be gone through before the case comes to trial. Most of the cases are hung up on such technical-procedural questions as: exhaustion of administrative remedies; satisfaction of certain statutes of limitations; propriety of filing class actions; whether conciliation is a precondition to filing suit and similar issues. Indeed, the first actual trial in a case of racial discrimination in employment (*Quarles v. Philip Morris*, in Richmond, Virginia) began only this week, almost two years after the effective date of the Act in July 1965. I might add that many of the large corporations and labor unions involved in employment litigation are employing some of the most vigorous and skillful counsel in the country and that a great deal of protracted and difficult litigation is in prospect.

A list of pending Title VII cases is appended to this statement.

Out of these experiences, we would like to make several suggestions concerning the proposed Bill S. 1308, the Clark-Javits Bill. We heartily applaud the provisions of the Bill which give the Commission cease and desist powers. Long ago it was learned that public rights cannot effectively be enforced by leaving them solely to private litigants. As a result, there has been enacted the Securities and Exchange Commission Act, the Interstate Commerce Act, the Pure Food and Drug Laws, the Federal Trade Commission Act, and the National Labor Relations Act, and similar agencies. The extent of racial discrimination in employment in America is so vast that there never will be progress unless government is armed with the power to move forward admnistratively on a broad scale.

At the same time our experience in the field of racial discrimination demonstrates that this Bill wisely preserves the rights of private suits alongside administrative enforcement by the government. The entire history of the developmen of civil rights law is that private suits have lead the way and government enforcement has followed. For example, the first declaration that it was unconstitutional for local institutions supported in part by federal funds to discriminate on the basis of race came in a lawsuit which the Legal Defense Fund brought (*Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (5th Cir. 1963)). In that case the "separate but equal" provision of the Hill-Burton Act, was held unconstitutional. The theory of this case was embodied in Title VI of the Civil Rights Act of 1964, giving administrative enforcement to various

agencies of the government, principally the Department of Health, Education and Welfare. At the present time HEW can, by employing the sanction of cutting off federal funds, compel desegregation of schools, hospitals and similar institutions. Private parties may also bring suits.

It has been our experience that private parties have done the pioneering into such questions as the duty of school boards not to discriminate racially in the hiring, firing and assignment of teachers. It is questionable whether HEW would have moved into the area of teacher segregation without the lawsuits that private parties won, holding that a student's right to a desegregated education included the right to attend schools staffed by teachers who had not been placed on a racial basis. Following these cases, HEW strengthened its position on the issue. This example can be multiplied many times over. Indeed, many provisions of the HEW guidelines on school desegregation were modified after judicial decisions in privately financed lawsuits. Moreover, it is important that the Negro communities maintain confidence in the legal system as something that they and their lawyers can invoke, even if a government agency will not. A recent article in the Wall Street Journal quoted an EEOC official as saying: "There is a feeling on the staff level that if a complaint involves General Motors, U.S. Steel or a company of that stature, with access to the White House, then Justice will back off."

We need not accept this as true to recognize that when a complaint is filed against a powerful corporation or labor union and the Commission does not bring it to successful fruition, the suspicion is that there is something of the sort sanctioned by the law. The Wall Street Journal article had caused much concern among plaintiffs who have been victims of a long racial discrimination. Their rights to state their case and bring it before federal courts with their lawyers are the basis of assurance against cynicism developing in the Negro community concerning enforcement of the law.

The provision in the proposed Bill, setting forth the conditions under which a private party may institute a civil action, is a decided improvement over the provisions in the present law. In many of the cases presently pending in various courts, defendants have atempted to have the cases dismissed on the ground that suit was not filed within the stated time limitation. Under the present law, a private party must institute his action within 30 days of receipt of a letter from the Commission so advising him of his right to bring suit. It has been our experience that this 30-day limitation is much too short for the average person who would be seeking relief under the Act to seek assistance in bringing his suit and also allow the attorney sufficient time to adequately prepare for the filing of a lawsuit.

Under the proposed Bill, a private person would have 60 instead of 30 days in which to bring his action. We feel that the 60-day limitation is still much too short. We would suggest a period of one year from the day the right to go into court arises as being a more appropriate time limitation in which a private party can bring suit.

Sections 708(b) and (c) of the proposed Bill would be helpful. If might be that the proposed sections are declaratory of existing law but they should remove any ground for arguments we have directly encountered in many of the cases, to the effect that Title VII proceedings should be held up because of proceedings before the Labor Board or vice versa. Taken literally, however, the proposed amendment does not dispose of arguments that an aggrieved party should first exhaust his contractual grievances or administrative remedies before the Labor Board or the Railway Board before bringing suit in court. Since the proposed subsection (b) applies only to the case where NRLB proceedings had already been instituted, it would be better if the clause were drafted more broadly.

The proposed Section 709(d) offers a marked improvement over existing law, in that it does not exempt from EEOC record-keeping requirements employers subject to state anti-discrimination laws. The proposed Section 709(d) would afford recognition to the needs of state agencies without ham-stringing the Federal Commission.

There is one matter which is unclear under the present Title VII and is not clarified by the proposed Bill. That is, what is the status of a conciliation agreement arrived at through voluntary persuasion as provided under the present law and the proposed Bill? If the respondent violates the agreement, does the complainant sue in court for breach of agreement? Does he file against the respondent with the Commission? Does the Commission conciliate breaches of the agreement,

or does the Commission proceed immediately in a court of appeals for an order to enforce the agreement? We would suggest that violations of conciliation agreements be made specifically redressable or reviewable in an appropriate federal court.

The venue provision in the proposed bill provides that a civil action may be brought by a private party ". . . in the appropriate United States district court." This venue provision is not sufficiently clear and there exists the danger of protracted disputes over the choice of a forum. The present law offers several alternative grounds for selection of a court, namely, ". . . any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful practice. . ." We do not see any reason why the same provisions could not be carried over into subsection (o) of the proposed bill.

Section 710(b) of the proposed bill affords a respondent an opportunity to have subpoenaes issued by and in the name of the Commission. A complaining party should be afforded the opportunity of securing subpoenaes from the Commission on the same basis as is provided a respondent in this section.

We do not see the necessity to regard as sacred the ultimate twenty-five (25) employee jurisdictional test in the present statute or the timetable by which employers with twenty-five (25) or more employees will not be reached by the statute until July, 1968. We would suggest that the number for coverage purposes be lowered to eight (8) and that this be done immediately. Our suggestion that the number be lowered to eight (8) coincides with the number of employees necessary for coverage of certain other federal statutes applicable to labor.

It seems anomalous that governmental units and agencies should be exempt from the coverage of Title VII since wrongs on their part directly violate the Fourteenth Amendment as well as possibly falling within the powers of Congress under the Commerce Clause. It might be said that (a) there already exists a right of action against employment discrimination by governmental agencies and, (b) that there is something unseemingly about having the Commission call state and local public officials before it to defend their conduct. As to the latter argument, however, there are precedents in which just this has been done, for example, a state-owned railroad falling within the jurisdiction of the Interstate Commerce Commission; sales by a state being subject to federal price control; a city or state-operated radio station being regulated by the Federal Communications Commission, etc.

The Commission should be given specific direction and authority to conduct a continuing survey of apprenticeship and retraining programs which could bring substantial relief in this particularly crucial area. Section 709(c) of the proposed Bill does direct the Commission to require record keeping in this area, but we feel that this approach to apprenticeship and retraining programs is insufficient.

Under the present law, an aggrieved party unable to afford his own attorney could apply to the court for the appointment of an attorney and the court has the power to authorize the commencement of an action without the payment of fees, costs or security. We would suggest that the provision relating to appointment of counsel for indigent persons be made a part of the proposed Bill.

In conclusion, I am thankful for the Committee extending me the opportunity to appear and present to you our experiences with the present law in addition to setting forth our observations and suggestions on the proposed Bill. It is our sincere hope that the deliberations of the Committee and the Senate will be fruitful in dealing with many of the deficiencies of the present law.

APPENDIX

LIST OF NAACP LEGAL DEFENSE AND EDUCATIONAL FUNDS, INC., TITLE VII CASES PENDING IN FEDERAL COURT

ALABAMA

1. *Dent* v. *St. Louis-San Francisco Railway Co., and Brotherhood of Railway Carmen of America*, Civ. No. 66-65 (N.D. Ala.)
2. *Ford, et al.* v. *United States Steel Corporation and United Steelworkers of America*, Civ. No. 66-625 (N.D. Ala.)

3. *Hardy, et al.* v. *United States Steel and United Steelworkers of America, et al.*, Civ. No. 66–423 (N.D. Ala.)
4. *McKinstry & Hubbard* v. *The United States Steel Corporation and United Steelworkers of America, et al.*, Civ. No. 66–343 (N.D. Ala.)
5. *Muldrow, et al.* v. *H. K. Porter and United Steelworkers of America, et al.*, Civ. No. 66–206 (N.D. Ala.)
6. *Pearson, et al.* v. *Alabama By-Products Corporation and the United Mineworkers of America*, Civ. No. 66–320 (N.D. Ala.)
7. *Pettway, et al.* v. *American Cast Iron Pipe Company*, Civ. No. 66–315 (N.D. Ala.)

GEORGIA

8. *Anthony* v. *Marion Williamson and Edward J. Shable (Georgia State Employment Service)*, Civ. No. 9947 (N.D. Ga.)
9. *Banks* v. *Georgia Lodge No. 45, Brotherhood of Railway Carmen of America*, Civ. No. 10167 U.S.D.C. (N.D. Ga.)
10. *Local Union No. 234 of the Wood, Wire and Metal Lathers Int'l. Union and Jackson* v. *Acoustl Engineering Company*, Civ. No. 10306 (N.D. Ga.)
11. *Royce* v. *General Motors Corporation*, Civ. No. 10391 (N.D. Ga.)

LOUISIANA

12. *Clark, et al.* v. *American Marine Corporation*, Civ. No. 16315 (E.D. La.)

NORTH CAROLINA

13. *Black, et al.* v. *Central Motor Lines, Inc.*, Civ. No. 2152 (W.D. N.C.)
14. *Brown* v. *Gaston County Dyeing Machine Company*, Civ. No. 2136 (W.D. N.C.)
15. *Griggs, et al.* v. *Duke Power Company*, Civ. No. C–210–G–66 (M.D. N.C.)
16. *Harvey* v. *Sears Roebuck & Company*, Civ. No. 1165 (E.D. N.C.)
17. *Johnson* v. *Seaboard Air Lines Railroad Company*, Civ. No. 2171 (W.D. N.C.)
18. *Johnson and Hickman* v. *The First National Bank and Trust Company*, Civ. No. 668 (E.D. N.C.)
19. *Lea, et al.* v. *Cone Mills Corporation*, Civ. No. C–176–D–66 (M.D. N.C.)
20. *Lee, et al.* v. *The Observer Transportation Corporation*, Civ. No. 2145 (W.D. N.C.)
21. *Moody, et al.* v. *Albemarle Paper Company and United Papermakers and Paper Workers, et al.*, Civ. No. 989 (E.D. N.C.)
22. *Robinson, et al.* v. *P. Lorillard Company and Tobacco Workers International Union, et al.*, Civ. No. C–141–G–66 (M.D. N.C.)
23. *Walker, et al.* v. *Pilot Freight Carriers, Inc.*, Civ. No. 2167 (W.D. N.C.)

TENNESSEE

24. *Alexander* v. *Avco Corporation and Aero Lodge No. 735 of the International Association of Machinist and Aerospace Workers*, Civ. No. 4335 (M.D. Tenn.)
25. *Hall* v. *Werthan Bag Corporation*, Civ. No. 4312 (M.D. Tenn.)

TEXAS

26. *Jenkins* v. *United Gas Corporation*, Civ. No. 5152 (E.D. Texas)

VIRGINIA

27. *Carlles, et al.* v. *Sturgis-Newport Business Forms*, Civ. No. 1153 (U.S.D.C. E.D. Va.)
28. *Quarles and Briggs* v. *Philip Morris Tobacco Company, and Tobacco Workers International Union, et al.*, Civ. No 4514 (E.D. Va.)

PREPARED STATEMENT OF ROY WILKINS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the Subcommittee, I thank you for the invitation to participate in this panel discussion on S. 1308, the proposed Equal Employment Opportunities Enforcement Act.

S. 1308 is a part of the President's civil rights legislative program for 1967. When the President sent his full program to the Senate in the form of S. 1026, we in the NAACP commended him for his continued leadership in civil rights.

We are pleased to again commend President Johnson for this proposal. With respect to employment, we note that the President has recognized that enforcement power will harmonize the procedures of the Equal Employment Opportunity Commission with the prevailing practices among states and cities which have had FEP agencies for many years, as well as other Federal regulator agencies. It will reduce the burden on individual complainants and on the Federal courts. The President also recognizes that it is vital to take steps to enhance the orderly implementation of important national policy, in order to overcome "disparity . . . clearly attributable to discrimination," as he noted in his 1967 Civil Rights message.

We commend also Senators Clark and Javits who have introduced the Equal Employment Opportunities Enforcement Act. The demonstration of bipartisanship in this instance reflects the sincerity of efforts to deal with an urgent problem and willingness to seek ways to benefit every citizen of this nation, as well as to extend each the equal opportunity which is his birthright.

A tremendous surge of hope accompanied the passage and signing of the Civil Rights Act of 1964, and it happened anew when, one year later, Title VII became operative. There was hope that at last the nation would deal meaningfully with the problems surrounding discrimination in employment. Despite the disappointment that no cease-and-desist authority had been granted the agency, there was a spirit and determination on the part of Americans to make this law work for those who suffer needless disadvantage as a result of discrimination.

The National Association for the Advancement of Colored People and its officers and lawyers have sought to make Title VII an effective law. The Association is responsible, directly or indirectly, for the filing of nearly 1600 individual charges against 350 employers, labor organizations, and private and public employment agencies throughout America.

While there have been achievements in some instances as a result of charges filed by citizens, and while some individual complaints have been dealt with successfully, the Commission has been handicapped in dealing with broad patterns of discrimination by lack of adequate enforcement authority. Our examination of Commission reports reveals that the agency has been unsuccessful in conciliating a large number of cases where reasonable cause has been found to exist. That this is so at a time when demands for equality have reached their present pitch and intensity is an indication that the nation has no choice but to come to grips with this problem.

The agency scored a notable success in negotiating a companywide conciliation agreement with the Newport News Shipbuilding and Drydock Company, under which "thousands will benefit directly," according to the Commission's annual report. On the other hand, the Commission has been unable to significantly affect the flagrantly discriminatory practices of the Crown-Zellerbach plant in Bogalusa, Louisiana. Nor have other government agencies taken effective action against this company, despite the fact that it is subject to the executive order on government contracts and could be the subject of litigation by the Department of Justice under the "pattern or practice" provision of Title VII of the 1964 Civil Rights Act. If the Commission had the cease-and-desist authority proposed in S. 1038, we are confident it would be able to effect results that would be closer to those obtained at Newport News, rather than those of Bogalusa.

The occupational structure of the Negro labor force is seriously out of line with the social characteristics of the American labor force in general. Negroes are disproportionately concentrated in the "lower" occupations, and only very slight improvement has been registered during the past 20 years. Research by Dr. Vivian Henderson indicates that Negroes make up about 11 per cent of all employed workers, but they make up 44 per cent of all household workers—four times their proportion of employed workers. They account for 21 per cent of all service workers and 26 per cent of all laborers, more than twice their proportion of employed workers. On the other hand, they make up less than 6 per cent of all employed craftsmen, 3 per cent of all salesmen, and 6 per cent of all clerical workers. Fully 43 per cent of all employed Negro males are working in jobs below the semi-skilled level, compared with only 15 per cent of all employed white workers. These figures were released in 1966 by the Bureau of Labor Statistics.

This imbalance contributes to job insecurity and prevents development of potential. The Negro occupational structure is something that came into being primarily because of restrictions which themselves were discriminatory in origin. It is shot through with systematic exclusion of Negroes with respect to training and employment opportunities. The structure does not lend itself to adjustments to technological change, and it means that the discriminated-against worker is particularly vulnerable to cyclical fluctuations and susceptible to unemployment problems. Some economists hold that approximately 35,000 jobs per week disappear as a result of automation, and while some occupations are decreased, others increase. The decrease, of course, is in the jobs of those who can least afford to lose them, for they are the low-paying, traditional, "Negro" jobs which fall before the march of progress.

Pathology with explosive potentials can be observed in the situation of the Negro teen-ager. Unemployment among this group is from 2 to 3 times that of comparable white groups. One out of every three Negro female teen-agers in the labor market today is looking for a job and cannot find one. The same is true for one out of every four Negro males. The figures for the explosive summer months of 1966 were 32 Negro teen-ager unemployed per 100 as against 14 per 100 for white teen-agers.

Special problems exist with respect to apprenticeship training and the construction industry. No agreements have been achieved by EEOC where charges have been filed, because the construction industry respondents have refused to conciliate. This area is particularly important as reliable predictions indicate there will be growth during the next few years in this industry and that skilled jobs will greatly increase therein.

Furthermore, it is a sad but true fact that some of America's giant corporations have refused to accept conciliation proposals which would eliminate overall patterns of racial discrimination in major sections of the American economy.

Those who experienced the great upsurge in hope that equal opportunity would become more the rule than the exception, and those (especially the young people) whose aspirations became greater as a result of hope, have been rudely jolted when, during the course of their transactions with the Equal Employment Opportunity Commission, they have learned that the agency cannot require compliance with an agreement. Indeed, it cannot order a respondent found to be in violation of Title VII to terminate unlawful policies and practices.

The proposed legislation represents substantial improvement over the present Act. We do believe there is a need for clarification and modification of some provisions—involving some changes which I will suggest.

The first improvement in the bill we would suggest would be a more extended coverage. We ask that employers of eight or more employees and unions of eight or more members be brought within the jurisdiction of the Act. According to testimony offered before the House Committee on Education and Labor by the former chairman of EEOC in 1965, this would bring approximately 500,000 additional employers within coverage of the Act.

I would like to point out that this extended coverage was a feature of the Hawkins bill (H.R. 10065) that passed the House of Representatives in the 89th Congress with the combined backing of the Democratic and Republican House leadership.

It has been our experience that employers with fewer employees often tend to be major practitioners of discrimination. Further, these employers are often located within the inner city where Negroes, Mexican Americans, and Puerto Ricans are largely confined because of discrimination in housing patterns. The employer with 8–25 employees is less likely to join the growing trek of industry to the suburbs. Their close proximity to the ghetto community may often fan tension and create disturbances if such employers are permitted to discriminate against citizens because of their race, color, religion or national origin.

We believe that another large group of employees should be extended the protection of the Act-public employees working for state, county and local governments and their political subdivisions and agencies. Public employment is one of the most rapidly growing fields of employment, and as of now there is little to protect the employee or potential employee from discrimination.

We would hope that the present requirement that complaints must be referred to state and local fair employment agencies could be deleted from the law. We believe that the effect of this provision is to unduly burden both the complainant and the EEOC and to delay final resolution. In the interest of efficiency and speedier justice we feel its elimination is in order.

Some time limits for the Commission's action should be written into the law. We suggest a general limitation of 120 days for the Commission to complete investigation and conciliation of a charge prior to the issuance of a complaint and a like period for the Commission to act when a complaint has been filed. S. 1308 does not provide any limitation of time. Presently under existing legislation the Commission has a maximum of 60 days to attempt to eliminate discrimination through conciliation. We are advised that the Commission has been unable to comply with the 60 day limitation of time because of its heavy complaint load. We do not believe, however, that this justifies a complete elimination of a period of time for the Commission to act. By increasing the period from the present 60 days to 120 days, the Commission should have adequate time to process the cases without unreasonable delay. According to the Commission's annual report approximately 22% of the cases filed and recommended for investigation were filed by persons seeking to be hired. These complainants need a quick remedy. Thus the bill should not completely remove the limitation of time in which the Commission is to act.

Section 702 of the existing legislation should be clairified in order to make it clear that the exemption of employees of educational institutions is limited to employment that is directly related to the selection, hiring and retention of faculty members and administrative officials. Said section should be further amended to clearly express Congressional intention to limit the exemptions to religious institutions to the selection, hiring and retention of employees directly connected with religious and educational activities and specifically include in the coverage of the Act all other employees.

There can be no justification for those who teach and preach in the name of democracy, equality and love to be exempted from practicing their dogma by hiring persons without regard to their race or color.

We would hope that the provision giving to the Attorney General the authority and duty to conduct all litigation arising under the EEO Act would be modified to allow Commission to handle its cases at least to the level of the Courts of Appeals. Most Federal regulatory agencies handle litigation of their own cases. We see no reason for an exception here. The Commission will have the benefit of its own investigation of cases and the *expertise* in the handling the problems of employment discrimination.

The Department of Justice could, of course, retain the right to intervene in cases that it feels relate to issues of national importance.

The Department of Justice has under existing law the authority to institute litigation involving a pattern or practice of employment discrimination. The extremely selective and limited use that the Department has made of this authority indicates to us that it would be wise to allow the Commission to share in litigation as the agency involved in the on-going program to eliminate employment discrimination.

The provision of Section 7(c) of S. 1308, taking from the Commission the right to hire personnel and vesting it exclusively in the Chairman is, we believe, ill-advised, and, we hope, unintended by the drafters of the legislation.

The adoption of this provision would be in derogation of the rights now exercised by the Commission members collectively and seems to imply that they have not exercised it properly. We are sure that this is not the intention of the authors of the bill.

The transfer of exclusive hiring authority to the Chairman could subject him to extreme pressure from patronage—seekers, a situation that should not be allowed in an agency dealing in this sensitive area of national affairs. While we have every confidence in the integrity of the present Chairman to resist such pressures, we do not know what the future may bring in a change of chairman, and we would not wish to run the risk that someone of lesser sensitivity may be exercising this broad grant of power.

The Congress set the Commission up as a bipartisan body. We believe that this spirit of bipartisanship can be best preserved by allowing all members of the Commission to participate in selecting personnel. Further we believe that the existing harmonious relationships among the members could be adversely affected by this proposed change.

All of these proposed changes we consider of importance. But of primary importance to us, as it has been through the years, is the idea of effective administrative enforcement. Therefore we consider the heart of the bill to be the grant of authority to the Commission to enforce its orders.

Because of their importance to the aggrieved employees or job applicants, we ask that these administrative procedure provisions be amended to afford additional protection. We believe this could be affected by granting to the charging party the same right that is given the respondent the right to be a full party in the procedures before the Commission. If this right is granted to the charging party once reasonable cause is found, it would follow that he would have full opportunity to protect his rights, including the right to be a necessary party to any conciliation agreement, to participate and be representated by counsel in the hearing and to petition for enforcement or review of Commission orders. We respectfully urge that these rights be afforded him.

In advancing these suggested changes, I trust that I have not diverted attention from our basic objective of assuring adequate enforcement of existing prohibitions against employment discrimination. I reiterate our long-standing support of a grant of adequate investigative and enforcement authority to the administrative agency enforcing the basic fair employment law. This is embodied in S. 1308. The enactment of these provisions into law would mark another giant step forward in our nation's continuing effort to extend the benefit of full equality to all of its citizens.

PREPARED STATEMENT OF WHITNEY M. YOUNG, JR., EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE

Mr. Chairman and Members of the Subcommittee; my name is Whitney M. Young, Jr., and I am Executive Director of the National Urban League. We appreciate your invitation and the opportunity it provides the Urban League to support this vitally needed legislation. To be effective, the Equal Employment Opportunity Commission needed enforcement power from its inception.

We also wish to take this opportunity to commend Senators Clark and Javits, who are responsible for introducing this important piece of legislation.

The legislation to which we address ourselves would make an indispensable contribution toward the protection of the equal employment rights of individuals. The major provision is that which grants EEOC the power to issue cease and desist orders.

We believe that President Johnson, in his message to Congress, emphasized the need for cease and desist order power when he stated:

"Unlike most Federal regulatory agencies, the Equal Employment Opportunity Commission was not given enforcement powers. If efforts to conciliate or persuade are unsuccessful, the Commission, itself, is powerless. For the individual discriminated against, there remains only a time consuming and expensive lawsuit."

It is increasingly apparent, from the EEOC's brief operation, that more effective machinery for enforcement authority must be given to the Commission to bring about conciliation.

We note that of thirty-five (35) States with EEPC laws, twenty-eight (28) provide for enforcement procedures. Of the remaining seven (7) that had initially relied upon voluntary compliance, four (4) have amended their laws to provide for enforcement procedures.

Federal enforcement toward Equal Employment Opportunity continues to be a major issue with minority citizens. While the employment status of Negro workers has improved considerably during the past two decades, there remain significant differentials between white and Negro workers. In spite of the Nation's improved economic status, the employment position of Negroes continues to lag behind their white counterparts.

Nation-wide studies document that they are still confined largely to the unskilled or semi-skilled jobs, when employed. They are employed fewer hours per week and their unemployment rates are twice as high as those of whites. Negro men continue to earn sixty percent (60%) as much as white men, while Negro women earn a little more than half as much as white women. The lower earning power of Negro men makes it necessary for more Negro women to work than white women.

Even more striking data is available on employment and unemployment from a recent study, conducted by the Department of Labor, entitled "A Sharper Look at Unemployment in U.S. Cities and Slums". Gathered from the twenty (20) largest U.S. Metropolitan areas, it reveals an unemployment rate that varies greatly from two point seven per cent (2.7%) in Washington, D.C. to five point two per cent (5.2%) in San Francisco and six per cent (6%) in Los Angeles.

In ten (10) of these areas, the rate is significantly above the national average of about three (3) to four per cent (4%). In five (5), it is about the same, in five (5) others, it is significantly lower.

The non-white unemployment rate is about three (3) times higher than the white unemployment rate in eight (8) of these areas, two (2) times higher in six more and fifty per cent (50%) higher in two (2) others. This study partially corrects, for the first time, a fault which had been discovered in the 1960 Census—i.e. the missing completely of a large number of Negroes; one (1) out of every six (6) Negro men between the ages of twenty (20) and thirty (30). This means that past non-white unemployment figures have understated the situation substantially.

The highest unemployment rates in the twelve (12) larger areas, covered by the study for fourteen (14) to nineteen (19) year-old non-whites, range from eighteen point four per cent (18.4%) in Washington, D.C. to thirty-six per cent (36%) in Philadelphia. The rate is above thirty per cent (30%) in seven (7) of these areas.

Many of the differentials in the employment status of Negroes are due to their inability to obtain jobs commensurate with their training. Likewise, discriminatory hiring practices adversely affect both the Negro individually and the total economy. They account for the disproportionate representation on the public welfare rolls. Discrimination in employment has a greater direct and indirect impact on the AFDC Program than any other single socio-economic factor. It causes desertion, divorce and unwed parenthood with all their concomitant personal, social and economic costs. It also has similar significant causal relationships to unemployment.

Title VII of the Civil Rights Act of 1964, under which the Equal Employment Opportunity Commission was established, engendered great hope that this mechanism would deal meaningfully with the problems surrounding discrimination in employment. The actual agency experience, which has demonstrated that the Commission cannot enforce compliance, has given rise to disillusionment and lack of confidence. These conditions have led the American Negro to suspect that legislation, supposedly guaranteed to provide equality of opportunity, is full of loopholes and political terminology. He is rapidly losing faith in the democratic process to achieve his goal of equality of opportunity.

Within the next few months, the Federal Government will sponsor a Concentrated Employment Program in nineteen of our major cities throughout the country. The Government will spend from two and one-half to eight million dollars in each selected city. The ultimate objective of this program is to make it possible for the unemployed slum residents to obtain and hold regular jobs, primarily in the private sector of the economy. The immediate short range goal is to provide twenty-five thousand to forty thousand new jobs for previously unemployed slum residents. Many of the people participating in this crash effort will be Negroes, who, because of prior deprivation and discrimination, need all of the legislative tangibles to assist them in becoming productive and useful citizens. They cannot become discouraged, in their desires to attain full equality of opportunity, by additional "token legislation" to appease the wishes of a few, while ignoring the crying needs of the disadvantaged poor.

The Urban League's fifty-seven (57) years of existence have been dedicated to the cause of equality of opportunity. Through our Job Development Program, Skills Bank Program, and more recently, our On the Job Training Program, we have worked with thousands of business and industry personnel.

In these efforts, we have been and are still being thwarted by subtle *and* overt discriminatory practices, that are perpetrated by biased employers who hide behind the legislative jargon, to deny compliance. At present, we have no leverage which requires violators to terminate their unlawful policies and practices.

We feel that the proposed legislation improves tremendously upon the present Act. Therefore, we are in general agreement with most of its provisions. However, we would like to submit some suggestions regarding the provisions listed below.

It seems appropriate that there should be a provision for the Commission to effect its own litigation. This should also include employers who hold government contracts and are under Executive Order 11246. This would serve as a dual control to insure maximum compliance under the law.

We strongly recommend that greater consideration be given to the "charging party" involved. Under the proposed legislation, the charging party has little involvement with conciliation and agreements can be worked out between government representatives and management.

We also strongly feel that an aggrieved person should be able to institute a civil action against the respondent named in the charge in the appropriate United States district court, without regard to the amount in controversy, or in any state or local court of competent jurisdiction. This protects the rights of all citizens, regardless of the nature and size of the act.

The National Urban League's experience demonstrates the need for the pending legislation.

I wish to thank you for inviting me to present this testimony, in behalf of the National Urban League. The problems we face in the coming months and years may well rest in your hands.

In addition to the moral implications, there is a dollar-and-cents logic to equal employment opportunity. There are some costs which taxpayers are shelling out, because of Jim Crow, that could easily be eliminated. There are the billions spent on public welfare; there is the cost of public housing, much of which would be unnecessary if more Negroes could buy their own homes; there is the cost of sending thousands of building inspectors into the field every day to ferret out violations of slum landlords; there is the cost of arresting, jailing, trying, and paroling teen-age colored boys for purse snatching because they can't find work.

These items in America's Bigotry Budget cost taxpayers more than twenty billion dollars a year. This twenty billion dollars, which we are virtually throwing away, is equivalent to all U.S. exports abroad with all the one hundred-thirty nations of the world.

In the opinion of W. W. Heller, former chairman of the President's Council of Economic Advisors, lifting the income of Negroes to that of whites would *double* their current rate of economic growth. If the non-white labor force earned as much as their white counterparts, Negroes would spend an additional three point six billion dollars on food; one point seven billion dollars on clothing; one point five billion dollars on housing; one point three billion dollars on household operation; one point two billion dollars on cars and transportation; one point two billion dollars on recreation and amusement; five hundred million dollars more on utilities; and eight million dollars more on personal care and miscellaneous items.

You have an obligation, I believe, to give a ray of hope to the deprived—those who have been deprived, by circumstances, in the past. You must make sure that disadvantaged persons will have the full equality of opportunity, that our economy demands. Thank you.

Senator CLARK. Gentlemen, in addition to your general comments supporting the administration bill, each of you has made specific recommendations for amendments. Mr. Young, as I read his statement, makes three suggested changes, Mr. Greenberg seven, Mr. Wilkins seven, and some if not all of these changes overlap. They are all useful and provocative. Some of them are pretty technical.

I am going to ask counsel for the subcommittee to analyze these proposed amendments and make a report to the subcommittee advising as to which of the amendments should be adopted. I will also ask counsel for the subcommittee to confer with the administration witnesses, Mr. Shulman, Secretary Wirtz and the Attorney General, to see to what extent these changes are acceptable to the administration.

Mr. Rauh and Mr. Mitchell did not submit prepared statements and I would suggest, gentlemen, that you pick a leader and let him start the discussion going forward.

Since, as is sometimes the case, I am the only member of the subcommittee present and I have read the statements, it does not seem to make much sense to read them again; so that I would ask you gentlemen to proceed in your own way. You have plenty of time. On the other hand, I hope we will not go over, to too great an extent, ground which is already covered in the statements.

Mr. Wilkins.

A PANEL CONSISTING OF ROY WILKINS, EXECUTIVE DIRECTOR, NAACP; JACK GREENBERG, DIRECTOR, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND; CLARENCE M. MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; JOSEPH L. RAUH, GENERAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS; AND WHITNEY M. YOUNG, JR., EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE, INC.

Mr. WILKINS. Senator Clark, it is our understanding that the papers which have been submitted will simply be referred to in the comments that the organization heads will make. Mr. Rauh and Mr. Mitchell, who are in supporting roles, are available for what might be called technical and expert advice to those of us who are, to borrow a phrase from the underworld, perhaps merely mouthpieces.

Senator CLARK. I hope you are not Hamlet and Rosencrantz and Guildenstern.

Mr. WILKINS. But, in any case, we thought we would have just a brief summary by each person of the paper already submitted and in alphabetical order that brings Mr. Greenberg to the microphone first. We would be glad to have him summarize his statement here.

Senator CLARK. Please do, Mr. Greenberg.

STATEMENT OF JACK GREENBERG, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. GREENBERG. Mr. Wilkins, I am astonished. It is the first time that "g" has been first in the alphabet.

Senator CLARK. You are lucky you haven't a Clark down there.

Mr. GREENBERG. I would only like to say a word or two to emphasize several matters in the prepared statement. As you have indicated, some of the observations in the prepared statements are substantive and some more or less technical.

I would like to say a word or two about some of the substantive matters.

To me the most important substantive contribution that this new bill makes is that it gives the power to the Commission to bring cease and desist proceedings against offenders. Long ago we learned in the implementation of public law in America the public policy of the United States cannot be enforced unless it is enforced by the Federal Government as, for example, with the Securities and Exchange Commission and the Interstate Commerce Commission, the Federal Trade Commission, the Food and Drug Administration, the National Labor Relations Act, and so forth, and I think it is entirely appropriate with so grave a problem as title VII addresses itself to, and at least as serious, unquestionably more serious than some of the other subjects, that the EEOC under this new bill would have power to enforce over a broad scale throughout the country the law far more pervasively than any private parties can do.

At the same time, we enforce another provision of the law which we think is equally important and that is that provision of the law that preserves the right of private suit. Private suit, I should say, has been

the bellwether of the civil rights movement from the very beginning. The school segregation cases were brought by private civil rights lawyers. All of the great advances in the civil rights area have come initially, later with social assistance, assistance from society in general, assistance from government associations but initially have come from litigation filed by private civil rights lawyers.

I might give some examples: The Hill-Burton Act, the Hill-Burton Hospital Conditions Act had for many years a separate but equal provision and for well over a decade civil rights proponents went to what had been the predecessor of the Department of Health, Education, and Welfare in the Government and said, "You can't enforce separate but equal since the 1954 Court decision," and they said they were unable to overlook the provisions and finally a lawsuit was filed by private civil rights lawyers, and I was privileged to be involved in that case, and the U.S. District Court for the Fourth District held that unconstitutional and HEW followed the law as it well might have done in advance, but it needed this private initiative in order to do it.

The guidelines that the Commissioner of Education in the Department of HEW follows are largely guidelines that have been developed in private suit and as the private litigation has developed in some of these cases, and by private I don't mean by persons who were retained as a corporation might retain a law firm, but I mean by civil rights organization, the guidelines have evolved along Government suit and so we say these two portions of the law are extremely important: one, Government enforcement as a matter of giving a pervasive treatment to the problem; and, two, preservation of the right of private suit so that an independence and certain pioneering spirit can be maintained in the implementation of the law.

I give a good many examples of this in my prepared statement. I give a good many examples of how lawsuits have accomplished a good deal. I would like to refer to one of them and that is the *Newport News Shipbuilding* case. That is a case which for quite a long while had been under the jurisdiction of the Office of Federal Contract Compliance and the conditions of segregation and discrimination continued there even though there was theoretical Government administrative control and power over this.

Finally, when a private law suit was filed under title VII people got down to serious negotiations and a settlement was arrived at which has provided jobs for Negroes in volume heretofore unknown, in capacities and so forth. We have a good number of other observations mostly directed toward technical considerations in the act, and I leave that to you, Senator Clark, and your staff to refer to those.

Senator CLARK. Thank you very much, Mr. Greenberg.

Who next, Mr. Wilkins?

Mr. WILKINS. Senator Clark, my good friend Mr. Young here, although he is last on the alphabet, would like to have a word to say.

STATEMENT OF WHITNEY M. YOUNG, JR., EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE

Mr. YOUNG. Thank you, Senator Clark.

First for the record I am Whitney Young, executive director of the National Urban League.

Senator CLARK. We know who you are.

Mr. YOUNG. We want to express our appreciation for the invitation to apper before this committee; also to you, Senator Clark and Senator Javits, for introducing this particular legislation. I don't know how I can point out strongly enough the seriousness of this legislation being passed. It is now fairly apparent that there is developing a growing cynicism among many of our Negro citizens, particularly our younger Negro citizens, about laws and the extent to which they are made effective. I think this is a serious situation. In fact, for the first time last year we had the spectacle of some civil rights groups actually not supporting civil rights bills, but actually opposing them. I think this growing feeling of disillusionment and discouragement is one that has to be met forthrightly. It is bad enough that we have in the EEOC a situation where the victim himself, oftentimes the one in the most disadvantageous position with the least possible security, has to initiate action.

I wish there were some way where purely on the face of it, where there is obvious discrimination, that the Commission could more aggressively move in on these cases. I certainly want to associate myself with the requests of Mr. Greenberg about the importance of the cease-and-desist order. Without this, this largely becomes purely conciliation, and negotiation, or mainly good advice. It still is not effective and it means that we are extending a consideration, if you will, to violators of this law that we would certainly not do, say, with antitrust or even traffic regulation.

It seems that we can always be so much more considerate when it is the other fellow who is victimized. I think this growing cynicism about laws and legislation is somewhat justified when you observe the actual facts as released by the Labor Department and others showing that in spite of the law we have practically the same gap remaining in the average income of Negro as related to white citizens. Today the average Negro man makes 60 percent of the yearly income of that of the white employee. A Negro with a college education today makes less in the course of a lifetime than a white fellow with a high school education.

The other point I would like to make that is not included in my testimony is that one of the great values of laws like this, that are really rigid laws, is that it makes it possible for the business that wants to do the right thing to do it. It has been my experience that we have businesses in this country, businessmen who would like to do right in their employment policies but who lack the courage to go ahead and do it. If you have a law that has teeth in it, then this man who has these exaggerated fears——

Senator CLARK. Just a minute, Mr. Young.

Senator Prouty?

Senator PROUTY. Mr. Young, I am sorry that I have to leave. Before I do I wish to say that in you and Mr. Wilkins and Mr. Mitchell I think we have three of the most distinguished Negro leaders in the country present. I am proud of the work that you have been doing and I am sure that your people should be. We are going to give great weight to the views which you are expressing this afternoon.

Thank you.

Mr. YOUNG. Thank you very much.

Senator CLARK. Mr. Young, knowing the vagaries of the live quorum as I do I thought that I would stay here a few minutes and let you finish your preliminary statement, and then we will recess so that I can go to the quorum too and by that time maybe Senator Prouty will be back and we can go ahead without unduly interrupting your time schedule.

Mr. YOUNG. I appreciate that. I want to point out that I have direct information from businessmen that they need to do the thing that they don't have the personal courage to do.

There is a great deal of exaggerated fear and just as the hotel men in the South wanted a public accommodations bill but they were afraid to initiate the action themselves this would give them the opportunity. There are the obvious moral reasons but I am also concerned about what we call America's bigotry budget. In this country some $25 billion in purchasing power of the Negro is lost. We spend in this country some $50 billion for private and public welfare, not all Negroes, but a disproportionate amount of it; $27 billion for crime.

I think the time has come that we have to have laws that are more than pious platitudes, laws that in effect will provide the teeth so that it can be effective.

Senator CLARK. I guess you would like to see a freedom budget substituted for a bigotry budget.

Mr. YOUNG. I certainly would.

Senator CLARK. Mr. Wilkins, I think I can stay for one more.

Mr. WILKINS. I wanted Mr. Mitchell to have a word to say at this point if he wants to add something to what these gentlemen have said, and anticipate what I might say.

STATEMENT OF CLARENCE M. MITCHELL, DIRECTOR, WASHINGTON BUREAU, NAACP

Mr. MITCHELL. Thank you, Mr. Wilkins.

Senator, I wanted merely to address myself to a couple of the things that came up in the morning hearings.

Senator CLARK. Would you mind getting that microphone over there?

Mr. MITCHELL. In the morning hearings the question arose of why is it that colored people are not present in large numbers in apprentice training, and I would say that information which I took the trouble to check on during the lunch hour would indicate that most of the people who become journeymen in the skilled trades do not become journeymen because they have been through apprentice training. I managed to pick up some very distinguished authorities to support that. There is a professor out at the University of California, or at least his material was published by the University of California. He is Mr. George Strauss, who published some material on apprenticeship and evaluation of the need and it was published by the University of California Press. He makes this significant statement.

He said that in practice the majority of construction journeymen entered the skilled trades through channels other than apprenticeship. They go in by completion of a part of the formal apprenticeship training. They have informal apprenticeship. They learn the trade in the nonunion sector of industry or a related industry. Some come from vocational schools and some come by way of working up from unskilled

trades through the so-called helper classification and then he says there is a procedure of coming in by what is known as stealing, whatever that is, through the back door.

In other words, it is my opinion that it is very unrealistic and unfair to say that what colored people need is more training before they can become skilled workers. I heard Secretary Wirtz, for example, mention that atrocious case in Cleveland where the people had been trained through MDTA and then they were all disqualified on some kind of an oral examination. But look at what would happen to them if they had not been disqualified. They would have had a year of training in the MDTA and then under the requirements of the Electrical Workers the apprenticeship training program is 4 years after that and I submit that this is wholly unrealistic in this country. If we are going to reach these young people who are between the apprenticeable ages of 18 and 24, and there are over a million of them who are Negroes, we have to do something that shortens that process and which is more realistic. I think that this is a real challenge to Government, to employers, to unions, and to everyone else to stop talking about colored people not being ready because they haven't got the training.

I think what we have to do is make the process of entering simpler and I think we will get better results.

Senator CLARK. Thank you very much, Mr. Mitchell, for a very provocative suggestion.

Now Mr. Wilkins, are we ready for you?

Mr. WILKINS. Mr. Rauh is counsel, of course, for the leadership conference on civil rights.

Senator CLARK. The counsel will recognize the good precept of the appellate lawyer, which is when you are ahead shut up and sit down.

I am teasing you. You are going to have your day in court.

STATEMENT OF JOSEPH L. RAUH, JR., GENERAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. RAUH. Senator, your predispositions have always been with the civil rights movement, so that when you said that we were ahead, why, you spoke from the heart on that.

I will just make three points very quickly.

First I think the most important proposal being made by us for change in your bill is the proposal that would put public employees under the law. If you think of a Negro being arrested in the South, arrested by a white trooper, a white sheriff, he goes to jail in a "black Maria" run by white people. In jail he sees only white people. When he gets in the courtroom the next day there are only white people running the place. It seems to us that if you really want to do something toward integrating justice in the South, we should apply this equal employment law to all of the public agencies, State and local, in the South.

Second, I agree with everything that has been said that the center of this bill is the cease-and-desist order. It must be. There is no sense having a Commission whose sole authority is to play pattycake with the problem. This Commission is set up for the purpose of doing something. It is a Federal body. It is almost a parody of a Federal body to have it there but with no power to act.

Third, we urge the subcommittee to bring this bill through the full committee and on to the floor as soon as possible. There is a need for civil rights legislation now and we feel that this bill is the vehicle. It is the vehicle if for no other reason than the fact that we have a subcommittee that is favorable to civil rights, a chairman of the subcommittee who is favorable to civil rights, and a full committee that is favorable.

We look to you. We pin our hopes on you for getting civil rights to the floor soon. And if we don't get it there soon, we start to run into threats of filibuster. You are really our hope for some action.

Senator CLARK. Thank you, Mr. Rauh.

Mr. Wilkins.

STATEMENT OF ROY WILKINS, EXECUTIVE DIRECTOR, NAACP

Mr. WILKINS. Senator, I would like to echo what Mr. Young has said in thanking you for this opportunity to appear. I speak today and I want this understood, and on the record, as the director of the NAACP rather than in the role of chairman of the leadership conference on civil rights. This particular statement I submitted is an NAACP statement and has not been endorsed by all of the organization in the civil rights conference. I don't want to repeat what others have said nor take a lot of your time here.

We want to reserve for whatever questions you might have but it strikes me, sir, that it ought to be repeated that the heart of this matter, of course, is the cease-and-desist order. I go back to 1946 when we first had before us here in Washington the question of fair employment practice legislation, when there was such bitterness about it after the wartime FEPC of President Roosevelt and when certain forces in the Senate vowed to cut off all funds even if the bill were enacted.

To find here 20 years later a piece of legislation, welcome indeed for President Kennedy and President Johnson have introduced it and to have pushed it, and for you and Senator Javits, for example, to have introduced this supplementary legislation, is all very welcome to the civil rights forces.

We commend the President and our assassinated President for their forward action in the matter. Nevertheless, the fact remains that 20 years after 1946, the legislation now on the books does not have the cease-and-desist order and the young people who hoped that this legislation would open up job opportunities for them are correspondingly discouraged when they find that the Commission before which they have spread their case and their complaints doesn't even have a right to order a company or corporation, even when found guilty, and patently guilty, of certain practices, to cease and desist, so this must be the heart of the bill. We have made certain suggestions about amendments to the bill which you have noted and said you are going to refer these to be collated and to examine into each of them. I will not stress those except to say that we stand behind every recommendation in the bill and indeed some of the others that have been made because they are the same.

I think, Senator, in closing the brief remarks I have to make that I would like to read verbatim from two paragraphs only of the state-

ment, because they illustrate, it seems to me, the human and explosive, or potentially explosive, elements in this whole question:

> The occupational structure of the Negro labor force is seriously out of line with the social characteristics of the American labor force in general. Negroes are disproportionately concentrated in the "lower" occupations, and only very slight improvement has been registered during the past 20 years.
>
> Research by Dr. Vivian Henderson indicates that Negroes make up about 11 per cent of all employed workers, but they make up 44 per cent of all household workers—four times their proportion of employed workers. They account for 21 per cent of all service workers and 26 per cent of all laborers, more than twice their proportion of employed workers. On the other hand, they make up less than 6 per cent of all employed craftsmen, 3 per cent of all salesmen, and 6 per cent of all clerical workers. Fully 43 per cent of all employed Negro males are working in jobs below the semi-skilled level, compared with only 15 per cent of all employed white workers.

These figures, sir, were released only last year by the Bureau of Labor Statistics.

This indicates the concentration of Negroes in the low-paying categories and it seems to me that while we talk about the technicalities of this bill and its political applications and legal applications we ought not to forget the very human problem of unemployment that we are discussing and, finally, sir, I refer to a matter that is in the forefront of everyone's mind because we are approaching summer and the question in everyone's mind is what kind of a summer can we have, whether it will be peaceful or whether it will be turbulent and full of tension, and it seems to me pertinent to call attention in that connection to the unemployment figures for Negro teenagers.

Pathology with explosive potential can be observed in the situation of the Negro teenagers. Unemployment among this group is two to three times that of comparable white groups. One of three of every female Negro teenager in the market today is looking for a job and cannot find one. The same is true for one out of every four Negro male.

The figures for the explosive summer months of 1966 were 32 Negro teenagers unemployed per 100 compared to 14 per 100 for white teenagers.

Now it seems to me that in these figures lies the answer to whether we are going to address ourselves realistically to this problem or not because when you have young teenagers of any race full of muscle and vim and vigor and full of idleness also, you have all the ingredients for mischief and for unexplainable explosions. When you cap this in with a sense of being rejected and denied and frustrated because of a thing like race, then you do indeed have explosive ingredients. It is gratifying to note that the President sent over day before yesterday a request for $75 million additional for summer employment and I notice that Director Sargent Shriver has indicated that this money if appropriated will be put immediately to use in the summer program.

I also note that there is a bill for a supplemental appropriation taking up the amount that was chopped out of the last appropriation. All of this is to the good and all of it is crying for attention but, of course, summer employment, while relieving a sore spot and a spot of potential tension and trouble, is merely a palliative and the real correction of the situation lies in perfection and enactment of the kind of bill which you and Senator Javits have submitted here and its appropriate amendment.

I don't think, Senator, that we can add anything to the thousands of words that have been spoken on unemployment among Negroes and the necessity of the Federal Government to do something about it.

Senator CLARK. Thank you very much, Mr. Wilkins.

Thank you, gentlemen.

I have relatively few questions. You gentlemen remember that back in 1964 this subcommittee pressed through the full committee and brought to the calendar what was then known as the Humphrey bill, which had a rather different administrative setup from the present administrative setup of the Equal Employment Opportunity Commission. Everybody seems to have backed away from that this year and I am wondering whether on more mature reflection that particular organizational pattern, which personally I still think is better than the one in the present law, is just not pragmatic or not politically realistic, or whether you thought it just wasn't any good. Which of you would like to answer that?

Mr. MITCHELL. I would defer to Joe.

Mr. RAUH. Go ahead.

Mr. MITCHELL. I think what we have been trying to do in this whole process, Senator Clark, is to evolve legislation that would do the job and could also pass. In trying to arrange for a piece of legislation which would do the job, the thing that we considered most was what we considered most was what we were able to get through Congress the last time. One of the things which is very important about this is the fact that we do want the complainant to have an opportunity to be represented by counsel and have the right to appeal his case even after the Commission itself might find that in its opinion there was no discrimination.

This has been the main emphasis that we have been considering and we have not abandoned anything because we thought it was bad. We have just adopted what people said would be workable, what experience has shown us would be workable, and what we think we have the votes to get through in Congress.

Senator CLARK. Do all you gentlemen concur in what Mr. Mitchell said?

Mr. RAUH. I would like to just add this one point, Senator. I think that your bill in 1964 had a lot of very valuable things in it. One thing, if my recollection is correct, was that it included a requirement of affirmative action, like making employers advertise in the newspapers in the Negro areas where they had in the past discriminated. In other words, I think there was a lot of value in that bill. I doubt that you would want to shift to the whole pattern of that bill but some of the thinking behind it would be very valuable here and I don't think it should be discarded. You must recognize that we are desperately anxious to get this cease and desist power but I certainly wouldn't think we want it at the expense of overlooking the affirmative things that you had in that earlier bill. I for one was very interested in that bill and would like to see some of the affirmative suggestion in there carried over here.

Senator CLARK. I agree that we have to be pragmatic, though sometimes we would rather be perfectionists, but the heart of the Humphrey bill which I played some part in myself was that it made of the Equal Employment Opportunity Commission a sort of quasi-judicial body.

It would have provided for what we hoped would be a high-powered executive director and gave him rather substantial powers, including urging him to initiate actions and this we thought would be particularly valuable in certain areas of the country where there might be some fear of intimidation, and where an executive representing a Federal commission might well be able to do a good many things that could not be done if the matter was left to a private complainant.

I think there was also some feeling that the Attorney General had a lot of other things to do. Possibly experience has shown that the initiative which the Attorney General was authorized to take under the act just has not panned out too well. I suppose we had better be pragmatic about it. I still think it was a better bill.

Mr. GREENBERG. Senator, the consideration that you point out exists in the bill. There can be Commissioner's complaints under this bill. I believe there have been a couple but not many. I think that comes down to the question of the general functioning of the Commission which I think anyone will concede has faced certain problems. I believe it is still without a General Counsel. I believe it still does not have a full complement of Commissioners. It went for almost a year without Commissioners being appointed. For a long time it was lacking two Commissioners. I believe it is now lacking one.

Senator CLARK. It still lacks two, because we have not confirmed the latest appointee.

Mr. GREENBERG. So that I think your observation about the necessity or the importance of the Commission initiating complaints is exceedingly well taken and it can do it but as impaired as it is the question is, What can it do at all?

Senator CLARK. I agree with that. What concerns me was the testimony we heard this morning from the only three Commissioners there are at the moment. They indicated that they were behind in passing on complaints. They have a backlog. The Commission has apparently spent a great deal of their time writing opinions, as judges.

Mr. MITCHELL. Senator Clark, before you finish I would just like to make it clear that anybody who looks at what happened in 1964 when we passed the law which is now on the books knows that those of us who were engaged in that fight, including yourself and the now Vice President, all wanted the very best possible bill and we got into a situation where we got a pretty good bill through the House and then of course we ran into revisionists over here in the Senate who proceeded to revise downward.

Now, we are trying to make the best of the bill and I think in Mr. Greenberg's testimony there is an indication of how potent this law can be when he cites some of the court cases where you had a pure application of the law which has resulted in significant employment and changes in the pattern of the employer.

I will be frank with you and say that the Commission just has not done all that it could do with its existing powers. It is my opinion that the Department of Justice has not done all that it could do under existing powers. This of course can't be corrected by revising the law. It is necessary to revise the ideas of those who administer the law and I think we have just got to face up to that. If I had my way, I would certainly insist that whoever is named the Chairman of this Commission ought to be in the job for a reasonable period of time and he

ought not be named unless he is willing to serve out that full period. Washington is the place where you get a lot of grapevine information that the present Chairman is not going to remain with the Commission. This is ridiculous. Here I don't think he has been in office a year.

Senator CLARK. Since September.

Mr. MITCHELL. That is right. The prior Chairman, a fine man, went out after a short period of time. It seems to me we have just got to say to these people who take these jobs—"just don't take it unless you are going to stay and see this thing through."

I think also we have got to insist that they tell the whole story. They could have told you this morning the information that I have given to you about apprentice training. They could have answered your question this morning about where the bulk of the complaints come from. In their own report they indicate that Alabama and North Carolina are the places—this is a printed report—from which most of the complaints come.

I thought the Secretary of Labor was less than candid with the committee when he talked about that Cleveland situation. It seems to me that he should have explained what the real drag is in this problem; the fact that Negroes are expected to meet unreasonable, unfair, and undemocratic standards.

Now, these are things that you can have the best law in the world but you can't correct them unless you correct the actions of people who administer the law and I want to say that I love everybody who is connected with the Commission and I think everybody is just great in this picture but we have got to be more forthright in explaining what some of these real problems are.

I just wanted to say one final thing. We had an admonition this morning from the committee indicating that people need to be active in pressing for this law. Well, we represent the people and we are here but you are the only member of the committee who is here. I understand that the Senate is a busy body but I submit, excluding myself, that when you have got a distinguished panel such as this, it should be possible to have a better attendance of this subcommittee than we have. Poor attendance makes a bad image to the people. It makes a bad image to the press when we have a situation in which we talk about an important statute like this and a lot of empty seats are there. I am happy to say the room is full of interested citizens, we have a very gracious and wonderful chairman but no committee members.

Senator CLARK. I would like to make a comment off the record.

(Discussion off the record.)

Senator CLARK. Mr. Mitchell, I think what you have said is extremely interesting.

Gentlemen, Senator Javits yesterday introduced his own bill which is quite different from the administration bill which he and I cosponsored. We placed this bill in the record together with a speech he made. Have you gentlemen had an opportunity to study the Javits bill?

Mr. GREENBERG. We saw it in the press.

Senator CLARK. I would ask each of you if you would or perhaps Mr. Wilkins, you could coordinate to give the committee a somewhat detailed statement or critique on the Javits bill on which we are holding hearings. I ask you to get that in as promptly as you can.

Mr. WILKINS. Very good.

Senator CLARK. We had some discussion this morning about the impact of the State FEPC legislation on the Federal bill and it was brought out that 38 of the 50 States have some form of equal employment opportunity legislation, although there seems to be some difference in statistics between the Secretary of Labor and the members of the Commission.

I think I gathered that 31 of the 38 had fairly adequate enforcement provisions. The other seven didn't. I was quite unable to get from Mr. Shulman, although I questioned him fairly carefully, any indication as to whether, in assessing the number of complaints received from a particular State, it makes any difference whether it is a good State law or not, and whether the difference which is paid in the present legislation to State enforcement procedures is wise or not.

I wonder if you gentlemen would address yourselves to those two questions. First, does a good State law help? And, secondly, is the present procedure for correlating Federal complaints with State complaints an appropriate one?

Mr. YOUNG. I would like to speak to this. My figures are almost the same as this. I had 35 States with FEPC laws with 28 of them with enforcement features. Interesting enough, less than half of them started out with them but later found they needed them and of the seven that do not have them four have since added them. So that, I would very strongly indicate that there is a major difference between those State laws where there are clear-cut cease and desist orders and enforcement procedures and those that represent just good advice.

But I think I would also go back to the point that Mr. Mitchell was making that a great deal depends upon the Commission itself and the leadership and the administrative freedom and support which is given it.

This Commission here actually started out with a philosophy that it was an educational agency. In spite of the fact that you had plans for progress with voluntary programs, you had private agencies like our own agency, the Urban League, that was trying to get people to do these things voluntarily they didn't conceive of themselves as an agency to enforce the law and word got around.

Now, I think this backlog they talk about of complainants would be greatly reduced if they would more aggressively enforce, if they had the legislation here that would permit them to issue cease and desist orders. They spend so much time going back and forth with petitions and having discussions and all of this. This is why they have the big complaint.

Senator CLARK. How about the State laws?

Mr. YOUNG. There is no question that where there is the enforcement provision——

Senator CLARK. No question of what, that it helps?

Mr. YOUNG. Pardon?

Senator CLARK. You say there is no question but you didn't finish the sentence. There is no question that that helps——

Mr. YOUNG. Yes, but it is also related to the Commission itself, it is personnel and its administrative support from the Governor.

Senator CLARK. I got the impression this morning that there was a sort of a battledore and shuttlecock going on. A Federal complaint

would be filed with the Commission. The Commission would turn it over to the State commission. The State commission would fail to act on it and therefore the Federal Commission would get it back again and in this procedure an awful lot of time would go by before the complainant had a determination as to whether the complaint was adequate.

Mr. MITCHELL. Again I hate to hog the show but I have lived with this thing so long that I think the public is entitled to know the facts. The only reason for all this deference to these States where there are laws is pure, unadulterated politics. The Federal Government has preemption in our system of government and has the last word on constitutional questions and Federal laws. There is no reason in the world why there should be any statutory requirement which makes it mandatory for this Commission to first clear with some State agency.

This Commission ought to have the discretionary right to defer to States but when we were working on this legislation there were a lot of people who had pet State laws who said—"we have to make sure that our State has a full opportunity to exercise its jurisdiction."

The result is that the poor complainant is in the shuttlecock position that you so aptly point out, Senator Clark. He gets battered back and forth. If he has the good fortune to be released quickly by the Commission and he happens to fall into the hands of a good lawyer like Mr. Rauh or Mr. Greenberg he gets redress as they have gotten by taking cases into court very promptly. There is no reason why the Federal Government shouldn't do that and I think it is just foolish to have all this deference paid to the States where there are enforceable laws.

Senator CLARK. Mr. Mitchell, let's face it. You did not make your considerable reputation in the civil rights field, by becoming an advocate of States rights.

Mr. YOUNG. Senator Clark, I am going to have to ask to be excused.

Senator CLARK. Mr. Young, you have been a great help to us. I am sorry you have to leave.

Mr. YOUNG. Thank you very much.

Mr. GREENBERG. I would like to add to what Mr. Mitchell said that at the State as well as the Federal level the necessity is a good statute but that is only the beginning. If a good statute is not enforced adequately it is perhaps worse than no statute because it breeds cynicism. We have made a study of the New York statute not with respect to employment but with respect to housing which is one of the matters within its jurisdiction and we have found that as far as the New York statute is concerned with respect to housing which is under the same Commission that it is exceedingly inadequate and have filed some complaints with respect to that so that the mere existence of a State law amounts to nothing. I would endorse what Mr. Mitchell said, that there should be some discretionary power in the Commission to evaluate the value of a State law and where appropriate act without reference to the State.

Senator CLARK. I would like to have printed in the record at this point pages 58 through 64, inclusive, of the First Annual Report of the Equal Employment Opportunity Commission which gives at least some of the data the subcommittee has been looking for with respect to the distribution among the States, the different kinds of complaints which have been received.

(The material referred to follows:)

ANALYSIS OF CHARGES

July 2, 1965-June 30, 1966

TOTAL MATTERS ANALYZED

The Office of Compliance has received and analyzed the following matters: **8854**

The following action has been taken (individual charges):

- Deferred for state or local FEPC action 977
- Additional information required 1383
- No probable jurisdiction 2063
- Other (close, withdrawn, pending reanalysis) 658
- Recommended for investigation 3773

Status of Investigations (Individual charges)

- Investigations completed 1659
- In process and pending 2114

Status of Conciliations

Recommended for conciliation (following Commission finding of cause):

- Individual charges 704
- Respondents 214
- Successful conciliations
  - Individual charges 111
  - Respondents 45
- Unsuccessful conciliations
  - Individual charges 60
  - Respondents 16
- Partially successful
  - Individual charges 20
  - Respondents 7
- In process and pending
  - Individual charges 513
  - Respondents 146

RECOMMENDED FOR INVESTIGATION, DEFERRED, AND ADDITIONAL INFORMATION REQUIRED

Of the 8854 matters received and analyzed, the following have been recommended for investigation, deferred, or additional information required: **6133**

The nature or the discriminations alleged was as follows:

- Negro 3067
- Race–Other 64
  - American Indian 10
  - Caucasian 39
  - Chinese 1
  - Filipino 2
  - Latin 4
  - Spanish 8
- Race–Not Specified 123
- National Origin 131
  - African 1
  - Greek 2
  - Latin American 8
  - Mexican American 72
  - Cuban 2
  - Italian 3
  - Slavic 3
  - Lebanese 1
  - Not Specified 39
- Sex 2053
- Religion 87
- Not Specified 608

The nature of the employment problem or problems alleged was as follows:

Hiring	1400
Promotion	1253
Training and Apprenticeship	184
Segregated Facilities	322
Benefits	807
Wage Differential	679
Seniority	955
Layoff	447
Firing	474
State Employment Service – Referral	55
State Employment Service – Testing	9
Private Employment Service	2
Union – Referral	53
Union – Membership	120
Union – Apprenticeship	9
Other	457
Not Specified	162

The respondents involved in these matters were as follows:

Employer	5284
Union	1347
State Employment Service	89
Private Employment Service	23
Labor-Management Apprenticeship Training Program	2
Not Specified	290

These matters were divided by state as follows:

Alabama	531	Nebraska	81
Alaska	2	Nevada	10
Arkansas	55	New Hampshire	2
Arizona	11	New Jersey	490
California	210	New Mexico	18
Colorado	29	New York	177
Connecticut	35	North Carolina	709
Delaware	10	North Dakota	2
District of Columbia	35	Ohio	341
Florida	67	Oklahoma	16
Georgia	116	Oregon	14
Idaho	1	Pennsylvania	190
Illinois	190	Rhode Island	2
Iowa	228	South Carolina	132
Indiana	118	South Dakota	1
Kansas	519	Tennessee	352
Kentucky	45	Texas	284
Louisiana	192	Utah	5
Massachusetts	33	Vermont	3
Maine	5	Virginia	218
Maryland	112	Washington	24
Michigan	98	West Virginia	30
Minnesota	34	Wisconsin	23
Mississippi	102	Wyoming	3
Missouri	223	Hawaii	2
Montana	3		

RECOMMENDED FOR INVESTIGATION **3773**

The nature of the discriminations alleged was as follows:

Negro		2026
Race – Other		13
Latin	4	
Spanish	1	
Caucasian	8	

Race–Not Specified		28
National Origin		50
Mexican American	25	
Cuban	1	
Greek	1	
Italian	1	
Latin American	8	
American Indian	1	
Hungarian	1	
African	1	
Not Specified	11	
Sex		1624
Religion		14
Not Specified		18

The nature of the employment problem or problems alleged was as follows:

Hiring	818
Promotion	828
Training and Apprenticeship	160
Segregated Facilities	279
Benefits	744
Wage Differential	463
Seniority	804
Layoff and Recall	293
Firing	136
State Employment Service–Referral	22
State Employment Service–Testing	6
Union–Referral	9
Union–Membership	21
Union–Apprenticeship	6
Private Employment Agency Referral	2
Other	194
Not Specified	4

The respondents involved in these matters were as follows:

Employer	2551
Union	580
State Employment Service	42
Private Employment Service	10
Labor-Management Apprenticeship Training Program	1
Not Specified	7

These matters were divided by state as follows:

Alabama	457	Mississippi	79
Arizona	2	Minnesota	23
Arkansas	39	Missouri	21
Colorado	10	Nevada	1
California	65	New Hampshire	1
Connecticut	6	New Jersey	426
Delaware	2	New Mexico	2
District of Columbia	4	New York	11
Florida	38	North Carolina	615
Georgia	70	Ohio	173
Illinois	55	Oklahoma	6
Indiana	40	Oregon	2
Iowa	216	Pennsylvania	44
Kentucky	30	Rhode Island	2
Kansas	488	South Carolina	88
Louisiana	145	Tennessee	212
Maine	1	Texas	164
Maryland	1	Virginia	169
Massachusetts	3	Washington	5
Michigan	45	West Virginia	10
		Wisconsin	2

DEFERRED FOR STATE OR LOCAL FEP ACTION 977

The nature of the discriminations alleged was as follows:

Negro		614
Race – Other		26
Caucasian	12	
Spanish	5	
American Indian	8	
Filipino	1	
Race – Not Specified		55
National Origin		40
Mexican American	17	
Italian	2	
Greek	1	
Slavic	1	
Not Specified	19	
Sex		129
Religion		44
Not Specified		69

The nature of the employment problem or problems alleged was as follows:

Hiring	224
Promotion	230
Training and Apprenticeship	8
Segregated Facilities	34
Benefits	13
Wage Differential	70
Seniority	23
Layoff and Recall	39
Firing	176
State Employment Service – Referral	16
State Employment Service – Testing	1
Union – Referral	27
Union – Membership	71
Union – Apprenticeship	2
Other	94
Not Specified	13

The respondents involved in these matters were as follows:

Employer	693
Union	255
State Employment Service	15
Private Employment Service	3
Labor-Management Apprenticeship Training Program	0
Not Specified	48

These matters were divided by states as follows:

California	96	Nebraska	6
Colorado	3	Nevada	5
Connecticut	9	New Jersey	38
Delaware	6	New Mexico	6
District of Columbia	26	New York	119
Illinois	70	Ohio	87
Iowa	1	Oregon	3
Indiana	36	Pennsylvania	93
Kansas	19	Washington	11
Massachusetts	13	Wisconsin	16
Maryland	101	Wyoming	3
Michigan	26	Minnesota	2
Missouri	180	Utah	2

ADDITIONAL INFORMATION REQUIRED 1383

To the extent the information is known, the nature of the discriminations alleged was as follows:

Negro		427
Race–Other		23
Caucasian	19	
Chinese	1	
American Indian	1	
Filipino	1	
Lebanese	1	
Race–Not Specified		40
National Origin		43
Mexican-American	30	
Spanish	2	
Cuban	1	
Not Specified	9	
Slavic	1	
Sex		300
Religion		29
Not Specified		521

To the extent the information is known, the nature of the employment problem or problems alleged was as follows:

Hiring	358
Promotion	195
Training and Apprenticeship	16
Segregated Facilities	9
Benefits	50
Wage Differential	146
Seniority	128
Layoff	109
Firing	162
State Employment Service–Referral	17
State Employment Service–Testing	2
Union–Referral	17
Union–Membership	28
Union–Apprenticeship	1
Other	169
Not Specified	145

To the extent the information is known, the respondents involved in these matters were as follows:

Employer	1040
Union	145
State Employment Service	32
Private Employment Service	10
Labor-Management Apprenticeship Training Program	0
Not Specified	234

These matters were divided by state as follows:

Alabama	74	Georgia	46
Alaska	2	Hawaii	2
Arkansas	16	Idaho	1
Arizona	9	Illinois	65
California	49	Iowa	11
Colorado	16	Indiana	42
Connecticut	20	Kansas	12
Delaware	2	Kentucky	15
District of Columbia	5	Louisiana	47
Florida	29	Massachusetts	17

Maine	4	Oregon	9
Maryland	10	Pennsylvania	53
Michigan	27	South Carolina	44
Minnesota	9	South Dakota	1
Mississippi	23	Tennessee	140
Missouri	22	Texas	120
Montana	3	Utah	3
Nevada	4	Vermont	3
New Jersey	26	Virginia	49
New Mexico	10	Washington	8
New York	47	West Virginia	20
North Carolina	94	Wisconsin	5
North Dakota	2	Nebraska	75
Ohio	81	New Hampshire	1
Oklahoma	10		

LACK OF PROBABLE JURISDICTION 2063

These matters were rejected for the following reasons:

Untimely	268
Less than 100 persons	46
Political subdivision	237
Educational institution	211
Religious institution	10
Government agency	605
Not covered by Title VII	686

These matters were divided by states as follows:

Alabama	83	Montana	5
Alaska	5	Nebraska	8
Arkansas	34	Nevada	3
Arizona	10	New Hampshire	2
California	137	New Jersey	47
Colorado	17	New Mexico	12
Connecticut	22	New York	150
Delaware	6	North Carolina	75
District of Columbia	56	North Dakota	3
Florida	67	Ohio	94
Georgia	57	Oklahoma	13
Hawaii	1	Oregon	15
Idaho	4	Pennsylvania	104
Illinois	139	Puerto Rico	1
Iowa	8	Rhode Island	2
Indiana	34	South Carolina	83
Kansas	15	South Dakota	2
Kentucky	21	Tennessee	154
Louisiana	37	Texas	115
Massachusetts	37	Utah	9
Maine	3	Vermont	2
Maryland	54	Virginia	56
Michigan	56	Washington	30
Minnesota	16	West Virginia	16
Mississippi	22	Wisconsin	21
Missouri	36	Wyoming	1
		Unspecified	63

SEX DISCRIMINATION

Of all the matters received and analyzed, **2432** have alleged discrimination based on sex.

The nature of the problem alleged was as follows:

Hiring		170
Men	35	
Women	135	
Promotion		97
Job Classification		213
Wage Differential		93
Benefits		726
Do not hire women with children		4
Do not hire women as trainees		4
Layoff, Recall, and Seniority		588
Fire women when marry		45
Fire women when have children		4
Fire women and replace with men		47
Age limitation for women		31
Job opportunities – Advertising		9
State Labor Laws for Women		291
Overtime	262	
Weight	16	
Rest Periods	2	
General Allegations	11	
Union refusal to process grievances		12
Employment Agency Referral		9
Miscellaneous		80
Firing (Unexplained)		9

EEOC

Senator CLARK. I make the additional comment that perhaps the subcommittee should urge the President in filling the existing vacancy on the Commission and any vacancies which may occur in the reasonably near future to assure himself that the nominee will commit himself to serve out his full term as a condition of being nominated and that in the course of his confirmation hearing on the nomination for the advice and consent of the Senate we too should look carefully into that matter.

It is my understanding, for reasons with which I have some sympathy, that the existing vacancy will be filled by a Republican woman.

As you know, the law requires bipartisanship in the Commission, and obviously with discrimination in the field of sex an important matter within the jurisdiction of the Commission, it is highly desirable to have a woman on the Commission.

I would hope that when the President makes that selection he will give careful thought to what you gentlemen have said this afternoon, and what I have just placed in the record.

There is another matter on which I would like to get your views very briefly, and then I am almost through.

You touched on this a little bit, Mr. Mitchell, but I am not sure that we explored it as deeply as we should. That is the question of whether there is really any geographical pattern of evasion or refusal to obey the requirements of the 14th amendment and the civil rights law of 1964 with respect to equal employment opportunity. Mr. Shulman was very reluctant to discuss that. The Secretary of Labor, I thought, was somewhat more candid. As leaders in the NAACP and the civil rights movement, what can you gentlemen tell the subcommittee in respect to whether there is substantially more denial of equal employment opportunity in the South than in the large northern cities with Negro ghettos and the like? I said this morning that in Pennsylvania, where I think we have a pretty good State law, most of the problem arises in Philadelphia and Pittsburgh because that is where the Negro population tends to concentrate. This raises the question as to what is the situation in those States of the South where there is a very much heavier concentration of Negro population than elsewhere, and also whether in those wide areas where the Negro population is quite small, the Plains States, we still find the same problems.

Can you enlighten the subcommittee on any of that?

Mr. Wilkins.

Mr. WILKINS. Senator Clark, I don't have any figures that I can cite. Mr. Mitchell said he had some figures printed on shining paper from authorities but I would suggest that the experience both in this Commission and in Mr. Greenberg's legal activities and Mr. Mitchell's activities here in Washington, all this experience suggests that, while the South may not be singled out as the worst or worse than the North, there, are certain types of employment discrimination there which apparently flourish, namely, the kind that denies upgrading and promotion and does not enforce seniority rules or, indeed, in some instances may have separate lines of seniority, so that the Negro employees, even though in substantial numbers of a corporation in some southern State, may find themselves pocketed and blanketed in a restricted category of employment and unable to employ their seniority in plantwide applications.

Now, this is a favorite in the Southern States and on the other hand in the North we also find examples of the separate seniority proposition but in the North we find something else which is harder to put your finger upon and can only be done, say, case by case, and that is the uncovering of personal plant personnel practices which systematically, or as a matter of understood policy, tend to restrict the employment opportunity of Negroes.

Now, I wouldn't be able to say whether this happens more often in northern New York State than it does, say, in Indiana or more in Indiana than it does in Tennessee, but I would tend to believe that, whereas it does follow a geographical concentration of Negroes, we would also have to look at the types of discrimination, whether it is original barring from employment and here the prime example is Cleveland, certainly not Cleveland, Miss., but Cleveland, Ohio, where the Negroes are excluded originally from certain craft unions. It certainly was true here in Washington, D.C., and in Philadelphia in the matter of the structural steelworkers. McCloskey, for example, was building a building for the U.S. Government and he just couldn't hire a Negro steelworker. So it is difficult to say whether one section is worse than another.

Senator CLARK. In other words, it is a pretty sophisticated question.

Mr. WILKINS. It is a sophisticated question but some of the discrimination, Senator, is not sophisticated. Some of it is very crude.

Senator CLARK. Thank you.

Mr. MITCHELL. As I was going to say, Senator, you were in a position to get a good look at what we are up against. You have just been in Mississippi.

Senator CLARK. I was in Cleveland, Miss.

Mr. MITCHELL. You have seen the displaced thousands of people who have been put out of work because hands are no longer used to pick cotton. They use machines. The question I want to ask is why is it that a Negro who has been picking cotton in Mississippi can get on a train and ride on the Illinois Central all the way up to the city of Chicago where he can get a job in a plant but he can't get a job down in the State of Mississippi doing the same thing because he is supposed not to be trained enough. I think, as Mr. Wilkins has said, we are faced with a lawless, brutal, and despicable system of job discrimination in the South which even goes to the extent of taking the lives of Negroes when they try to get upgraded.

I would stake my reputation on the fact that if we want to find the people who murdered, by blowing up his car, Wharlest Jackson who had been promoted following fair employment procedures being instituted in the Armstrong Tire & Rubber Co. down in Mississippi, if we want to find out who did it we could find them right there in that plant still working there. I think this is one of the most awful things that we face in this country.

Here we have industry moving southward, out of a lot of large industrialized areas of the North, building new plants and still putting the Negroes in as janitors. The Negroes come to New York and Philadelphia and hang around on the corners because there isn't enough work to go around when if this were fair they could be employed right there in Mississippi.

80-226 O—67——10

Senator CLARK. Thank you, Mr. Mitchell.

I take it that all you gentlemen would agree that there is a very close interrelationship between discrimination in employment and the war on poverty. There is no doubt about that, is there?

Mr. WILKINS. Absolutely.

Senator CLARK. So that if we are going to make some real progress in the war against poverty one of the first things we have to be sure to do is to eliminate discrimination in employment. That is clear.

Thank you very much, gentlemen. You have been most helpful.

Mr. WILKINS. Senator, I am sorry. Before we close, may I add just one item because I want to be fair to the Commission, and I think that some of our comments here, while fair, have been rather harsh. I would call attention to one section of my own testimony which suggests that the bill might be amended so that the Attorney General, the Department of Justice would not be the sole channel through which the Commission could bring its actions and that its own counsel could take up cases rather than wait for the Department of Justice.

Senator CLARK. That is a good suggestion but they have to get a counsel first, don't they?

Mr. WILKINS. Yes, and I hope you get a good one and I hope he has the powers rather than just the title when he gets here, but in the Commission's shuttling matters back and forth, if they are wasting time it may be because their referrals to another department of Government already burdened down with many other referrals are not being handled promptly.

Now, I think the Commission needs everything we have said here about its personnel, attitude, and diligence and especially about its reluctance. I hope this legislation will not permit it to genuflect to the States in this matter because some of the State laws are not very strong. Even the New York law which is the oldest one passed in 1945 is not as adequate in the field of housing, for example, as Mr. Greenberg has pointed out. I don't think the Commission ought to be blamed if it runs into a bottleneck of referred complaints to another department of Government which are not handled promptly

Senator CLARK. Thank you very much, gentlemen. We have appreciated your being with us.

The subcommittee will stand in recess until tomorrow morning at 9:30.

(Whereupon, at 3:40 p.m. the subcommittee was recessed, to reconvene at 9:30 a.m., Friday, May 5, 1967.)

EQUAL EMPLOYMENT OPPORTUNITY

FRIDAY, MAY 5, 1967

U.S. SENATE,
SUBCOMMITTEE ON EMPLOYMENT, MANPOWER, AND POVERTY
OF THE COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 4232, New Senate Office Building, Senator Joseph S. Clark (chairman of the subcommittee) presiding.

Present: Senators Clark (presiding), and Javits.

Committee staff members present: Stewart E. McClure, chief clerk; John S. Forsythe, general counsel; and William C. Smith, counsel to the subcommittee.

Senator CLARK. The subcommittee will resume its session on S. 1308, the administration's equal employment opportunity bill, and on S. 1667, introduced by Senator Javits. Our first witness this morning is Mr. John Harmon, executive vice president of the National Employment Association.

Mr. Harmon, we are very happy to welcome you here. You were kind enough to furnish us with an advance copy of your statement which I will ask to have printed in full in the record following your testimony.

I would be grateful to you if you felt you could summarize the statement instead of reading it in full, although it is fairly short.

If you prefer to read it you may feel free to do so.

STATEMENT OF JOHN E. HARMON, EXECUTIVE VICE PRESIDENT, NATIONAL EMPLOYMENT ASSOCIATION, ACCOMPANIED BY DANIEL J. MOUNTIN, DIRECTOR OF GOVERNMENTAL AFFAIRS NEA

Mr. HARMON. Senator Clark, I am delighted to be here. My name is John E. Harmon. I am the executive vice president of the National Employment Association, the single nationwide trade association representing approximately 6,000 private employment agencies in the United States. Accompanying me is Daniel J. Mountin, our director of governmental affairs.

Senator CLARK. We are happy to have you with us, Mr. Mountin.

Mr. HARMON. I appear before this committee to express the support of private employment agency industry for S. 1308.

Title VII of the Civil Rights Act of 1964 is one of the most important pieces of social legislation ever to have been passed into law in the United States. It concerns employment practices to an extent that

affects every employer, employee, and employment agency in this country. The broad basic philosophy behind the enactment of title VII establishes the principle that race, color, religion, sex or national origin are not relevant in the consideration of the applicant's qualifications for employment.

In a freely competitive society, education, training, experience, ability, and talent should be the only criteria by which to judge an applicant's capabilities to do a particular job.

It is well established that the private employment agency industry is in full accord with this philosophy and that it wishes to and will comply both with the letter as well as the spirit of the civil rights laws. As a matter of interest to this committee, the National Employment Association recently appeared before another Senate subcommittee to express its endorsement of two bills that would ban discrimination in employment based on age.

Senator CLARK. What subcommittees were those?

Mr. HARMON. Senator Yarborough's subcommittee and, Mr. Mountin, do you recall the number of the bill?

Mr. MOUNTIN. S. 380 and S. 788.

Senator CLARK. Were they two separate subcommittees or just one?

Mr. HARMON. Just one, in the Labor Subcommittee.

I might say, Senator, that we have been working with the U.S. Chamber of Commerce in our efforts to find employment for the handicapped, for the disadvantaged. We did run into a real problem with people in the age bracket from 50 on and especially those who were age 80 that wanted to continue their employment.

That was the reason for our appearance because we felt that there were many jobs going begging today; yet in some of these cases it was most difficult to get a person employment in the age bracket of 70, 75 and many of them are very, very able and very, very young in their outlook.

Senator CLARK. I am sure you are right. I am looking forward with some trepidation to my own problem.

Mr. HARMON. At that time we suggested to the subcommittee that it "consider placing the law, with its proposed enforcement provisions under the authority of the Equal Employment Opportunity Commission, as it is generally in the States, so that there can be both a unified and uniform effect directed to all areas of arbitrary discrimination in employment."

Earlier this week, the National Employment Association appeared before the Equal Employment Opportunity Commission during its hearings on proposed amendments and additions to its regulations concerning sex discrimination in employment. Our purpose in testifying was to share with that body the knowledge of job opportunity advertising which we, as the only nongovernmental placement organization in the country, have gained in our more than 40 years of experience as the organization of placement agencies.

No law, Federal, State, or local is of any value to the public unless it contains proper and effective enforcement provisions. Such regulations must be written in such a manner as to be clearly understood in content and intent in order to insure a proper and fair solution to the problems at hand. Title VII of the Civil Rights Act of 1964, while

containing admirable solutions to the broad problem areas of discrimination in employment, allows the Equal Employment Opportunity Commission the power only to investigate complaints, conciliate disputes, and recommend suits by the Justice Department. S. 1308 would grant the Commission the power to issue cease-and-desist orders which, we feel, are necessary to provide correct enforcement of the intent and spirit of the law.

The private employment agency industry and the National Employment Association have consistently gone on record in favor of local and State laws dealing with equal opportunity in employment practices, vigorously supported the enactment of civil rights legislation, and have a record of compliance with these laws of which the industry can be proud.

While our motives are influenced by the economic desire to enlarge our own opportunities, our observations clearly substantiate the need for legislation such as S. 1308.

In the experience of private employment agencies operating under laws having discrimination prohibitions, we have found that the stronger the law and the better administered and enforced it is, the greater the economic opportunities afforded to all employment applicants.

Mr. Chairman, the National Employment Association stands ready to assist this committee in all ways possible to achieve the purposes for which this legislation is intended. We recognize the social problems that demand solutions.

The private employment agency industry fully endorses your efforts in this connection as exemplified by the bill presently under consideration.

Senator CLARK. Thank you very much, Mr. Harmon. We are grateful, and I am sure the administration will be grateful, for your support of this bill. I have a few question I would like to ask you if I may.

Does your association operate in all 50 States?

Mr. HARMON. No; there are some States, such as Montana and Nevada, where the population density does not warrant or does not justify a private agency. In fact, there are very few cities in those States that could support such an agency.

Senator CLARK. Does that include Alaska and Wyoming?

Mr. HARMON. Wyoming is one of those States. We have a few members in Alaska. Hawaii is the same. We have a few members there. Most of our agencies are located in the metropolitan areas. They have to be in order to have an available supply of applicants to justify operating a business.

Senator CLARK. I guess you deal primarily with urban employment; don't you?

Mr. HARMON. Yes; for the most part.

Senator CLARK. For example, you would not be down in the delta in Mississippi, helping to find jobs for those people?

Mr. HARMON. No, sir; we would not. Most of our placements are industrial, commercial, nonagricultural.

Senator CLARK. Do you have a good many clients from minority groups?

Mr. HARMON. I would say yes, without reservation; very definitely. In fact, here again, it depends on the location. Most of our clients for our agencies—when I say clients, not clients of association, but clients of our members would be across the board.

Senator CLARK. I assume that because of the nature of your agencies those individuals in minority groups would be largely middle class and professional, would they not?

Mr. HARMON. No, sir; they would not. In fact, here again, it depends on the area. I have in the past year visited many of our State associations and in that time have visited many private agency offices. It is not uncommon to find in the outer offices, where counselors are interviewing or giving tests, many people of various origions taking tests for secretarial positions, clerk positions. Agencies want to place people with skills that our economy needs.

In fact, I noticed in Senator Javits' statement on the floor yesterday, or the day before yesterday, that he pointed out in New York it works rather well. In New York City, in particular, I have visited many of what you might call the industrial placement agencies. I believe you will find every national origin in those offices. In fact, the big complaint of business now is that there are too few people in those offices, the job demands are so heavy.

Senator CLARK. Your member agencies would be interested in domestic service employment, would they not?

Mr. HARMON. Some; yes, sir.

Senator CLARK. Not much?

Mr. HARMON. Well, we have some members that handle that group, but not very many. Here, again, I would say most of our members really work in the commercial area, not domestic even though we do represent that particular element.

Senator CLARK. Do you have any experience with respect to the geographical impact of equal employment opportunity? For example, do you find more difficulty in placing members of minority groups in the South than you do in the West and in the North?

Mr. HARMON. That was the reason I believe that we supported your Civil Rights Act. As a result of the enactment of that act, a booklet was prepared by the National Employment Ascsociation which explained the act to all our members and even our nonmembers. This book was made available to all agency owners. One of the things that we ran across in some of our studies, and this I think is particularly true this year and last year, is that most of our agencies will say something like this, "We are short of applicants—jobs are going begging."

In the South, in particular, if you can bring in a well-qualified person, we have no problems placing that person. In fact, many companies are making a sincere effort because of the act to comply.

I think business in general wants to comply. I know in some cases there is a big argument among top management whether they should hire a person of minority origin merely to comply, when the person is not qualified.

Senator CLARK. Of course this is a very tight labor market.

Mr. HARMON. It is a very tight labor market. I think now in particular, in response to your question, even though there might have been grounds for a different answer earlier, there is very little discrimination now. This is my personal feeling.

Senator CLARK. Do you have agencies in Alabama and Georgia and Mississippi and Louisiana and Florida?

Mr. HARMON. Yes; in every one of those States.

Senator CLARK. You are speaking in your testimony in the light of the experience that these agencies have had?

Mr. HARMON. Yes. In every one of these agencies, according to the reports that we have received, I just can't imagine a person, a competent secretary, a competent file clerk, being turned down for employment in those southern communities because of their particular race.

Senator CLARK. Do your agencies or at least some of these agencies specialize in placing executives, college graduates, graduate students?

Mr. HARMON. Very definitely. This is an area of curious specialization. We have one agency in Chicago that places only insurance agents or insurance company officers. We have one agency in California that places managers for large chainstores. I know one office in New York I visited that specializes in the scientific field.

I never knew there were so many different types of biologists, for example. Counselors have books literally 2 feet high of application and job-order forms for various types of biologists of given particular specialties ,and the book might be 3 inches wide. Incidentally, most of those applicants are already employed, but are looking for other positions for various reasons.

Senator CLARK. Do you find that Negroes, Puerto Ricans, Spanish, and Mexican-Americans fill these executive positions from time to time?

Mr. HARMON. Yes, they do. Senator, I think this is one of the biggest misunderstandings today. Our agency people are working for a profit and they want to place people, but there is a real shortage of skilled and trained manpower at this time. This is without reservation. I don't think there is a State where you could honestly say there is an overabundance of supply in any one of these areas.

A person in a minority group today, I think, really has an advantage because many companies are making an effort to hire that person. As I stated earlier, there is a real argument at the top in many companies, whether they should actually drop the job qualifications merely to place a person of minority origin on their work force.

Senator CLARK. Secretary Wirtz testified yesterday that he thought, and he expressed the idea rather well, the basement door is open but the door at the top of the stairs is shut by which he meant that in the last several years equal employment opportunity has spread pretty well for vacancies in the lower categories of employment but when this came to promotion the door, let us say, to the dining room is still locked.

Do you have experience in your agencies with individuals who have a job, who come in and want you to find a better one for them?

Mr. HARMON. Very definitely. In fact, much of our business is done this way. Once you have served a person and served him well, and after he has worked several years with a company, it might be that he will tell his sister to come in or his brother, uncle, or friend.

In other words, they did a job, a good job for me. This is a service type agency and he will come back again if he is looking for something

better or of a different type. I don't know that I would completely agree with Secretary Wirtz on his observation. My observation has been just the opposite regarding the people at the top in the minority group.

They are trying to open doors for them. They want to place them. They want very much to place them. I think you will find, and this is outside of our business, that many of our larger corporations are interviewing any logical candidate. And I think giving preference to minority groups. In other words, as has been said in some quarters, members of the caucasian race are being discriminated against in some companies.

Senator CLARK. I think the Secretary had reference to moving up the employment ladder in some Southern States, particularly in the area of State and local government. For example, there might be some difficulty about having a Negro chainstore manager in certain parts of the Southern States.

Have you run into anything like that? Or an insurance agent? Would he have great difficulty in soliciting insurance policies?

Mr. HARMON. It is conceivable. Frankly, my knowledge about any governmental placement is limited because in most of your corporate structures in the south such as city halls they do not hire through a private agency.

There is no provision in law to pay a fee. Much of it is done through civil service examination and that type of an arrangement.

Senator CLARK. You would not be familiar with it?

Mr. HARMON. No, I would not.

Senator CLARK. Have your agencies had any perceptible number of American Indian clients?

Mr. HARMON. Well——

Senator CLARK. I visited an Indian reservation in New Mexico, and it intrigues me to see the eagerness of the young Indian woman or man who wants to better themselves and get off the reservation. Is there any chance for them to get a job?

Mr. HARMON. I have been all through the west but I frankly can't recall having experienced this type of situation. I would say this, that when I think I first met you when we were discussing the advantages of the Manpower Act I did tour the country quite extensively then.

I know in North Dakota, for example, there were some Indian reservations, and at least a few of them would take this training under the Manpower Act and then having received the training would go back to the reservation.

They are still very much in demand. I think if a young Indian boy or girl were adequately trained for the market I believe they could be placed. I believe today there would be less discrimination found on the job market than perhaps earlier because of the shortage, the absolute shortage of skilled manpower.

The thing we have to keep in mind is that if a person has a competency he will find a placement.

Now the question you were referring to a moment ago, I did not mean to hedge on it. It is that I don't know the answer about the South regarding opportunities in these various companies. It is conceivable that they might be discriminated against.

It is just that I do not know.

Senator CLARK. One final loaded and irrelevant question. How are you getting along these days with the State employment services?

Mr. HARMON. I will have to tip my hat to Frank Cassell who as you know, came to the Labor Department from a large corporation and who is very knowledgeable about the placement of people. He has had a very difficult task. I have tried to turn my cap around once in awhile to appreciate his problem.

I think many of your State employment offices are doing the very best in the area that we think they should work. It is a very difficult job.

Senator CLARK. You remember the controversy we had under the Wagner-Peyser Act amendments last year?

Mr. HARMON. Yes. I know Mr. Cassell personally visited one of our State associations to sit down with them and see if there was some way to reconcile the differences and to work together more closely.

I think it is this type of effort which should be expanded. Our feeling has been, as you well know, that the private placement sector should place those people that are eligible for jobs. There are many people in our economy that are not skilled, that need training under the Manpower Training Act. The U.S. Employment Service really should work on this particular side of the street. We are still receiving examples of advertising in the Wall Street Journal and other publications by State employment offices for comptrollers, for presidents of companies.

We feel this is a misuse of taxpayers funds. This is our personal feeling based on the views of 5,000 to 6,000 taxpaying private agencies around the country.

This is a personal opinion. It is a social opinion. To answer your loaded question directly, I would say we are getting along better because the job demands placed on the U.S. Employment Service have been so great for work for the disadvantaged they have been forced to work more in this area and less in the professional area.

So, there is less reason for conflict. I think there is a great need for even closer collaboration. I think Frank Cassell is making a sincere effort to see if there is a way that we might be able to work more closely together.

I would like very much to find it.

Senator CLARK. I would, too. Personally, I have always felt that this country ought to have a mixed system, private employment agencies and State employment services, and that there is no real need for bitterness or controversy. They ought to be able to come to some acceptable compromise. I hope Mr. Cassell can work it out because we do need some amendment to the Wagner-Peyser Act. If the private employment agencies and State employment agencies can get together it would be a great thing I think for the whole manpower problem.

Mr. HARMON. Senator, I think, if I could just restate my position briefly: with today's manpower situation being what it is, if we could figure out how to salvage many of these people and give them the proper training, the result would be a big boost to our economy. To be very candid about it, the private placement agencies are not equipped financially to do this type of salvage work.

Everybody wants to see to it that a person who wants to work, who has a desire to work, who does not have a skill, be given the opportunity to learn that skill.

This takes a lot of work and it requires a lot of screening. I think sometimes we are playing a numbers game in the Federal Government on the recording and reporting of job placements. We do not feel it is fair for the U.S. Employment Service to utilize this technique of how many bodies did you interview today?

I think it would be far better to be able to answer the question, how many souls did you salvage today? If they said five in a month that might very well be a full workload. If we could get five people back on the payroll and work out their problems, why should the counselor be adding numbers and comparing them with the private placement sector of numbers? It is a numbers game that really does not make sense.

Yet they tell how many placements they make. If they have a fellow to distribute telephone directories, that would constitute a placement in their little check marks of placements. Three days of delivering phone books is a placement. Not so with the private sector. I don't think that this is the type of thing that we should be arguing about. We should be trying to salvage these people, and the organization which is best equipped to do this is the U.S. Employment Service.

Senator CLARK. Sort of an aspect of Parkinson's law, don't you think?

Mr. HARMON. It is very definitely.

Senator CLARK. Thank you very much, Mr. Harmon. You have been very useful to the subcommittee.

Mr. HARMON. Thank you, Mr. Chairman.

Senator CLARK. Your statement will be printed in the record in its entirety at this point.

(The prepared statement of Mr. Harmon follows:)

PREPARED STATEMENT OF JOHN E. HARMON, EXECUTIVE VICE PRESIDENT, NATIONAL EMPLOYMENT ASSOCIATION

Mr. Chairman and members of the committee, my name is John E. Harmon. I am executive Vice President of the National Employment Association, the single nationwide trade association representing approximately 6,000 private employment agencies in the United States. Accompanying me is Daniel J. Mountin, our Director of Governmental Affairs.

I appear before this Committee to express the support of the private employment agency industry for S. 1308.

Title VII of the Civil Rights Act of 1964 is one of the most important pieces of social legislation ever to have been passed into law in the United States. It concerns employment practices to an extent that affects every employer, employee, and employment agency in this country. The broad basic philosophy behind the enactment of Title VII establishes the principle that race, color, religion, sex or national origin are not relevant in the consideration of the applicant's qualification for employment. In a freely competitive society, education, training, experience, ability and talent should be the only criteria by which to judge an applicant's capabilities to do a particular job.

It is well established that the private employment agency industry is in full accord with this philosophy and that it wishes to and will comply both with the letter as well as the spirit of the Civil Rights Law. As a matter of interest to this Committee, the National Employment Association recently appeared before another Senate Subcommittee to express its endorsement of two bills that would ban discrimination in employment based on age. At that time, we suggested to the Subcommittee that it "consider placing the law, with its proposed enforcement

provisions under the authority of the Equal Employment Opportunity Commission, as it is generally in the States, so that there can be both a unified and uniform effort directed to all areas of arbitrary discrimination in employment."

Earlier this week, the National Employment Association appeared before the Equal Employment Opportunity Commission during its hearings on proposed amendments and additions to its regulations concerning sex discrimination in employment. Our purpose in testifying was to share with the body the knowledge of job opportunity advertising which we, as the only non-governmental placement organization in the country, have gained in our more than forty years of experience as the organization of placement agencies.

No law, federal, state, or local is of any value to the public unless it contains proper and effective enforcement provisions. Such regulations must be written in such a manner as to be clearly understood in content and intent in order to insure a proper and fair solution to the problems at hand. Title VII of the Civil Rights Act of 1964, while containing admirable solutions to the broad problem areas of discrimination in employment, allows the Equal Employment Opportunity Commission the power only to investigate complaints, conciliate disputes, and recommend suits by the Justice Department. S. 1308 would grant the Commission the power to issue cease-and-desist orders which, we feel, are necessary to provide correct enforcement of the intent and spirit of the law.

The private employment agency industry and the National Employment Association have consistently gone on record in favor of local and state laws dealing with equal opportunity in employment practices, vigorously supported the enactment of civil rights legislation, and have a record of compliance with these laws of which the industry can be proud.

While our motives are influenced by the economic desire to enlarge our own opportunities, our observations clearly substantiate the need for legislation such as S. 1308.

In the experiences of private employment agencies operating under laws having discrimination prohibitions, we have found that the stronger the law and the better administered and enforced it is, the greater the economic opportunities offered to all employment applicants.

Mr. Chairman, the National Employment Association stands ready to assist this Committee in all ways possible to achieve the purposes for which this legislation is intended. We recognize the social problems that demand solutions. The private employment agency industry fully endorses your efforts in this connection as exemplified by the bill presently under consideration.

Senator CLARK. Is Mr. James Hunt here? Mr. Hunt, we are very happy to have you with us. Mr. Hunt is the labor relations manager of the Chamber of Commerce of the United States.

I see you have a prepared statement, Mr. Hunt, which I will ask to have printed in full in the record at this point. I have not had an opportunity to read it. I would appreciate it if you felt, since it is nine pages long, that you could summarize it as opposed to reading it in full, but I will leave that to you.

STATEMENT OF JAMES W. HUNT, LABOR RELATIONS MANAGER, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. HUNT. Yes, I would like to submit this for the record and summarize some of the more important arguments.

Senator CLARK. If you will. Proceed in your own way.

(The prepared statement of Mr. Hunt follows:)

PREPARED STATEMENT OF JAMES W. HUNT, LABOR RELATIONS MANAGER, CHAMBER OF COMMERCE OF THE UNITED STATES

My name is James W. Hunt. I am Labor Relations Manager for the Chamber of Commerce of the United States and I am appearing before this Committee on behalf of the National Chamber. I appreciate the opportunity to present our views on S. 1308 which would amend Title VII of the 1964 Civil Rights Act.

THE NATIONAL CHAMBER'S POSITION

The proposed amendments contained in S. 1308 are unnecessary. They would, in fact, tend to frustrate the objective of Title VII, which is to provide equal employment opportunity.

The alleged purpose of these proposed amendments is to make the work of the Commission more effective. In the brief two-year existence of the Commission, however, it has not been shown that the Commission's existing procedures are inadequate to accomplish the goals established by Title VII. In fact, the reverse has been shown. The Commission is seeking to further the goal of equal employment opportunity and is doing so with the cooperation of business and the National Chamber. At the same time, the Commission has had to operate under the handicap of an enormous caseload. The worst possible course of action under this circumstance would be the adoption of legislation requiring time consuming and lengthy administrative hearings which would result from the proposed amendments to Title VII.

Using the NLRB as an example (since this agency has the type of power proposed by S. 1308), there is a delay of approximately 12 months before the average case is processed through the NLRB alone—to say nothing of the added time required should the decision be taken to the courts. The average delay in time from the date that an NLRB preliminary hearing is closed to the date of the trial examiner's first decision is almost four months.[1] Thus, the proposed change in the EEOC's administrative machinery would frustrate the need for speedy disposition of employment discrimination charges. Swift resolution of a charge is of the utmost importance to the individual who has been discriminated against. What this individual needs is a job, not a law suit.

VOLUNTARY COMPLIANCE

It should also be noted that the fair employment bill originally introduced in Congress in 1964 would have given the Commission authority comparable to that of the National Labor Relations Board. The NLRB procedure was not adopted then and it should not be adopted now. It was decided by the Congress in 1964 that the problems of discrimination would be resolved much better through informal methods of conference, conciliation and persuasion rather than through an NLRB-type procedure.

Rep. William McCulloch explained the reason for this Congressional decision: "As the title was originally worded, the Commission would have had authority to not only conduct investigations, but also institute hearing procedures and issue orders of a cease-and-desist nature. A substantial number of committee members, however, preferred that the ultimate determination of discrimination rest with the Federal judiciary. Through this requirement, *we believe that settlement of complaints will occur more rapidly and with greater frequency.* In addition, we believe that the employer or labor union will have a fairer forum to establish innocence. . . ." [Emphasis added.] (Rept. 914, Part 2, 88th Congress, 1st Session, House of Representatives, p. 29.)

Since the Commission began operations, there have been no developments to alter this judgment. On the contrary, every indication is that the vast majority of employers in the United States are anxious to comply with the fair employment requirements of the law and are making every effort to do so. An important factor in this voluntary effort is that compliance is not based on compulsion. In the complex areas of over-all employment, job promotion, seniority, and working conditions, deeply ingrained attitudes and practices are involved. As a consequence, a philosophy of enforcement stressing cooperation and flexibility, as the law now provides, will accomplish more permanent results than any rigid administrative attitude that seeks resolution of problems by commanding a person to "cease and desist."

An important Administrative official active in the area of civil right legislation also endorsed the voluntary approach. Former Attorney General Katzenbach in a statement before the Senate Subcommittee on Executive Reorganizations on March 3, 1966, said: "Conciliation is an old friend. Indeed, it has always been the function of the law and the good lawyers to keep tempers down, to find satis-

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[1] Statistics taken from recent hearings before the U.S. House of Representatives, Subcommittee of the Committee on Appropriations, 89th Congress, 2nd Session, Department of Labor Appropriations for 1967, Part I, Page 126.

factory agreement and to settle cases, whenever possible, out of the court." This procedure is particularly relevant in dealing with the many problems arising under Title VII.

Despite the evident success of the voluntary approach, the proposed amendments to Title VII would revert to the NLRB-type procedure, which has been previously considered and rejected by members of Congress.

TITLE VII ENFORCEMENT PROCEDURE

Title VII now provides for enforcement in three distinct stages. The first is voluntary compliance. The second involves conciliation, persuasion, and Commission findings of probably cause that discrimination has occurred. The third stage, when necessary, is through judicial proceedings by the aggrieved individual or the Attorney General.

Voluntary compliance, *the first stage*, is meeting with considerable success. A survey conducted in 1965 revealed that 75 percent of companies interviewed had taken "positive steps" to employ Negroes. (*Daily Labor Report*, No. 127, July 2, 1965) Further, more than 300 of the largest companies in the United States, employing nearly nine million workers, entered into an agreement with the then President's Committee on Equal Employment Opportunity to take "affirmative action" to provide equality of opportunity in employment. This is actually more than Title VII requires. The law is negative. It orders an employer not to discriminate. However, as indicated, the great majority of employers are taking positive steps, including recruitment, to insure that Negroes are aware of job opportunities. And these same companies are providing the example and leadership for other companies.

Last year, Franklin D. Roosevelt, Jr., former Chairman of the EEOC, in discussing the first six months of the Commission's operations said:

"The Commission and staff have received tremendous cooperation from employers and labor organizations in every part of the country. Our investigators and conciliators have been received with courtesy wherever they have gone. We continue to find a very real desire on the part of many of those charged to go beyond merely complying with the law.

"Walls are literally coming down where segregated facilities once existed—often at considerable expense. Most employers are outreaching individual complaints to open up new opportunities for minorities in their plants and businesses. Good business and good conscience are going hand in hand and the spirit as well as the letter of the law is being applied with good will." (*Daily Labor Report*, No. 17, January 25, 1966)

In addition, many business organizations have encouraged their members to comply with this law. The National Chamber, for example, has distributed over 100,000 copies of its "Guide to Civil Rights Act," not only to its members, but also to the public; and it has conducted conferences on Title VII in over 50 cities in all sections of the country in the past three years. Our impression from these meetings is that, in all regions of the nation, there is a clear willingness on the part of employers to comply with this law.

It is our firm conclusion that the first stage, voluntary compliance, is meeting with exceptional success. To implement this conviction, the National Chamber, in the past year, has jointly arranged with local and state organizations and business leaders for meetings with the Equal Employment Opportunity Commission in all parts of the country—New Orleans, Memphis, New York, Pittsburgh, Indianapolis, and Charlotte. These seminars were devoted to explaining interpretations of Title VII and discussing ways and means of involving the business community more fully in the multiple programs of affirmative action. Such meetings will continue to take place. In this spirit of cooperation, it is felt that the already excellent record of voluntary employer compliance will be further improved.

The second stage of enforcement under Title VII provides for settlement of disputes through a process of investigation, determination of probable cause, persuasion, and finally conciliation. It has met with amazing success. Only a few cases have gone beyond the conciliation stage without being settled.

Alfred W. Blumrosen, Chief of Conciliation, EEOC, has stated that:

"I could list another number of areas where we have achieved settlements of issues which, if they were litigated, would have taken years to resolve. Those settlements will, I believe, set the pattern for the solution of these problems throughout the nation, and will mean, in fact, that there will be relatively little litigation under Title VII." (BNA Fair Employment Practices Report, No. 21, April 28, 1966, p. 2)

The proposed amendments to Title VII, however, would virtually destroy the conciliatory approach, a proven method of operation. Instead of a friendly climate where the parties sit down to reason together, S. 1308 would substitute a formal adversary proceeding in which public charges and countercharges are disputed by the parties. Rather than searching for areas of agreement so as to reach a settlement, the parties must center on substantiating the hearing record for possible judicial appeal. The proposed amendments would cause employers against whom a claim is filed, to immediately adopt a defensive and wary posture which, as experience with the NLRB has demonstrated, often results in prolonged public hearings and litigation taking years to settle. It would create resistance where none presently exists, and reverse the trend toward successful accomplishment of Title VII goals through mediation.

Certainly the experience of the state commissions enforcing fair employment practice laws do not indicate an overwhelming need for public administrative hearings or agency "cease and desist" power. Former EEOC Commissioner, Mrs. Aileen Hernandez, told the Industrial Relations Research Association that her experience with the California FEP Commission, of which she became a member in 1961, indicated that no more than a very few cases out of over a thousand filed ever went beyond the state agency before settlement. This same situation is no doubt true in other states having similarly established commissions. Mediation and conciliation have met with marked success where attempted at the state level and they are meeting with even better success at the federal level. In short, there is a willingness on the part of all parties involved to achieve the goal of equal employment opportunity.

The final stage for obtaining compliance under the present law is through enforcement by court action. Section 706(e) provides for an appeal to the courts when there is either a failure to voluntarily comply with Title VII or an impasse in mediation and conciliation. In such cases, the federal court may appoint counsel to represent the individual; waive the payment of all fees, costs, or security; and allow the Attorney General to intervene on behalf of the aggrieved party. If the court finds that discrimination exists, Section 706(g) calls for wide-ranging remedies for unlawful employment practices—which may include reinstatement or hiring of employees with back pay.

Another section which proponents of S. 1308 seem to overlook provides for swift and effective action against serious cases of discrimination. Section 707(a) of existing law provides for immediate action by the Attorney General when any person, or group, is engaged in a pattern or practice of discrimination.

The wisdom of these provisions is that they give effective enforcement powers to the government, while preserving the Commission's role as an impartial conciliator. S. 1308, on the other hand, would combine the Commission's role as a conciliator with that of prosecurtor and advocate.

The issue, therefore, is not whether the government needs additional power to enforce Title VII, for it is quite clear that existing law now provides for such power. The question is whether this power should be centered a sproposed by S. 1308, in the same agency which is supposed to be a mediator and conciliator. This, in turn, raises a very serious question whether an agency can assume the contradictory functions of mediator and prosecutor. The result may be to destroy the Commission's effectiveness as a conciliator and undermine the great progress which has resulted from this procedure.

Clearly the wide-range of legal remedies mentioned above have not proven to be inadequate. On the contrary, they have proven to be so effective that there has been little need to resort to the stronger remedies provided for in Title VII. The "final resort" provided for in Title VII—court action by the individual or the Attorney General—is an undeniably potent force for promoting voluntary cooperation by parties who might otherwise be less cooperative. Likewise, the mediation process allows the great majority of employers to adjust differences with their employees on a friendly basis.

S. 1308, therefore, does not confer any additional power on the government, but only concentrates it in the hands of one agency. This Committee must give very serious attention to whether these proposed amendments will, indeed, further the national policy of providing equal employment opportunities for all persons. It may be that they will impede rather than promote this policy..

In conclusion the proposed amendments to Title VII would:

make an adversary out of a Commission which now strives for cooperation:

require formal and public hearings, increasing both budgetary expense and delay in settlement of disputes:

lump the functions of the prosecution together with those of an administrator and conciliator—a total contradiction of functions;

ignore the complete absence of any valid reason for change, such as strong resistance to Title VII which is, in fact, not present;

ignore the record of Commission proceedings which show that even existing court proceedings are seldom needed;

seriously hinder progress in providing job opportunities for minority groups.

SUMMARY

The views of the Chamber of Commerce of the United States on the proposed amendments of Title VII of the 1964 Civil Rights Act are:

1. The amendments are unnecessary in that the present law has not been shown to be ineffective in the short duration since its enactment.
2. Voluntary compliance is meeting with great success.
3. There is no indication that EEOC requires additional authority to enforce Title VII, but it is abundantly clear that present enforcement machinery is more than sufficient to achieve the goal of equal employment opportunity.
4. Creation of a formal hearing procedure will tend to inhibit the existing spirit of voluntary cooperation with the Equal Employment Opportunity Commission.
5. The amendments would frustrate rather than promote a speedy and effective resolution of problems involving equal employment opportunity.

Mr. HUNT. My name is James W. Hunt. I am labor relations manager for the National Chamber of Commerce. The chamber shares the concern of this committee for implementing the objectives of title VII which is to provide equal employment opportunity for minority groups.

However, there is a serious question that S. 1308 will impede rather than promote those opportunities. S. 1308 would in practice replace the existing provisions of the law providing for conciliation with cease-and-desist powers like that of the National Labor Relations Board.

Conciliation has worked effectively in promoting employment opportunities and will continue to accomplish this objective. Making the Equal Employment Commission into another NLRB will impede rather than promote such opportunity.

In statements yesterday it was contended that the NLRB approach would encourage voluntary settlements. I would like to analyze those arguments because I think they are not correct.

First, the Labor Board is so swamped with cases that it cannot expedite them. The NLRB is not know for its conciliatory approach to matters and it takes an average of 12 months to dispose of a case.

In contrast, the Commission has sixty days to settle a charge filled with it. The Commission, moreover, also has such a tremendous case load that making it into another NLRB may result in even more than 12 months to dispose of a charge.

This will certainly not help an aggrieved person. Second, it is claimed that S. 1308 will take the burden of processing complaints off the individual and place it on the Government. This is misleading. A charge under existing law may be brought not only by the aggrieved person but also by a labor union, a civil rights group, or by the Commission, itself.

Now it is interesting to note that under title VII the Commission does have the power to file a charge of discrimination. This is actually more power than the NLRB has.

The NLRB cannot file a charge. It has to be brought by an outside party.

Senator CLARK. You mean file a charge in the Federal courts?

Mr. HUNT. No, sir; with the agency. The Commission can file a charge with itself alleging discrimination.

Senator CLARK. There is nothing to do after filing the charge except to say "please stop." They have no legal authority to——

Mr. HUNT. They have the power of conciliating which has proved effective.

Senator CLARK. The Commission testified yesterday, supported by the Attorney General and the Secretary of Labor and representatives of civil rights groups, that the power to conciliate was quite ineffective. They said that if they had the power to issue cease-and-desist orders they felt they could dispose of a much heavier workload, and they would not often have to use their cease and desist power. I am surprised that the chamber should take the position you have indicated, because it seems to me that, by and large, American business has cooperated very well in the equal employment opportunity effort.

Mr. HUNT. Yes, sir; indeed we have.

Senator CLARK. You heard Mr. Harmon testify a little while before. I do think this type of testimony does tend to give your organization a bit of a black eye just as a matter of policy.

You have every right to do it, of course, and I am going to listen to you very carefully. I am a little concerned as to how the decision was made to do this, to come in here and oppose this.

Mr. HUNT. I would like to answer this because I think there are some points that have not been raised previously. What you are referring to is the power of the Federal Government to enforce this ban on discrimination in employment.

If the case is taken to court after the Commission has acted, title VII already provides for court-appointed counsel, waiver of fees and charges and even allows the Attorney General to intervene.

In addition title VII also provides that the Attorney General may institute a court action whenever there is a pattern or practice of discrimination.

The Secretary of Labor said yesterday a substantial percentage of employers engage in subtle violations of the law. I believe this is a completely unfair characterization of the business community.

We are complying with the law. We are trying to work with the Commission and the Government in this respect.

Senator CLARK. I would hope that we would get from the Commission in the statistics which I asked them to provide us some hard evidence as to the extent to which business enterprises particularly those who are eligible to joint the U.S. Chamber of Commerce, are complying.

My guess is that the overwhelming majority of them will be found to be complying.

Mr. HUNT. Yes, I believe that will be found.

There is a lot that has to be done in this area but I believe the business community is moving in that direction. One of the reasons is the cooperation that employers have had with the Equal Employment Commission. Making the Commission into another NLRB will discourage this cooperation.

Senator CLARK. I raise a eyebrow at that. Give me an argument: I would think it would help and not hurt. You tell me where you think it will hurt.

Mr. HUNT. In this respect, the Commission as a conciliatory agency will come in when there is a charge of discrimination, sit down with the employer, with the aggrieved person, with the labor union, civil rights group and all.

They have a frank and open discussion of the problem to try to work out some solution, taking into account all these interests. This is the work of the Commission now as a conciliatory and mediatory agency.

The parties recognize this. The employer recognizes this. He knows this is the group whose only function is to conciliate. If you make it into an NLRB, they know they cannot be frank because what they say may ultimately be used against them, by the same group they are now trying to conciliate with, in an adversary proceeding and later in the court.

The chamber is not opposed to the Government having effective enforcement powers of title VII. The Government does now have this power. The whole issue here on S. 1308 is whether to transfer this power from other agencies into the Equal Employment Opportunity Commission.

That is the question—concentrating this power in the Commission.

Senator CLARK. If I could interrupt for a moment, all the Government witnesses yesterday testified that they felt the present legal remedies to enforce the 14th amendment and Civil Rights Act were inadequate and that you could not rely on the Department of Justice and the Federal courts to assure adequate compliance.

Now I would think that the Commission certainly should continue the conciliation procedures that it now utilizes. In fact it might be desirable to write into the law a requirement that they could not issue a cease-and-desist order until they had made a showing that they made every effort to conciliate through appropriate measures.

To some extent to my mind the procedure is not unlike that which the President recommended yesterday for settling the railroad strike. There is a requirement for 90 days of intensive efforts at some conciliation, mediation, factfinding and the like before the court action or the recommendations of the boards goes into effect.

Is that a pretty good analogy?

Mr. HUNT. No, sir; I don't think you can compare it to labor relations in this area. The problems are entirely different. Labor management relations involves such things as negotiating, collective bargaining.

This is a different area.

Senator CLARK. It is a closely allied area, it seems to me. Certainly equal employment opportunity is quite an important aspect of labor relations.

Mr. HUNT. Yes, sir, it is. Part of the employment conditions do relate to labor relations but equal employment opportunity is not a collective bargaining item between labor and management.

Senator CLARK. That is true. Go ahead.

Mr. HUNT. The whole objective here is that you want cooperation between labor, management, and the Government in providing employment opportunity. They have to work together. The whole object here, the whole point, the whole philosophy, is not to have adversary parties—we want to work together. In collective bargaining you have opposing positions.

That is why it is not analogous.

Senator CLARK. Counsel has just handed me a copy of S. 1308, which includes on page 2, lines 12 through 17 the following, which I quote:

If the Commission determines after such investigation—

That is an investigation which the Commission representatives testified is now being decentralized into regional offices—

If the Commission determines after such investigation that there is reasonable cause to believe the charge is true, the Commission shall endeavor to eliminate any such alleged or unlawful employment practice by informal methods in conference, conciliation, and persuasion. Nothing said or done during and as part of such informal endeavors may be made public by the Commission or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any officers or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than a thousand dollars or imprisoned not more than one year.

It seems to me that takes care of the objection you raised.

Mr. HUNT. Yes, sir. They could not use the evidence that they found in the conciliatory aspect of the procedure. In other words, the procedure under S. 1308 would provide that there is reasonable cause to find that there is discrimination, then they have to go through the conciliation approach.

Later if this is unsuccessful, then through a hearing—an adversary proceeding. Of course, they can't use the evidence that they found in the conciliation process.

But the fact remains that if the same parties for the Commission, same agents for the Commission, are part of the conciliatory proceeding they must know of evidence which is relevant to the case.

Whether they use it or not, at least they know where to go to find the evidence.

Senator CLARK. It seems a little bit attenuated to me, but go ahead.

Mr. HUNT. Fourth, the Secretary of Labor cites statistics that members of minority groups continue to have unemployment rates higher than other groups. He suggests the reason for this is resistance to title VII by employers.

The 1965 Manpower Report to the President states:

That nonwhite workers remain heavily concentrated in such low-skilled jobs as laborers, domestics, and other relatively unskilled service occupations. The removal of discriminatory barriers has emphasized the extent to which negroes are ill prepared for today's jobs. Poor education has posed a major obstacle to the employment of Negroes in managerial, professional, technical, and other specialized occupations and fields.

This report which incidentally was prepared by the Department of Labor, clearly suggests that the answer to the problem of providing employment opportunities is through educational and training programs and the chamber supports that procedure.

Senator CLARK. That is one facet, and I thoroughly agree with you, but it does not follow from that that the need does not exist for cease-and-desist power where there is a qualified applicant from a minority group who is being discriminated against.

In other words, there are two facets to this problem.

Mr. HUNT. Yes, sir, you have to remove the barrier to employment. Then you have to qualify the person for that occupation. They have to go hand in hand.

Senator CLARK. I agree with you that qualification is very important.

Mr. HUNT. The chamber fully supports these training programs. In fact, yesterday, the president of the chamber, former Gov. Allan Shivers, in commenting on these expanded training and job opportunities for American youth, said:

> The Chamber re-emphasizes its encouragement to employers to give particular attention to the ways the young and inexperienced job seekers can prepare for and obtain productive employment, and urges organized labor to cooperate in this worthy endeavor.

Senator CLARK. Did you say former Gov. Allan Shivers, of Texas, is president of the U.S. Chamber of Commerce?

Mr. HUNT. Yes, sir; he is the new president.

If I can summarize, employers are making great efforts to provide employment opportunities for members of minority groups, Conciliation has worked effectively and will continue to work effectively.

There is ample authority under existing law to enforce title VII. There is no need to vest this authority in the Commission. The problem must be attacked not only through fair employment legislation but also through educational and training programs.

The business community has provided the leadership and will continue to do so in the future. This is also an area where business, labor, and Government must work together. We firmly believe it will be a step backward in the progress that is being made to make the Commission into another NLRB.

Senator CLARK. Thank you very much, Mr. Hunt. You have been a very articulate and able witness on behalf of your client.

Mr. HUNT. Thank you.

Senator CLARK. Our final witness this morning is Mr. Joseph J. Morrow, vice president for administration, Pitney-Bowes, Inc.

I recall that you appeared before us several years ago.

STATEMENT OF JOSEPH J. MORROW, VICE PRESIDENT FOR ADMINISTRATION, PITNEY-BOWES, INC.

Mr. MORROW. Yes, I did, sir; in 1963.

Senator CLARK. You have no prepared statement?

Mr. MORROW. I have been traveling all week. Your letter caught up with me yesterday afternoon in Baltimore. Last night I scribbled my statement out on Mayflower Hotel stationery.

Senator CLARK. Sometimes we have to do that.

Mr. MORROW. It is very brief.

Senator CLARK. Go ahead in your own way.

Mr. MORROW. My name is Joseph J. Morrow, vice president for administration of Pitney-Bowes, Inc., a southern Connecticut manufacturer of postage meters and other business machines. I am a member of the national board of trustees of the National Urban League. I am also a member of the advisory committee of the Community Relations Service.

It is a distinct pleasure for me to testify before your committee, Senator Clark. I had the honor of appearing before your committee on July 23, 1963, when I read and submitted a statement by our chairman of the board, Walter H. Wheeler, Jr., in support of the Civil

Rights Act which became law the following year. Mr. Wheeler at the time was hospitalized.

We have now under consideration S. 1308 which gives the Equal Employment Opportunity Commission the authority to issue cease-and-desist orders. It seems to me that we should not have any law on the books which is not enforceable. As I understand it, in many cases, an individual must take his case to the courts himself, if he has been discriminated against in employment or in membership in a labor organization. This is asking a great deal of an individual who comes from a disadvantaged minority. To my mind, it just isn't practical. Laws are made to protect rather than to punish. Under bill S. 1308, the Equal Employment Opportunity Commission would be given the authority, in fact the duty, to protect the individual who has suffered discrimination.

At Pitney-Bowes we decided to integrate our work force over 20 years ago simply because we felt it was the right and decent thing to do. We had no fair employment practices legislation in the State of Connecticut at the time; the fair employment law was enacted several years later in 1947. The effectiveness of Connecticut's law, through good administration, is attested to by the fact that employers within the State have experienced little or nothing in the way of personnel problems because of adherence to the law; and that the general walkouts, loss of business, and other dreadful happenings prophesied by the law's opponents have never materialized. Thus, no dramatic upheaval has followed the enactment of fair employment practices legislation in Connecticut, and the State commission has the authority to issue cease-and-desist orders. The Commission has used its "big stick" scarcely at all, but the knowledge that it is there has undoubtedly helped obtain employment for many victims of prejudice.

The vast mapority of employers in commerce and industry and of labor unions are observing the civil rights law. However, none of us pretends that discrimination is nonexistent. The intent to discriminate in employment, if skillfully concealed, is sometimes difficult to detect. Bill S. 1308 provides the Commission with more effective means with which to combat violations of the law.

While the long-range solution to the problem of racial injustice is to change the hearts and minds of men, it does not argue against the provision of basic minimum standards of justice and opportunity through laws, particularly when the majority of our citizens agree that such laws are necessary, as I am convinced they now do.

Senator CLARK. Thank you very much, Mr. Morrow, for your very helpful testimony.

As I recall, you told us when you were here 4 years ago, that your company never had any problem with equal employment opportunity and you had a good many members of minority groups on your payroll and indeed had done some on-the-job training to upgrade the skills of people in the neighborhood of your plants where there were some low-income groups who desperately needed employment.

Isn't that correct?

Mr. MORROW. That is right.

Senator CLARK. I am happy to see you come on as representative of a good-sized and successful company right after the testimony

of the Chamber of Commerce of the United States which opposes this bill.

I do appreciate your coming here.

Mr. MORROW. Thank you.

Senator CLARK. Senator Javits.

Senator JAVITS. I have no questions. I know the Pitney-Bowes company very well. It has a very fine reputation.

Mr. MORROW. Thank you.

Senator JAVITS. In this field especially.

Senator CLARK. Thank you very much.

Senator JAVITS. Mr. Chairman, I would like to have recalled Mr. James W. Hunt. I understand he has actually left. Would the Chair call and see if he is here?

Senator CLARK. I think he has left.

Is Mr. Hunt here? Mr. Hunt is gone.

Senator JAVITS. Mr. Chairman, I would just make the following observation for the record. I have a number of questions for Mr. Hunt which I will ask him in writing. The particular question I am most interested in is that I would like to have a report from the U.S. Chamber of Commerce as to the experience in the 31 States which have cease-and-desist order procedures in their State employment antidiscrimination laws.

Indeed, I would like their experience in the 38 States. Question No. 1: And especially the 31 with cease-and-desist order procedures.

Second, I would like to understand from them whether they oppose cease-and-desist order procedures in the six States which were recently added to the 25 that had it and if so, why.

Third, I would like specifically their experience in the State of New York. I might say parenthetically in the State of New York it has worked very well and there have been very few cases, including court cases.

I should be very much interested in where the chamber gets these objections to the procedure which both the administration bill and the bill filed by me with Senators Kuchel and Case seek to set up.

Senator CLARK. If the Senator will have the questions which he wishes to direct to Mr. Hunt prepared by minority counsel, I certainly will be glad to see that they are sent to him in the name of the subcommittee.

Senator JAVITS. Mr. Chairman, I request also that, if he does not answer them, that he be recalled.

Senator CLARK. The Senator certainly has that right. We will take it under consideration in due course. I know the Senator is the last man in the world who wants to hold up the passage of adequate equal employment legislation.

There is some problem as to when we can get this bill out of the subcommittee and to the floor.

The committee will stand in recess until 2:30 p.m. this afternoon at which time a panel of directors and commissioners of State fair employment practice commissions will appear.

(Whereupon, at 10:30 a.m., the subcommittee recessed, to reconvene at 2:30 p.m. the same day.)

AFTER RECESS

(The subcommittee reconvened at 2:30 p.m., Senator Joseph S. Clark presiding.)

Senator CLARK. The subcommittee will resume its session. I will ask our witnesses this afternoon to come forward and sit behind the witness table: Mr. Alfred E. Cowles, executive secretary, Washington State Board Against Discrimination, who is accompanied by Mr. Morton M. Tytler, assistant attorney general of the State of Washington; Prof. William P. Murphy, commissioner, Missouri Commission on Human Rights; Mr. George S. Pfaus, director, New Jersey Division on Civil Rights; Mr. Malcolm C. Webber, chairman, Massachusetts Commission Against Discrimination; and Miss Anna Withey, general counsel, New York City Commission on Human Rights.

Ladies and gentlemen, we are happy to welcome you here. I have had an opportunity to read the two statements that were available this morning, Mr. Webber's and Mr. Murphy's. Both of you gentlemen have made some very valuable suggestions for changes or amendments to S. 1308, particularly Mr. Murphy, who had six different suggestions for amendments.

As is the case with the witnesses yesterday who made some very valuable suggestions, I am going to ask the counsel for the subcommittee to collate the suggestions of Mr. Murphy for changes in S. 1308, discuss them with the appropriate officers of the various executive agencies, and see to what extent counsel recommends them to the subcommittee that they should be incorporated in the bill as we prepare to mark it up and tender it to the full committee.

I wonder whether you have had an opportunity to discuss with each other how you would care to proceed? I know that Mr. Pfaus and Mr. Booth have submitted statements.

A PANEL CONSISTING OF ALFRED E. COWLES, EXECUTIVE SECRETARY, WASHINGTON STATE BOARD AGAINST DISCRIMINATION; ACCOMPANIED BY MORTON M. TYTLER, ASSISTANT ATTORNEY GENERAL OF THE STATE OF WASHINGTON; WILLIAM P. MURPHY, COMMISSIONER, MISSOURI COMMISSION ON HUMAN RIGHTS; GEORGE S. PFAUS, DIRECTOR, NEW JERSEY DIVISION ON CIVIL RIGHTS; MALCOLM C. WEBBER, CHAIRMAN, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION; AND ANNA WITHEY, GENERAL COUNSEL, NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Miss WITHEY. My statement was submitted on behalf of Mr. Booth. Mr. Booth is chairman of the New York City commission.

Senator CLARK. I think perhaps the best way to proceed is to ask each of you for perhaps no more than 5 minutes to summarize the statements you have submitted. The ones which have just come in from Mr. Cowles, Mr. Pfaus, and Mr. Booth will be printed in the record consecutively and I suppose just because I happen to be looking to my left I will ask each of you to identify yourself for the record so I will now know who is who here.

(The prepared statements referred to follow:)

PREPARED STATEMENT OF MALCOLM C. WEBBER, CHAIRMAN, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Mr. Chairman and Members of the Subcommittee, as Chairman of the Massachusetts Commission Against Discrimination I wish to express my appreciation to this Honorable Subcommittee both officially and personally for the opportunity to appear and testify before this committee.

While I welcome the opportunity to register my support for all the measures contained in this historic proposal, it is to the emphasis on the strong administrative proceedings to which I would like to direct my remarks.

"The elimination of discrimination is a corner stone upon which world peace must be based." In the year 1945, the Governor of the Commonwealth of Massachusetts, M. J. Tobin, spoke these words as he appointed a committee to recommend to him and for consideration of our general court, legislation designed to eliminate discrimination in employment because of race, color, or religion. He admonished the committee not to devote time to studying the need, for the need of such legislative action clearly had been established in the findings of a special Commission reporting to the legislature in 1944. This was the third study group since 1943 which had considered the problem in one form or another.

And so, in 1945, this special Commission with a mandate from the Governor set out across the Commonwealth scheduling hearings and receiving suggestions as to the most effective type of legislation designed to eliminate such discrimination. More than 200 persons came to address these hearings. Diversified groups representing religious societies and congregations, labor unions, employers groups, civic organizations and organizations for the advancement of minority races and nationalities testified before them. All were in favor of some type of legislation—some made concrete suggestions and others just general presentations.

After listening to these citizens the committee offered a draft of a proposed bill embodying the provisions which it deemed most desirable and effective and which most represented the wishes of the citizens of the Commonwealth. From this drafted proposal the Fair Employment Practices Act, now administered by the Massachusetts Commission Against Discrimination, came into being. On August 12, 1945, the law became effective and the then entitled Fair Employment Practice Commission went to work.

Like the proposals being considered today in S. 1308, this legislation contained provisions for complaints to be filed with the Commission by aggrieved parties, investigations by the Commission; informal attempts at solutions by conference, conciliation, and persuasion; upon failing these, notices of public hearings; testimony under oath; and finally an order requiring respondent to cease and desist and to take affirmative action. Also the legislation provided for judicial enforcement on behalf of the agency and judicial review on behalf of the respondent.

Our Commission has been administrating these laws for 21 years and we believe that the rest of the nation can benefit from our experience. We find that wise and judicious use of the tools of administrative proceedings,—the investigations, conferences, public hearings and cease and desist orders with their applicable affirmative actions have had a telling effect not only in eliminating discriminatory acts but in their prevention at the same time. The power of the threat of public hearings before our agency and the possibility of the cease and desist and affirmative orders have been of immeasurable educational value.

Employers know that when they are summoned before the Commissioners of our Agency, they are facing persons who work with problems of discrimination day in and day out. They know that they are facing persons chosen for the task because they have spent years, sometimes a lifetime working in the complex thicket of human relations of the type that often impedes progress in a heterogeneous society such as ours. They know that they are facing persons who will be conciliatory when practical, but who will not hesitate to use their full powers to bring about compliance when the occasion calls for it. They know that they are facing persons who will be fair but not neutral; whose jobs is to eradicate discrimination in employment wherever it may be found when based on race, color or religion.

The expertise of the persons who occupy these positions of public trust should not be minimized. For here is the great strength of the administrative approach

to any social problem. The right of civil action in matters dealing with discrimination in employment is unknown to us. We adhere solely to the administrative proceedings. We believe that they can accomplish the end swiftly because they are not dependent upon a calendar and effectively because the arbiters of these disputes work with these problems and none other. And there is seldom a disguise for discriminatory practices which they have not met before.

In the 21 years in which our public policy has prohibited discrimination in employment within the Commonwealth only 56 employment cases have gone to public hearing, cease and desist orders have been issued and only two agency determinations have been the subject of appeal to the courts. In one case the Commission found against the complainant and this finding was upheld by both our Superior Court and our Supreme Judicial Court. The other case involved an aspect of discrimination other than race, color, or religion but one covered under our law. The finding and order to cease and desist in the latter case was upheld by the Superior Court and is presently being appealed to the Supreme Judicial Court.

But the testimony to the success of a strong administrative approach is not seen best in these statistics but rather in statistics which do not exist. Our Commission keeps a carefully documented record of each case including a follow up. The testimony of success can be found in the column marked "repeat violations," where the accumulations in that column are minuscule. This is no accident. Employers in Massachusetts are aware of the powers given to our agency, are aware of the expertise of the Commissioners and are aware that the citizens of Massachusetts labored hard to bring about this administrative machinery and they intend that we use it. When we have used it once we have never had to return to use it again and our legislature has been diligent in adding to our tools whenever a loop hole could be found.

Needless to say, we were pleased when the Congress of the United States placed the public commitment of the United States Government behind the desire of the citizens to bring about equal employment opportunity throughout the land. It meant to us that the rest of the Nation had seen what our many study Commissions had gleaned over 20 years ago from the citizens of Massachusetts. However we are very distressed that a strong administrative approach and the valuable progress which could have been made under it, had been ignored. We have proved that all meaningful tools known to administrative proceedings and honed from the vast experiences of the many other administrative agencies must be made available to those responsible for bringing about equal job opportunities. These have been made available to the solution of other social concerns such as labor disputes with a great measure of success and are needed here.

If we can do better, then we must; for not to do our best is to court failure, and we cannot fail. Congress recognized an urgent American problem when it enacted Fair Employment Practice legislation in 1964. If EEOC cannot do the job for want of proper and adequate tools then the courts must. But the courts need not, for we in Massachusetts are firmly convinced that EEOC can and we plead that you give it the tools and it will.

PREPARED STATEMENT OF PROF. WILLIAM P. MURPHY, MEMBER OF THE MISSOURI COMMISSION ON HUMAN RIGHTS

My name is William P. Murphy. I am a member of the Missouri Commission on Human Rights and also a professor of law at the University of Missouri, where I have taught the courses in Constitutional Law, Labor Law and Administrative Law. At the present time, I am on leave from Missouri under a one year appointment to the staff of Sam Zagoria, a member of the National Labor Relations Board.

The Missouri Commission on Human Rights was created by the legislature in 1957, so we are celebrating our tenth birthday this year. In 1957 the Commission was given jurisdiction to receive charges alleging discrimination in the area of employment, to investigate such charges and "to make recommendations for the removal of any discrimination" revealed by the investigation. The Commission was not given any power of legal enforcement in situations where discrimination was found to exist and the Commission was unsuccessful in achieving voluntary correction by persuasion and conciliation.

Experience demonstrated that very frequently the discriminating party would either deny the Commission's finding that discrimination existed or admit the discrimination and refuse to correct it, knowing that the Commission was powerless to resort to legal sanction. Discussions with Negro leaders revealed that in a large number of cases the victims of discrimination did not bother to resort to the Commission because they felt that it was futile to do so. At the same time a Commission survey which reached into all counties of the state indicated the existence of widespread discrimination in employment practices.

In 1960, therefore, the Commission recommended to the legislature and the governor that the statute be strengthened to give the Commission the power to issue complaints when conciliation failed, to hold hearings on the complaints, to issue cease and desist orders when violations were found, and to seek enforcement of those orders in court. The legislature responded to the Commission's recommendations, and a new statute was enacted providing for legal enforcement as indicated. This new statute became effective in October 1961. Since that time the experience of our Commission has completely justified the decision to strengthen our power. The number of charges filed increased sharply; since 1961 we have processed over 700 cases. Investigation determined that discrimination existed in more than one-third of this number. We found also that the power of legal enforcement substantially reinforced our efforts to achieve compliance through conciliation and negotiation, with the result that in only one case has it been necessary to file a complaint and go to a hearing. I might add that in 1965 the legislature prohibited discrimination in places of public accommodation and vested our Commission with authority to enforce that statute.

The one case in which conciliation failed involved a school district in Southeast Missouri, an area of the state where segregation patterns are deeply rooted. The school district consolidated the student bodies of a white and Negro school but dismissed all the Negro teachers. After a two-day hearing, the Commission issued an order directing the school board to offer employment to two Negro teachers. As one of the Commissioners who sat on the case, I take some pride in the fact that this was the first case in the nation, so far as I know, in which a state commission directed such remedial action in the sensitive area of faculty desegregation. The hearing was held, of course, in the area where the schools were located, was well attended and widely publicized. The Commission believes that the hearing and the ensuing order have had a salutary effect in achieving voluntary compliance and in supporting our conciliation efforts.

In summary, then, our experience in Missouri has been that legal enforcement powers are essential if the purposes of anti-discrimination statutes are to be achieved. In that respect our experience is certainly not unique. Without exception, so far as I know, every study which has been made of anti-discrimination efforts at the state level reaches this same conclusion.

Experience with welfare legislation at the federal level teaches the same lesson. Of direct relevance is the situation of the 1930's when the issue was the right of workers to engage in union activity free of employer interference and reprisal. Section 7(a) of the National Industrial Recovery Act of 1933 recognized the rights of workers, and a National Labor Relations Board was created to protect them. But the Board could only seek compliance by persuasion and negotiation; it had no enforcement powers. The result was that in most cases the rights were ignored. In consequence, Congress in 1935 enacted the National Labor Relations Act which created the present National Labor Relations Board with legal enforcement powers almost identical with those which this bill would confer upon the Equal Employment Opportunity Commission. I suggest that in the 1960's the right of Negro workers to be free of racial discrimination in employment practices is directly analogous to the situation of the 1930's and the right of workers generally to be free of discrimination because of their union activities. The teaching of history and experience is clear; if the rights are to be realized and protected, the power of legal enforcement is essential.

Now if I may, I would like to call attention to several other points which occurred to me as I read the bill.

First, I would mention those provisions which carry forward the present policy of Title VII under which charges filed with the EEOC are referred to state authorities for action. Although the Missouri Commission is one of the youngest of the state agencies in this area, I am proud to say that, with the active support of Governor Warren E. Hearnes, we were one of the first state agencies to adapt its appropriations, staff and procedures to the system of federal-state cooperation

recognized in Title VII. At the present time about sixty percent of our cases come to us by referral from the EEOC. In these days of increased centralization and federal preemption, we applaud the fact that Title VII affords to states which are willing to act the opportunity to do so. This procedure enables the states to perform the useful role on our federal system which the Constitution contemplates. I hope the Committee will make it clear in the legislative history that this example of "cooperative federalism" should continue. I would also call attention to the proposed amendment of section 709(b) which authorizes EEOC to "engage in and contribute to the cost of research and other projects of mutual interest" undertaken by state agencies, to utilize the services of state agencies and pay for such services "by advance or reimbursement." Under a similar provision in the present law, the Missouri Commission has received several grants which we appreciated and which we used constructively to good advantage. Under present law, however, payments by EEOC to state agencies can be made only by way of reimbursement. This limitation places considerable economic hardship on state agencies which must meet salaries and costs on a current bassis and which do not have any cushion of reserve funds. We urge the retention of the language permitting payment in advance.

Second, I note that the bill vests in the EEOC the functions of investigation, conciliation, issuance of complaints and adjudication. Section 706(n) on the other hand, provides that the Attorney General shall conduct all litigation to which the EEOC is a party. This strikes me as a very unusual departure from customary federal regulation through administrative process. The typical pattern is to vest all functions in the same agency and then, as required by the Administrative Procedure Act, to provide the necessary procedural safeguards by separation within the agency. The outstanding exception is the National Labor Relations Act, which vests the powers of investigation, complaint issuance and litigation in an independent General Counsel and confines the National Labor Relations Board, in complaint cases, to the function of adjucation. The reason for that separation, however, is peculiar to the administration of the labor law and Congress has not repeated that structure in any other agency. This bill on the powers of EEOC is unique, however, in that it separates the function of investigation and complaint issuance from the function of conducting litigation and vests them in completely different agencies. The practical advantages of putting these functions under the same control are obvious. I realize there may be reasons of which I am not aware for this bill's unusual departure from time-tested practice, but I urge that very careful consideration be given to this matter.

Third, I am concerned by those provisions of the bill which, in my judgment, do not sufficiently recognize the procedural rights of the individual who is the victim of the alleged discrimination. Under Title VII of the Civil Rights Act of 1964 the individual can sue in federal court if the EEOC's conciliation efforts are unsuccessful. If he does sue, then of course he has all the procedural rights of a party in litigation. The proposed bill, however, sharply circumscribes the rights of a changing party on whose behalf EEOC issues a complaint.

Section 706(g) provides that the charging party ("persons aggrieved") "may submit briefs or other written submissions when such are permitted or directed, may be present to observe at any stage of the proceedings, with or without counsel, and may appeal or petition for review to the same extent as a party, but without the permission of the Commission persons aggrieved may not otherwise participate in the proceedings." I suggest that this is an unwarranted restriction on the procedural rights of an individual to participate in a proceeding which will determine his substantive rights. In unfair labor practice proceedings under the National Labor Relations Act, the parties to the litigation are the General Counsel and the respondent. The charging party, on whose behalf the General Counsel has issued the complaint, can cross-examine witnesses called by the General Counsel and respondent, introduce witnesses of his own, and file exceptions to the the decision of the trial examiner. It is common practice for the charging party to introduce testimony and other evidence, offer legal arguments and request remedies which are in addition to the case presented by the General Counsel. It seems to me that the rights of the individual should be no less under this legislation. Under the NLRA, the rights of the charging party are recognized by Board regulation, not in the statute. Here, however, they are specified in the bill itself, and therefore this is where they should be recognized more fully.

I note also that Section 706(i) authorizes the EEOC and the respondent to settle a case by agreement between themselves, but without the agreement of

the charging party. I believe this is contrary to EEOC's practice under present law, and I suggest that it is a step backward to repudiate that practice. It is true that Section o(1) gives the individual the right to sue if EEOC refuses to issue a complaint or settles a case after complaint has issued. In such a suit section o(2) directs the court to disregard the action of the EEOC. I submit that this is an unrealistic effort to avoid the prejudice to the plaintiff resulting from a settlement agreement. It would be much better not to authorize any settlement in the first place without the consent of the charging party.

Finally, I refer to Section 706(h) of the bill, which sets forth the remedial power of the EEOC when, after hearing, it finds that an unlawful employment practice has been committed. Under this section, the EEOC is empowered to order the respondent to "cease and desist from such unlawful employment practice, and to take such affirmative action, including reinstatement or hiring of employees, with or without back pay . . . as will effectuate the policies of this title . . ." This language is almost identical with that found in Section 10(c) of the National Labor Relations Act, which confers remedial authority upon the National Labor Relations Board in unfair labor practice cases. The labor law makes it an unfair labor practice for an employer to restrain or coerce employees in the exercise of their right to engage in union activities or to discriminate against them because of such activities. Experience has demonstrated that, as interpreted by the Board and the courts, Section 10(c) does not provide remedies adequate to deal with these offenses. For many years the Board, the courts and the Congress have been urged to authorize and provide more effective remedies. Under any regulatory statute it is, of course, impossible to anticipate the different factual situations which may arise and the variety of remedies which might be appropriate. The point is that in this bill it might be better to clarify the remedial power of the EEOC at the outset and thus avoid a duplication of the unfortunate experience under the National Labor Relations Act. For example, consider an award of double or treble back pay; an award of repayment for financial losses, in addition to wages, which flow from the loss of employment; or an order which goes beyond relief to the individual and directs the adoption of an overall plan for eliminating discrimination. Such remedies as these are not now available under the NLRA and there is serious doubt that they would be permissible to the EEOC under the language of this bill. I suggest, therefore, that consideration be given to strengthening the remedial power granted in Section 706(h).

PREPARED STATEMENT OF ALFRED E. COWLES, EXECUTIVE SECRETARY, WASHINGTON STATE BOARD AGAINST DISCRIMINATION

The Washington State Board Against Discrimination has been charged with the task of eliminating and preventing discrimination because of race, creed, color or national origin. It has had adjudicatory power over discrimination in employment since 1949, and over discrimination in places of public accommodation since 1957. In other areas, it has advisory and investigatory jurisdiction only.

When the Washington Board receives a complaint of ethnic discrimination in employment or in a place of public accommodation, it is assigned to a field representative for preliminary investigation to see if there is reasonable cause to believe that an unfair practice has occurred. If reasonable cause is found, negotiations are commenced to settle the case through a conciliated agreement. If conciliation fails, the chairman of the Board convenes a hearing tribunal, typically composed of one lawyer, one person from the local community, and one member of the State Board, who must not have previously participated in the case. If, after the hearing, the tribunal finds that the charged person has engaged in an unfair practice, it orders him to cease and desist the unfair practice and to take such affirmative action as will carry out the purposes of the Law Against Discrimination. The order is appealable to the state superior court and ultimately to the state supreme court.

The Washington State Board Against Discrimination has experience in administering a human rights law that gives it cease-and-desist powers over some ethnic discrimination and no cease-and-desist power over other ethnic discrimination. Our experience in administering this law convinces us that the power to issue cease-and-desist orders is essential to the accomplishment of the task of a human rights agency.

This is not because it takes a cease-and-desist order to eliminate a discriminatory practice. In fact, only one percent of the cases which our Board has processed have gone to a hearing. All the rest have been settled through conciliation, or have been dismissed for lack of jurisdiction, or on a finding of no reasonable cause to believe that an unfair practice has occurred.

The value of the power to issue cease-and-desist orders lies more in its presence than in its use. The simple presence of the power to go to a hearing makes the charged party take the Board seriously and negotiate seriously with its representatives during the conciliation process. The result is usually a settlement that is acceptable to both sides. To put it bluntly, the charged party is usually not motivated to negotiate seriously with the human rights agency unless by doing so it stands to avoid having the same issues raised in a formal, adversary proceeding.

In saying this, I do not want to create the impression that the possibility of an adversary hearing puts pressure on the charged party only. It is often said that when a case goes to court, everyone loses. This is especially true in the human rights area. So far as the complainant is concerned, if he does not get *speedy* relief, he gets no relief at all—and hearings take time. So far as the state agency is concerned, a hearing often consumes an amount of man hours and money that seems unjustified in terms of the practical impact of the particular case on the elimination and prevention of discrimination generally.

But, as I have said, the true value of the cease-and-desist power lies not in its use, but in its salutory effect on the conciliation process. It balances the powers at the conference table, and makes for true negotiation between equals.

In recent years, my staff has avoided hearings on all but a few cases, and at the same time has settled cases on conciliated terms that eliminate and prevent discrimination, and that are viewed as fair by both our Board and the charged party. On the other hand, we have had little success in appealing to the better natures of persons whose ethnic discrimination does not come within our Board's cease-and-desist power, although we have tried to resolve every human rights problem which is brought to our attention, whether or not it is within the scope of our cease-and-desist power.

We support legislation to give the Equal Employment Opportunity Commission adjudiciatory power over complaints like that now possessed by the Washington State Board Against Discrimination.

PREPARED STATEMENT OF GEORGE S. PFAUS, DIRECTOR, NEW JERSEY DIVISION ON CIVIL RIGHTS, DEPARTMENT OF LAW AND PUBLIC SAFETY

My name is George S. Pfaus and I have been the Director of the New Jersey Division on Civil Rights for the past five years. I have studied Senate Bill No. 1308 and I am strongly in favor of its adoption. It has a number of good features which will improve the effectiveness of the Equal Employment Opportunity Commission, but I am especially interested in the provisions which empower the Commission to issue Cease and Desist Orders which will be enforceable in the Federal Courts.

The New Jersey Law Against Discrimination was adopted in 1945. In this first enactment the Law prohibited discrimination in employment and established what was then called the Division Against Discrimination in the State Department of Education. This was the second State agency in the country established to deal with discrimination. In the intervening years the Law has been amended many times so that there is now virtually complete coverage of places of public accommodation and housing as well as employment. The name of the Division was changed to Division on Civil Rights, and in 1963 the agency was transferred from the Department of Education to the Department of Law and Public Safety in order to give greater emphasis to its law-enforcement responsibilities. This Department is headed by the Attorney General of New Jersey, Arthur J. Sills.

Our Law has always had, beginning with its first enactment in 1945, provision for the issuance of Cease and Desist Orders by the Division Director, with these Orders enforceable in the courts. These provisions are found in N.J.S.A. 18:25-17 and 18:25-19.

During the past five years, resulting in part from the social revolution that is going on all over the country and in part from the increased activities of the

Division, our complaint load has increased from 200 per year to 800 per year. Currently, these divide roughly into housing—50%, employment—40%, and public accommodations—10%.

In keeping with the provisions of our Law, the Division operates in what has now become the standard form for anti-discrimination agencies: a complaint is filed with the Division by an aggrieved person or group; the complaint is investigated with both the complainant and the respondent; if the facts adduced in the investigation support the allegations of the complaint, a finding of probable cause is made; if these facts do not support the allegations, a finding of no probable cause is made; if the finding is one of probable cause, efforts are made with the respondent to conciliate the issues; if the conciliation is successful, the respondent and the Director of the Division sign a Consent Order and Decree; if conciliation is not successful, a public hearing is held before a hearing examiner designated by the Director from the Division's panel of examiners; at the conclusion of the hearing and following his study of the record the hearing examiner files a written report with the Director which contains the examiner's recommended findings of fact, conclusions of Law and disposition; the report of the hearing examiner and the entire record are studied by the Director who then issues an Order.

Both the Consent Order and Decree which follows successful conciliation and the Director's Order which follows the public hearing contain cease and desist provisions for the kind of discrimination that had been practiced and provisions for affirmative relief for the complainant. Of course, if the facts so warrant, the hearing examiner will recommend, and the Director's Order will provide, for dismissal of the complaint.

The respondent may appeal a Director's Order directly to the Appellate Division of the Superior Court. If the respondent neither obeys the Order nor appeals it, the Division goes to the same court for affirmation of its Order. When an Order has been affirmed by the court, either on appeal from the respondent or on a request for affirmation from the Division, the court tries the case solely on its record. In the 22 year history of the Division we have never lost a case in court. A number of these cases have been decided by the New Jersey Supreme Court. Failure of a respondent to obey the affirming Order of the Court will result in the sanctions of contempt proceedings.

Provision for enforceable Cease and Desist Orders is of paramount importance. In an Order against any specific respondent it serves, in a negative way, as a constant prod against repetition of the same kind of discriminatory practice against which the Order was issued. Of even greater value is its use as a foundation for securing the adoption and carrying out of programs of broad affirmative action. The Cease and Desist provisions of an Order, coupled with an intelligently aggressive approach by the agency staff, almost always result in the adoption by the respondent—employer of improved methods of recruiting, testing, selection, placement, training, up-grading, and all the other components of a set of personnel practices that truly can provide equal opportunity for all persons without any form of active or passive discrimination. Without this cease and desist foundation in the Order only an enlightened employer will undertake equal employment affirmative action programs. Such an employer will do this, anyway, without the necessity of any kind of Order.

When the enforcement agency has the authority to issue Cease and Desist Orders all employers are much more amenable to a persuasive approach aimed at voluntary adoption of affirmative action policies and programs, even without complaints being processed against them. Employers are susceptible to the potential of an Order containing Cease and Desist provisions. The mere presence in the statute of this provision makes possible a "wholesale" approach to the problem of discrimination in employment. The total effect of such an approach over even a small period of time, would far exceed the results of the "retail" program of righting the wrongs contained in the individual complaints filed with and processed by the agency.

In New Jersey, we want the statutory authority for the Federal Equal Employment Opportunity Commission to be as strong as possible, and certainly to be as strong as the provisions of our own Law for our own Division. We are not in any way jealous of the Federal agency, but consider it a very valuable partner in this vitally necessary crusade to eliminate all forms of discrimination in our town, State, and throughout the country. The deferral program, which is

continued in S–1308, has worked splendidly and without a single hitch as far as New Jersey is concerned. In dealing with employer-respondents, we have found that the existence of the Federal statute and the E.E.O.C. has given us two strong "assists." One is the simple implication that "the Feds will get you if we don't!" The other is that all our respondent's competitors face the same compliance requirements as he does, either from State laws and agencies in states which have agencies similar to our own, or from the E.E.O.C. in the other states.

I earnestly hope that S–1308 will become law as soon as possible.

PREPARED STATEMENT OF WILLIAM H. BOOTH, CHAIRMAN, NEW YORK CITY COMMISSION ON HUMAN RIGHTS

The City Commission on Human Rights has a dual responsibility to attempt to dissolve prejudice before it develops into overt acts of discrimination, and to enforce the law banning acts of discrimination when that law is broken. The entire agency is continually engaged in education and, to some extent, in conciliation. Enforcement is the special sphere of the legal and investigating arms of the agency.

In the early years of the Commission, however, education and conciliation were the agency's most important tools of persuasion; until successive amendments to the law strengthened the Commission's enforcement powers, they were sometimes its sole reliance. Today, when education and conciliation fail, the Commission has at its disposal the subpoena, the public hearing, the posting power, the injunction, and, as a last resort, referral to the courts for cease and desist orders, injunctions and criminal prosecution. These are the tools by which it carries out its mandate under the expanded law on human rights to "eliminate and prevent discrimination in employment, in places of public accommodation, resort or amusement, in housing accommodations and in commercial space, because of race, creed, color or national origin."

When I was designated by Mayor Lindsay as Chairman of the City Commission on Human Rights, the Mayor charged me with the responsibility of combating discrimination in industry, and thus to secure more jobs for Negroes and Puerto Ricans in New York City. Mayor Lindsay stated that he felt that the New York City Commission on Human Rights should be an effective agency to breakdown discrimination in securing a better deal for all people in New York City. No matter what other programs are undertaken to improve the Negroes' circumstances they cannot succeed unless we eliminate job discrimination. Since that time I have come to the conclusion that effective enforcement machinery is indispensable to demanding and securing equal employment.

Prior to January of 1966, the City Commission on Human Rights had no enforcement power with respect to unlawful discriminatory acts in employment. However, since that time the City Commission has had concurrent jurisdiction with New York State with reference to job discrimination within the five boroughs of New York City. Some persons are of the opinion that a multiplicity of agencies in this field may produce serious problems; however, my experience has been that the law can more effectively be enforced when you have a strong federal law, a strong state law, and a strong local law; and for this reason I am urging that this law be amended to grant to the Equal Employment Opportunity Commission the enforcement power which both the New York State and the New York City Commission on Human Rights have.

The present law permits the New York City Commission to entertain the complaint of any person who feels he is aggrieved because of discrimination. He or his lawyer may file such a complaint with the Commission against any employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice, or the Commission on its own motion may file a complaint.

The Commission is required to make a prompt investigation and decide whether or not there is probable cause to credit the allegations of the charge. If the Commission so finds, then it may endeavor to eliminate the unlawful discriminatory practice, by conciliation or persuasion, however attempts to conciliate are not mandatory. The terms of such conciliation agreement may include provisions requiring the respondent to refrain from continuing unlawful discriminatory

practices in the future. The agreement may also contain further provisions providing for the entry in Court of a consent decree embodying the terms of the conciliation agreement.

In case there is a failure to eliminate the unlawful discriminatory practice, the Commission may hold a hearing. If after the evidence is received and the Commission shall find the respondent guilty of an unlawful discriminatory practice, the Commission shall state its findings of fact and shall issue an order requiring the respondent to cease and desist from an unlawful discriminatory practice or the Commission can take such affirmative action requiring the respondent to hire the complainant, reinstate with back wages or even to give compensatory damages. During this procedure the Commission has the power to get a restraining order in the Supreme Court. This order would restrain the respondent from doing an act which during the pendency of the proceeding would tend to render any order of the Commission ineffectual. The City's law is subject to judicial review. In addition there is a penal provision which may be exercised against any person who does wilfully violate an order of the Commission. Such person shall be guilty of a misdemeanor punishable by imprisonment for not more than one year or by a fine of not more than $500 or both.

It is my belief that since our strong enforcement powers have been in effect, the City Commission has been able to secure more jobs for both Negroes and Puerto Ricans. During the year of 1966 the Commission embarked upon a program to open up jobs to Negroes and Puerto Ricans and members of other minority groups in sectors of the economy which have been consistently closed to them. Our agency gave this top priority during this period. We confronted contractors that were doing business with the City and insisted that they prove that their work forces were integrated. Jobs were obtained for minority group workers in ten major firms in which the Commission was concerned during the year; total 858. In each company the number of such employees on the rolls when the Commission staff made its initial check was exceedingly small in proportion to the firms' total work force; for example, one firm with a work force of 2500 which was hiring Negroes and Puerto Ricans at a rate of 5% is now hiring them at the rate of 20%. The firm took on 497 new employees of whom 405 were Negroes, 86 Puerto Ricans and 6 Orientals. The Commission attributes the increase of hiring of Negroes and Puerto Ricans to its influence. I believe that a law that conciliates but does not compel cannot work. Conciliation works best when compulsion is waiting in the wings.

It is my belief that a settlement is an object lesson. A strong law is likely to deter violators and encourage complainants, a weak one promises the opposite effect. In the field of discrimination in housing where we have had many more years of experience and struggle to enforce desegregation we have found that as our enforcement powers have increased we have correspondingly been able to secure greater voluntary compliance. I am therefore of the opinion that if the Equal Employment Opportunity Commission is empowered to conclude a complainant's case by going into court to enforce cease and desist orders etc., getting full compliance will be more of a reality. I urge the passage of an amendment to Title 7 of the Civil Rights Act of 1964 to conform with bill number S. 1308.

Mr. COWLES. My name is Alfred E. Cowles, executive secretary of the Washington State Board Against Discrimination.

Mr. PFAUS. I am George Pfaus, director of the New Jersey Division on Civil Rights.

Miss WITHEY. I am Anna Withey, general counsel of the New York City Commission on Human Rights.

Mr. WEBBER. I am Malcolm Webber, chairman, Massachusetts Commission Against Discrimination.

Mr. MURPHY. William Murphy, commissioner, Missouri Commission on Human Rights, and professor of law at the University of Missouri.

Mr. COWLES. With me is assistant attorney general of the State, Morton M. Tytler.

Senator CLARK. Mr. Cowles, will you start it out?

STATEMENT OF ALFRED E. COWLES, EXECUTIVE SECRETARY, WASHINGTON STATE BOARD AGAINST DISCRIMINATION, ACCOMPANIED BY MORTON M. TYTLER, ASSISTANT ATTORNEY GENERAL OF THE STATE OF WASHINGTON

Mr. COWLES. The board against discrimination in the State of Washington was established in 1949. We have powers to prevent discrimination in the area of employment and also public accommodations.

When the board receives a complaint of discrimination in employment the case is referred to one of our field representatives who conducts an investigation.

If we find that reasonable cause is there to substantiate the fact that discrimination has taken place, then our staff commences the conciliation process. We try to arrive at a mutually satisfactory conclusion of the case through the conciliation process.

If, however, the conciliation attempts do not resolve the issue, the chairman of the board is empowered to appoint a tribunal, a tribunal of five citizens whose job it is to hear the case in a public manner, in front of the press and so on.

If, after the hearing, the tribunal finds that the aggrieved person has indeed engaged in an unfair practice, he then orders a cease-and-desist order and orders that affirmative action take place to resolve the complaint.

The order, however, is appealable to the State superior court and ultimately to the State supreme court. The board against discrimination has had experience in administering a human rights law that gives the cease-and-desist power over certain kinds of ethnic discrimination but we do not have cease-and-desist power over other kinds of discrimination.

Our experience in administering this law convinces us that the power to issue cease-and-desist orders is essential to the effectiveness of our work. This is not because it takes a cease-and-desist order to eliminate discriminatory practices.

In fact only 1 percent of the cases that our board has processed have gone to the hearing. All the rest have been settled through conciliation or have been dismissed for lack of jurisdiction or because no reasonable cause has been found after the investigation.

The value of the power to issue cease-and-desist orders lies more in the fact that it is there rather than the fact that we use it. The simple presence of the power to go to a hearing makes the charged party much more willing to conciliate with our board staff and it makes the negotiations much more successful.

The result is usually a settlement that is acceptable to both sides.

Now in concluding let me say this: I do not want to create the impression that the possibility of an adversary hearing puts pressure on the charged party only. It is often said that when a case goes to court everyone loses.

This is especially true in the human rights area. So far as the complainant is concerned, if he does not get speedy relief he gets no relief at all, and the hearings take up a good deal of time.

So far as the State agency is concerned, a hearing often consumes an amount of manpower and money that seems unjustified in terms of

the practical impact of the particular case on the elimination and prevention to discrimination generally.

In recent years my staff has avoided hearing on all but a few cases and at the same time has settled cases on conciliated terms that eliminate and prevent discrimination and that are viewed as fair by both board and the aggrieved parties.

On the other hand, we have little success in appealing to the better natures of persons whose ethnic discrimination does not come within our board's cease-and-desist power.

We strongly support legislation to give to the Equal Employment Opportunity Commission of the Federal Government adjudicatory power over complaints like that power now possessed by the Washington State Board Against Discrimination.

Senator CLARK. Thank you, Mr. Cowles.

Does your Commission have jurisdiction over discrimination in employment?

Mr. COWLES. Yes, it does.

Senator CLARK. What are the principal areas in which you have to deal with discrimination in employment, particularly with respect to kinds of employment and the characteristics of the aggrieved parties?

Mr. COWLES. We have power with respect to employers generally who have eight or more employees, labor unions, and employment agencies. The aggrieved parties are multiracial and we have American Indians, orientals, and 15,000 American Negroes in the State of Washington.

Senator CLARK. About how many complaints have you had on an annual basis; last year, for example?

Mr. COWLES. Last year we had 100 formal complaints and 200 informal complaints.

Senator CLARK. All except one I think you said were resolved by reconciliation?

Mr. COWLES. That is right.

Senator CLARK. Thank you very much.

Mr. Pfaus.

STATEMENT OF GEORGE S. PFAUS, DIRECTOR, NEW JERSEY DIVISION ON CIVIL RIGHTS

Mr. PFAUS. The New Jersey law against discrimination was first adopted in 1945 and in the beginning provided for coverage only in the area of employment. Since then it has been amended many times.

We now cover places of public accommodations and housing. The law definitely has the provision for cease-and-desist orders enforceable in the courts for all types of complaints and for orders that result after conciliation which we call a consent order and decree or for inclusion in orders which result when conciliation is not successful from holding of public hearings by a hearing examiner and regular staff procedure.

I would like to place all my emphasis on the desirability of having provided for the Equal Employment Opportunity Commission the authority for cease-and-desist orders. There are three short paragraphs I would like to read which emphasize that.

Provision for enforceable cease-and-desist orders is of paramount importance. In an order against any specific respondent it serves, in

a negative way, as a constant prod against repetition of the same kind of discriminatory practice against which the order was issued.

Of even greater value is its use as a foundation for securing the adoption and carrying out of programs of broad affirmative action.

The cease-and-desist provisions of an order, coupled with an intelligently aggressive approach by the agency staff, almost always result in the adoption by the respondent-employer of improved methods of recruiting, testing, selection, placement, training, upgrading, and all the other components of a set of personnel practices that truly can provide equal opportunity for all persons without any form of active or passive discrimination.

Without this cease-and-desist foundation in the order only an enlightened employer will undertake equal employment affirmative action programs. Such an employer will do this, anyway, without the necessity of any kind of order.

When the enforcement agency has the authority to issue cease-and-desist orders all employers are much more amenable to a persuasive approach aimed at voluntary adoption of affirmative action policies and programs, even without complaints being processed against them. Employers are susceptible to the potential of an order containing cease-and-desist provisions.

The mere presence in the statute of this provision makes possible a wholesale approach to the problem of discrimination in employment. The total effect of such an approach, over even a small period of time, would far exceed the results of the retail program of righting the wrongs contained in the individual complaints filed with and processed by the agency.

In New Jersey, we want the statutory authority for the Federal Equal Employment Opportunity Commission to be as strong as possible, and certainly to be as strong as the provisions of our own law for our own division. We are not in any way jealous of the Federal agency, but consider it a very valuable partner in this vitally necessary crusade to eliminate all forms of discrimination in our State and throughout the country.

The deferral program, which is continued in S. 1308, has worked splendidly and without a single hitch as far as New Jersey is concerned. In dealing with employer respondents we have found that the existence of the Federal statute and the EEOC has given us two strong assists. One is the simple implication that the Feds will get you if we don't.

The other is that all our respondents competitors face the same compliance requirements as he does, either from State laws and agencies in States which have agencies similar to our own or from the EEOC in the other States.

Senator CLARK. Thank you, Mr. Pfaus.

How many complaints did you process last year?

Mr. PFAUS. The total was 800; of these approximately 40 percent were in the employment coverage.

Senator CLARK. Of that 40 percent in how many instances roughly did you find the complaint was justified?

Mr. PFAUS. Roughly not quite half. The balance we made a finding of no probable cause.

Senator CLARK. Do you have a provision against discrimination on grounds of sex?

Mr. PEAUS. No; we have age but we do not have sex.

Senator CLARK. Most of the complaints in New Jersey are from Negroes and Puerto Ricans?

Mr. PEAUS. At least 90 percent of the complaints are Negroes. There is a small percentage, maybe 3 or 4 percent, who are Puerto Ricans.

Senator CLARK. The fact that you had 800 complaints last year would seem to indicate that New Jersey has not completely solved the problem of discrimination in employment?

Mr. PEAUS. That would be the understatement of the year, Senator.

Senator CLARK. Thank you very much, sir.

Miss Withey?

STATEMENT OF MISS ANNA WITHEY, GENERAL COUNSEL, NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Miss WITHEY. Mr. Chairman, prior to January 1966 the city commission did not have any enforcement power on the question of employment. After January 1, 1966, the New York State Legislature gave the city commission concurrent jurisdiction with the New York State commission.

Since that time we have been entertaining complaints of that nature. During the last year we have had some 125 complaints in the field of employment. We still have pending of those 125, some 45. About 30 percent were properly settled and the others are still being processed.

We have about five cases that are pending in the New York State Supreme Court at this particular time. However, our last revision in the law does give us full authority to issue cease-and-desist orders and we also have a great deal of teeth in our law with reference to enforcement power.

We also have the right to go in and get a restraining order in the event the respondent would be doing something which would render an order of the commission ineffectual.

The city law is also subject to a judicial review. In addition there is a penal provision which may be exercised against any person who does willfully violate an order of the commission. Such person being guilty of a misdemeanor punishable by imprisonment for not more than 1 year or by a fine of not more than $500 or both.

It has been our experience during the past year, however, that a strong enforcement law has enabled the commission to secure more jobs for both Negroes and Puerto Ricans. During the year 1966 the commission embarked upon a program to open up jobs to Negroes and Puerto Ricans and other members of minority groups.

Our agency gave this top priority. We confronted contractors that were doing business with the city and insisted that they prove that their work force were integrated.

Jobs were obtained for minority group workers in 10 major firms in which the commission was concerned, during this year there was a total of 858 jobs. In each company the number of such employees on the roles when the commission staff made its initial check was exceedingly small in proportion to the firms total work force.

For example, one firm with a work force of 2,500 originally hired Negroes and Puerto Ricans at the rate of 5 percent is now hiring at the rate of 20 percent.

Senator CLARK. I want to ask you whether the tight labor market has anything to do with that?

Miss WITHEY. I think it might have a great deal to do with it. But you have to consider all the circumstances together.

Senator CLARK. Do you think that it also evidences a more cooperative effort?

Miss WITHEY. I think cooperation is very important, too.

Senator CLARK. Do you think it is improving?

Miss WITHEY. Pardon?

Senator CLARK. Do you think it is improving?

Miss WITHEY. I think that the fact that we have teeth in the law, persons do not want to tackle this, to tangle with the law. They also know that it is the right and proper thing to do. All these factors help to make compliance.

Senator CLARK. I am sure that is true but I am wondering whether you think over the period of your experience on the city commission that the general situation with respect to discrimination in employment has improved.

Miss WITHEY. I would say that it has improved somewhat; yes.

Senator CLARK. There are still a lot of problems.

Miss WITHEY. I think that is an understatement.

Senator CLARK. Senator Javits, who could not be here, advises me that the New York City Commission is in the process of preparing a study of discrimination in employment in the building trades.

He would like to have a copy of that study submitted to this subcommittee when it is completed.

When do you expect to have this finished?

Miss WITHEY. I expect that the report will be released within the next 2 weeks.

Senator CLARK. Would you be kind enough to send us a copy for inclusion in the record?

Miss WITHEY. I would be very glad to, yes.

Senator CLARK. At Senator Javits' request when the report is received it will be printed in the record at the end of the testimony of this panel.

(At the time this hearing went to press the material referred to had not been received by the subcommittee.)

Miss WITHEY. I believe that a law which conciliates but does not compel cannot work. Conciliation works best when compulsion is waiting in the wings. It is my belief that the settlement is an object lesson, a strong law is likely to deter violators and encourage compliance.

A weak one promises the opposite effect. I know that in the past year in the field of discrimination in housing we have been able to settle more cases than we had prior to the time that we had teeth in our law, the right to issue orders and the right to go into court and enforce these orders. We have been able to settle on an average of four out of every five complaints that have come by getting the compliance.

Senator CLARK. Do you have a backlog of undisposed complaints?

Miss WITHEY. We have some what of a backlog but I say that we

are gradually disposing of our backlog. I would say that at the present time we might not have more than a hundred cases in backlog.

Senator CLARK. About how long does it take from the time a complaint is filed on the average to a disposition of the matter by conciliation or by the issuance of a cease-and-desist order?

Miss WITHEY. With reference to an employment case it would possibly take somewhere between 60 days and 4 months.

Senator CLARK. Thank you very much, Miss Withey.

Mr. Webber.

STATEMENT OF MALCOLM C. WEBBER, CHAIRMAN, MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Mr. WEBBER. The Massachusetts Commission Against Discrimination has jurisdiction over employment, housing, public accommodations and some phases of school operations.

It has broad coverage in that it covers the areas of age and sex as well as those of race, religion, and color. It has been in existence for 21 years. During this time I think we have built a body of experience of some value. I agree with the basic tenets of the previous speakers and I don't want to be repetitive so I will disregard this.

Senator CLARK. Yes, and I have read your statement and unfortunately there are no other Senators here.

Mr. WEBBER. But I did want to say that we don't have any civil powers, we don't have the power to go to civil court. We have never felt this to be a serious lack because the expertise that is built up within the Commission and the power, the threat of being able to issue a cease-and-desist order we have found has aided our conciliation to the point where those cases were—where we find probable cause we have been able to conciliate in the great majority of cases.

Senator CLARK. Let me ask you what happens. You say you have no civil enforcement powers. What happens if you issue a cease-and-desist order and the defendant does not obey it?

Mr. WEBBER. This is enforceable through the courts, sir, and they would be in contempt which is a $500 fine or a year in jail.

Senator CLARK. So to that extent you have a civil remedy?

Mr. WEBBER. Yes, we have an enforceable order.

Senator CLARK. Would it be civil contempt or criminal contempt? There is a very slim distinction, of course.

Mr. TYTLER. I don't know about Massachusetts, Senator, but in Washington it is civil contempt.

Mr. PFAUS. I am sure it is civil in Massachusetts.

Senator CLARK. Thank you.

Professor Murphy.

STATEMENT OF PROF. WILLIAM P. MURPHY, COMMISSIONER, MISSOURI COMMISSION ON HUMAN RIGHTS

Professor MURPHY. Senator, I would like for the record to show that I am here wearing two hats today.

Senator CLARK. I gathered that from your statement. I congratulate you and the law school for turning you loose to do this fine civic work.

Professor MURPHY. Thank you, Senator. The first three pages of my statement I am speaking for the Missouri Commission on Human

Rights, but for everything that is said in the last three pages they can't be held responsible.

Senator CLARK. Those are some of your most valuable suggestions.

Professor MURPHY. Senator, I would like to reiterate, of course, our full support of everything that has been said for cease-and-desist powers.

Indeed, it seems to me that this is an exercise in documenting the obvious. Rather than recapitulate my prepared statement I would like to take my time, if may, to comment on a statement that was made by one of yesterday's witnesses.

Senator CLARK. Yes; I wish you would.

I don't know whether any of you heard the representative of the U.S. Chamber of Commerce this morning but the U.S. Chamber of Commerce has as its president former Gov. Allan Shivers, of Texas, and they sent a very articulate and able young man in this morning, Mr. James W. Hunt, who testified in opposition to 1308 on behalf of the chamber of commerce.

His general view was that to provide cease-and-desist powers would make matters worse then rather than better because it would antagonize people who might be encouraged to cooperate voluntarily. He suggested that if you have a stick in the closet this would get their backs up and you would get into a lawsuit and that is always unfortunate.

I was going to ask each of you in turn a little later to comment on that. Possibly—suppose we start with Mr. Murphy.

Professor MURPHY. I will comment on it right now. I think the history of the right of workers to engage in union activity in the 1930's is directly parallel.

Senator CLARK. He said he did not think it was. He said collective bargaining was very different from asserting individual rights on behalf of individual people.

Professor MURPHY. Was he able to bring to the attention of the committee any instances in which powers of conciliation without enforcement had really affected the legislative purpose?

I think history would demonstrate to the contrary, Senator.

Senator CLARK. I think so. His view was that since there was not any such power in Federal law now there would be no basis for comparsion. Of course, we probably should have asked him, and Senator Javits has requested that he reply in writing to some inquiries, what the experience of the chamber has been in the various States which do have these enforcement powers.

I think I will ask each of you in turn—perhaps you can start, Mr. Murphy—whether there is anything in your experience which would indicate that your State chambers of commerce are opposed to enforcement powers or whether the business interests, organized or unorganized, have been making efforts to repeal those enforcement powers or have indicated any dissatisfaction with them?

Professor MURPHY. I know of no effort in our State to bring about any repeal of our statute. Our statute at the present time covers not only discrimination in employment but public accommodations. That was added by our legislature in 1965.

At the present time we have bills in the legislature which would extend the antidiscrimination policy into the field of housing. I would be amazed if Missouri were to reverse itself, so to speak, in this area.

Senator CLARK. Now you have a pretty active State chamber of commerce, I imagine. Have they indicated in this any antagonism to your State law?

Professor MURPHY. Not to my knowledge, I should say that I have been a member of the Commission for only 1 year prior to coming here on leave. So there are many of the details of the operation with which I am not personally familiar.

But my impression is, from talking with other Commissioners and the staff people, that we do not get this adamant resistance, at least generally speaking, from the business community. There will be isolated instances; yes, sir.

Senator CLARK. Let me hold you in abeyance for a moment and go down the line and ask Mr. Webber, Miss Withey, Mr. Pfaus, and Mr. Cowles whether you know of any public position taken by your State Chambers of Commerce and whether the business community generally has made any efforts to repeal the section of your respective laws which provides the power to issue cease-and-desist orders.

Mr. WEBBER. There has never been any move on the part of the State chamber of commerce to repeal any section of our legislation, including, what is today much more controversial, sections of our housing law.

I am very proud that the State and the Boston Board of Realtors have supported our housing law and that is one of the strong ones in the country.

Senator CLARK. That is a miracle.

Mr. WEBBER. I think so, too, sir. We do have a State "plans for progress" program in which all the major employers who essentially control the chambers of commerce take an active part. They have been most cooperative.

Senator CLARK. Miss Withey?

Miss WITHEY. I know of no move on the part of any State organization or city organization to repeal the fair housing laws or the law on human rights in any area in New York City or State.

Senator CLARK. Which would include employment?

Miss WITHEY. Yes.

Senator CLARK. Mr. Pfaus.

Mr. PFAUS. Not only is there no move but we enjoy the graces of the—we have two organizations, the New Jersey State Chamber of Commerce and the New Jersey Manufacturers Association. I would like to give you this pamphlet as an example of the kind of cooperation called the "Employer's Guide to the New Jersey Anti-Discrimination Law."

We wrote it and the New Jersey Manufacturers Association paid for its printing and its distribution and the New Jersey State Chamber of Commerce also at its own expense distributed copies of this to every member of the organization throughout the State.

Senator CLARK. Thank you, sir.

Mr. Cowles.

Mr. COWLES. Senator Clark, there is no opposition, either private or overt, to the cease-and-desist power in our law.

Beyond that, Senator, the State board against discrimination in the State of Washington as part of its affirmative action program meets regularly with the business community and particular with the Boeing Co. personnel, which is our largest employer and we find that the relationships between the business community and our agency are very excellent.

When cases of discrimination are discovered they are more than willing to sit down and conciliate.

Senator CLARK. Perhaps from what the lady and gentlemen have said, the position of the Chamber of Commerce of the United States of America is largely a Texas phenomena.

Professor MURPHY. The Junior Chamber of Commerce in Missouri just a few years ago designated the executive director of our commission as Jaycee's Man of the Year. Whatever the seniors might think the juniors are certainly behind us.

Senator CLARK. That is very interesting.

Professor MURPHY. I want to comment on a statement made by Mr. Mitchell yesterday afternoon in which he referred to the policy of State operation in this area and the deferring of cases by the EEOC to State agencies as being a question of States rights.

I would certainly not want to have this program go before Congress with the stigma of States rights attached to it because to me it is not a question of States rights at all. The right to be free from racial discrimination is a Federal right and the Federal Government has the power and the primary and ultimate duty to protect it. At the same time it is true that the States are capable, if they will assume the responsibility, of performing a useful role in this area.

There is a problem, not only in this area but many other areas, of revitalizing State government, of trying to get the States to fulfill their responsibilities and assume a more important role in our system. Reapportionment of State legislatures will have its ultimate historical vindication in the fact that it did contribute to a reinvigoration of State and local government.

Senator CLARK. I quite agree with you. Does seem to me that to the extent that these responsibilities can be decentralized to the States and to the extent that we find the States are picking up that responsibility and carrying it adequately, just to that extent the Federal Government might well stay out of the way and let the States handle it.

It is only when the States are failing to do a good job I think that the Federal Government should intervene. Then in that respect I would like to ask each of you what the relationships of your State and city commissions have been with the Federal Equal Employment Opportunity Commission since it went into the business after the enactment of the Civil Rights Act of 1964.

Perhaps you could start with that, Mr. Murphy.

Professor MURPHY. Our relations have been excellent. At the present time we are getting about 60 percent of our cases in the employment area on a deferral basis from the EEOC.

We have been the recipient of two or three grants for research projects from EEOC. So, both functionally and I think as a matter of personal relationships we have gotten along extremely well with them and I think they would reciprocate that feeling.

Senator CLARK. Yesterday, Mr. Shulman, the chairman of the commission, testified that there was a good deal of what I then called battledoor and shuttlecock in that under the Federal law the complaint would be referred to the State commission for processing but if it did not act by a certain time then the Federal Government would resume jurisdiction and process the complaint.

In Missouri have there been complaints referred by the Federal Equal Employment Opportunity Commission which you have been unable to process in the time so they went back to the Federal Government?

Professor MURPHY. I will answer your question this way, Senator. There have been cases which we have not been able to process within the 60 days provided by the statute.

But they have not gone back to the Federal Government for the reason that their backlog would have prevented the case from being processed, too.

So on what might be called a nonstatutory arrangement we have kept those cases beyond the 60-day limit contemplated by the statute. But I have been advised by a member of our staff who is present here that there has not been a single case which has come to Missouri from the EEOC which has gone back to the EEOC.

Senator CLARK. What is your experience, Mr. Webber?

Mr. WEBBER. When the EEOC was formed our commission attitude was that it was vital and necessary addition to the fight against discrimination in this country. Our relationship has been cooperative. We have again also received grants for research purposes that have been very valuable.

Last year I believe it was 17 complaints referred to the Massachusetts commission from the EEOC. This year there has been one. To my knowledge there have been two here that have gone back.

This does not mean that every one of those cases was settled in 60 days. At the end of 60 days we have made a report. While the majority of our employment cases would be settled in the 30 to 60 days referred to before, if you try to average it there are always a few that go for a very long time so the average really is—does not apply.

I only know of two cases that have gone back to the EEOC for any action in the years that they have been organized.

Senator CLARK. Miss Withey, I suppose that the Federal Commission would refer the complaint to the State commission rather than to the city commission?

Miss WITHEY. That is right. We have received no referrals because the agreement is with the State. However we have been working very closely with the EEOC with reference to contract compliance and with reference to other areas. I know that the city commission also was the recipient of a grant for research which they did with Wayne State University on the question of retail stores in New York City.

Senator CLARK. Mr. Pfaus?

Mr. PFAUS. As I indicated in our statement our relationship with EEOC has been very cooperative. I don't have the exact figure but I would guess we have received about 100 cases referred to us and every single one of these has been processed within the statutory requirement.

Senator CLARK. So you have not had any bounce back?

Mr. PFAUS. No. There is a bouncing back in this respect. Occasionally then it comes up that an individual will file a complaint with us and then without telling us anything about it will also write a letter to EEOC in Washington. Then we get the case referred to us from Washington and of course we see that it matches up in the clerical work and we see what we have got.

That has been the only bouncing, if you call that bouncing.

Senator CLARK. Mr. Cowles.

Mr. COWLES. Senator, our agency is 18 years old, and it is well known throughout the State of Washington. Most cases are sent to us for original jurisdiction. However, about 5 percent of the total caseload has involved cases that have been referred by EEOC.

Two or three of those we have had to refer back to EEOC, because the 60-day statutory limitation had expired, and we had not finished our work.

But our relationship with the EEOC has been excellent, not so much with respect to grants—we have not received any money from the Federal Government in this area—but in terms of affirmative action, staff members of the EEOC have come out to the west coast, and they have helped us enormously in terms of meeting with labor groups and labor union organizations to help us to break through some of the barriers that have nothing to do with complaints but in terms of seeing where we can eliminate complaints.

Senator CLARK. Have most of your troubles with unions in the employment discrimination area been with the building trades?

Mr. COWLES. Yes, sir; also operating engineers, however, both.

Senator CLARK. Construction workers, I guess?

Mr. COWLES. Yes.

Senator CLARK. Mr. Murphy, I think I interrupted you before you were through. Didn't I?

Professor MURPHY. I was about to inject a mercenary note in the proceedings, Senator. The States, of course, are glad to get this business on deferral.

At the same time it does increase the workload on them and the burden upon the staff. I would hope that this subcommittee, if it were so disposed, might suggest to the EEOC that financial assistance to the State commissions for the purpose of making investigations should be a part of their program.

My understanding is that at the present time the money can go for research grants but not to carry on the cost of investigating complaints. I don't want to appear grasping, but it is a practical problem.

Senator CLARK. Do you have that in your statement as a suggestion?

Professor MURPHY. I don't recall whether that is in my statement or not. If it is not, it should have been.

Senator CLARK. Perhaps it was one of the other witnesses who suggested that while there were provisions in the law for the reimbursement of State agencies for various expenditures, as a practical matter—as a pragmatic matter this was not too useful, because the accounting procedures involved rarely require a revolving fund which the State commission could advance money for these expenses.

It would be much better if payments could be made in advance rather than as reimbursement. Do you concur with that?

Professor MURPHY. Definitely. That is set forth in my prepared statement.

Senator CLARK. Have you finished?

Professor MURPHY. The final point I wanted to make on this deferral is that I would like to echo what Mr. Greenberg said yesterday, and that is that there is no point in having a policy of deferral to a State agency unless the State agency is really doing an effective job in the area.

You can have a beautiful law on the books, but unless it is being enforced properly your deferral simply results in delay in vindicating the rights of the individuals and the public.

Mr. Greenberg suggested that deferral might be a matter of discretion with the Federal agency rather than mandatory. That certainly, I think, would be quite proper.

Senator CLARK. As I understand it there are 12 States that don't have State commissions and seven others that don't have any cease and desist power and possibly some of the other States are not doing the kind of job you indicate you are doing in your States.

I think that is something we should take under advisement. Two of you seemed to be a little incredulous when I suggested that may be you had succeeded in eliminating discrimination in employment.

I wondered if the other three were equally incredulous or perhaps view it at least to a significant extent as an unsolved problem?

Mr. WEBBER. I would like to comment on that.

On the pure discrimination against the man on his entry level job we get few cases with validity, today, on the actual entry level. In this area I don't believe it is all the work of a civil rights commission.

I believe, too, that the voluntary worker on the part of the employers in the Commonwealth of Massachusetts and I believe the full employment picture in the Commonwealth of Massachusetts have a great deal to do with this.

However, it is true that at the entry level we don't get very many good solid complaints.

Senator CLARK. This is a more or less recent phenomenon, isn't it?

Mr. WEBBER. Right. This has been a change over the last 3 or 4 years.

Senator CLARK. And who knows to what extent it is due to the tight labor market and to what extent it is due to education?

Mr. WEBBER. I don't know. But I do feel we remain with this terribly complex area and discrimination is becoming more complex all the time. The terrible complex area of upgrading is a very, very serious problem.

Senator Clark. Secretary Wirtz dwelt on that yesterday at considerable length. He felt the situation with regard to discrimination on entry had improved enormously since the enactment of the 1964 act, possibly even before that, but that discrimination in upgrading and promotion is still a serious problem.

Do you concur?

Mr. WEBBER. I concur. I also would like to add it is a most complex and difficult area. This is an area where you get investigation that requires one man for weeks going through applications and qualifications, a very difficult area, which of course affect this time cycle that we talk about.

When we get through it is a most difficult determination to make.

Senator CLARK. Do the rest of you agree with Mr. Webber that perhaps the primary area of concern is in the upgrading and promotion rather than actual employment of persons?

Mr. COWLES. I agree. I think it is a complex area as Mr. Webber has pointed out primarily because some large employers are hesitant to put a nonwhite person as a superior above people from a majority group.

It is a tradition or pattern of exclusion at that level of operations which perpetuates this problem that he speaks of. I certainly would concur however that it is more prevalent at the managerial and supervisory level than at the entry level at this time.

Senator CLARK. Mr. Pfaus.

Mr. PFAUS. I certainly agree that then insofar as the job that is outlined in the law for agencies, as far as ours is concerned, that the entry level is minor and the upgrading is major. But insofar as the total picture of America being completely free of discrimination there still remains in the entry level job perhaps the greatest problem, but that is the problem that our agencies are not at all geared up to do and to some extent even the EEOC is not geared up to do—this involves the training, the business of antipoverty programs 10 times as big as they now are and the elimination of ghettos.

Senator CLARK. It is a much bigger picture than merely equal opportunity.

Mr. PFAUS. That is right.

Miss WITHEY. I would agree with that. I think in certain areas there is still a great deal of discrimination in the entry level.

Senator CLARK. Dr. Murphy.

Professor MURPHY. Most of our complaints at the present time do deal with on-the-job discrimination rather than in hiring.

Senator CLARK. Ladies and gentlemen, I don't want to dismiss the panel if there is anything more that anyone of you would like to say.

You have been most helpful to the subcommittee. I want to commend you for your willingness to come down here to be of such assistance.

Mr. COWLES. Senator, Mr. Tytler is the assistant attorney general in the State of Washington. He wants to make one point that has not been covered already.

Senator CLARK. Yes, sir.

STATEMENT OF MORTON TYTLER, ASSISTANT ATTORNEY GENERAL, STATE OF WASHINGTON

Mr. TYTLER. I would like to add one thing in answer to your question concerning the criticism of the chamber of commerce that cease-and-desist power prevents amiable settlement of complaints.

Adding to what has already been said about good relations between industry and the civil rights agencies in this State I think if there were bad feelings it would be reflected in the number of cases that go to hearings that are not able to be settled through conciliation. I am particularly familiar with these hearings in the State of Washington because it is my job to process—to prosecute them on behalf of the State.

While we don't have a large population of them I have some generalities. The hearings involve mainly three types of cases, first of all our test case where somebody simply wants to raise issues of law over whether somebody is covered or the law is constitutional or that sort of thing.

No dispute over the facts. Almost friendly cases.

A second type of case is where the contest is not over the facts but over the appropriate type of order to be issued.

The charged party may in effect admit liability but think the order should be less strict.

The third type is a dispute over what occurred and the commission is put to the duty of proving its case.

Particularly the large corporations have viewed this as a business matter and have not gotten emotional. In fact I can only think of two contested cases in the State of Washington where the emotional frame of mind of the charged party had something to do with the case going to a hearing.

Both of these cases involved charged parties who were themselves members of a minority and they were so embarrassed by the charge that they could not come to conciliation and in effect admit that the charges had some merit.

Senator CLARK. That is very interesting.

Would you all agree that in the unfortunate event that we should have, again, as we have had so often in the past, a significant amount of unemployment, your problems will become more serious in view of the apparent experience that minority groups are the last to be hired and the first to be fired?

I see everybody nodding his head. I take it that is what the President calls a consensus.

Mr. WEBBER. I think we should shudder at the thought.

Senator CLARK. Does anybody else care to say anymore?

Thank you very much for your help. I am most grateful to you all.

Professor MURPHY. Thank you, Mr. Chairman.

Senator CLARK. The subcommittee will stand in adjournament subject to further call of the chair.

Without objection, I order statements, material, et cetera, on hand, and pertinent material subsequently received, placed in the record at this point.

(The material referred to follows:)

PREPARED STATEMENT OF DAVID A. BRODY, DIRECTOR, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

The Anti-Defamation League of B'nai B'rith wishes to take this opportunity to express its support for and to urge the prompt passage by Congress of S. 1308 which is designed to enlarge the authority of the Equal Employment Opportunity Commission established by the Civil Rights Act of 1964.

The Anti-Defamation League is the educational arm of B'nai B'rith which was founded in 1843 and is America's oldest and largest Jewish service organization. It seeks to develop good will and understanding among Americans of the various religious, ethnic, and racial groups. Its program is rooted in the religious teachings of Judaism: man is a creature of God and all men are equal before Him: the dignity of the individual is God-given and must not be violated—teachings which are shared by all the great religions in America and which undergird the constitutional guarantees of freedom and equality.

At the outset we wish to commend you as Chairman of the Subcommittee and Senator Javits for co-sponsoring this bill and for making possible early hearings

on this crucial legislation. S. 1308 is, of course, identical with Title III of S. 1026, the six point omnibus civil rights bill which was transmitted to the Congress by President Johnson in mid-February and introduced in the Senate several days later by a bi-partisan group of 27 Senators led by the distinguished Senator from Michigan, Philip A. Hart. At the time the President sent his proposals to the Congress, we applauded his action and pledged our support.

The main thrust of S. 1308 is to give to the Equal Employment Opportunity Commission much needed authority to issue cease and desist orders to bring about an end to discriminatory employment practices. All the Commission can do under present law is to investigate and try to conciliate complaints of discrimination. Where persuasion proves unsuccessful, the Commission is powerless to act; the victim of discrimination is left to his own resources. He must seek relief in the courts alone, unless the Attorney General finds a pattern or practice of discrimination and exercises his statutory authority to bring suit to enjoin such discrimination. To date only a handful of such suits have been instituted.

In his message to the Congress, the President emphasized the importance of removing this limitation on the Commission's authority. He stated:

"Unlike most other Federal regulatory agencies, the Equal Employment Opportunity Commission was not given enforcement powers. If efforts to conciliate or persuade are unsuccessful, the Commission itself is powerless. For the individual discriminated against, there remains only a time-consuming and expensive lawsuit."

It is to fill this gap in the Commission's authority that S. 1308 has been introduced.

There is no need for us in this brief statement to document the broad range of existing job discrimination. That has been done time and again and the fact of discrimination has been acknowledged even by the opponents of the legislation. Testimony before your Subcommittee has established that despite the progress made in recent years, the problem of employment discrimination is still a pervasive and persistent one. Statistics furnished your Subcommittee in its two days of oral hearings have provided a graphic picture of the extent of discrimination against Negroes and Mexican-Americans. Other minority groups, including Jews, also suffer the burden of discrimination. Many areas of employment, particularly in the upper levels of the major and older established American industries are still closed to Jews or are only just beginning to be opened.

Testimony before your Subcommittee has made it plain that if prompt and substantial progress is to be achieved in reducing employment discrimination, the Equal Employment Opportunity Commission must be equipped with additional enforcement powers to do the job assigned to it by Congress in 1964. As Secretary of Labor Wirtz stated before your Subcommittee it is clear "that we have gone perhaps about as far as the present legislative vehicles will carry us, that there is still a long way to go, and that the more effective enforcement provisions in S. 1308 are essential."

In conferring power upon the Commission to issue cease and desist orders, S. 1308 would do no more than give the Commission the standard authority long enjoyed by federal regulatory agencies and by nearly all state and local fair employment practice agencies. The experience of the state agencies as described to your Subcommittee clearly establishes that such enforcement powers are required to make the conciliation process effective and to prevent its being used as a delaying device. The experience of these agencies also shows that when there is enforcement authority to back up conciliation relatively few cases ever go to an administrative hearing—they are settled or otherwise disposed of without a formal public hearing—and even fewer are ever appealed to the courts. The mere existence of cease-and-desist powers helps to insure the success of the conciliation approach and to bring about voluntary compliance.

There are, of course, other desirable improvements which may be made in the existing law, such as the amendment, to cite but one, included in the Javits, Kuchel, Case bill S. 1667 which would expand the coverage of the law to make employers and labor unions which have eight or more employees or members subject to its jurisdiction. But it is not our purpose at this time in this brief statement to go into any detailed analysis of these other features, important as they may be to the ultimate solution of the problem of job discrimination. It is our aim, by concentrating on this one provision, to stress the urgent need to give the Commission the cease and desist powers which it must have if it is to carry out successfully the responsibility mandated to it by the Congress, to eliminate employment discrimination on account of race, color, religion, national origin and sex.

PREPARED STATEMENT OF HEATH WAKELEE, DIRECTOR, ELECTRONIC INDUSTRIES ASSOCIATION, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittee, the Electronic Industries Association (EIA), a trade association representing about 300 members companies in the electronics industry, whose members are located throughout the United States, has given careful and thoughtful consideration to the provisions of S. 1308, "The Equal Employment Opportunities Enforcement Act".

EIA and its members strongly endorse the principles set forth in Title VII, the effective implementation thereof and constructive improvements therein, and wish to hereby reaffirm, for the record, our continued support for equal employment opportunity. Many of our members are actively engaged in providing equal employment opportunity through individual programs and broader programs, such as Plans for Progress. It is also our belief, however, that the proposals contained in S. 1308 are premature (e.g., less than two years have elapsed since the effective date of Title VII), that they are not based on experienced deficiencies in the administration of Title VII, and may be harmful to the voluntary programs in effect at this early stage of Title VII's administration. For this reason, and until such time as the administration of Title VII clearly demonstrates that the lack of the proposed enforcement powers constitute a deficiency in the existing concepts of Title VII, we urge that legislation such as that proposed in S. 1308 should not be adopted. As such time as it is evident that deficiencies exist in the enforcement area of title VII or other aspects thereof, which can only be demonstrated after a reasonable period of administration thereof, we will constructively support corrective legislation addressed to and necessary to remedy actual deficiencies in the administration of Title VII of the Act.

The aforesaid EIA position is premised on the following facts:

a. The existing conciliation and mediation efforts of the Commission have resulted in significant voluntary programs for equal employment opportunity founded in voluntary and mutual concern principles. Because they are voluntary and encompass meaningful guidance by cooperative effort with the Commission, they have resulted in a more widespread effort by employers to adopt these principles than could possibly be achieved through cease and desist orders.

b. Because of its relatively short period of existence, the policies of the Commission, in the implementation of Title VII, are still in their infancy and formulation stage, with new and more meaningful guidelines being issued now more frequently and on an expanding basis. There is no real indication, as yet, that these policies need implementation on a cease and desist basis and, indeed, this cannot even be determined until the Commission has had a full opportunity to define the parameters of compliance.

c. We believe that the addition of the subject powers at this time could run counter-productive to the many affirmative and self-initiated employer programs in the area of equal employment opportunity.

d. At the present time, there is not a glaring deficiency in the enforcement procedures with respect to equal employment opportunity. On the contrary, if anything, there is current approliferation of overlapping jurisdictions, providing multifold areas for relief. For example, the majority of the States have adopted nondiscrimination statutes with enforcement procedures, which, in the first instance, take precedence over Federal jurisdiction, the NLRB has taken jurisdiction in this area; substantial numbers of employers are subject to the provisions of the President's Executive Order, and virtually all organized employers have comparable non-discrimination provisions in their collective bargaining agreements.

For the aforesaid reason, EIA urges that the proposals contained in S. 1308 not be adopted and that any corrective legislation, if necessary, await such time as deficiencies are demonstrated in Title VII to which meaningful amendments in Title VII can be directed.

PREPARED STATEMENT OF WILLIAM E. DUNN, EXECUTIVE DIRECTOR, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

We appreciate the opportunity of filing a statement for the record on S. 1308. First, we would like to note the kind of experience in the field of nondiscrimination on which we based our comments. Our experience comes from the fact that

many of our members perform Federal construction contracts, and for many years have been subject to nondiscrimination requirements applicable to government contractors imposed by Executive Orders. These experiences go back years before there was any Congressional action in this field, to the days of the F.E.P.C. of the 1940's. They include the time of the Government Contract Committee of the 1950's, and the President's Committee on Equal Employment Opportunity, and now the Office of Federal Contract Compliance. In recent years, the Executive Orders have encompassed federal-aid contracts as well.

Our record with all of these agencies indicates that the Associated General Contractors and its members have always had relationships of cooperation, and that our policies have always been to support the principles of nondiscrimination.

BASIC PROBLEMS

From this experience and this background, we have come to see certain basic problems as contributing to, and perpetuating, racial and minority discrimination in the construction field, which we will point out below. However, S. 1308 fails to deal with the basic problems as we see them, and we believe what is need at this time is not patchwork but solutions.

The basic problems, as far as discrimination in construction is concerned, are the hiring halls, complex seniority systems, union referral arrangements, closed shops, and secondary boycotts, among others.

These basic problems stem from legislation already passed by the Congress, particularly section 8(f) of the Taft-Hartley Act, and we believe it would be well to re-appraise these existing provisions of law in the light of present-day realities. Section 8(f) is attached.

HIRING HALLS

The seriousness of hiring halls and related arrangements practiced by the Building Trades Unions has come to our attention painfully on government contracts, where the Executive Orders hold the contractor alone responsible, and apply sanctions to him *only*—not the Building Trades Unions, even where their guilt on discrimination is evident. While construction contractors, for this reason, resist the inclusion of hiring halls and related provisions at the bargaining table, another arm of government gives no support or recognition to the nondiscrimination objectives of the other arm, but practically forces contractors to enter into hiring hall agreements by holding them mandatory subjects of bargaining. Perhaps the NLRB feels the act passed by the Congress gives them no other way. In any event, the man at the receiving end of the Federal establishment at the grass roots must get a very bad impression to see Washington blowing hot and cold on the same issue.

So here is a very substantial step towards the promotion of equal employment opportunity in construction, which your Subcommittee might tackle, namely:

(1) to make Building Trades Unions solely responsible for unlawful discrimination, racial and otherwise, that occurs as a result of their operation of hiring halls, and similar referral arrangements, and

(2) to make hiring halls and related conditions a permissive, rather than a mandatory subject of bargaining. (That would preclude strikes and picketing to obtain them in labor agreements.)

SECONDARY BOYCOTTS

Secondary boycotts pose a similar problem for minorities in construction. These are strikes and picketing to force one company to quit doing business with a Negro subcontractor or other firms employing Negroes or other minorities. The deadly impact of secondary boycott attacks on minorities in construction is documented in the St. Louis Arch case, an excerpt of which is attached.

While secondary boycotts are illegal *today* under Section 8(b)(4)(B) of the Taft-Hartley Act, they may be legalized this Session by S. 1487 now before the Senate Labor and Public Welfare Committee. If that happens, we would advise your Subcommittee that the cause of nondiscrimination in construction would be set back a great deal farther than it would be advanced by S. 1308. While S. 1487 is not directly related to S. 1308, they are, in fact, related to the same thing. Again, we believe it would be prudent for the Congress and its committees to avoid getting into conflicting positions on the same issue, and that your Subcommittee should carefully study the adverse impact S. 1487 would have on nondiscrimination in construction and do your utmost to defeat it.

SHOT IN THE DARK

We would also suggest that the Subcommittee first obtain a better understanding of the character of the problem before embarking upon as revolutionary a course as outlined in S. 1308. The lack of contribution of knowledge on this score from government spokesmen appearing before your Subcommittee is curious, in view of the years of accumulation of voluminous surveys under the Executive Orders from government contractors on minority aspects of their employment. It is also curious in view of the mandate of the Civil Rights Act of 1964 to canvass unions, hiring halls, and training groups for information on minorities. Nearly three years later, no such survey has yet been made but is, however, about to be launched.

We are familiar with voluminous surveys under the Executive Orders beginning with so-called Form 41 in 1963, 1964, and 1965, and then Form 100 in 1966, and Form 100 revised in 1967. These reports must literally fill warehouses of data on minority aspects of employment in the construction industry. We believe the Subcommittee would be prudent, indeed, to first obtain available statistical dimensions and locations of the nondiscrimination problem before shooting as big a shot as S. 1308 into the dark.

A CONSTRUCTIVE APPROACH

A final suggestion, while not involved in S. 1308 but related, would be to seek for ways of taking a positive and constructive position, rather than banking on the perennial "thou shalt not" approach. As a practical constructive approach, we would urge your Subcommittee to consider ways of curing the anemic climate now blighting training in construction.

Our experiences with the Federal apprenticeship and training programs convince us that they will not permit the kind of breakthrough of large numbers of new skilled construction workers in time to meet the great demands in the construction industry. We are also convinced that government can and should take every practical step to make participation in training programs, on the part of the trainee and employers, as attractive as possible. Certainly, one of the least difficult steps would be to provide tax credit for employers' financial contributions to training programs. This idea has already been far developed in bill form in committees of this Congress.

We would urge your earnest consideration of our views, and your thorough reconsideration of this entire complex but serious problem before reporting S. 1308 to the full committee. If we can be of further assistance, please let us know.

SECTION 8(f) FROM THE LABOR MANAGEMENT RELATIONS ACT, AS AMENDED, 1959

(f) It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: *Provided*, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act: *Provided further*, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e).*

[An excerpt from the NLRB decision in the St. Louis Arch case]

(164 NLRB No. 40, D-9750, St. Louis, Mo., May 6, 1967)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1, AFL-CIO (E. SMITH PLUMBING COMPANY)

PIPEFITTERS LOCAL 562, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO

LOCAL 36, SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, AFL-CIO

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ST. LOUIS, AFL-CIO[1]

CASES NOS. 14-CC-348, 14-CC-349, 14-CC-350, 14-CC-352, 14-CC-358

CASE NO. 14-CC-357

LOCAL 42, LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, AND ROBERT F. HOEL, AN INDIVIDUAL, AND NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

CASE NO. 14-CC-359

BUILDING AND CONSTRUCTION TRADES COUNCIL OF ST. LOUIS, AFL-CIO (E. SMITH PLUMBING COMPANY), AND CONGRESS OF INDEPENDENT UNIONS, LOCAL NO. 99

DECISION AND ORDER

* * * * * * *

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision and the entire record in these cases, including the exceptions, cross-exceptions, and briefs, and hereby adopts the findings, conclusions,[3] and recommendations of the Trial Examiner, with the modifications noted below.[4]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, as modified below, and orders that the Respondents, International Brotherhood of Electrical Workers, Local 1, AFL-CIO; Pipefitters Local 562, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO; Local 36, Sheet Metal Workers' International Association, AFL-CIO; Local 42, Laborers' International Union of North America, AFL-CIO; and Building and Construction Trades Council of St. Louis, AFL-CIO, their officers, agents, and representatives, shall take the action set forth in the Trial Examiner's Recommended Order, as herein modified:

1. Delete paragraph 1 of the Trial Examiner's Recommended Order, and substitute the following:

"1. Cease and desist from engaging in, or inducing or encouraging any individual employed by Hoel-Steffen Construction Company, Sachs Electric Company, St. Louis Sheet Metal Company, Lorain Engineering Company, or any other person engaged in commerce, or in an industry affecting commerce, to engage in a strike or a refusal in the course of his employment to perform services for his respective employer, or threatening, coercing, or restraining the above-named employers, or any other person or employer engaged in commerce, or in an industry affecting commerce, where in either case an object thereof is to force or require them, or any of them, to cease doing business with E. Smith Plumbing Company, or any

other person or employer engaged in commerce that does not employ members of unions affiliated with the AFL–CIO.

* * * * * * *

NATIONAL LABOR RELATIONS BOARD,

Dated, Washington, D.C.
[Seal]

FRANK W. MCCULLOCH,
Chairman.
JOHN H. FANNING,
Member.
GERALD A. BROWN,
Member.
HOWARD JENKINS, JR.,
Member.
SAM ZAGORIA,
Member.

* * * * * * *

TXD–501–66

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This case comes before me upon a consolidated complaint of unfair labor practices issued on February 11, 1966, by the General Counsel of the National Labor Relations Board, herein called the Board, acting through its Regional Director for the Fourteenth Region (St. Louis, Missouri), against International Brotherhood of Electrical Workers, Local 1, AFL–CIO (herein called the Electricians); Pipefitters Local 562, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL–CIO (herein called the Plumbers); Local 36, Sheet Metal Workers' International Association, AFL–CIO (herein called Sheet Metal Workers); Building and Construction Trades Council of St. Louis, AFL–CIO (herein called the Council); and Local 42, Laborers International Union of North America, AFL–CIO (herein called the Laborers). The complaint is based upon charges filed in January 1966, by Robert F. Hoel (herein called Hoel), by National Association for the Advancement of Colored People (herein called NAACP), and by Congress of Independent Unions (herein called CIU), and alleges that Respondents have engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (b)(4)(i) and (ii)(B) and Section 2(6) and (7) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, *et seq.*) herein called the Act. Respondents filed answers denying the commission of any unfair labor practices.

Pursuant to notice the undersigned conducted a hearing at St. Louis, Missouri, on May 19 and 20, 1966, at which all parties were present and represented by counsel. At its conclusion the parties waived oral argument. The General Counsel has filed a brief.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

* * * * * * *

III. THE UNFAIR LABOR PRACTICES

1. THE ARCH

This case arises from the establishment at St. Louis of the Jefferson National Expansion Memorial in conjunction with the 200th aniversary of the founding of the city. Prominent as a feature of the Memorial stands the Arch, at its apex some 600 feet above ground level. It is a National Park installation, and like other features of the Memorial it is being erected with the financial help of the Federal Government. One of the conditions of this help, as expressed in Executive Order 11246, is that there shall be equal employment opportunity afforded to all persons on the project. In the context of this case, this means

that contracts shall be awarded and employees hired without regard to race or color. Obtaining compliance with Executive Order 11246 is the function of the Office of Federal Contract Compliance, in the United States Department of Labor.

* * * * * * *

The construction contract for work on the Visitors Center, a feature of the Arch, was entered into on October 19, 1965, between the United States Department of the Interior, National Park Service, and Hoel-Steffen, the successful bidder. The awarding of the contract to Hoel-Steffen, and the awarding by Hoel-Steffen of subcontracts, was delayed, however, because of the difficulty in convincing the Office of Contract Compliance that work on the Arch would be performed without discrimination, in conformity with Executive Order 11246. On November 15, at the urging of Bi-State Development Company which was to operate the train to be installed in the legs of the Arch, a meeting was convened in the office of Leroy Brown, superintendent of the Park Service, attended by Brown, W. W. Zenfell, area coordinator for the contract compliance section, Robert Hoel, president of Hoel-Steffen, Joseph Cousin, secretary-treasurer of Building and Construction Trades Council of St. Louis, and others.

At the meeting Zenfell explained that Executive Order 11246 required that the general contractor, in this instance Hoel-Steffen, take "affirmative action" to insure equal employment opportunity for work on the Arch. This, according to Zenfell, had not been done. A discussion followed as to the categories of work at which Negro workers might be employed, and E. Smith Plumbing Company, a small company owned by a Negro and employing Negro plumbers, was suggested. It was recognized by those present that Smith's plumbers were not members of Plumbers Local 562, affiliated with the AFL–CIO, one of the Respondent's herein, but, perversely, were members of Local 99, affiliated with the Congress of Independent Unions, one of the Chagging Parties. Boyajean, deputy compliance officer for the Department of Interior, asked Cousin, "Will the AFL people work with a CIU plumber if he is employed on the job?" Cousin's answer was, "No, definitely not." With that, the meeting broke up.

Two or three weeks after this meeting Hoel-Steffen subcontracted the plumbing work in the Visitors Center at the Arch to Smith, who, along with his other two plumbers, the first part of December began preliminary work on the jobsite. This immediately came to Cousin's attention, and on December 21, he talked with Zenfell and told him that, as a result of awarding the plumbing subcontract to Smith, "there might be some trouble down on the project," that the Building and Trades Council was "unhappy" about it, and he reminded Zenfell of his, Cousin's, declaration at the November meeting that the AFL–CIO union members would not work alongside Smith's employees. He asked Zenfell to see Superintendent Brown and persuade him to get Smith to surrender his contract. This, Cousin said, would "solve the situation." Zenfell refused. Two days later Cousin got in touch with James Brotherton, administrative officer for the Memorial, employed by the National Park Service, and told him that he was "concerned" that Hoel-Steffen had awarded the plumbing subcontract to a "CIU outfit," and asked "if there was anything the National Park Service could do to get Smith to withdraw from the contract, or to get Hoel-Steffen to prevail upon Smith to do so." Brotherton said there was not, and reminded Cousin of Executive Order 11246.

Thus rebuffed, but rallying, the Building and Construction Trades Council on December 27 drafted the following statement of policy:

"STATEMENT OF POLICY ADOPTED BY THE BUILDING AND CONSTRUCTION TRADES COUNCIL OF ST. LOUIS

"Since the inception of the Building and Construction Trades Council of St. Louis, an affiliate of the Building and Construction Trades Department, AFL–CIO, and its affiliated local unions and their members have adhered to the policy and practice of not working on construction projects unless the journeymen workers, apprentices and their helpers employed thereon are 100% AFL–CIO....

* * * * * * *

"It has now come to the attention of the affiliated membership of the Council that the interior work on the Gateway Arch will not be entirely performed by workers who are AFL–CIO.

"As a consequence, the Building and Construction Trades Council of St. Louis announces that the rank and file members of its affiliated local unions do not desire to accept employment on the Gateway Arch interior finishing project, and hereby informs the general contractor, sub-contractors and all others concerned with the finishing of the Arch's interior that they should make arrangements to perform the work in question by construction workers they can obtain from any other available source.

* * * * * * *

"This announcement is being made by the undersigned in accordance with the instructions and orders given them as the officers of the Building and Construction Trades Council of St. Louis by the unanimous vote of the delegates of its affiliated local unions at a special meeting of said Council held on December 21, 1965." [1]

* * * * * * *

The Statement of Policy was mailed to Hoel-Steffen, the National Park Service and various subcontractors on the Arch project, and widely disseminated on radio and television, by Arthur Hunn, president of the Council.

The success of the Council, representating the several crafts who are Respondents is this case, and of the agents of the crafts themselves in their joint effort to boycott agencies of the United States Government, the general contractor and the subcontractors on the Arch, became apparent on January 7, 1966. Donald Schubert, project manager for Hoel-Steffen, the general contractor, arrived at the jobsite early that morning after having notified St. Louis Sheet Metal Company, which had the sheet metal contract, and Lorain Engineering Company, which had a plumbing contract,[2] to have workers on the job that day. Observing that there were no lights in the underground area of the Arch where Hoel's work on the Visitors Center was to be performed, Schubert asked one Dilge, general foreman for Sachs who had the electrical subcontract, and Sparks, an employee of Sachs, to turn the switch so that the sheet metal workers and the plumbers could see to do their work, and continue with the installation of temporary lighting. Both refused, Dilge stating that he would "just as soon not work with a contractor [Smith] who was not a member of the Building Trades Council." Both these electricians, however, performed electrical work on the jobsite that day for other contractors who employed members of AFL–CIO crafts.

Later the same morning Gene Ko n, employed by St. Louis Sheet Metal, arrived, as did Jim Roach and Elmer Gib ng, plumbers employed by Lorain Engineering Company. All three men told Schubert that they

* * * * * * *

CONCLUSIONS

The above findings of fact are based upon the credited, uncontroverted testimony of witnesses called by the General Counsel, and documentary evidence sponsored by them, as well as upon stipulations of fact by counsel. No witnesses were called by the Respondents.

The record leaves no doubt, indeed it proclaims, that immediately it became known that some of the work on the Arch would have to be performed by a subcontractor employing Negro workers, to demonstrate compliance, even though only a token compliance, with Executive Order 11246, and that these workers would not be affiliated with the AFL–CIO [3] representatives of the AFL–CIO crafts, including officers of the Building and Construction Trades Council of St. Louis, made known their determination to frustrate such an outcome, Executive Order 11246 to the contrary not withstanding. And, it may be added, regardless of the proscriptions of the National Labor Relations Act.

When Hoel-Steffen subcontracted the plumbing work to E. Smith Plumbing Company with its three Negro plumbers, representatives of Respondent lost no time in bringing pressure to bear on the National Park Service, an agency of the United States Government, and on Hoel-Steffen, Sachs Electric, St. Louis Sheet Metal, and Lorain Engineering, to force them to cease doing business with Smith, though Respondents had no labor dispute with these companies. Cousin, acting for the Council and its affiliated craft members, at the meeting on November 15, 1965, flatly warned that members of these crafts would "definitely" not work with any CIU plumber. On December 21, Cousin threatened Zenfell with "trouble" because of the award of the plumbing contract to Smith. On Decem-

ber 27, in a letter to the craft unions in question and to the various subcontractors, the Council even more explicitly threatened to strike unless the work at the Visitors Center was "entirely performed" by members of the AFL–CIO. Widespread publicity was given this decision in the newspapers, and, on television and radio for the evident purpose of alerting every craftsman in the area not to accept work at the Visitors Center so long as Smith was employed there.

When on January 7, Smith and one of his employees showed up at the jobsite, the other employees, electricians, plumbers, sheet metal workers, and laborers, made good this threat and struck.

I find that the above-described activities of Respondents had the purpose and effect of threatening the employees of the employers herein, and forcing them to cease doing business with E. Smith Plumbing Company. Such activities are clearly interdicted by Section 8(b) (4) (i) and (ii) (B) of the Act.

* * * * * * *

THE REMEDY

Having found that Respondents have violated Section 8(b) (4) (i) and (ii) (B) of the Act, it will be recommended that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

* * * * * * *

CONCLUSIONS OF LAW

1. International Brotherhood of Electrical Workers, Local 1, Pipefitters Local 562, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 42, Laborers International Union of North America and Building and Construction Trades Council of St. Louis, all affiliated with AFL–CIO are labor organizations within the meaning of the Act.

2. Smith, Hoel-Steffen, Sachs, Sheet Metal Company, and Lorain are employers engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

* * * * * * *

3. By (a) engaging in a strike, and inducing and encouraging employees, of Smith, Hoel-Steffen, Sachs, Sheet Metal Company, Lorain, and other employers to engage in a strike or a refusal in the course of their employment to perform services for their respective employers, and (b) threatening, coercing, or restraining Hoel-Steffen, Sachs, Sheet Metal Company, and Lorain with an object of forcing or requiring these employers to cease doing business with Smith, Respondent has engaged in unfair labor practices comprehended by Section 8(c) (4) (i) and (ii) (B) of the Act.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record, it is recommended that Local 36, Sheet Metal Workers International Association, Local 1, International Brotherhood of Electrical Workers, Pipefitters Local 562, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 42, Laborers' International Union of North America, and Building and Construction Trades Council of St. Louis, their officers, agents, representatives, successors, and assigns, shall:

1. Cease and desist from:

(a) Engaging in, or inducing or encouraging the employees of the above-named employers to engage in, a strike or a refusal in the course of their employment to perform services for their respective employers, and (b) threatening, coercing, or restraining these employers, or any other person or employer, where in either case an object thereof is to force or require them to cease doing business with E. Smith Plumbing Company.

2. Take the following affirmative action designed to effectuate the policies of the Act:

* * * * * * *

HORACE A. RUCKEL,
Trial Examiner.

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
May 19, 1967.

Mr. JAMES W. HUNT,
U.S. Chamber of Commerce,
Washington, D.C.

DEAR MR. HUNT: I am sorry that I was unable to attend the hearing of the Subcommittee on Employment, Manpower and Poverty of the Committee on Labor and Public Welfare on S. 1308 and S. 1667 on May 5, 1967 until you had completed your testimony. There were several questions which I had hoped to ask you with reference to the position of the Chamber of Commerce but, unfortunately, you had left the hearing room by the time I arrived. I would appreciate it, therefore, if you would answer on behalf of the Chamber of Commerce, the following questions:

1. Approximately thirty-eight states presently have laws against discrimination in employment on account of race, creed, national origin or religion. In thirty-one of those thirty-eight states, the law is enforced by a state agency which has cease and desist order powers similar to those which S. 1308 and S. 1667 would confer upon the EEOC. Does the experience in the thirty-one states in which the enforcement agencies have been given cease and desist order powers, as compared to the seven states in which the agencies have not been given such powers, support the Chamber's contention that cease and desist powers impede voluntary compliance with the law or cause greater delay than would otherwise exist in the handling of cases?

2. In six of the thirty-one states where the enforcement agencies presently have cease and desist order powers, namely, Kansas, West Virginia, Kentucky, Indiana, Iowa and New Mexico, the enforcement agencies originally did not have this power; it was added only recently. Did the U.S. or local Chambers of Commerce support or oppose the change in any of these six states, and if so, on what grounds?

3. In warning of the delay which would occur were the EEOC given cease and desist order powers, your prepared statement notes (p. 3) that it takes approximately twelve months before the average case is processed through the NLRB. Under the present Civil Rights Act, if the EEOC's voluntary compliance efforts are unsuccessful, the complainant must bring a civil action. Is it the Chamber's contention that the time that would elapse in the average litigated case between the filing of a charge with the EEOC and the entry of a final judgment in a district court would be less than the time that would elapse between the filing of a charge and an entry of an order by the EEOC if the EEOC were given cease and desist order powers?

4. In your testimony, you also warned that giving the EEOC cease and desist order powers would "virtually destroy the conciliatory approach, a proven method of operation", because employers would "immediately adopt a defensive and wary position which, as experience with the NLRB has demonstrated, often results in prolonged public hearings and litigation taking years to settle." Why are not employers similarly reluctant to cooperate under existing law, in view of the fact that private civil actions may be brought against them? Moreover, why are employers not fully protected against disclosure of information obtained by the Commission during conciliation attempts by the flat prohibition against such disclosures now contained in Section 706(a) which would be retained in exactly the same language, in Section 706(b), under S. 1308? Finally, is the fact that the NLRB disposes of over 90% of its cases prior to the entry of a final order by the Board (see the Thirtieth Annual Report of the NLRB), consistent with the Chamber's position that NLRB type enforcement discourages voluntary settlements?

I would appreciate your early response to these questions.

With best wishes,

Sincerely,

JACOB K. JAVITS, *U.S. Senator.*

CHAMBER OF COMMERCE OF THE UNITED STATES,
HUMAN RESOURCES DEVELOPMENT GROUP,
Washington, D.C., June 5, 1967.

Hon. JACOB K. JAVITS,
United States Senate,
Washington, D.C.

DEAR SENATOR JAVITS: I appreciate the opportunity to reply to the questions that you raise in your letter of May 19 concerning the Chamber's testimony on S. 1308 and S. 1667 on May 5, 1967.

1. The reporting services on state fair employment practice agencies (e.g. Bureau of National Affairs) do not disclose the time that it takes for state agencies to act on charges of employment discrimination. Experience with the NLRB, however, which is a federal agency having power comparable to that proposed for the Equal Employment Opportunity Commission, shows that the average time to dispose of a case under a cease and desist procedure is twelve months.

2. The Chamber is an organization concerned with national issues. We did not, therefore, take a position on legislation concerning state fair employment practice laws.

3. If the Commission is unable to resolve a charge of discrimination within 60 days under existing law, the aggrieved individual, or the Attorney General, may bring an action in a federal district court. S. 1308, on the other hand, does not place any similar time limitation on the Commission. Before an individual can get to court, he must first exhaust administrative procedures. Again using the NLRB as an example, the NLRB takes almost two months just to issue a complaint and twelve months to process a case. There is little reason to believe that the Commission, which is already burdened with a large caseload, can process cases any faster than the NLRB—if, indeed, it can process them as fast.

4. The Chamber's testimony did not object to effective enforcement power by the government. (See pages 7 and 8.) The objection is to the concentration of the power of the conciliator with that of a prosecutor in the same agency. This is a contradiction of functions which will impede rather than promote a swift resolution of a charge.

It is true, as you point out, that under S. 1308 the Commission cannot disclose in an adversary proceeding the information it obtained in the conciliation process. However, there is nothing to prevent the charging party, a labor union, or other group from disclosing such information to the Commission during the adversary proceeding.

Finally, of the 90 percent of the cases that the NLRB disposed of before final order, only 25 percent are settled by the parties. Twenty-eight percent are dismissed by the NLRB because the charges lack merit and 37 percent are withdrawn by the charging party. The NLRB Annual Report does not claim that any cases were dismissed, settled, or withdrawn because of any conciliation efforts by the NLRB.

Sincerely,

JAMES W. HUNT,
Labor Relations Manager.

SUMTER, S.C., *May 15, 1967.*

Hon. JOSEPH CLARK,
Subcommittee on Employment and Manpower,
Senate Labor and Public Welfare Committee,
Washington, D.C.

DEAR SENATOR: We strongly support all affirmative action in your committee toward the passage of bill S. 1308.

We also support the substance of the resolution on equal opportunity in employment by the Department of Social Justice, National Council of Churches of Christ in the U.S.A.

Rev. F. C. JAMES,
Director, Commission on Social Action,
The African Methodist Episcopal Church.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 12, 1967.

Hon. JOSEPH S. CLARK,
Chairman, Subcommittee on Employment and Manpower of the Labor and Public Welfare Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you know, the Leadership Conference on Civil Rights, the NAACP Legal Defense Fund, the Department of Justice, and the AFL–CIO have had several discussions regarding the provisions of S. 1308, a bill to amend Title VII of the Civil Rights Act of 1954. Those discussions led to an agreement on several amendments.

I understand a copy of the bill, with the suggested amendments, has been delivered to your administrative assistant, Mr. Harry Schwartz. This letter is to inform you that with these amendments the legislative proposal has the support of the AFL–CIO.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

AMERICAN NEWSPAPER GUILD,
Washington, D.C., May 3, 1967.

Senator JOSEPH S. CLARK,
Chairman, Employment, Manpower, and Poverty Subcommittee, Senate Office Building, Washington, D.C.

DEAR CHAIRMAN CLARK: We should like to call to the Subcommittee's attention our endorsement of the proposed amendment (S. 1308, known as the Equal Employment Opportunities Enforcement Act) to Title VII of the 1964 Civil Rights Act which would grant to the Equal Employment Opportunities Commission enforcement powers similar to those of other federal regulatory agencies.

As an organization that has advocated and worked for full equality of employment opportunity since the days of its founding the Guild views the EEOC's present inability to employ judicially enforceable cease and desist orders, in cases where its efforts at conciliation and persuasion prove unsuccessful in correcting violations of Title VII, as an indication that the EEOC was created as a less than equal regulatory agency to enforce a law aimed at remedying less than equal treatment of a large portion of the nation's citizenry. Second-class status for EEOC has impeded seriously realization of the aims of the 1964 Act, we feel, and aided those in our society bent on frustrating the national policy of equal opportunity set forth in the Act.

We urge the Subcommittee to resist any attempts that might be made to weaken S. 1308, and to report the bill favorably with dispatch.

We should like our endorsement of S. 1308, as introduced by Senators Clark and Javits, to be entered in the record of the Subcommittee's hearings on the bill.

Sincerely,

WM. J. FARSON,
Executive Vice President.
CHARLES A. PEBLIK, JR.,
Secretary-Treasurer.

GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS,
DIVISION OF HUMAN RELATIONS AND ECONOMIC AFFAIRS,
Washington, D.C., May 10, 1967.

Hon. JOSEPH CLARK,
Subcommittee on Employment and Manpower, Committee on Labor and Public Welfare, Senate Office Building, Washington, D.C.

DEAR SENATOR CLARK: In connection with Senate Bill 1308, I wish to call to your attention a special resolution adopted by the Board of Christian Social Concerns of The Methodist Church at its annual meeting in Louisville, Kentucky, October 18–20, 1965.

This resolution calls attention to the lack of enforcement powers granted the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

The text of the resolution is contained on the next to the last page of the attached Board publication entitled, "Statements '65."

You will note that the resolution supports, "proper administrative enforcement procedures, subject to judicial review" for the Equal Employment Opportunity Commission.

Sincerely yours,

GROVER C. BAGBY,
Associate General Secretary.

STRENGTHENING FEDERAL LEGISLATION ON EQUAL EMPLOYMENT OPPORTUNITIES

The terrible facts of job discrimination against Negro Americans and members of other minority groups are now well known in the United States. Therefore, the General Conference of 1964 has declared "The right to . . . secure employment . . . should be guaranteed to all regardless of race, culture, national origin, social class or religion."

We note particularly the word "guaranteed" in the foregoing declaration. In a constitutional democracy, such a guarantee comes only through law which is enforceable and enforced.

Title VII of the Civil Rights Act of 1964 calls cautiously and weakly for fair employment practices. The Equal Employment Opportunity Commission, charged with securing compliance, has no administrative enforcement powers. This is a grievous omission. The twenty-five states which have already provided administrative enforcement powers in connection with their own fair employment practices legislation have found through experience that court enforcement alone, slow and cumbrous as it must be, is woefully inadequate to meet the need here. Judicial review of administrative enforcement activity protects against administrative abuses, but judicial enforcement alone largely means voluntary compliance or non-enforcement.

We, therefore, call upon Methodist people to support the strengthening of Federal legislation in support of equal employment opportunities for all, by the provision of proper administrative enforcement procedures, subject to judicial review.

We further recommend that the extent of employee coverage under the current legislation (Title VII, Civil Rights Act of 1964) be broadened significantly.

1964 Discipline, Par. 1820.

NATIONAL CATHOLIC CONFERENCE FOR INTERRACIAL JUSTICE,
Chicago, Ill., June 2, 1967.

Hon. JOSEPH S. CLARK,
Chairman, Senate Labor Subcommittee on Manpower, Employment, and Poverty, Senate Office Building, Washington, D.C.

DEAR SENATOR CLARK: The National Catholic Conference for Interracial Justice has noted with interest the above bill, introduced by yourself and Senator Jacob Javits, which would greatly enhance the effectiveness of the Equal Employment Opportunity Commission in its work to rid our country of the moral evil and the adverse economic consequences of employment discrimination. Particularly effective in this bill is your request for the provision of cease and desist powers for the Equal Employment Opportunity Commission.

The National Catholic Conference for Interracial Justice wishes to commend you and Senator Javits for the introduction of this bill, and wishes to urge the Senate and the House of Representatives of the United States to adopt this bill which would enable the Equal Opportunity Commission to do the job, more effectively, with which it has been charged under the Civil Rights Act of 1964.

Sincerely yours,

MATHEW AHMANN,
Executive Director.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.,
DEPARTMENT OF SOCIAL JUSTICE,
New York, N.Y., May 1, 1967.

Senator JOSEPH S. CLARK,
Subcommittee on Employment and Manpower, Senate Labor and Public Welfare Committee, Washington, D.C.

DEAR SENATOR CLARK: It is our understanding that you will be holding hearings early in May on S. 1308, a bill designed to strengthen the powers and authority of the Equal Employment Opportunity Commission.

In this connection I wish to bring to your attention the enclosed resolution on Equal Opportunity in Employment recently adopted by the Department of Social Justice of the National Council of Churches.

As you will see, it urges the Congress to enact legislation which will confer on the Equal Employment Opportunity Commission the power to issue "cease and desist" orders with respect to practices which it finds to be in violation of Title VII of the Civil Rights Act of 1964. It also calls for increased funding of the activities of the Equal Employment Opportunity Commission.

I will be grateful if you would arrange to have this resolution entered in the record of your hearings as expressing the position of the Department of Social Justice.

Cordially yours,

Rev. SHIRLEY E. GREENE,
Director for Church and Economic Life.

RESOLUTION ON EQUAL OPPORTUNITY IN EMPLOYMENT BY DEPARTMENT OF SOCIAL JUSTICE, DIVISION OF CHRISTIAN LIFE AND MISSION, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.

Whereas, the National Council of Churches has expressed its deep concern about "the prevalence in our time of exploitation and discrimination in respect to employment of certain groups";[1]

Whereas, the National Council has strongly supported the Civil Rights Act of 1964, which among other important provisions prohibits, in Title VII, discrimination in hiring, firing, compensation, terms, conditions or privileges of employment on the basis of race, color, religion, sex or national origin; and

Whereas, its experience has proved that the Equal Employment Opportunity Commission requires added legal enforcement powers and increased funding if it is to fulfill effectively its mandate to carry out the provisions of Title VII: Therefore, be it

Resolved, That the Department of Social Justice of the Division of Christian Life and Mission of the National Council of the Churches of Christ in the U.S.A calls upon the Congress of the United States promptly to enact legislation which will confer on the Equal Employment Opportunity Commission the power to issue "cease and desist" orders with respect to practices which it finds to be in violation of Title VII, and where necessary to bring civil action in the courts to enforce such orders; and be it further

Resolved, That the Department of Social Justice calls upon the Congress to increase the appropriation for the Equal Employment Opportunity Commission to make possible adequate investigation, conciliation, technical assistance and enforcement activities to the end that equal employment opportunity shall become a reality throughout the nation; and be it further

Resolved, That the Department of Social Justice calls upon the Equal Employment Opportunity Commission and the Department of Justice, each within its respective sphere of legal responsibility, to pursue vigorously the mandate of Sec. 707 of the Act to end "patterns of discrimination" by employers, labor organizations, or employment agencies.

Adopted: April 14, 1967.

[1] "Christian Concern and Responsibility for Economic Life in a Rapidly Changing Technological Society." Statement adopted by the General Board, February 24, 1966.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., May 26, 1967.

Hon. JOSEPH S. CLARK,
Chairman, Senate Subcommittee on Employment, Manpower, and Poverty, Senate Office Building, Washington, D.C.

DEAR SENATOR CLARK: At the May 4, 1967, hearing on S. 1308, you requested members of the panel who testified to submit their views on S. 1067.

After consultation with Roy Wilkins and Clarence Mitchell, I am submitting our comments on S. 1067 in the attached memorandum. Jack Greenberg, Director-Counsel of the NAACP Legal Defense and Educational Fund, has reviewed and approved the memorandum.

Sincerely yours,

JOSEPH L. RAUH, Jr., *Counsel.*

Attachment.

MEMORANDUM ON EQUAL EMPLOYMENT OPPORTUNITY LEGISLATION (S. 1667) FROM THE LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Pursuant to your suggestion, we are submitting our comments on the bill introduced by Senators Javits, Case and Kuchel (S. 1667) to amend Title VII of the Civil Rights Act of 1967. In so doing, we make no attempt to evaluate it vis-a-vis S. 1038, but reserve our comment for its specific provisions.

Rather than analyze it section-by-section, we feel a more fruitful approach would be to consider the major changes it would make in existing law, as set out in the *Congressional Record* by Senator Javits, and comment on them one-by-one.

These changes were described by Senator Javits (*Congressional Record*, May 3, 1967, pp. S. 6226–7), as follows:

It would: "First. Give the EEOC the power to issue cease-and- desist orders which all other regulatory agencies have, but also retains the power of the Attorney General under the existing Title VII to initiate civil suits against patterns or practices of discrimination in employment."

Comment: The grant of cease-and-desist authority to the enforcing agency has been considered an essential ingredient of effective fair employment legislation by all supporters of such legislation since the initiation of the original effort to enact fiar employment laws. Therefore we welcome this proposal without qualification.

We likewise endorse continuation of the authority of the Attorney General to file suits to end patterns and practices of employment discrimination. Since 1964 this authority in the Attorney General has become almost universally accepted as a necessary part of any statutory scheme of relief against discrimination.

"Second. Expand the coverage of Title VII to employers and labor unions which have eight or more employees or members."

Comment: We have previously given our support to this proposed change in the law, both by testimony before Congressional committees and otherwise. We reiterate that support at this time.

"Third. Require the EEOC to conduct a continuing survey of apprenticeship or other training or retraining programs and to report quarterly to the Congress its findings."

Comment: We believe that such an official survey would provide an excellent method of identifying trouble spots in the labor market and evaluating progress made in combatting discrimination in these programs.

"Fourth. Give the EEOC the same investigatory powers which the Federal Trade Commission had under section 10 of the Federal Trade Commission Act."

The Commission needs adequate investigatory authority. The incorporation by reference of the powers of the Federal Trade Commission has been a feature of a number of civil rights bills in recent years. We agree that it would meet the definition of "adequate."

"Fifth. Expand the coverage of Title VII to employees of State and local governments, including State employment agencies."

Comment: This is another change we have previously supported and which we are happy to see introduced in the form of specific proposed legislation.

"Sixth. Limit precomplaint investigation and conciliation to not more than 30 days after a charge has been filed with the EEOC. This would prevent dilatory tactics on a respondent's part from prolonging the precomplaint proceedings, and in this field particularly there is a need for rapid relief if it is to be at all effective."

Comment: We would not at this time be prepared to give our support to this provision. The backlog of cases creates a present and real problem to the Commission, even under its time limitation of 60 days. A cut in time to 30 days would only aggravate a bad situation. Perhaps at a later date when the Commission's work load becomes manageable and its procedures more routinized, we would reevaluate this.

"Seventh. Authorize the EEOC to order affirmative action including the establishment of on-the-job training for anyone discriminated against. This is a significant remedy particularly where the defense is that there have been no qualified minority group applicants."

Comment: This we could give our present and unqualified support. Affirmative action is essential to accomplishing true equality of opportunity.

"Eighth. Authorize the EEOC to order the payment of damages. This is needed particularly where no other relief is available to a particular grievant found to have been discriminated against."

Comment: While we could support the principle of this suggestion, we feel that it might raise issues that could delay or jeopardize passage of the basic legislation. Therefore we would not be inclined to insist on it at this time.

"Ninth. Authorize the EEOC to utilize the services of the Labor Department in conducting investigations, seeking voluntary compliance, conducting hearings, and coordinating training programs. This would help to overcome the serious limitations upon the EEOC's ability to handle its caseload, which has far exceeded expectations, by utilizing particularly the nationwide network of the Labor Department's Wage and Hour Division local offices and staff, and the staff of the Manpower Administration."

Comment: We do not believe this would be an advisable practice to adopt. The Commission needs a well-trained staff of investigators who have a basic commitment to its program. It is not likely to get the type of service it needs by farming out its duties to employees of another agency whose primary interest is something other than the solution of problems of discrimination.

There was testimony before the Subcommittee that where investigators of the Department of Labor have been used by the Commission, a high percentage of their investigations have been unsatisfactory, leading to reinvestigation by the EEOC.

While it may be realistic to believe that getting an adequately budgeted and trained staff for the Commission at the present time may prove difficult, it is equally realistic to conclude that once the Commission surrenders its investigatory authority, it will be difficult to recover it. On balance we believe in the long run it will be better to make the fight for an independent staff for the Commission rather than surrender this important Commission function.

"Tenth. Authorize the EEOC to receive donations of services and funds as so many other Federal agencies are authorized to do. This could be a highly useful source of expertise from the private sector."

Comment: We feel this could be of help to the Commission and support its passage.

"Eleventh. Authorize the EEOC to obtain interlocutory relief, a temporary injunction, or restraining order, in the U.S. Circuit Court of Appeals prior to a final order to avoid dilatory practices or repeated violations of the law or to afford relief where otherwise there would be irreparable injury."

Comment: This principle was embodied in the Hawkins bill (H.R. 10065, 89th Congress) which we supported. We are happy to renew that support at this time.

"Twelfth. Authorize the U.S. Circuit Court of Appeals to order a civil penalty of no more than $5,000 in appropriate cases. The Federal Trade Commission Act provides a similar remedy."

Comment: This provision would add a strong incentive for respondents to obey the orders of the Commission. However, we believe it may also raise problems that could jeopardize action on the bill as a whole.

"Thirteenth. Make judicially reviewable findings of 'no probable cause' by the EEOC and require that notice of such findings be given to complainants."

Comment: We consider judicial review of such findings to be necessary to the protection of complainants' rights. In order to make it more effective, we urge that the Commission be required to give its reasons for the finding and that the Commission's investigative report be made part of the record on review.

"Fourteenth. Make consent agreements enforceable in the courts as EEOC final orders."

Comment: This would be a definite improvement and would fill a gap in existing law.

"Fifteenth. Require complainants' consent to a finding of voluntary compliance prior to a hearing. It is now required only during a hearing."

Comment: This is another improvement we would strongly support.

"Sixteenth. Permit a Commissioner who filed a charge to participate as a witness in the hearing upon it, as is now authorized generally under the Administrative Procedure Act."

Comment: Assuming that this procedure would be acceptable to the members of the Commission, we would support its inclusion as being helpful.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., June 20, 1967.

Hon. JOSEPH S. CLARK,
U.S. Senate,
Washington, D.C.

DEAR SENATOR CLARK: The Leadership Conference on Civil Rights at its meeting yesterday reaffirmed its support for S. 1308, the bill introduced by Senator Javits and yourself to amend Title VII of the Civil Rights Act of 1964.

The Leadership Conference believes that giving the Equal Employment Opportunity Commission the power to issue cease and desist orders as provided in S. 1308 will be a substantial and significant step toward equality of employment opportunities throughout the country. With power to issue enforceable orders, the Commission will be able to multiply and accelerate its work and to bring more and more Negroes and other minorities into the mainstream of American economic life.

The Leadership Conference testified strongly in support of S. 1308. Roy Wilkins, our Chairman, gave the major testimony and both Joseph Rauh, our General Counsel, and I gave supporting testimony. Subsequent to that testimony we submitted to you certain changes resolving the dispute over cease and desist powers vis-a-vis individual private suits. We believe the resolution of this matter has been a wise and useful one and that the bill with the amendments we propose is not satisfactory to, but much desired by, all the organizations in the Leadership Conference.

We urge you to report out the bill at the earliest possible moment and to use your good offices to get it to the floor of the Senate. The country needs a Civil Rights Bill this year; your work can provide the vehicle for it and we are all deeply grateful to you for your leadership.

Sincerely yours,

CLARENCE MITCHELL, *Legislative Chairman.*

Attachment.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS

COOPERATING ORGANIZATIONS

African Methodist Episcopal Church.
A.M.E. Zion Church.
Alpha Kappa Alpha Sorority.
Alpha Phi Alpha Fraternity.
Amalgamated Clothing Workers of America.
Amalgamated Meat Cutters and Butcher Workmen.
American Civil Liberties Union.
American Ethical Union.
American Federation of State, County & Municipal Employees.
American Federation of Teachers.
AFL-CIO.
American Jewish Committee.
American Jewish Congress.
American Newspaper Guild.
American Veterans Committee.
Americans for Democratic Action.
Anti-Defamation League of B'nai B'rith.
A. Philip Randolph Foundation.
B'nai B'rith Women.
Board of Social Ministry, Lutheran Church in America.
Brotherhood of Sleeping Car Porters.
Catholic Interracial Council.
Christian Family Movement.
Christian Methodist Episcopal Church.
Church of the Brethren Service Commission.

Citizens Lobby for Freedom & Fair Play.
College YCS National Staff.
Congress of Racial Equality.
Delta Sigma Theta Sorority.
Episcopal Society for Cultural and Racial Unity.
Frontiers International.
Hadassah.
Hotel, Restaurant Employees & Bartenders International Union.
Improved Benevolent & Protective Order of Elks of the World.
Industrial Union Department, AFL–CIO.
International Ladies Garment Workers Union of America.
International Union of Electrical, Radio & Machine Workers.
Iota Phi Lambda, Inc.
Japanese American Citizens League.
Jewish Labor Committee.
Jewish War Veterans.
Labor Zionist Organization of America.
League for Industrial Democracy.
Medical Commission for Human Rights.
National Alliance of Postal & Federal Employees.
National Association for the Advancement of Colored People.
National Association of College Women.
National Association of Colored Women's Clubs, Inc.
National Association of Negro Business & Professional Women's Clubs, Inc.
National Association Real Estate Brokers, Inc.
National Baptist Convention, USA.
National Bar Association.
National Beauty Culturists League, Inc.
National Catholic Social Action Conference.
National Catholic Conference for Interracial Justice.
National Community Relations Advisory Council.
National Council of Catholic Men.
National Council of Catholic Women.
National Council of Churches, Commission on Religion and Race.
National Council of Jewish Women.
National Council of Negro Women.
National Council of Puerto Rican Volunteers.
National Council of Senior Citizens, Inc.
National Dental Association.
National Farmers Union.
National Federation of Catholic College Students.
National Federation of Settlements and Neighborhood Centers.
National Federation of Temple Sisterhoods.
National Jewish Welfare Board.
National Medical Association.
National Newman Student Federation.
National Newspaper Publishers Association.
National Organization for Mexican-American Services.
National Sharecroppers Fund.
National Student Christian Federation.
National Urban League.
Negro American Labor Council.
North American Federation of the Third Order of St. Francis.
Northern Student Movement.
Omega Psi Phi Fraternity, Inc.
Phi Beta Sigma Fraternity.
Phi Delta Kappa Sorority.
Pioneer Women.
Presbyterian Interracial Council.
Protestant Episcopal Church, Division of Christian Citizenship.
Retail, Wholesale & Department Store Union.
Southern Beauty Congress.
Southern Christian Leadership Conference.
Student Nonviolent Coordinating Committee.
Textile Workers Union of America.

Transport Workers Union of America.
Union of American Hebrew Congregations.
Unitarian Universalist Association, Commission on Religion and Race.
Unitarian Universalist Women's Federation.
United Automobile Workers of America.
United Church of Christ, Committee for Racial Justice Now.
United Church of Christ, Council for Christian Social Action.
United Church Women.
United Hebrew Trades.
United Packinghouse, Food & Allied Workers.
United Presbyterian Church, Commission on Religion & Race.
United Presbyterian Church, Office of Church and Society.
United Rubber Workers.
United States National Student Association.
United States Youth Council.
United Steelworkers of America.
United Synagogue of America.
United Transport Service Employees of America.
Women's International League for Peace and Freedom.
Workers Defense League.
Workmen's Circle.
Young Women's Christian Association of the U.S.A.
Zeta Phi Beta Sorority.

AMERICAN FEDERATION OF LABOR-CONGRESS
OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., June 23, 1967.

HON. JOSEPH S. CLARK,
United States Senate,
Washington, D.C.

DEAR SENATOR CLARK: We want to add our own separate word of support for S. 1308, with the amendments proposed by the Leadership Conference on Civil Rights.

As one of the organizations participating in the Conference, the Industrial Union Department took an active part in working out the questions raised in the original version of S. 1308 by the sections providing for individual private suits. The changes Clarence Mitchell submitted to you resolve those questions to our satisfaction. We gladly endorse S. 1308.

The Equal Employment Opportunity Commission badly needs the additional powers S. 1308 would give the agency. The country, just as badly, needs this and the other sections of the Civil Rights Act of 1967.

S. 1308, which owes so much to your leadership, could provide the vehicle for the entire Act. We know you share our sense of urgency in this matter. We are sure you will do your utmost to see that the bill is reported out as soon as possible.

Sincerely yours,

JACK T. CONWAY,
Executive Director.

(Whereupon, at 3:30 p.m., the subcommittee adjourned subject to call of the Chair.)

O