EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

HEARINGS

BEFORE THE

GENERAL SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST AND SECOND SESSIONS

ON

H.R. 6228 and H.R. 13517

BILLS TO FURTHER PROMOTE EQUAL EMPLOYMENT OPPORTUNITIES FOR AMERICAN WORKERS

HEARINGS HELD IN WASHINGTON, D.C., DECEMBER 1 AND 2, 1969, AND APRIL 7 AND 8, 1970; COMPTON, CALIF., APRIL 9 AND 10, 1970

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

MONDAY, DECEMBER 1, 1969

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR,
COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2261, Rayburn House Office Building, Hon. Augustus F. Hawkins, presiding.

Present: Representatives Hawkins, Pucinski, Burton, Clay, Ayres, and Erlenborn.

Also present: Representatives Reid and Steiger.

Staff members present: Robert E. Vagley, staff director.

(Text of H.R. 6228 and H.R. 13517 follows:)

91ST CONGRESS
1ST SESSION

H. R. 6228

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1969

Mr. HAWKINS (for himself, Mr. REID of New York, Mr. BURTON of California, Mr. CAREY, Mrs. CHISHOLM, Mr. CORMAN, Mr. DIGGS, Mr. EDWARDS of California, Mr. KASTENMEIER, Mr. MORSE, Mr. REES, Mr. RYAN, Mr. SCHEUER, Mr. STOKES, Mr. TUNNEY, and Mr. CHARLES H. WILSON) introduced the following bill; which was referred to the Committee on Education and Labor

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 (89 Stat. 259; 42 U.S.C. 2000e–5) is amended to read as follows:

"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 of this title.

"(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the 'respondent') 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 to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. 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, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an 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, the Commission shall take no action with respect to the investigation of such charge 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 certified 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 shall be filed within 180 days after the

alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by the person aggrieved within three hundred 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 it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, 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, at a place therein fixed not

less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

"(g) A respondent shall have the right to 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 and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other persons a right to intervene 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 Commission 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 diligency 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 charge has been filed 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 parties 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. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.

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

"(k) The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein 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 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 on the record considered as a whole shall be conclusive. If any 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 its agent, the court may order such additional evidence to be taken before the Commission, its member, or its 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 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. Upon the filing of the record with it 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.

"(1) Any party 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 in the circuit in which the unlawful

employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission (and to the other parties to the proceeding before the Commission) and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, 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 on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant 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. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

"(m) The provisions of the Act entitled 'An Act to

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amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', approved March 23, 1932 (47 Stat. 70 et seq., 29 U.S.C. 101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

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

"(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may, upon referral to the Attorney General, bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of

sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection."

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 be made available for inspection, reproduction, and copying by the Attorney General or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Attorney General nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or 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 to compel by appropriate process the production of such record or paper."

SEC. 4. 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 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 or 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 orga-

nization, 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. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

"(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, infor-

mation 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. 5. 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. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: *Provided*, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706."

SEC. 6. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is further amended as follows:

(a) Strike out "twenty-five" and insert "eight".

(b) 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)).

(c) 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 (a) (2)).

(d) Strike out "to give and to act upon the results of any professionally developed ability test: *Provided*, That such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin" in section 703 (h) and substitute therefor the following: "to give and to act upon the results of any professionally developed ability test which is applied on a uniform basis to all employees and applicants for employment in the same position and is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned: *Provided*, That such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin".

(e) (1) Add the phrase "or joint labor-management committee controlling apprenticeship or other training or

retraining, including on-the-job training programs," after "employment agency" in section 704 (a).

(2) In section 704 (b), (A) strike out "or employment agency" and insert "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) add the phrase "or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee," before "indicating".

(f) Amend the second sentence of section 705 (a) by inserting "and all members of the Commission shall continue to serve until their successors are appointed and qualified: *Provided,* That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted" immediately preceding the period and amend the fourth sentence of section 705 (a) to read as follows: "The Chairman shall be responsible on behalf 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, attor-

neys, 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."

(g) 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.

(h) In section 705(g)(6), strike out the words "section 706" and substitute therefor the words "section 715."

(i) 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."

(j) Add the following new subsections at the end of section 713:

"(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rules as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, 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: *Provided*, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of

the United States Code to conduct any hearing to which that section applies.

"(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise."

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

(l) Section 715 is amended to read as follows:

"CIVIL ACTIONS BY PERSONS AGGRIEVED

"SEC. 714. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the

parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereto: *Provided*, That, upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsections (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

"(b) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under

this section. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, or in the judicial district in which the plaintiff would have been employed but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.

"(c) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, 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). Interim earnings or amounts earnable with rea-

sonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704 (a).

"(d) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a), the Commission may commence proceedings to compel compliance with such order.

"(e) Any civil action brought under subsection (a) and any proceedings brought under subsection (d) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

"(f) In any action or proceeding under this section, the court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs."

SEC. 7. Title 5 of the United States Code is amended as follows:

(a) Add the following new clause at the end of section 5314:

"(53) Chairman, Equal Employment Opportunity Commission."

(b) Amend clause (72) of section 5315 to read as follows:

"(72) Members, Equal Employment Opportunity Commission (4)."

(c) Repeal clause (111) of section 5316.

SEC. 8. Sections 706, 710, and 715 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

91ST CONGRESS
1ST SESSION

H. R. 13517

IN THE HOUSE OF REPRESENTATIVES

AUGUST 13, 1969

Mr. AYRES (for himself, Mr. QUIE, Mr. BELL of California, Mr. DELLENBACK, and Mr. STEIGER of Wisconsin) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To further promote equal employment opportunities for 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 Opportunity Act of 1969."

SEC. 2. Subsections (g) and (h) of section 705 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000 e–4) are amended to read as follows:

"(g) The Commission shall have power * * * (6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an ag-

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grieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate proceedings in accordance with subsection (h) of this section, when in the opinion of the Commission such proceedings would be in the public interest, and to advise, consult, and assist the Attorney General in such matters.

"(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

SEC. 3. (a) Subsection (e) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5) is amended to read as follows:

"(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c), the Commission has been unable to obtain voluntary compliance with this Act, the Commission may bring a civil action against the respondent named in the charge: *Provided*, That if the Commission fails to obtain voluntary compliance and fails or

refuses to institute a civil action against the respondent named in the charge within one hundred and eighty days from the date of the filing of the charge, a civil action may be brought after such failure or refusal within ninety days against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or further efforts of the Commission to obtain voluntary compliance."

(b) Subsections (f) through (k) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e-5) are redesignated as subsections (g) through (l) respectively, and the following new subsection is added:

"(f) Whenever a charge is filed with the Commission

and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited."

(c) Subsection (h) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5), as redesignated by this section, is amended to read as follows:

"(h) If the court finds that the respondent has engaged in or is engaging 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, but is not limited to, reinstatement or hiring of employee, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a

member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704 (a)."

Mr. HAWKINS. The meeting of the General Subcommittee on Labor will now come to order.

In the absence of the chairman, Mr. Dent, I am presiding today, and his statement will be incorporated in the record at this point if there is no objection.

Without objection, it is so ordered.

(The statement referred to follows:)

STATEMENT OF HON. JOHN H. DENT, CHAIRMAN, GENERAL SUBCOMMITTEE ON LABOR AT OPENING HEARINGS ON EQUAL EMPLOYMENT OPPORTUNITY LEGISLATION

I regret I am unable to preside at the first day of hearings on the equal employment opportunity legislation. It is because of my deep concern about the subject matter and my wish that the bills be considered as soon as possible, that I asked my colleague and chief sponsor of the legislation, Congressman Augustus Hawkins, to proceed with the hearings this morning.

Congressional approval of title VII of the Civil Rights Act of 1964 was a declaration of a national policy on equal employment opportunity. However, the Congress failed to give the Equal Employment Opportunity Commission the means to implement that policy—enforcement authority. To be an operative administrative agency, the Commission must have authority to enforce the law after all efforts at conciliation and mediation have failed to effectuate compliance. That is the purpose of the bills before the subcommittee, and I fully support their objectives.

I wish to take this opportunity to commend my colleague, Mr. Hawkins, for his work in this area. His has been a tireless effort that began many years ago when he was instrumental in the enactment of the California Fair Employment Practices law. His zeal for a Federal law has been no less, and I look forward to joining him to work for enactment of the legislation under consideration today.

Mr. HAWKINS. The hearings this morning are on the subject of equal employment opportunity. We have under consideration H.R. 6228, H.R. 6229, and H.R. 13517, and related bills.

The members of the committee who are with us this morning are, to my right Mr. Burton of California, Mr. Clay of Missouri; and to my left Mr. Reid of New York and Mr. Ayres of Ohio.

The first witness is Mr. William H. Brown III, Chairman of the Equal Employment Opportunity Commission.

Mr. Brown, as a personal friend and associate, I would like to welcome you to the committee, and I am certain the committee is very pleased to have your testimony this morning. We know that you have a very difficult position. We are very sympathetic, and having said that, of course the committee is, as you well know, one which is also very aggressive and we will look forward to your testimony with great pleasure. You may present it, as you please, either by a written statement or in any other manner which you so desire.

STATEMENT OF HON. WILLIAM H. BROWN,, III, CHAIRMAN EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ACCOMPANIED BY RUSSELL SPECTER, ACTING GENERAL COUNSEL

Mr. BROWN. Thank you very much, Mr. Chairman.

I first would like to introduce to the members of the subcommittee, Russell Specter, who is the Acting General Counsel of the Equal Employment Opportunity Commission and who is sitting with me here at the table.

Mr. HAWKINS. It is nice to have you, Mr. Specter.

Mr. SPECTER. Thank you.

Mr. BROWN. Mr. Chairman, and members of the subcommittee, I am pleased to appear before you this morning to comment on H.R. 14632, H.R. 6228, and H.R. 13517, each of which is designed to strengthen the enforcement powers of the Equal Employment Opportunity Commission (EEOC).

The Equal Employment Opportunity Commission was established by title VII of the Civil Rights Act of 1964. Title VII prohibits discrimination based on race, color, religion, sex, and national origin in all aspects of employment. The Commission is bipartisan in composition and its members serve 5-year terms on a staggered basis. Commissioners are appointed by the President, with the advice and consent of the Senate, with one designated as Chairman.

Title VII prohibits four major groups affecting commerce from engaging in discriminatory practices: employers, all private and some public employment agencies, labor organizations, and joint labor-management apprenticeship and training programs. Employers of 25 or more persons, labor unions with 25 or more members or operating hiring halls, and employment agencies dealing with employers of 25 or more persons have been covered since July 8, 1968, when the jurisdictional stepdown process of the title was completed.

The Commission has two major assignments under title VII. The compliance program, which would be fundamentally affected by the measures in question, 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. In addition, the Commission serves as Federal grant agency for State and local fair employment practices commissions. In fiscal year 1969, contracts were approved for 25 State and 19 municipal agencies totaling $700,000. This is a part of the title's general scheme of encouraging the States to provide machinery for the settlement of disputes within their own borders, and is closely related to the deferral requirements of section 706.

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 existence of the State or local law.

A charge must be filed within 90 days of the occurrence of the alleged unlawful employment practice, or 210 days if deferral to a State or local agency is involved.

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

If within 30 days after the filing of a charge the Commission has been unable to obtain voluntary compliance, the charging party may bring a civil action against the respondent in the Federal district court.

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.

In its 4 years of existence, the Commission has received over 44,000 charges of which approximately 56 percent complained of discrimination because of race. Twenty-three percent were concerned with sex discrimination, with the remainder of the charges involving national origin and religion. Of the 27,000 charges that were recommended for investigation, reasonable cause was found in 63 percent of the cases that completed the decision process, but in less than half of these cases were we able to achieve either a partially or totally successful conciliation.

It can readily be seen that the existing law is seriously deficient. A respondent determined to maintain the status quo need only resist exhortations to change his ways and take refuge in the knowledge that eventually the Commission must withdraw. In most cases the possibility of a pattern or practice suit being brought by the Attorney General may be discounted for the simple reason that the Justice Department must be very selective in expending its resources. All that an intransigent respondent has to fear is the unlikely possiblity that whomever he has discriminated against will take him to court. This has happened in less than 10 percent of the cases where we found reasonable cause and attempts at conciliation were unsuccessful.

That this remedy has proven ineffective is not surprising. The primary reason for the enactment of equal job opportunity legislation was to facilitate the economic advancement of a significant class of disadvantaged persons. Certain minorities were by social custom relegated to the bottom of the economic heap, and consequently were prevented from enjoying the normal benefits of membership in our society. Correction of this disparate status of minorities was the purpose of the Civil Rights Act of 1964.

Yet in order to realize the rights guaranteed him by title VII, the disadvantaged individual is told that in the pinch he must become a litigant, which is an expensive proposition and traditionally the prerogative of the rich. Thus minorities are locked out of the proffered remedy by the very condition that led to its creation, and the credibility of the Government's guarantees is accordingly diminished.

It is clear from this that goodwill by itself is not sufficient, and that neither minorities nor employers will regard the title with the respect due to law until realistic avenues of enforcement are made available. The question remains as to what course we should follow.

The history of fair employment practices legislation has been largely characterized by the assumption that administrative procedures are the only answer to the problem. Four months ago I chose to publicly question this assumption, and was met with a reaction that is usually reserved for blasphemers and other troublesome cranks.

I propose—respectfully—to continue my irreverence, in the hope that you will find my argument persuasive, or failing that, that you will at least accord it thoughtful consideration.

Simply stated, the issue is whether the traditional method of administrative cease-and-desist orders, or direct action in the district courts, is the preferable method of obtaining compliance with title VII.

Both systems envisage an adversarial hearing before a finder of fact. Under the cease-and-desist approach, the finder of fact would be a hearing officer, while under the district-court approach, the finder of fact would be a district court judge. In neither case would there be a jury trial. The first question posed then is, "Is it easier from a compliance point of view to conduct trials before a hearing officer or a district court judge?"

Hearings have some advantages. Trials of this character tend to be, in theory at least, less formal than trials before judges. Hearsay evidence is more readily available for use in an administrative proceeding and there are certain relaxations of customary procedural rules because of the administrative character of the trial. We have observed, however, that over the years NLRB trials have tended to become fairly formal and the NRLB has published rules and regulations governing trials which rival the Federal Rules of Civil Procedure in complexity.

Under the district-court approach, the first advantage over a hearing procedure we observe is that the Federal Rules of Civil Procedure, with respect to discovery, would greatly facilitate the collection of evidence for trial. Under a cease-and-desist approach, the rather cumbersome method of enforcing subpenas severely inhibits the acquisition of evidence for trial, making the hearing very dependent upon the investigation. Experience has shown that investigations which are aimed simply at developing enough evidence to find reasonable cause fall far short of providing adequate evidence for obtaining a decision where the standard is a preponderance of evidence on the record. Discovery procedures take less time than administrative fact-gathering techniques, and the contempt powers of the court operate to inhibit any intimidation of witnesses, which is a rather difficult problem that is often real, but seldom apparent.

When we come to the area of relief, however, I believe that the district court approach is clearly and demonstrably preferable to the cease-and-desist method. The pertinent yardstick is the amount of time an aggrieved person must wait before he is afforded relief, whether temporary or permanent. This point is central to the discussion, for in cases of employment discrimination relief too long delayed is often relief denied.

Under the district court approach, if one prevails before the court, he is entitled to an immediate injunction and other relief to bring about a rapid end to the discriminatory practices proved at the trial. Indeed, under a recent decision of the U.S. Court of Appeals for the Fifth Circuit (*United States* v. *Hayes International*, 2 FEP Cases 67, 5th Cir., 1969), a relatively simple proof would allow the EEOC to obtain a preliminary injunction pending a full trial of the case. In other words, where discrimination is established, relief is available to the charging parties as soon as the proof is completed, and, in many instances, even before the case is fully tried.

As a matter of practice, this would not be the case under the cease-and-desist approach. While I recognize that most administrative agencies' statutes contain provision for preliminary judicial relief

prior to administrative hearing, and that such language does in fact appear in both H.R. 14632 and H.R. 6228, it does not necessarily follow that the problem is thereby resolved. The Labor Board has such authority under its statute, but I do not think it is any secret that the Board has used the power so infrequently as to practically negate its existence. This is largely because seeking preliminary relief on anything approaching a regular basis would require the full-time efforts of a very large number of attorneys. The issues in every case would have to be litigated in three different forums, including the court of appeals, before a final, enforceable decree would issue.

The system would be just too cumbersome to work on a regular basis, and is a rather high price to pay merely to enjoy a special standard of review in courts of appeal that have historically demonstrated both sympathy and sophistication in title VII litigation. One must keep in mind that the great growth of administrative agencies as adjudicating bodies took place in the 1930's because of the established hostility and lack of understanding of the problems of that time by the courts of that time. Today, in the area of civil rights at least, the opposite has been true. Whereas administrative and other nonjudicial approaches to the problems of employment discrimination have evidenced timidity and a lack of resourcefulness on the part of the administrative agencies, the courts have from the very beginning demonstrated both that they knew the nature of the problem and were willing to take the steps necessary to effectively combat employment discrimination.

With this in mind, it seems eminently more sensible to me to proceed in a forum where not only can preliminary relief be made available at the outset, but if circumstances warrant, further relief can be obtained as the case proceeds, with permanent relief embodied in a self-enforcing decree issuing at the culmination of trial. Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease-and-desist approach, and aggrieved parties will have their remedy at the earliest possible moment.

This alternative saves the best features of the independent agency approach—expertise and political autonomy—while avoiding the conceptual problems that arise when an active enforcement stance must be accommodated within a structure that contemplates quasi-judicial neutrality. The problem title VII seeks to correct is not one susceptible to the kind of policy balancing that is usual in the administration of laws regulating utilities or other situations involving competing interests. Racial discrimination does not occupy the status of an "interest" under our system of law. It is a pestilence to be eliminated in as quick and efficient a manner as possible. I think H.R. 13517 will well serve that end, and have the assurance of the President of the United States that he will press for its speedy passage, free of amendments designed to cripple its provisions.

There are several other pertinent items that I think bear comment. First, I think it is of utmost importance that the private right of action be preserved. During the last Congress, legislation was reported in the Senate that would have granted enforcement power to EEOC, but at the expense of the section 706 private right of action being deleted.

This was a mistake that should not be repeated. Access to the judiciary in seeking redress of grievances should not be reduced to a parens

patriae type of right, assertable only by a government official acting on an aggrieved person's behalf. Every man deserves the right to seek his day in court, whether an administrative agency thinks his cause is just or not. The section 706 private action has been an important source of title VII law, and well illustrates the value of continual replenishment of the legal framework from extra-governmental sources.

H.R. 6228 and H.R. 14632 would make several other changes in the present provisions of title VII, and I would be happy to answer any questions the members of the subcommittee might have about them. I should reiterate, however, that enforcement power is at the heart of what we are discussing, and deserves the greatest amount of attention. Realistic legislation in this area is long overdue, and is absolutely essential if we are ever to witness the final demise of employment discrimination.

I thank you.

Mr. HAWKINS Thank you, Mr. Brown.

Mr. Brown, I assume that H.R. 13517 is similar to the so-called Prouty bill on the Senate side.

Mr. BROWN. That is correct.

Mr. HAWKINS. As I understand, the main difference between this approach and that which is advocated by H.R. 6228 and related bills is primarily in the enforcement machinery, one depending on the district court approach and the other one the administrative agency approach. Is that the basic difference between the two bills?

Mr. BROWN. That is the basic difference between the two bills. I think that is probably the most important difference. There are other things which are contained in House bill 6228 and 14632 which do not appear in the Prouty bill.

Mr. HAWKINS. These are probably the main differences between those who believe that the present law should be strengthened and differ only on the method whereby we would do this, is that correct?

Mr. BROWN. That is correct.

Mr. HAWKINS. Now, I understand that the Prouty bill has, I think, five or six coauthors. I know that the other approach, the cease-and-desist approach in the Senate has, I believe, in the Williams' bill 35 coauthors. Can you explain why it hasn't been possible to convince more of the Members of the other body that the approach that is being advocated by the administration is more desirable or more effective than the so-called administrative procedure approach?

Mr. BROWN. Well, I don't know how much of a push was made to attract people on to the Prouty bill as mere signatories. I think the other reason is that most of the people who had signed the Williams' bill on the Senate side had been previously committed to cease and desist. I think many of them found it unwise to change at that particular point. I think that this is probably true in the total picture as we view the results of the Senate hearings.

Mr. HAWKINS. I think you were committed yourself to cease and desist several days before that; weren't you, Mr. Brown?

Mr. BROWN. There is no question about that. I had been committed to the cease-and-desist approach until I had the opportunity of reviewing the new bill, which I had helped to write to a very great extent, and after having balanced the relative merits of both of these approaches, I became firmly convinced that the Prouty approach, the

court approach, was the better of the two to achieve the kind of results that all of us who are interested in equal employment opportunity certainly want to achieve.

Mr. HAWKINS. My understanding from reading the Congressional Record is that Mr. Scott, the minority leader in the Senate, although he is a coauthor of the Prouty bill, in the Record indicated that he favored cease and desist so that apparently the administration wasn't even able to convince the minority leader in the Senate this is a bold new approach that is more efficient and highly desirable. Would you believe that, because of the crowded court situations, legal attacks on discrimination would be cumbersome and time-consuming if we used the court approach rather than the administrative agency approach?

Mr. BROWN. I would think absolutely not. As a matter of fact, we have had the opportunity of making some actual comparisons between the time it takes for a court action to go through to a final decree, and the time it takes for general civil litigation in the district courts to go through, and also the period of time it takes for the average case being handled by the National Labor Relations Board to go through. Some of the figures which we have come up with are very, very startling and I might just give the committee the benefit of some of the research that we have done in this area.

First, we found that in fiscal year 1968, and this is for general civil litigation in the district courts, all district courts, the median time from the filing to the disposition of all cases was only 10 months. The median time from filing to the disposition on settled cases was 7 months and the median time from filing to disposition on all tried cases was 19 months.

In the section 707 cases, as you are aware, which were handled primarily by the Attorney General, the average time from a complaint being filed until the time relief was granted was 14 months, and the average time from a complaint being filed until relief was denied was 19 months.

Now, when we compare that with the Labor Board C cases for fiscal year 1969, we find a very different kind of picture. From the time of the charge to the complaint there were 57 days which elapsed, and these are all averages again; from the complaint to the close of the hearing, there was an additional 57 days. From the closing of the hearing to the decision, that would be the hearing examiner's decision, there were 84 days, and from the hearing examiner's decision to the Board decision was 127 days, for a total of 327 days. I might point out that at that particular point there was no final decree or enforceable order. The additional time which was necessary from a Board decision to a court decree where there was a request from review was 411 days, but the additional time from Board decision to court decree for enforcement took an additional 630 days. In other words, under the Labor Board C cases for fiscal year 1969, the average case from the time the complaint was filed until there was some enforcement obtained took a period of 957 days.

Now, we also have had the benefit of looking at many of the cases which have been filed by individual charging parties under 706 of title VII and this would give us a fair idea of the period of time that we are talking about prior to getting a final enforceable order.

In the case of *Vogler* v. *Asbestos Workers Local 53*, this case was filed on November 25, 1966, and the district court decision, which was an enforceable order at that point, was given on May 6, 1967, and the final appeal court of appeals decision affirming the district court was given January 15, 1969.

One of the landmark cases, the *Quarles* v. *Philip Morris* case was filed on November 8, 1965, and the district court decision was rendered on January 4, 1968.

In the case of *Bowe* v. *Colgate*, another very important case, it was filed on April 28, 1966, and the district court decision, again an enforceable decision, was given on June 30, 1967.

In the *Jenkins* v. *United Gas* case, and this probably represents the longest period of time involved because it was a case in which the district court originally found no violation, this case was filed on April 8, 1966. The district court decision was rendered on December 22, 1966, and the court of appeals decision which reversed the district court was rendered on August 29, 1968.

In one final case, the case of *United States* v. *Hayes International Corp.*, which just came down this year, suit was filed March 25, 1968, and the court of appeals decision was rendered on August 9, 1969.

So, I think, Mr. Chairman, by looking at the relative periods of time between the various alternatives which have been suggested, the court method, I think, offers the greatest opportunity for early relief with an enforceable order being given at the earliest possible point in time.

(The document referred to follows:)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The following table offers a comparison of the time factors involved in processing National Labor Relations Board "C" (unfair labor practice) cases, and various kinds of civil litigation in the District Courts. "C" cases are the NLRB proceedings most comparable to the administrative procedures contemplated by H.R. 6228 and other cease and desist bills.

I. FY 1968 General Civil Litigation (District Courts)[a] (Median Time):
   Filing to disposition, all cases: 10 mos.
   Filing to disposition, settled cases: 7 mos.
   Filing to disposition, tried cases: 19 mos.

II. Sections 707 Cases (District Courts): [b]
   Average time, complaint to relief granted: 14 mos.
   Average time, complaint to relief denied: 19 mos.

III. Representative Section 706 Cases (District Courts): [c]
   Vogler v. *Asbestos Workers, Local 53*—Filed: 11/25/66. District Court decision: 5/6/67.
   Quarles v. *Philip Morris*—Filed: 11/8/65. District Court Decision: 1/4/68.
   Dewey v. *Reynolds Metals*—Filed: 5/31/68. District Court Decision: 6/6/69.
   Bowe v. *Colgate*—Filed: 4/28/66. District Court Decision: 6/30/67.
   Clark v. *American Marine*—Filed: 2/14/66. District Court Decision: 9/15/69.
   Jenkins v. *United Gas Co.*—Filed: 4/8/66. District Court Decision 12/22/66.

IV. National Labor Relations Board "C" Cases (FY 1969)[d] (Median Time):
   Charge to complaint: 57 days.
   Complaint to close of hearing: 59 days.

[a] Annual Report of the Director of the Administrative Office of the U.S. Courts, 1968.
[b] Information obtained from Department of Justce.
[c] Information obtained from EEOC General Counsel's Office.
[d] Information obtained from NLRB General Counsel's Office.

Close of hearing to TX decision: 84 days.
TX decision to Board decision: 127 days.
Board decision to Court Decree*—*Request for Review:* 411 days. *Enforcement:* 630 days.
* FY 1968.

Mr. HAWKINS. The Chair is going to yield to the gentleman from New York at this point, but before I do I would like to simply say in explanation of the statement that you have just made, and I hope that the statement will be given to this committee in exactly the form that you have just given it so that we will have time to analyze it, that it is apparent that the approach emphasizes court action whereas the administrative agency approach emphasizes conciliation, that it is the thought that having the power that it would not be necessary to use it. I think that the approach that you are advocating emphasizes that things are going to be snarled up in the courts and not kept out of the courts.

Mr. HAWKINS. It certainly is not the objective of those who support the administrative agency approach that we are trying to convict persons, that we are trying to deal with an act after the act has been committed. What we are trying to do is to prevent that act and at every point to provide for effective conciliation. We believe that conciliation will be made effective by the Commission having the power to act, that in that instance it would probably not have to even act. We base that on the experience in more than 30 States and on other Federal regulatory agencies so that I think we get to a basic difference of the two approaches of one that seeks to conciliate to use its power only sparingly and one which seeks to go into court which would certainly prove to be, I think, very cumbersome, time-consuming, and rather costly.

Mr. BROWN. I might say in answer to your thought that we, too, envision the use of the court approach sparingly. I tend to feel that the intention of Congress was that we would be able to conciliate a much larger number of cases than what we are presently able to do.

I would dare say that with enforcement power, whether it be the court approach or cease and desist, the conciliation rate would go up substantially, but it would still require, at least from our experience up to this point, even on the cease-and-desist approach, that you actually use that power, so that you can get to the point where the climate is going to be so far as the employers and the labor unions are concerned, that they then are willing to sit down in a meaningful sort of way and discuss realistically the conciliation problems with you.

Our problem has been that we have found that without any enforcement powers our conciliation rate, as I have indicated, is less than 50 percent and these are in cases in which we have already found that there has in fact been a violation of the act.

Mr. HAWKINS. The Chair will at this point call on the gentleman from New York, Mr. Reid.

Before I do, I would like to say that since the first introduction of an equal employment opportunity bill in Congress, when I first came here, Mr. Reid and I have cosponsored the legislation and I certainly want to pay a tribute to the gentleman from New York for the very fine manner in which he has dealt with this subject. I think that he has done a tremendous amount of work and certainly it is a pleasure to be associated with him in the efforts to obtain a much stronger enforcement provision.

Mr. REID. I thank you very much, Mr. Chairman, for those generous comments, and I would like to yield to the distinguished ranking member of the Committee on Education and Labor and the author of the Ayres-Prouty bill.

Mr. AYRES. Thank you.

I might say, Mr. Chairman, that I know you are familiar with the manner in which the committees are established here in the House. I am actually just ex officio. Mr. Erlenborn is the ranking Republican on this particular subcommittee.

Just to refresh my own memory, you were a member of the Commission, of course, prior to being elevated to the chairmanship?

Mr. BROWN. That is correct.

Mr. AYRES. I should know this, but how long have you been a member of the Commission?

Mr. BROWN. I was originally appointed on an interim appointment by President Johnson on October 19, 1968.

Mr. AYRES. And when did you become chairman?

Mr. BROWN. I became chairman May 6, 1969, and at that time I was also made a member of the Commission since I had been acting under the interim appointment.

Mr. AYRES. Then you played an important part, I would presume, in drafting of the administration's bill, which in the House is H.R. 13517, is that correct?

Mr. BROWN. That is correct.

Mr. AYRES. So that even though there might be some differences and this is a rather controversial issue even on the Republican side, this is your position representing the administration, is that correct?

Mr. BROWN. That is my position representing the administration, and I think this position represents, in my opinion, the best way of achieving the purposes for which the act was established.

Mr. AYRES. I have one more question.

This doesn't have anything to do directly with the situation that is before us. This can be given as a personal opinion based on your extensive background in this field.

Have you had occasion to review the so-called Philadelphia plan?

Mr. BROWN. I have had the opportunity of reviewing it very, very briefly. I would be very honest with you. I have been so tied up with the problems of our agency that I haven't had the opportunity of going into the kind of in-depth study of the Philadelphia plan that I would like to have had.

Mr. AYRES. There have been some rather interesting statements over the weekend, and I presume this approach is going to be followed through by the administration. It seems as though they are intent, and I feel justly so, in providing the opportunity for jobs in the construction field.

Mr. BROWN. I think, Congressman, that that is a very accurate statement. I think that the things which we have found particularly during this past summer have given me a great deal of concern for the kind of confrontation which has taken place, particularly when you talk about Pittsburgh and Seattle, Chicago, and some of the other cities throughout this country.

We must give more than lipservice to the intent of the Civil Rights Act of 1964 and title VII of that act. We can't possibly take the chance

of having another confrontation as took place in Pittsburgh where you had some 4,000 members of the minority community marching for jobs, which at least they have a right to expect they are entitled to, and at the exact same timing having 4,000 to 5,000 whites marching in the attempt to protect the jobs that they feel they are entitled to. We must do something to bring the minority people of this country into the economic mainstream of American life, and we must do it on other than just a token basis, and we must do it on other than just the entry level positions.

I think that the Kerner Commission's report has indicated that one of the major problems for the unrest in this country is the fact of discrimination and particularly discrimination in employment, and to the extent that I possibly can, and I am certain that each member of the committee, as well as of the Congress, would also agree that to the extent that they possibly can, we certainly must eliminate the kind of discrimination which presently goes on in terms of employment in this country.

Mr. AYRES. Well, we will be glad to cooperate with you in your problems and I say to Chairman Hawkins on the House side that it is perfectly all right with me if you refer to this as the Ayres bill.

Mr. HAWKINS. Hereafter, we will do that, Mr. Ayres.

Mr. Reid?

Mr. REID. First, Mr. Brown, I would like to welcome you most warmly this morning and to wish you the very best in your important efforts.

Mr. BROWN. Thank you.

Mr. REID. I understand further the sensitivity of your position, but I am frank to say that I was dumbfounded by your statement, and I would like to go over the two elements that gave me some concern. You said, first, on the bottom of page 8 and the top of page 9: "I believe that the district court approach is clearly and demonstrably preferable to the cease-and-desist method" and subsequently on page 11 you say in the middle, "Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease-and-desist approach * * *."

I am dumbfounded by that statement because the facts around the country, in my judgment, clearly contradict it.

I would illustrate this first by mentioning something I am sure you are aware of, that there are 33 States in the United States today that have human rights commissions with cease-and-desist powers or other similar administrative enforcement powers. Further, in each case, as far as I know, the cease-and-desist approach has worked effectively. I can speak with some personal experience, however, only in connection with New York, and I would mention to you that something on the order of a very few percent, roughly 1 percent of the cases before the New York commission which now exceed, I think, over 16,000 cases, only 1 percent of these ever went the full commission route with cease-and-desist orders being required. In other words, well over 95 percent were resolved, conciliated, adjudicated in one form or another where there was probable cause.

Every knowledgeable American that I know in this field feels not only clearly but strongly that cease-and-desist powers are not only desirable but essential and imperative.

I would call your attention to the third annual report of your own Commission and of Clifford Alexander's preamble which presumably you had something to do with which underlines in bold type, "Legislation is currently before the Congress which would provide the Equal Employment Opportunity Commission with the power to issue complaint, cease-and-desist orders, et cetera." Basically, all of the States have found that this not only works but is expeditious. Many cases are resolved in a matter of a few days or a few phone calls. In some cases they are resolved merely by the fact that there is notice of a hearing or notice of a full Commission hearing and there is no such delay such as you mentioned in connection with Labor Board Category C cases which, as I understood your testimony, involved a number of days ultimately up to 327.

What I am trying to say very simply is that the vast majority of these cases can be resolved on the basis of the facts quickly, expeditiously, and fairly. It is working in well over two-thirds of our States, and to inject court proceedings here, even though you said you hoped to use this procedure sparingly would, in my judgment, materially weaken the enforcement powers of the Federal Government and substantially delay prompt enforcement.

Now, I know there are some differences of opinion on this, but if there is any matter of civil rights law that has been well tested both as to efficacy, effectiveness, and principle it seems to me to be this. Therefore, my question, and my apologies for the length of the preamble, is this: Have you examined the vast number of cases that have been settled by the State commissions with cease-and-desist powers? The fact is they do not as a rule have to use these powers, but the fact that they have the power is essential. Without it, as you point out, in the case of the Commission, compliance drags and conciliation is frequently difficult.

Mr. BROWN. I would be very happy to respond to that, Congressman. First, let me say that I respectfully disagree with your premise that the State agencies with cease-and-desist powers have been able to do the kind of job that we envision they should be able to do.

As you say, there are presently 33 States to which we do defer and which do have the cease-and-desist approach. I might say that the position which I have put forth both here and on the Senate side is not completely unique. Interestingly enough, Senator Goodell, from your own State, put forth the very position that I am espousing now, last year in the House.

Let me say this to you: We deferred some 25 or 30 percent of our cases to each of these States that you have indicated. Each of these States has in fact a cease-and-desist law on the books. It is interesting that, even though they have the cease-and-desist approach, of those 25 or 30 percent of the cases which are deferred, we receive back to the Commission—and it is interesting because our Commission has no enforcement power—we receive back 84 percent of those cases.

Now, this says something.

Mr. REID. Eighty-four percent of those that were not resolved?

Mr. BROWN. No, 84 percent of the cases which were deferred, not those not resolved, but 84 percent of the cases originally deferred.

Mr. REID. Do you have a figure as to the number of the cases that were resolved?

Mr. BROWN. I have no figures on that, but my advice is that that would be extremely low and I think one of the problems has been that historically and traditionally, the type of relief which is obtained by the State agencies is very, very limited in its scope. We find that many of the States take settlements which in our opinion are far, far below that which the courts have already approved. Some of the most far-reaching court decisions have come under section 706 cases and I would dare say that in 90 or 95 percent of the cases settled by a State agency they did not meet the standards that we set as to what is properly an adequate settlement under the law as it presently exists.

Mr. REID. Have you examined the record of the New York State commission?

Mr. BROWN. We have not examined that record very specifically.

Mr. REID. I think there you will find first, as I have said, over 90 percent of the cases are resolved without having to go to the commission. You will find that the number that have been resolved relatively promptly and effectively runs into the thousands. The number that have actually gone to the courts you can almost count on one hand.

Mr. BROWN. We are talking about States, and New York is one of them that under their FEPA, of course, are talking about housing cases, education cases, and so on, with many other types of cases.

Mr. REID. In New York, housing has been opened up, employment has been opened up, public accommodations have been opened up, restaurants have been opened up, and I think you will find the record is quite clear in New York and this was the first State commission. Now, I think you can undoubtedly distinguish between the vigor of the enforcement of particular State agencies, and I would not doubt that there are some differences and disparities, but my point is that where the statute is upheld and enforced vigorously, it works and is by far the promptest means of securing equitable relief.

Mr. BROWN. I might just suggest to you, Congressman, that if New York State had instead of the cease-and-desist approach, the right to go into a district court as we have suggested here, the percentages of successful conciliations as you have looked at them would be about the same, maybe even greater. I don't think that the fact that you have had the successful conciliations in New York State is solely due to the fact that you have had cease and desist. I think more importantly it is due to the fact that you have had some kind of enforcement power.

Now, presently, our commission has no enforcement power and as we look at the cases which are returned to us after the initial deferral, and New York is no exception to this, an awful lot of the cases which do come back to us have been sent out to agencies that do have cease and desist and have in fact tried to exercise that power. One of the things that we find is that many of these cases were deferred back.

Mr. HAWKINS. Would you yield at that point, because I am familiar with the California situation which is somewhat comparable to New York.

Mr. REID. I yield.

Mr. HAWKINS. I don't know what your record is in cases deferred to California that have been sent back to you, but I do know that with the exception of New York, and I think New York possibly is not adequately funded itself, there isn't a State agency that is adequately funded.

In California, I think it is something like $200,000 to $300,000 which is certainly inadequate for the number of cases they have handled. They cannot handle the cases that they receive in the first instance. To defer a case to California is like saying to them that we are adding to a caseload that is already overcrowded. I can understand that given the limited time in which to settle a case which is deferred to them, they have no alternative but to defer the case back to you. I think that to say that this implies a weakness of cease and desist is just misleading because it is a weakness of legislative bodies that do not adequately fund the agencies that they have created.

Mr. BROWN. We weren't saying that solely, Mr. Chairman. What we were saying is that, certainly you are absolutely right that there are cases in which the State agencies have been grossly underfunded. I might also say that in the history of our commission we have also been grossly underfunded from the very beginning. There have been many cases which are referred back to us in which the State agency has already been able to act and has obtained what the State agency feels is an adequate settlement and the charging party has seen fit to still have us take jurisdiction.

In many of those cases, we are able to get a much better settlement than the State agencies, and this has been true in spite of the fact that we have absolutely no enforcement powers whatsoever. I think as we look over the history of the State agencies part of the problem has been that this has been the traditional approach to the problem. I think the times of today and the rapidly changing conditions call for some innovative types of approaches to the problem.

I am no longer content to merely accept that what was good in the 1930's is the appropriate kind of legislation for the 1960's, and certainly not for the 1970's.

The main thing that I say to each of you on this committee is that what we must do is to look at this problem objectively and balance the relative merits of cease and desist as opposed to the court procedure, and, after having looked at this in great detail and having made an indepth study of it, can we honestly say when we come out at the end that the cease-and-desist approach is better than the court approach? I would think not. I think that from all the objective studies that we have made the court approach will achieve the kind of results that we are looking for in a much quicker period of time and will get us to the point where we will be able to raise our conciliation rate to perhaps 80 or 85 percent where it should be.

Mr. HAWKINS. Can we honestly say at the end of these hearings that all of us who wish to strengthen the law will cooperate to get a bill through regardless of whether it is one or the other?

Mr. BROWN. I would certainly think that that is important. I think that, as I outlined in my statement, the key to this is this agency's enforcement power. I would hope that by whatever persuasive powers I might have after you have had the opportunity of reviewing the record and whatever additional information that you may see fit to obtain yourself or whatever additional information we might be able to obtain for you that you will see that on the relative merits of these two approaches the preponderance and the weight would weigh most heavily on the side of the court approach.

Mr. REID. I have just one final comment and question, if I may.

My own view is that to go the route of the district court rather than the cease-and-desist route would be a tragic weakening of imperative powers that the Federal Government sorely needs. The New York State Division of Human Rights received a total of 16,129 complaints between 1945 and 1967. Of the total complaints received, 98 percent—or all but 326—were settled before being ordered for hearing, and more than two-thirds of those ordered for hearing were settled before the hearing was completed. In my view, this kind of record can be maintained only if the commission has administrative enforcement powers in the form of authority to issue cease-and-desist orders, returnable in court if necessary. I would ask unanimous consent, Mr. Chairman, to place in the record at this point the facts in New York State.

Mr. HAWKINS. Without objection, so ordered.

(The material referred to follows:)

NEW YORK STATE DIVISION OF HUMAN RIGHTS—DISPOSITION OF CASES 1945-67

	Total	Employment	Public accommodation	Housing	Education
Probable cause—Complaint sustained:					
Adjusted after conference and conciliation	3,407	1,760	450	1,194	3
Ordered for hearing or settled by consent order	[1] 384	136	20	228	.....
No probable cause found as to specific complaint but other discriminatory practices or policies found and adjusted	1,885	1,777	43	65	.....
No probable cause found—Specific complaint dismissed and no other discriminatory practices or policies found	8,667	6,637	580	1,416	34
Withdrawn	643	364	52	223	4
Lack of jurisdiction—Specific complaint dismissed	1,143	532	86	514	11
Total	[2] 16,129	11,206	1,231	3,640	52

[1] 58 of these complaints were settled by a consent order and 326 were ordered for hearing.
[2] Of the total number of complaints received by the Commission, 98 percent, or all but 326, were settled before being ordered for hearing, and more than ⅔ of those ordered for hearing were settled before the hearing was completed.

Mr. REID. Finally, I would point out, Mr. Brown, that under any court proceeding you are going to be involved with months and certainly a number of days' delay in any proceeding, whereas under the cease-and-desist approach the fact that the Commission has this power and institutes a proceeding is in the majority of cases sufficient almost to resolve it right there so that you get resolution in some cases in a matter of hours, in other cases after one or two meetings.

Lastly, I would ask you whether to your knowledge any of your predecessors or whether any of those that have fought this fight for a number of years, whether it be Martin Luther King, or Ralph Abernathy, or the predecessors of the Equal Employment Opportunity Commission, or the NAACP, because I see Clarence Mitchell here, or Joe Rauh from the Americans for Democratic Action—whether anyone in this field who has fought for this recommends the district court approach? If so, I am not aware of it.

Mr. BROWN. Let me make just one other observation. In spite of the type of successful conciliations that you have indicated New York has—and I will admit that I have not had the opportunity of looking at those records—the fact that you settled many cases very, very quickly I think very well might point up one of the problems and that problem is that many, many times the case has been settled only as a case itself and not as being representative of a class of cases.

I think that the thing which points this up very graphically to those of us at the Commission is that in January of 1968 when we came into New York City with a hearing the amount of discrimination which was complained of at that hearing was appalling. The records of most of those companies were appalling and this is in spite of the fact, as you say, that the law has been on the books for some 30 years. This is not only true of New York; it is true of many, many other States, and what we have been doing has been putting on bandaids where we should have been doing major surgery.

We cannot only treat this problem as a problem of the individual. We must treat the problem as symptomatic of a much larger problem, and that is the kind of discrimination which is being practiced on a widespread basis against an entire class of people, and this is particularly true in the case of seniority systems.

I might answer your last question by pointing out that one person who preceded me on the Commission, as a matter of fact the person whose place I took on the Commission, Sam Jackson, who is one of the original appointees to this Commission and who presently is the Assistant Secretary for HUD for metropolitan development has in fact taken the position that the court approach is preferable. As a matter of fact, he is the author of an article to this effect in the Washburn Law Review.

Mr. REID. I just thank the chairman for yielding and merely add that in New York there have been a number of cases that dealt with the broad structure of the law. There is a lot that needs to be done. I only hope that you will embrace the strongest possible powers and not, in my judgment, weaker powers.

Thank you.

Hr. HAWKINS. Mr. Pucinksi?

Mr. PUCINSKI. Thank you, Mr. Chairman.

Mr. Chairman, I would like to welcome you to the committee also. I would like to observe that I would probably be a good deal more persuaded by all this testimony if we could have some indication from you on what your Commission is doing about the forgotten minority, the Latin Americans in this country and when you are going to issue some guidelines or some rules and regulations on enforcing that part of the act which deals with discrimination because of national origin. This act was passed in 1964. I have asked the counsel for your Commission repeatedly to post the rules and regulations for people who feel they have been discriminated against because of their national origin. The last time we talked to your committee counsel he told me that you handle these things on an ad hoc basis, on a as-they-come basis, and I was just wondering, Mr. Chairman, is the Commission prepared or is the Commission going to issue some rules and regulations dealing with that aspect of the act?

We have, for instance, in the Chicago area a half-million Latin Americans and they are probably in the lowest economic rung that you can find. You have them here in the District.

You have about 75,000 Latin Americans in this area.

Again, you find them at the very lowest economic rung. There are other people who have been discriminated against because of national origin. When is your Commission going to address itself to that problem? You in your testimony say that you handled 9,000 cases or 21 percent of your cases involved national origin and religion.

But you don't have a breakdown. I am not at all persuaded by your counsel's statement that you haven't had very many complaints. You haven't had many complaints because the aggrieved don't know how to go about complaining and you really haven't set up any machinery for them to bring in their complaints. I can guarantee you that as abhorrent as discrimination is because of race and because of religion, I think that the most pernicious kind of discrimination in this country can be found in discrimination because of national origin simply because you can't put your finger on it, and yet we know darn well that it is there. We can look in agency after agency of government, we can look in our big corporation, look at the promotion lists and you are going to find that people, for instance, of the Slavic groups in this country are totally passed up for promotions for higher jobs.

For 5 years your Commission has given nothing but lipservice to this problem. I am hopeful that under your chairmanship we are going to have some changes and I wonder if you can tell me what changes are you anticipating in this field?

Mr. BROWN. I will be very happy to do that. As I think we have indicated to you earlier, the proposed national origin guidelines have in fact been drafted. They originally were to have been presented to the Commission for a vote just a week ago. We were unable to do that because Commissioner Ximenes was required to be out of town and we felt that it was imperative that he be there because of his Hispanic background.

We intend to pass and set up national origin guidelines. As a matter of fact, it is scheduled for the next Commission meeting. We have in the past operated on a case-by-case basis as far as national origin guidelines are concerned, and I might say that probably some 18 percent of our cases have dealt with national origin cases. Most of these, as you have pointed out, have to do with the Spanish surnamed American.

I agree with you that perhaps in the past the Commission has not undertaken the kind of job which would permit us to really determine the extent of discrimination which is being practiced which we know is widespread. Part of the problem has been not only in the Spanish surnamed community, but in the black community as well. As a matter of fact, in all the minority communities many of the people whom we are there to serve are unaware of the fact that we exist.

Now, you have asked what steps have I taken. One of the things which I have done, and the person should be on board in the next 2 weeks; I have hired an additional Special Assistant whose sole function will be to monitor the kind of problem that you are talking about. His name is Ellis Carrasco. He has had the background of being in the Southwest area, of working with many of the Mexican-American communities. He belongs to most of the Mexican-American organizations. He will be reporting to me on a daily basis; first, as to what we have done in the past; second, what our program should be to include all these people in the program of the entire Commission; and third, what steps should we take to see that these programs are carried out.

There is one other thing which we have considered, and to be perfectly honest we have not made a determination as to whether or not we can do it with the kinds of limitations that we operate under,

and that is to put out into the minority areas—and I am talking about putting out into the local communities as opposed to some Federal building downtown—someone from our Commission who perhaps would only serve one evening a week to accept complaints of discrimination, to make people in the community aware of the fact that this Commission does exist, that we are there to service them, and that we will do everything possible to see that their complaints are promptly adjudicated.

I would say to you, Congressman, that in the period of time that I have been on the Commission, and I believe this is true prior to the time that I was on the Commission, that we have at no time overlooked the cases dealing with national origin and as far as the future is concerned we certainly do not intend to overlook them.

We certainly intend to have these national origin guidelines published and certainly intend to do everything possible to see that everyone who is covered by the act as contemplated by Congress will be given the kind of protection that the Congress envisioned when the act was passed.

Mr. PUCINSKI. I think that is a very hopeful program that you have outlined here. I wonder if you could tell me specifically when the guidelines will be issued. I was under the impression that they were going to be issued today, or at least very shortly.

Mr. BROWN. They will be issued at the next Commission meeting. The Commission must vote on it. That is scheduled, I believe, for the 14th or 15th of December, and at that time they will be presented to the Commission.

Mr. PUCINSKI. My own feeling is that once the rules and regulations have been published people then know the procedure to be used to lodge a formal complaint. My judgment is that you are going to be amazed at the degree of discrimination that exists in this country because of national origin at all levels.

One final question. My colleague from New York talked about the New York law. We were in New York with this subcommittee in 1961 before the Federal act was passed. We were in New York again in 1964. I have always been led to believe that New York supposedly had the model act in this country for enforcement of rights of individuals. Yet I am under the impression that the State administration in New York State has probably the worst record in this country on enforcement.

Now, what is the problem there? They keep telling us about States rights and how we ought to leave this within the States. Here you have a State like New York that supposedly has a model statute, and yet we find in our surveys and our own statistics that the incidence of discrimination in hiring practices continues to exist on a large scale in New York and there apparently is no appreciable enforcement either by the Attorney General or the Governor or his own State commission.

Is there something lacking in the New York law that we ought to try to correct in Federal legislation? What is the problem there?

Mr. BROWN. I think one of the problems may be, and this is the problem that we are trying to avoid with the cease and desist approach in the Federal Government, is that historically administrative agencies have a tendency not to go to the exact limit. They tend to pull back from what the limit of their authority is.

I think the converse is true as far as the court approach is concerned. I think historically courts, and particularly in the area of civil rights as it relates to employment, have gone even further than many of the administrative agencies. One of the examples might very well be the National Labor Relations Board where in a very recent case, the *Packinghouse* case, the National Labor Relations Board did not feel that a practice of discrimination by an employer amounted to a violation of their act. The court pointed out to them that it, in fact, did constitute a violation of that act. You know, no matter what law you pass, it is only as good as the people that enforce it and the fact that that law is on the books really doesn't make any difference if that law is not being enforced.

Mr. PUCINSKI. Mr. Commissioner, I appreciate your problem on this and I appreciate your answer, also.

Mr. Chairman, in deference to my colleagues, whom I am sure have a lot of questions to ask, I won't pursue this matter at this time, but I do hope that as part of the hearings on this legislation this committee would summon Governor Rockefeller as the caretaker of the so-called model act in this country. Perhaps we ought to invite the Governor here and let him tell us why his State has failed so miserably in enforcing the act.

Mr. REID. Would the gentleman yield?

Mr. PUCINSKI. Perhaps we can then have some indication of whether or not additional Federal legislation——

Mr. HAWKINS. Will the gentleman from Illinois, who is talking about the State of New York, yield to the gentleman from New York, who would like to talk about his State?

Mr. PUCINSKI. Yes, I yield.

Mr. REID. I thank the gentleman for yielding.

I caught a passing reference to New York in the gentleman's comments, and I would merely put in the record preliminarily, if I may, that between 1945 and 1965 there were 13,414 cases filed and, in reference to the colloquy that I had with Commissioner Brown, of those 13,000 cases 183 were ordered for hearing or a consent order issued; and of the 183 only 33 of these complaints were settled by a consent order without being ordered for public hearing; and of the remaining 150, 74 were settled or discontinued before hearing, 33 were settled during the hearing, and at this point in the record there were 26 that had their hearing record completed and 17 were pending. At an earlier point in the record, I have inserted a table bringing this material up to a more current date.

My only point here, for the record, is that the vast majority of cases were resolved by virtue of the cease-and-desist power and that there was prompt adjudication.

With reference to my colleague's comments, the comments of the gentleman from Illinois, I would not say that New York has done everything that was possible. I think that it has made signal progress. It did have the first antidiscrimination statute in the United States.

I know the gentleman is fully aware that part of the problem in employment is the building trades and as the gentleman is perhaps not aware I was the author of the amendment to the Civil Rights Act of 1964 dealing with apprenticeship training and this is an

area where, frankly, I would like to see much greater progress, and I think a Federal statute with cease and desist in this area would be very helpful.

There are also problems with the longshoremen and the gentleman is familiar with the longshore unions, I am sure.

Mr. BURTON. On the east coast.

Mr. REID. On the east coast.

But, basically, there has been significant progress in opening public accommodations, employment, and many other areas. But I would be the first to say that we have not made significant progress yet with the building trades.

Mr. PUCINSKI. I hope the gentleman will agree that in order to fully appreciate the need or the lack of need for this legislation it would be a good idea to have the caretaker of what is called the model act in this country before this committee to tell us how well they have administered their State act.

Mr. REID. I wasn't aware he is the caretaker. It seems to me he is a very vigorous Governor who says he is going to run again. I think in any event anything that will strengthen the statute is what the gentleman and I would like.

Mr. BROWN. If I may ask just one question.

Mr. HAWKINS. Mr. Brown?

Mr. BROWN. I think the statistics which you have given us, Mr. Reid, are quite impressive. The thing which we at the Commission are quite concerned with, very frankly, is the fact that with regard to these cases which have been settled—some 13,000-plus cases of the 13,400 cases have been settled—the gut question is whether or not the settlements that have been obtained contain the most that could be possibly obtained for the people that you are representing; namely, the charging parties.

I would dare say that if our Commission decided to accept anything as a settlement instead of adhering to a very stringent set of rules and regulations as to what is a good settlement, we could also greatly increase the number of settlements in our Commission. I don't think that is the purpose of certainly the Federal act, and I think that what we must do is to make absolutely certain that whenever we do get a settlement, it is a settlement which truly obtains the most we can possibly get, under the court decisions, for the charging party involved.

Mr. REID. I would agree, Commissioner Brown, that obviously we want to get as broad and far-reaching a settlement as you can in any matter, but a great many of those cases are individual questions, for example, of public accommodation. I don't think the courts have to be burdened with each case of this kind. In broad opening up of whole areas, the New York State Commission has tended to act through the Commission procedure and, to some extent, it has been successful, but I would not argue that each case has to go to court for adjudication. I think you will find that in talking with other chairmen of commissions, past and present, around the United States that virtually everyone feels that this cease-and-desist power is absolutely fundamental and is essential, and I know of no one, basically, who has administered one of these commissions who doesn't feel it is an essential power.

Anything you can add to it, any areas where you want to initiate proceedings to broaden a particular area, which is the power the New York State Commission now has, I would say God bless you, more power to you, but for some of this cease-and-desist order is the only prompt and efficacious remedy.

Mr. HAWKINS. Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Brown, I want to thank you for coming here this morning and giving us the benefit of your experience as a member and as chairman of the Commission.

On page 12 of your statement you make reference to the private right of action under section 706, and the fact that certain legislation that was reported in the Senate last year would have removed that private right of action, which you go on to say is important, and I would agree with you.

Have you examined H.R. 6228 as introduced by our acting chairman, Mr. Hawkins, and others in the House, and could you comment on whether it contains or deletes that private right of action?

I have looked at it briefly, and I don't see the private right of action in there.

Mr. BROWN. I believe that H.R. 6228 preserves the private right of action.

Yes, under section 5(l) of that bill, and I am reading from page 21, line 15, or perhaps we ought to start at the very beginning of that section at line 10:

> If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706(c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the parties * * *

Mr. ERLENBORN. I am a little ahead of you reading this, and on page 22 it goes on to say:

> * * * a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved.

So that it is in here.

Mr. BROWN. It is in the bill.

Mr. ERLENBORN. I tried to find it in section 706 and did not find it, and had not gotten back as far as this section.

I thank you for that information.

It appears to me that there is really only one question here, and that is: What is the most expeditious manner of proceeding to obtain the relief that is I believe desired by all parties, and that is a resolution of these charges?

I take it from your testimony that you feel the most expeditious way of proceeding would be to have the Commission empowered to ask for relief in the courts, where you could get temporary or perma-

nent injunctions and you would be operating under the rules of civil procedure. I take it from your testimony that you feel that you would settle more cases having this power, and you would resolve more cases through a hearing procedure in the courts ultimately than you would if you were given cease and desist authority.

Is that the sum and substance of your testimony?

Mr. BROWN. That is absolutely correct.

Mr. ERLENBORN. So that your desire, I am sure, is the same as the desire of the sponsors of H.R. 6228, and you just have come to a different conclusion based on the evidence as to which is the most expeditious manner of proceeding.

Mr. BROWN. Yes, and I think it is very important that we don't lose sight of the fact that the most important thing for this Commission is enforcement powers. I think that is the key issue, and while we may differ as to which is the better of two routes to go, I certainly think we ought to keep in mind the fact that the goal is enforcement.

We would differ. We feel that the best way of going about getting the best kind of enforcement power would be the court route.

Mr. ERLENBORN. It would be your philosophy and that of the Commission that you would seek and desire voluntary compliance rather than litigation, and I know that our acting chairman earlier said that your support of the injunctive procedure was probably going to lead to more litigation and fewer settlements.

Are you aware of any State laws where they have the power of going into court to seek injunctive relief, or do all of the State laws, if the Commission has enforcing power, have cease-and-desist authority?

Mr. BROWN. I believe they all can do it after the use of cease and desist, but the information that we have is that very few of them ever use it.

The *Hayes* case, which just came down in August, would seem to give to us an immediate right to an injunction, almost as a matter of course.

Mr. ERLENBORN. That would be a temporary injunction pending the outcome of the proceedings?

Mr. BROWN. That is right, pending the outcome of the case itself, which is a very key thing, and I think it is of the utmost importance that we consider this very carefully.

Mr. ERLENBORN. This would in effect be a court-backed, cease-and-desist order during the pendency of the suit, with full enforcement procedures that are available to the court. Is that correct?

Mr. BROWN. Yes, and even more importantly, it is an order which is immediately enforceable by the courts.

One of the issues that we touched upon in our statement was the question of intimidation of witnesses, and this is a very real thing. This has happened.

A court sitting can immediately issue its own order in the form of a contempt citation if it finds that in fact any witness has been intimidated, and of course it is a self-enforcing order.

The difference between that and the cease-and-desist approach is that the cease-and-desist order, once it is issued, can be litigated all the way through, and you don't get the final enforceable order until, in many instances, it is so long after the fact has occurred that it does very little good.

Mr. ERLENBORN. The fact is that with either approach the ultimate relief is in the courts?

Mr. BROWN. Yes.

Mr. ERLENBORN. But a court enforceable order, and the approach that you favor, get you to the courts quicker than the cease-and-desist approach?

Mr. BROWN. And would get us an enforceable order much quicker.

Mr. ERLENBORN. Under the cease-and-desist approach, you are merely putting another level of hearing activity before you get to the ultimate, which is the court enforceable order?

Mr. BROWN. That is quite true.

Mr. ERLENBORN. Concerning the compulsion of witnesses to attend a hearing before the Commission, under the cease-and-desist approach you have the right to issue subpenas; but, if they are not honored by the party upon whom it is served, you must then go to the court to seek enforcement. Is that correct?

Mr. BROWN. That is quite true, and as a matter of fact, that can be appealed all the way to the Supreme Court, that particular portion of it.

Mr. ERLENBORN. And again, if your hearing were in the district court, it would be a court subpena, and more immediately enforceable than a subpena issued by the Commission. Is that correct?

Mr. BROWN. Yes, a district court could immediately require that witnesses attend, upon the penalty of a contempt citation. They can immediately indicate that certain records and things should be turned over.

Under the cease-and-desist approach, this would be a much more cumbersome method, because what would happen in the event that these people did not see fit to show up, or to obey the subpena, is that we then would have to go into the court to ask that they issue their own order, and this order, once it is issued, is not final, because the respondent would have the right to even appeal that order. It could very well be, if a respondent really wanted to be recalcitrant on that particular point, they could go all the way to the Supreme Court of the United States before they would get a final determination.

Mr. ERLENBORN. Voluntary compliance is very often not completely voluntary, but is based upon the knowledge that swift and sure enforcement will be the alternative. It appears that your conclusion is that the more swift and sure enforcement is through the direct appeal to the court rather than through an administrative hearing; and, therefore, the "voluntary" compliance is more likely in the case where the swiftest and surest judicial resolution is available. Would that be right?

Mr. BROWN. That is quite correct.

Mr. ERLENBORN. Thank you.

Mr. BROWN. Thank you.

Mr. HAWKINS. Mr. Burton.

Mr. BURTON. Preliminarily, let me state that our distinguished chairman of this hearing, Mr. Hawkins, has for very many years been a leader in this effort to assure a measure of economic justice in the area of employment. He was a leader in this matter, and the author of the legislation in our State. Ever since he has been in the Congress, he has been making an effort to make our Federal legislation more meaningful and effective.

I have just one or two procedural questions.

Are you authorized to print the notice of whatever rights employees may have in foreign languages?

Mr. BROWN. Not only are we authorized to do this, but we have, in fact, done this.

Mr. BURTON. In which languages have you done this?

Mr. BROWN. Basically they have been for the most part English and Spanish. We have not printed them, to my knowledge, in any of the other languages.

I would think that if we found a large number of another minority or ethnic background located in a particular plant, we would require that it be printed also in the relevant language.

We have brochures as well as booklets which have been printed by the Commission, and one of the other things that we are presently contemplating——

Mr. BURTON. I don't want you to take too much of my time in response to that.

Mr. HAWKINS. Mr. Burton, could you wait just one moment?

It is apparent that we are not going to be able to reach the panel today, as indicated on the agenda, because we do have another witness before that time.

I would suggest to Mr. Mitchell, and Mr. Greenberg, and Mr. Harris, and Mr. Freeland, and Mr. Rauh that we not tie them up further this morning. If it is possible, I would suggest that the committee will meet tomorrow morning at 9, if there is no objection, and that we call on the panel at that time.

I hope that this will not inconvenience any of you who are present today, but it is obvious that we are not going to reach you today.

I would suggest that we do convene tomorrow morning at 9, and do hear first from the panel, and that this be a definite commitment to hear from them first on the agenda tomorrow.

Mr. MITCHELL (Clarence Mitchell, director, Washington bureau, NAACP). Mr. Chairman.

Mr. HAWKINS. Mr. Mitchell.

Mr. MITCHELL. Mr. Freeland is here from Pittsburgh, and I have another witness from New York who is delayed on his plane.

I would just like to ask Mr. Freeland whether he could make it.

Mr. FREELAND. (Wendell Freeland, member, board of trustees, National Urban League). I could not, but I could give you my two and a half minutes.

Mr. HAWKINS. May I ask whether Mr. Kleindienst, Deputy Attorney General, can make it tomorrow morning, and if so, we could take the witnesses from out of the city.

Mr. KLEINDIENST (Richard G. Kleindienst, Deputy Attorney General). Mr. Chairman, I could the day after that, but I reset my schedule from today until tomorrow, and I have about eight appointments. I could do it, but it would be a rather awkward situation for me to accomplish it.

Mr. PUCINSKI. We have Mr. Jerris Leonard, who I believe was going to testify with Mr. Kleindienst, who is scheduled for my subcommittee tomorrow morning, at 10 o'clock, but I don't think I should interfere with your proceedings here.

Mr. BURTON. Mr. Chairman, may I suggest, if all members of the subcommittee will defer, I would be willing to submit my questions

to this witness in writing, if we can bring up the panel at this time. That might save some time.

Mr. HAWKINS. I don' think we can deprive the members who have not been heard from of their allotted time. We are not entertaining that, Mr. Burton.

I think we will have to go ahead the way the schedule calls for. We will proceed with the schedule.

For those who cannot make it tomorrow morning, it is unfortunate, and we certainly apologize to them, but we will be hearing from the members of the panel who are in a position to come back tomorrow morning. The others we will attempt to hear from some other time.

Mr. MITCHELL. Could I just ask one additional question?

Mr. HAWKINS. Yes

Mr. MITCHELL. Mr. Freeland I think would take only a few minutes. We could separate him from the panel, since he came from Pittsburgh; if it will be agreeable to you.

Mr. HAWKINS. We will then continue the hearing, and in the event a point of order is not raised, we will continue on.

Mr. MITCHELL. Thank you.

Mr. HAWKINS. Mr. Burton.

Mr. BURTON. In addition to Spanish, I would think some Chinese and Japanese bilingual notices would be useful in my particular area, where we have approximately 100,000 Chinese, many of whom are not citizens, and are not conversant with the English language.

This would be a very vital adjunct, and I would appreciate you informing me as to what decision you make in that particular regard.

(The information requested follows:)

The Commission currently supplies Spanish versions of the notice required to be posted by Section 711(a) of the Title, to employers, employment agencies and labor organizations as the need exists. Sample charge forms and booklets explaining the Commission's function are also printed in both English and Spanish renditions.

EEOC is aware of the need for *all* minorities to be fully aware of their rights under Title VII, and recognizes its responsibilities to ensure that these rights do not go unfulfilled for lack of understanding. Accordingly, I have directed the Office of Compliance to provide a report on the desirability of providing copies of the statutory notice and related materials in languages other than English and Spanish, and upon receipt of that report will take whatever action is indicated.

Mr. BURTON. As a follow-on to that which Congressman Pucinski discussed, it does not take a lot of imagination to follow the immigration patterns in the country. Wherever we have a unique situation, as we had right after 1956 with the Hungarians, a little bit of initiative on the part of your Commission might prove to be helpful to those who otherwise might not be informed as to what their basic rights are under this law.

The second question I have is: how many people do you have in the Commission, and what categories do you have, what are the two or three major categories, and how many people do you have in these various categories?

Mr. BROWN. At present we have on board slightly over 600 persons. These would be divided into the headquarters staff and the field office operations. There are 13 field offices around the country.

I would say first in terms of the compliance section that probably about somewhere around 225 or so would be in the compliance area of the Commission's operation. On the General Counsel's staff we have approximately 16 lawyers plus the supportive staff.

Mr. BURTON. Would you do this to save some time: Would you provide us with the number of authorized slots that you have, the number you have on board, and the number you have requested in next year's budget?

Mr. HAWKINS. Would the gentleman yield at that point?

Mr. BURTON. Yes.

Mr. HAWKINS. When that information is submitted, and I quite agree that it is useful for us to have it, would you indicate to the committee, because I don't want to get into it this morning, the jobs that are now unfilled in the super grades?

It is my understanding that you have not filled staff director, general counsel, director of research and compliance, program planning administration, and technical assistant general counsel.

You may or may not have filled these, but I think we would like to have some indication of those that you have filled, those that you have not filled, those in which persons are acting directors. It seems to me that this is relevant because if we are going to try to get money for the agency, and we cannot show that at least since the first of the year, and certainly since you are aboard, since May, that these jobs are filled at the present time, I think we are just not going to be able to convince anyone that the present agency is doing the job that it should do in recruiting individuals for its own staff.

(The information follows:)

POSITIONS STATUS OF EEOC

The Commission presently has 629 permanent positions authorized by the Bureau of the Budget, 625 of which are filled. This includes 569 employees on board, and 58 individuals to whom positions have been committed. A total of 820 authorized positions have been requested for FY 1970.

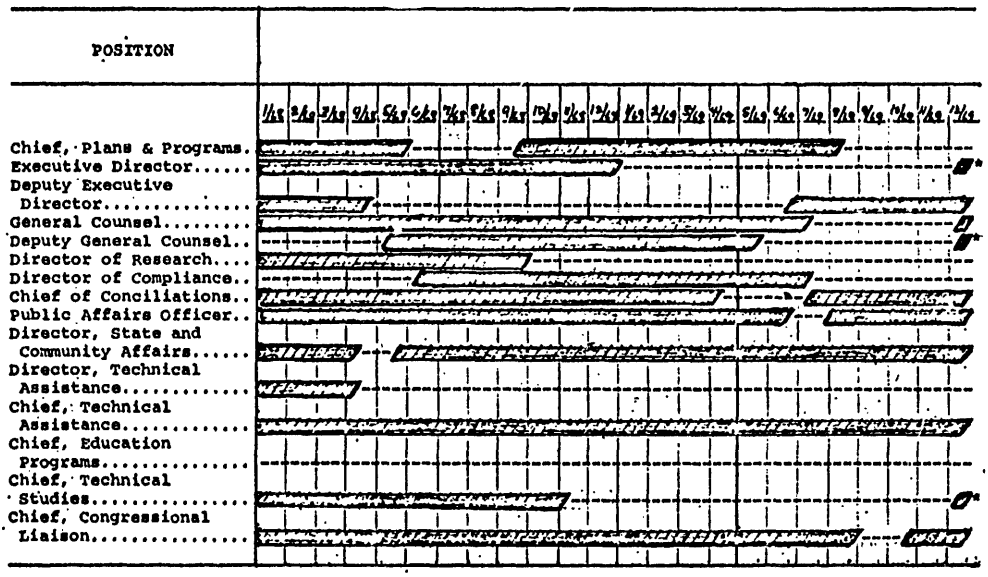
At the time of my taking office as Chairman, there were seven supergrade vacancies in the headquarters staff. Six more of these positions became vacant within a relatively short time.

At present only five supergrade vacancies exist. Among the positions that have ben filled are: Executive Director, Deputy Executive Director, General Counsel, Deputy General Counsel, Chief of Conciliations, Public Affairs Officer, Chief of Technical Studies, and Chief of Congressional Liaison.

The chart below depicts the present headquarters supergrade vacancy rate in the context of the Commission's past two years' experience. It should be noted that three of the five positions presntly vacant have been so for more than a year.

While traditionally difficult to fill due to the requirement of special skills, we are vigorously recruiting qualified personnel to fill these positions, and hope to have a full complement aboard in the near future.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Supergrade Vacancies
January, 1968 to December 1969



Mr. BURTON. Mr. Chairman, in the 2 minutes I have left, I would like to yield to the gentleman from Missouri, Mr. Clay.

Mr. HAWKINS. Mr. Clay.

Mr. CLAY. Mr. Brown, I think it is a matter of public record that the NAACP and the Urban League are favoring the position of cease and desist, and I have a book here entitled "Jobs and Civil Rights," which was prepared for the U.S. Commission on Civil Rights by the Brookings Institution, and it says, and I quote:

> Cease and Desist authority for the EOC is essential, no matter what else is done. The point is not so much that cease and desist authority would be widely used as that its availability would make it easier to secure compliance and cooperation in every phase of EEOC's operations.

This statement by the Brookings Institution for the Civil Rights Commission plus the position of the Urban League and the NAACP has been compared to your statements, and you only quoted two sources favoring the court procedure over cease and desist. You referred to Sam Jackson, I believe, and Senator Goodell.

I would like to ask you how do you value the opinions of those two individuals as compared to the Urban League and the NAACP.

Mr. ERLENBORN. Would the gentleman yield before the answer to that question?

Mr. CLAY. Yes.

Mr. ERLENBORN. Since that is taken out of context, and only a part of the statement, I wonder if the context of that statement is a comparison of the powers of the Commission under injunctive and cease and desist, or are they merely referring to enforcement powers which would aid the Commission?

Mr. CLAY. We can insert the whole chapter or the whole book into the record.

Mr. ERLENBORN. I would take your assessment of that. Are they comparing enforcement powers under cease and desist and injunctive, or is that subject to the interpretation that cease and desist or other enforcement powers would aid the Commission in settling cases?

Mr. CLAY. This says cease-and-desist authority is essential, no matter what else is done, and that is a direct quote. No matter what other provisions are provided, this, in their opinion, is essential.

Mr. ERLENBORN. An injunction, in effect, is a cease-and-desist order issued by the court. It is a question whether one issued by the Commission or the court is more efficacious.

Mr. CLAY. Regardless of what other procedure is provided for, it says it is essential, no matter what else is done. That is a direct quote from the study.

Mr. ERLENBORN. I think that is the witnesses' testimony, as well, only he feels that the cease-and-desist order issued by the court would be more efficacious than one issued by the Commission.

I wonder if that is the finding of that Commission, or are they referring to the injunction powers?

Mr. CLAY. I think they are referring to what we are referring to here, cease and desist.

Mr. BROWN. In answer to your question, and I am familiar with that document, they were concerned with enforcement powers specifically. They had taken the traditional approach to this entire problem, namely, cease and desist.

As I recall that report, at no time did they make a comparison between the cease-and-desist approach and the court approach.

This is the thing which I have tried to stress during the entire period of time I have been here this morning, and prior to this time: The gravamen is that we badly need enforcement powers.

The Civil Rights Commission, without having had the opportunity of making any analysis of the court approach, felt, and traditionally this has been true, that most people who have been involved in the civil rights struggle, when they look upon the problems of the Equal Employment Opportunity Commission, tend to feel that the final determination should be cease and desist.

I really don't believe that many of them have had the opportunity of making a complete analysis, and an objective analysis, of the two possible approaches. I think this is just reflected in their report, that they have taken the traditional approach to these two things.

Mr. CLAY. You did not address yourself to the question, and I will restate it.

Are you saying that the Brookings Institution did not have the value of Senator Goodell's position on the court procedure over cease and desist, as you quoted earlier?

Mr. BROWN. I don't believe that they did.

Mr. CLAY. Well, my question was, how do you value Senator Goodell's and Sam Jackson's opinion as compared to the other agencies that are in favor of cease and desist, and I am particularly interested in your evaluation of Senator Goodell's position?

Mr. BROWN. I don't think that the question is whether I value one person against the other as being better or being worse. I don't think that is the question which is before this committee. I think the question which is before this committee is whether or not this agency needs enforcement powers.

Now, the fact that we may disagree does not mean that one person is good and another person is bad. This has been historically the right of every person, to agree or disagree with any particular point of view which has been put forth.

I think this is particularly true in this case. I would not make a comparison and say that Sam Jackson or Senator Goodell is better or worse than the people who have put out this report. I don't think that is the important thing.

Mr. CLAY. I will take issue with you on that. I believe that the opinions that we reach are to be based on the positions taken in the past by people who are advocating certain things, and if Senator Goodell would advocate something on the question of civil rights, it would immediately make me suspicious, and I would look into it very closely, because Senator Goodell's record on civil rights has not been impressive.

Are you aware that he opposed the Voting Rights Act in 1965, and voted to recommit that bill? Are you aware that he was opposed to the open rule for the Civil Rights Act of 1966, and that Senator Goodell voted against the antipoverty bill in 1964, 1965, 1966, and 1967?

If Senator Goodell is advocating something for my benefit, I am going to be mighty suspicious, and I am going to look into it even more than I normally would, and I would suggest that maybe you ought to go back and take another look at Senator Goodell's position on what is good for the EEOC. I would highly suggest that to you, Mr. Brown.

Mr. BROWN. I——

Mr. HAWKINS. You may proceed, Mr. Brown.

Mr. CLAY. I don't believe I had posed a question at the end.

Mr. STEIGER. May I say to my colleague I am interested in a red herring that you are dragging across the room.

Mr. HAWKINS. I think the witness was in the process of answering the question, Mr. Steiger.

Mr. BROWN. Mr. Clay, what I was going to suggest to you is that it seems to me that the record of Senator Goodell is not at issue here today. I think the thing which is at issue is whether or not the Equal Employment Opportunity Commission will get the enforcement power that it needs.

I think all of the statistics have indicated that we have not been successful, where we have had no enforcement power whatsoever, in attempting to conciliate over 50 percent of our cases where we have found a violation of the act.

I would respectfully suggest to you that the much more important thing for us to consider is whether or not enforcement power as I envision it, or enforcement power as you look at it, is the better way to go.

What any number of people may or may not have felt in terms of other legislation I think is completely out of place here today.

What I am concerned about is that we don't get off on side issues that divide most of us who are looking for a single goal, and that goal is getting this Commission the kind of enforcement power that we need to do the job that each of you who have participated in the creation of this Commission envisioned that it should do.

Mr. CLAY. I think the issue here is whose opinion are we going to respect, and if we are going to say that the people who have devoted their lives and have the expertise in the field of civil rights, that their opinion has not as much merit as those who have opposed civil rights down through the years, then I think we have gotten off on a side-track, and I for one would much rather value and accept the opinion of the established civil rights organizations and the people who have been constantly fighting to improve the condition of 22 million blacks and millions of other people who are being discriminated against in this country.

And I cannot take as prima facie evidence that this is the best system, the mere fact that Senator Goodell and Sam Jackson are advocating that position, I say that it ought to cause us to reevaluate our position if we are favoring something that the enemy is advocating. It is just as simple as that.

Mr. BROWN. I can say this, because you know what my background is. I have been an advocate of civil rights my entire life. I have handled many, many cases free of charge in this field.

But I don't think it is a question of just my opinion, or anyone else's opinion. I think we have something much more important to base it on, and that is the kind of supporting evidence and documentation which we have, which shows that the court route is the better way to go.

I don't think it is based on opinion. It is based on fact, and we as lawyers know that we are not going to accept an opinion when we have fact that we can base this decision on.

Mr. CLAY. It is based on the interpretation of what is, and if one group is interpreting it in a manner different from another group, I still say the prevailing weight has to be cast on the side of the people who have been out here fighting for your advancement, and mine, and the millions of other people who are deprived in this country, but that is neither here nor there.

I have another question that I would like to ask, if I have time, Mr. Chairman.

Mr. HAWKINS. All right.

Mr. CLAY. Three members of this committee spent 3 days out in Los Angeles this last winter, I guess, in March or somewhere around there, and we covered hearings of charges of discrimination in three fields, the movie industry, radio and television, and a third industry, the aircraft industry, and the evidence that was presented was quite revealing, I think, and I think it clearly showed a pattern of discrimination against black people and Mexican-Americans in all three industries.

Now, you have taken the position that the best route to settle this issue is through the courts, and I would like to know if your agency has referred for trial any of the complaints that were brought against these three industries, and if so, what has happened since your referral.

Mr. BROWN. Well, first, the complaints which have been initiated by individual charging parties would not have reached the stage at which they would be referred for a pattern of practice suit.

As far as the motion picture industry is concerned, as you know; that was voted on by the Commission while we were still in session in California. That case was referred to the Justice Department.

An investigation, and I might say a very in-depth investigation, was conducted from March of this year through August of this year, and this is presently pending before the Justice Department, and the person from Justice can tell you what the present status is, but the last information I have is that they have been in consultation with all of the representatives of all of the motion-picture industry, of the related craft unions, as well as the TV and radio networks, in an attempt to work out some kind of agreement which would be enforceable.

Mr. CLAY. Now, this is how many months since the hearing and the recommendations for court action?

Mr. BROWN. Well, the recommendation for court action was made initially in March.

Mr. CLAY. In March?

Mr. BROWN. But the investigation——

Mr. CLAY. This is 8 months later.

Mr. BROWN. Well, it is 8 months later, but the investigation which took place of necessity had to be a very in-depth kind of investigation, because this is the first time in the history of this Commission that an industrywide suit was contemplated. It had never been done before.

This investigation, and they used people from Justice as well as from our Commission, was conducted over a period from March of 1969 until the beginning of September of 1969.

Mr. CLAY. Do you anticipate when the information will be inclusive enough to actually go into court?

Mr. BROWN. I think the information is already completely accumulated. I think a report has been made to Jerris Leonard, and the only question that has to be resolved is what is going to be the outcome of the conferences which have been going on in an attempt to work this thing out.

Mr. STEIGER. Would my colleague yield?

Mr. CLAY. I would like to know, Mr. Brown, how the court procedure is going to speed up the process, if it is taking you that long to get to court on one particular case.

Mr. STEIGER. Would my colleague yield?

Mr. CLAY. Yes.

Mr. STEIGER. Is it not fair, Mr. Commissioner, to say that the Commission, given the present law, cannot go to court except insofar as it may refer to the Justice Department a pattern of practice suit?

Mr. CLAY. That is what we are talking about, the referral to the Justice Department, Mr. Steiger.

Mr. STEIGER. No, you are not. You are talking about a court case, Mr. Clay.

Mr. CLAY. We are talking about the referral from this Commission to the Justice Department.

Mr. STEIGER. I want to make sure that the record is clear what you are talking about under the bill which the Commission has testified in favor of today is not the procedure that is presently available to the Commission under the law. There are two very different types of processes to be used.

Mr. HAWKINS. As I understand, the question is what is the status of the referral, what has happened.

Mr. BROWN. First, now we are talking about investigation, as contrasted to all the time factors which we have previously dealt with,

under the bill which has been proposed by Congressman Hawkins as well as the bill of Congressman Ayers.

We previously talked about the period of time it takes to get from the time a complaint is filed to a final determination.

The other thing that I might point out to you is the fact that under both bills, one of the things which has been pointed out here just this morning in this committee, is the fact that in all these cases it is better to try to work out some kind of settlement without the necessity of either using cease and desist or without the necessity of going into court, and with a case as involved as the motion picture industry case is, it necessarily cannot be resolved overnight.

You are dealing with literally probably 30 or 35 different entities, and all the various attorneys which represent them, and I would not want to see this kind of case handled quickly and boxed up. I don't think this is a legitimate test.

Mr. HAWKINS. Mr. Brown, you have been quoted publicly as having indicated that you would favor the discontinuance of the type of hearings that did take place in Los Angeles and New York, and I think of two other places.

Would you clarify that? Do you not favor public hearings of this type?

Mr. BROWN. I might say that I have been misquoted publicly many times about it.

I have gone on record as saying that both kinds of hearings are important, both the public hearing and the private hearing.

As a matter of fact, presently the research department of our Commission, at my insistence, is now looking into the types of industries that we should be going after, and the places in which a hearing would be most beneficial.

At no time have I ever advocated the cessation of having public hearings.

Mr. HAWKINS. You would not hesitate, then, to recommend in instances that you have warranted it, that such public hearings be continued?

Mr. BROWN. I would have no hesitation about that.

Mr. HAWKINS. Thank you.

Mr. Steiger.

Mr. STEIGER. Thank you, Mr. Chairman.

I appreciate your allowing me to sit in this morning, since I am cosponsor of the administration bill.

Mr. HAWKINS. We believe in fair practices around here.

Mr. STEIGER. I got to worrying about that a little bit. I am delighted that you made that statement.

You have done an excellent job under what I know are difficult circumstances, Mr. Commissioner, and I must say that I am rather taken with what I think is an argument over form rather than substance.

Those who are apparently opposed to the approach that you have supported; have not developed in my mind a case for why that is inferior to that which is proposed in cease and desist.

If one were to look back over the laws which are designed to protect individuals, particularly working people, against the various kinds of discrimination in employment, it is true, I think, that these rights that are in the law now are enforced directly through the courts rather

than through the cumbersome machinery of the quasi-judicial administrative agency issuing a cease-and-desist order.

Examples are in such legislation as title I of Landrum-Griffin, which establishes the bill of rights for union members; section 6(d) of the Fair Labor Standards Act, which prohibits discrimination in payment of wages on the basis of sex; and a recently enacted law prohibiting discrimination in employment because of age; and moreover, the Fair Labor Standards Act, which requires the payment of minimum wage rates, premium overtime pay, and forbidding child labor, also.

Thus, I think there is a precedent for the approach suggested by yourself and the administration, which I would judge has worked fairly effectively in the employment field in the past.

Is that a fair statement?

Mr. BROWN. I think that is an accurate statement.

Mr. HAWKINS. Would the gentleman yield for one question at that point?

I think he has answered you.

Have you ever heard of anyone getting a case resolved on the basis of discrimination based on age?

Mr. STEIGER. That law was just passed in December 1968, Mr. Chairman.

Mr. HAWKINS. That is a couple of years.

I don't know of even one. Even the Federal Government discriminates based on age, and I don't know of anyone who has been able to get a case settled.

Mr. STEIGER. If the chairman wishes to criticize the previous administration for its inaction in enforcing the law the Congress passed, that is up to him.

Mr. HAWKINS. Yes, I do; and I criticize this administration, as well.

Mr. STEIGER. I am not in any position to make that judgment at this time.

Let me turn to another area.

Mr. PUCINSKI. Would you yield for one question?

Mr. STEIGER. Certainly. I am always happy to yield to the gentleman.

Mr. PUCINSKI. Did I understand you to say that the discussion here this morning is more as to form than substance?

Mr. STEIGER. Yes, sir.

Mr. PUCINSKI. If you will permit me to challenge that, I think the whole discussion here, and the thrust of the testimony, is whether or not the enforcement of this act can be brought about more efficiently through the cease-and-desist orders issued by the Commission or through the more cumbersome procedures of judicial procedures.

Mr. STEIGER. Those are the gentleman from Illinois' words, "cumbersome procedure."

It seems to me that the weight of the evidence indicates that it is far more cumbersome to use cease-and-desist orders than to use the court.

Mr. PUCINSKI. You may find me in agreement with you.

For instance, in the NLRB, we have a procedure before the Board, very complicated, which provides a great legal protection for all the

litigants, and then after the Board hands down a decision, it is usually appealed by one side or the other, and taken to court, where it is tried de novo.

So that you may find me in agreement, but I think what this committee will have to do is make a basic judgment as to whether or not this bill, this law, can be enforced more effectively by giving this Commission cease-and-desist powers, or whether it can be enforced more effectively by going directly to the court.

I submit to my colleague from Wisconsin that this is more than just an argument of form. I think it is very substantive.

Mr. STEIGER. I will say to the gentleman from Illinois before I go on to another area of concern to me that it comes down to a question, at least based on some of the questions that have been asked, of who do you like, do you like this group versus this group, do you like this person versus this person, which I find totally irrelevant and beside the point.

Mr. PUCINSKI. I would agree with that.

Mr. STEIGER. The other question is: What is the best procedure to give EEOC the enforcement power which maybe you and I might agree they do need?

I am convinced, because of my own conviction in this field, that it is superior to use the procedure proposed in H.R. 13517. Not only is it more prompt, but I think it is more equitable. As I have reviewed the legislation in H.R. 6228, and 6229, the Commission would be the investigator of the charge, and if it believes the charge to be true, then it acts as the conciliator to secure voluntary compliance, and then, step three, if conciliation fails, it issues a complaint and processes such complaint before itself, sitting as a quasi-judicial tribunal, and decides the case and issues an order, and then may petition the Federal district court for relief, and it may seek review in the Supreme Court.

Thus at least it seems to me that under these bills, the administrative agency in these cases acts both as investigator, conciliator, prosecutor, judge, and appellant to a higher tribunal, and I think completely escapes the principle of separation of powers, and this very definitely worries me.

I think it worries many people in this country, about that power in any one Commission.

Even the National Labor Relations Board is denied the authority to conciliate or mediate, and the investigation of charges and prosecution of complaints is carried on by the independent counsel, and not by the Board itself.

I did not ask that as a question. I make that as a statement of my own feelings about what has been proposed by some.

I do not want to ask a question about the right that is granted under the National Labor Relations Act, and the functions that are granted to the Board under that act, in which, if my informaion is correct, the court has ruled that the rights granted to individuals under that act are public rights, and not private rights.

Is it fair, Mr. Commissioner, to assume that those powers granted under H.R. 6228 would also be public rights, and not private rights, and therefore what happens if the Commission does not decide to take further actions?

Mr. BROWN. Would you just give me a moment, please?

Mr. STEIGER. Yes.

Mr. BROWN. Congressman, actually under both bills there would be a combination of both public and private rights, that is, under the bill 13517 and also under the bill 6228, because in each case in the event that the Commission does not proceed, the private party would have the right to go into court on his own, and that is being preserved.

Mr. STEIGER. But under 6228 that right is preserved solely if the Commission decides that the charge is not proved.

Mr. BROWN. No; I think it is also after a certain passage of time.

Mr. STEIGER. In section 714, if the Commission determines there is no reasonable cause to believe the charge is true, dismisses the charge, then certain steps may be followed by the individual, but what happens in the case of the individual on whose behalf a cease-and-desist order is issued by the Commission, and the Commission then decides to do nothing more?

Mr. BROWN. I think there is also provision in 6228 whereby after the passage of 180 days after the charge is filed, and that would be on page 21 of that bill, under section 714(a) after any of these four or five things take place, and this is in the disjunctive, the charging party would have the right to go into court.

Mr. STEIGER. The difficulty is that under the National Labor Relations Act cases have developed where a cease-and-desist order has been issued, and no further action has been taken.

Mr. BROWN. That is true.

Mr. STEIGER. Then the party on whose behalf the order was issued has no recourse.

Mr. BROWN. Yes, under the National Labor Relations Act that is true, that the party would be out of court, and would have no recourse at all, but under 6228 he would have certain rights preserved, and also under our bill he would have certain rights preserved.

Mr. STEIGER. I am going to ask, Mr. Chairman, that the record be kept open to have a more complete response from the Commissioner on that point insofar as the language in H.R. 6228.

Mr. HAWKINS. Would you consent to having the Commissioner respond by a written statement to this committee?

Mr. STEIGER. That is what I mean.

Mr. BROWN. I will be very happy to do that.

Mr. HAWKINS. So that the record will indicate.

(The statement requested follows:)

STATEMENT ON THE LANGUAGE OF H.R. 6228

Section 5(1) of H.R. 6228 (revising Section 706(e) of Title VII) provides in part:

> If . . . (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (a) or (d), the Commission has not . . . entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with Section 706(f) *or an agreement with the parties in accordance with section 706(i)*, the Commission shall notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. . . . (emphasis added).

Section 706(i) of Title VII, as it would be revised by Section 2 of H.R. 6228, provides for settlement from the date of filing of a charge right up to the time the record of administrative proceedings is filed in court under a petition for enforcement of a cease and desist order. Thus, read together, it is clear from these sections that if within one hundred and eighty days after filing of a charge, the Commission had not obtained a conciliation agreement acceptable to the person aggrieved, that person could then bring an action in the District Court against the respondent named in the charge, provided that the Court of Appeals had not previously assumed jurisdiction. It would make no difference whether a cease and desist order had been issued or not.

Mr. CLAY. Did you not touch on that in your opening statement, that you thought this right should be left open?

Mr. BROWN. That is correct.

Mr. HAWKINS. I think we are agreed upon that.

Were you through, Mr. Steiger?

Mr. STEIGER. Yes.

Mr. HAWKINS. I think that the hearing, I would hope, has developed one thing, and that is that all of us are seeking to strengthen the law. I hope, therefore, that when these hearings are concluded, if the overwhelming evidence is one way or the other, that that group that advocates strengthening the law, but disagrees on the method, would certainly cooperate with the other side in order to get a bill through.

I certainly hope that your testimony this morning will reveal that fairness, that whichever way we go, that all of us are seeking pretty much the same thing, but it is a difference of approach.

Mr. BROWN. Mr. Chairman, I might say that I am certainly appreciative of the manner in which you have presided over this hearing, and I am certainly appreciative of the kind of hearing which has been conducted, along with the cooperation of all the members of your committee, and any further information that you may deem necessary for this record, we will be very happy to supply.

Mr. HAWKINS. Thank you, Mr. Brown.

Mr. BROWN. Thank you.

Mr. HAWKINS. The next witness is Mr. Kleindienst, the Deputy Attorney General, accompanied by Mr. Jerris Leonard, Assistant Attorney General, Civil Rights Division.

We are not going to have much time, Mr. Kleindienst. I would ask that your statement be filed in the record at this point, and that you be open to any questions from members of the committee.

If you would desire to make a brief statement, we would appreciate having a statement from you, or if you merely wish to submit to questioning, we would do it that way.

(Statement follows:)

STATEMENT OF RICHARD G. KLEINDIENST, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee, this Subcommittee is considering legislation amending Title VII of the Civil Rights Act of 1964 to further promote the equal employment opportunities of American workers. I appreciate this opportunity to present the views of the Department of Justice on this important matter and to comment on the proposals pending before you.

I would like to focus my testimony on the need for legislation giving the Equal Employment Opportunity Commission additional enforcement authority and the position of the Department as to the most appropriate legislation.

NEED FOR LEGISLATION

The 1961 Report on Employment of the Commission on Civil Rights states well the meaning, problems and impact of job discrimination. I quote from that report:

"Denial of employment because of the color of a person's skin, his faith, or his ancestry is a wrong of manifold dimensions. On the personal plane, it is an affront to human dignity. On the legal plane, in many cases, it is a violation of the Constitution, of legislation, or of national policy. On the economic and social plane, discrimination may result in a waste of human resources and an unnecessary burden to the community."

It is the resolve of this Administration to help remedy this wrong by pursuing a program to increase the effectiveness of a national effort to guarantee all Americans equal employment opportunity.

Today that guarantee does not exist. The investigations of the Department of Justice, in all parts of the country, disclose significant instances of employment discrimination, most often because of race and national origin. Employment discrimination is one of the major factors in the unemployment and underemployment existing among some minority groups.

While Congress has declared such practices to be unlawful, the agency assigned the primary responsibility for enforcing that law—the Equal Employment Opportunity Commission—has virtually no enforcement authority. EEOC is responsible for investigating charges of discrimination and determining if there is a reasonable cause to believe that a charge is true. If it finds reasonable cause, it attempts to settle the case by means of voluntary conciliation.

When the conciliation fails, however, the Commission has no authority to resolve the problem, but can only release the private party so that he can bring private suit, and refer the matter to the Attorney General for a "pattern or practice" suit. However, most of the persons who believe they are victims of discrimination have neither the resources nor the knowledge with which to mount such a lawsuit. Moreover, the allocated resources of the Civil Rights Division preclude "pattern or practice" employment discrimination lawsuits on a volume basis.

The result is widespread lack of compliance with the requirements of the law. In fiscal year 1969, for example, approximately 11,700 charges of discrimination were received by EEOC. During that year, however, EEOC was either partially or wholly successful in conciliations involving 376 respondents; in matters involving 398 respondents in which reasonable cause had been found conciliation was unsuccessful. Further, at the end of the year, an additional 677 conciliations were in process or pending assignment. During the same year, the Attorney General brought 19 lawsuits, five of which were on referral from EEOC. Similarly, the number of private lawsuits filed was relatively small in proportion to the number of charges filed.

It is also significant that in the four years in which Title VII of the Civil Rights Act of 1964 has been in force, we are aware of only four cases in which a private party has won a contested lawsuit charging racial discrimination under Title VII without the Federal Government intervening as a party; and in three of those four, the Government had filed an amicus brief.

H.R. 13517—THE APPROPRIATE LEGISLATION

The evidence clearly indicates that if EEOC is to be an effective body in eliminating employment discrimination it must have the powers necessary to bring the recalcitrant into compliance with the law. Without such authority, conciliation and voluntary compliance will never be a truly effective means of settling disputes and resolving differences.

Some who have studied this problem over the years have concluded that EEOC should be given authority to hold administrative hearings on the merits of a charge and upon a finding of an unlawful employment practice it be empowered to issue a cease and desist order drawn to remedy the situation. After the issuance of the order, EEOC could then petition the court of appeals to obtain enforcement. In short, they recommend an NLRB type authority or some variation thereof.

The Administration has rejected this approach, however, in favor of the approach embodied in H.R. 13517, an approach we believe to be more effective and one that can be immediately implemented by EEOC.

H.R. 13517, which was prepared by Chairman Brown of the EEOC and the Commission staff, would grant to EEOC the authority to bring a civil action against any respondent it has found reasonable cause to believe is engaging in an unlawful employment practice and from whom it has not been able to obtain voluntary compliance. Private persons would retain the right to initiate a lawsuit if EEOC failed to institute a civil action within six months of the filing of a charge. This bill would give EEOC the right to conduct its district court litigation, but would direct the Attorney General to conduct all appellate litigation in the courts of appeals and in the Supreme Court. It would leave the Attorney General's authority to commence pattern or practice suits unimpaired.

In addition, H.R. 13517 would authorize EEOC to institute an immediate judicial action for temporary or preliminary relief pending final disposition of a charge in those cases in which the Commission investigation indicates that such prompt judicial action is necessary. The bill makes it the duty of the court to assign cases brought by EEOC or private parties for hearing at the earliest practicable date and to expedite the cases.

No other substantial changes in existing law are made by the bill.

The Department of Justice strongly supports and urges enactment of this proposal for several reasons:

First, we believe that the appropriate forum to resolve civil rights questions—questions of employment discrimination as well as such matters as public accommodations, school desegregation, fair housing, voting rights—is a court. Civil Rights issues frequently arouse strong emotion. United States District Court proceedings provide procedural safeguards to all concerned; Federal judges are well known in their areas and enjoy great respect, the forum is convenient for the litigants, and impartial, the proceedings are public, and the judge has power to fashion a complete remedy and resolution of the problem.

Second, we believe that empowering EEOC to bring court suits will greatly facilitate its ability to implement the law without delay and to bring effective relief to victims of discrimination. In the first place, it would take a considerable period of time—perhaps 2 years—for EEOC to establish the administrative structure necessary to implement an NLRB-type procedure. Under our proposal, EEOC attorneys could bring court actions almost immediately following the effective date of the amendments. We must not delay the efforts of the Federal Government to provide equal employment opportunity when such delay is not necessary.

Moreover, the proposal we support would enable EEOC to obtain a binding order much more quickly than under the cease-and-desist approach. Violation of an administrative order issued by EEOC would not be punishable as contempt of court. EEOC would have to seek enforcement of its order in the court of appeals and such proceedings would ordinarily take an additional one to two years after decision. An order of the district court, on the other hand, is effective immediately, except in the unusual case in which the statute provides otherwise or a stay is issued.

Third. We recognize that, under our proposal, EEOC must have authority to be represented in the lower courts by its own attorneys. I want to be very candid with the Subcommittee in telling you that the Department of Justice initially rejected this concept, but we have been persuaded that granting this authority to EEOC is necessary and will not detract from the responsibilities of the Department of Justice to represent the Government in litigation in this vital field. There is already developing a substantial body of law under Title VII of the 1964 Civil Rights Act, much of which has resulted from the investigations and litigation of the Department.

The Department is very concerned with the development of good law and we believe that through coordinated efforts with EEOC as it seeks to enforce the law in lower courts and the fact that the Attorney General shall continue to represent the Government in all appellate litigation, we can assure the Congress we shall maintain vital civil rights laws. However, we must get these laws enforced and we feel confident that EEOC lawyers will and must move to bring necessary and appropriate cases into the lower courts to obtain compliance with the prohibitions of Title VII.

Fourth. We believe that it is essential that the Attorney General retain his authority to institute pattern or practice suits. This authority would be eliminated under one of the pending bills, but would be retained under H.R. 13517.

Section 707 of Title VII authorizes the Attorney General to commence a lawsuit whenever he has reason to believe there is a pattern or practice of discrimination to the full enjoyment of the rights created by Title VII.

The Civil Rights Division began to devote its resources to employment problems in a significant way for the first time in the Fall of 1967. Since then, we have filed approximately 48 lawsuits under Title VII. The roster of defendants includes the Bethlehem Steel Company, Sinclair Oil Company, Crown Zellerbach Paper Company, Cannon Mills, Roadway Express, Chesapeake and Ohio Railway, the Ohio Bureau of Employment Services, as well as the United Steelworkers, the United Papermaker and Paperworkers, International Brotherhood of Electrical Workers, and numerous other employers and unions. This roster further indicates the magnitude of the problem of employment discrimination and the difficulty of the cases.

Yet, in that short time we have been able to obtain decrees in about 15 cases. Our view is that these cases and settlements have affected more workers and afforded relief to more members of minority groups than all the private litigation under Title VII put together. The addition of the resources of EEOC will further strengthen this program.

Employment cases are difficult to prepare and prove and it would be unwise, particularly at this point in the development of the law, to deprive the equal employment opportunity program of the resources, experience and skill of the Civil Rights Division.

Section 707, which provides for the expedition of suit brought by the Attorney General, has proved to be an important vehicle for the quick resolution of major cases. Indeed, we are aware of only two court of appeals decisions after trial under Title VII and both of those cases were ones in which the Department of Justice represented the Government as a party.

If equal employment opportunity is to become a reality we think it vital that the Civil Rights Division continue to play an important role in the employment field; and the Attorney General's authority in Section 707 be retained.

For the convenience of the Subcommittee, I am submitting for the record a chart showing the history and status of all cases brought by the Attorney General under Title VII.

Fifth. We do not believe that H.R. 13517 would flood the courts with litigation. Not all the pending charges before EEOC and the charges that were not successfully conciliated will go to court. To the contrary, if a respondent knows that his failure to conciliate may subject him to court suit, the result is likely to be a substantial reduction of the number of recalcitrant respondents. The addition of new enforcement powers should reduce the likelihood of litigation in most cases; as a general rule, people do not want to be taken to court when they can settle out of court.

One must also appreciate the nature of these cases. They take time to investigate and prepare for court action. EEOC lawyers will have to be selective, at least at first, and they will want to take representative cases to court as a means of insuring widespread compliance.

While it is certain that there will be more Title VII cases in court initially, we do not believe that the Administration's proposal will place any significant strain on the 93 Federal District Courts. Once the legal obligations become clear, conciliations and settlements without trial will become more feasible. We are confident that the district courts can absorb these cases without undue burden or delay.

I would like at this time to associate the Department of Justice with the statements presented to the Senate Subcommittee on Labor by Secretary of Labor George P. Schultz and by Robert E. Hampton, Chairman of the United States Civil Service Commission. The positions they have taken respecting implementation of Executive Orders designed to eliminate job discrimination are endorsed by the Department of Justice.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer your questions.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964—STATUS OF CASES AS OF NOV. 26, 1969

Defendant	Judicial district	Complaint	Decision	Appeal	Appellate decision
St. Louis Building & Construction Trades Council, et al.	E.D. Mo	Feb. 4, 1966	Mar. 7, 1968[1]	May 6, 1968	Sept. 16, 1969
New Orleans Asbestos Workers (Local 53)	E.D. La	Dec. 15, 1966	May 31, 1967[3]	June 5, 1967	[4] Jan. 15, 1969
Dillon Supply Co	E.D. N.C	Feb. 27, 1967	July 1, 1969[1]	Aug. 29, 1969	
Columbus Electrical Workers (Local 683, IBEW).	S.D. Ohio	Apr. 14, 1967			
H. K. Porter Co. and United Steelworkers	N.D. Ala	June 23, 1967	Dec. 30, 1968[1]	Mar. 3, 1969	
Cincinnati Electrical Workers (Local 212, IBEW).	S.D. Ohio	July 24, 1967	Sept. 13, 1968[3]		
St. Louis-San Francisco Ry. Co. and Brotherhood of Railroad Trainmen.	E.D. Mo	do			
Cleveland Electrical Workers (Local 38, IBEW).	N.D. Ohio	Aug. 8, 1967	Mar. 20, 1969[5]	May 19, 1969	
Bethleham Steel Corp. and United Steelworkers.	W.D. N.Y	Dec. 6, 1967			
Cincinnati Ironworkers (Locals 44 and 372) (Locals 44 and 372).	S.D. Ohio	Dec. 7, 1967			
Southern Weaving Co	D. S.C	Jan. 12, 1968	June 24, 1968[6]		
Bogalusa Papermakers (Local 189, United Papermakers) and Crown Zellerbach Corp.	E.D. La	Jan. 30, 1968	Mar. 26, 1968[3]	Apr. 2, 1968	[4] July 28, 1969
			June 26, 1969[7]		
Los Angeles Steamfitters (Local 250)	C.D. Calif	Feb. 7, 1968	Sept. 23, 1969[6]		
Indianapolis Plumbers (Local 73)	S.D. Ind	Feb. 8, 1968	Aug. 15, 1969[3]		
Las Vegas Electrical Workers (Local 357)	D. Nev	Feb. 19, 1968			
Sinclair Refining Co. and Oil, Chemical and Atomic Workers.	S.D. Tex	Mar. 21, 1968	June 13, 1969[6]		
Hayes International Corp. and United Auto Workers.	N.D. Ala	Mar. 25, 1968	June 21, 1968[7]	Aug. 16, 1968	[2] Aug. 19, 1968
Caldwell Furniture Co	W.D. N.C	do	Mar. 26, 1969[6]		
Chicago Ironworkers (Local 1)	N.D. Ill	Apr. 12, 1968	Aug. 7, 1969[5]	Aug. 8, 1969	
Roadway Express, Inc	N.D. Ohio	May 2, 1968			
T.I.M.E. Freight, Inc	M.D. Tenn	May 15, 1968			
New York Lathers (Local 46)	S.D. N.Y	May 22, 1968			
Manor Baking Co	N.D. Tex	June 19, 1968	[6] Jan. 20, 1969		
Jacksonville Terminal Co. and 14 railroad craft unions.	M.D. Fla	June 24, 1968			
AMBAC Industries	D. Mass	June 28, 1968			
Associated Transport, Inc	M.D. N.C	do			
Cleveland Pipefitters (Local 120)	N.D. Ohio	do			
Metro Personnel System Inc., et al	N.D. Tex	July 3, 1968	[6] Aug. 1, 1969		
Roper Hospital	D. S.C	July 29, 1968	[3] Mar. 10, 1969		
Parke, Davis & Co	E.D. Mich	Sept. 20, 1968	[6] Jan. 30, 1969		
Chesapeake & Ohio Ry. Co., and 2 unions	E.D. Va	Oct. 17, 1968			
Kaybe Mills of North Carolina	M.D. N.C	Nov. 12, 1968	Aug 8, 1969		
Ohio Bureau of Employment Services	S.D. Ohio	Dec. 10, 1968			
Continental Can Co. and Local 50, United Mine Workers	E.D. Va	Dec. 27, 1968			
Alabama By-Products and Local 50, United Mine Workers	N.D. Ala	Dec. 30, 1968			
Georgia Power Co. and 7 locals, IBEW	N.D. Ga	Jan. 10, 1969			
Owens-Corning Fiberglass Corp. and Local 15, Glass Bottle Blowers Association	D. S.C	Jan. 17, 1969			
East St. Louis Operating Engineers (Local 520)	E.D. Ill	do	May 13, 1969[6]		
East St. Louis Electrical Workers (Local 309).	E.D. Ill	do			
East St. Louis Cement Masons (Local 90)	E.D. Ill	do			
Texas Longshoremen (International Longshoremen's Association and 37 locals).	S.D. Tex	Jan. 20, 1969			
Cannon Mills Co	M.D. N.C	Apr. 8, 1969			
Baltimore Longshoremen (Locals 829 and 858).	D. Md	Apr. 22, 1969			
Gustin & Bacon	D. Kans	Apr. 24, 1969	Sept. 19, 1969[9] (dismissed)		
Newark Sheet Metal Workers (Local 10)	D. N. J	Apr. 25, 1969			
San Francisco Ironworkers (Local 377)	N.D. Calif	June 24, 1969			
Central Motor Lines and 3 Teamsters locals.	W.D. N.C	Aug. 12, 1969			
Seattle Ironworkers (Local 86) et al. (5 unions and 3 JAC's).	W.D. Wash	Oct. 31, 1969			

[1] Relief denied.
[2] Reversed and remanded.
[3] Relief granted.
[4] Affirmed.
[5] Relief denied in part, granted in part.
[6] Consent decree.
[7] Relief granted on remaining issues.
[8] Complaint dismissed.
[9] Dismissed.

STATEMENT OF HON. RICHARD G. KLEINDIENST, DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY HON. JERRIS LEONARD, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION; AND BENJAMIN W. MINTZ, DEPUTY CHIEF, COORDINATION AND SPECIAL APPEALS, CIVIL RIGHTS DIVISION

Mr. KLEINDIENST. Thank you, Mr. Chairman.

I know you have all read my statement. I would be most happy to have it inserted in the record.

I would like to introduce to the chairman and the members of the committee present, in addition to Mr. Leonard, Mr. Benjamin Mintz, sitting at my right, who is the Deputy Chief, Coordination and Special Appeals, Civil Rights Division of the Department of Justice.

Let me make one brief statement in addition to my printed statement. I would like to make this additional statement as a result of having sat here this morning and listened to the dialog between Chairman Brown and the members of the subcommittee.

Perhaps I should preface my remarks by saying this: I do not doubt the complete conviction and sincerity and the deep motivation of all those who favor the cease-and-desist approach to this problem. It is manifest by those, as Mr. Clay pointed out, who do favor it because they have been in the vanguard of civil rights in this country for years and years and years, and they sincerely and devoutly seek some legal method by which these grievances are going to be redressed.

But I don't believe that they have given thought to the unique kind of remedy that this administration proposes.

If I am not mistaken, the kind of weapon that this administration offers to put in the hands of the EEOC will be unique among all of the independent agencies of the U.S. Government.

If I am not mistaken, and I haven't checked on all the agencies, no other agency of the Government, no other independent agency, has the right on behalf of an individual grievant to go directly into the Federal district court and to file a claim on behalf of an individual, and seek a remedy for that person.

Instead, all such litigation in the Federal district courts is handled either by attorneys in the Justice Department or by the U.S. attorneys.

We think that this remedy is so unique, and so radical, and indeed so progressive, that the whole dialog up to this time has really concerned itself with the cease-and-desist approach merely because traditionally it was the only administrative kind of an approach that was accepted or that was available.

The administration gave a great deal of time to this matter since January 20, and I am sure the chairman understands the problems that are imposed upon a new administration. After an election, not only do you have problems in the civil rights area, but you have problems in almost every other area.

When Chairman Brown began to talk about this concept, there was some resistance to it, because of the fact that traditionally independent agencies of the Government did not have that right.

We would like to say that we feel that we are as sincere as other persons in this respect, and in terms of having a dedication to get a quick, expeditious means by which these grievances are settled for the

benefit of those who are aggrieved, we think that our remedy is unique in and of itself.

Mr. HAWKINS. Mr. Attorney General, I think that the criticism is not that we disagree completely with you, but that persons whom we would have assumed would have been consulted on what you call a unique method have not been consulted, certainly those persons who had been active in the field.

We have many States that have been in the forefront, individuals connected with these State governments, we have private organizations, we have Members of both the House and Senate who apparently were not consulted.

Apparently the chairman of the Commission himself was not consulted prior to a week before the introduction of this bill, because he was still supporting cease and desist, and I am quite sure that he would not have been supporting cease and desist just a few days before the introduction of a bill if he had been consulted.

It seems that this bright new method was completely drafted by someone. We don't know who did it, and I don't think it matters, but I think the significant thing is that nobody knew anything about it.

Mr. KLEINDIENST. Well, I will try to touch on that, Mr. Chairman.

Mr. HAWKINS. This leads to suspicions, you see.

Mr. KLEINDIENST. I will try to allay those, because I think it would be meaningful if I attempted to set forth before this committee the processes that went on in the executive branch of the Government that led up to this proposal.

Mr. Brown, I think, has very forcefully stated that he is interested in enforcement and that we have two alternatives.

The traditional approach was cease and desist. He advocated cease and desist, but he was also looking for something better than cease and desist.

While the matter was being discussed in terms of legislation, Mr. Brown was proposing to the administration, to the Department of Justice, a more expeditious manner of addressing the Government itself to this problem. It was in that latter stage, just immediately prior to the introduction of these bills, that all of the doubts with respect to this procedure were resolved. They were resolved because of what all of us felt was the extraordinary importance of having a good enforcement remedy in the EEOC.

In addition to that, Mr. Chairman, as a result of the experience of the National Labor Relations Board over some 30 years, the processes before that Board and the abuse of the cease-and-desist procedures of that Board have come under increasing criticism.

Not only in my present capacity, but as a practicing lawyer for some 20 years before the National Labor Relations Board, I became amazed at the manner in which lawyers could subvert the objectives of the National Labor Relations Act—that is to say, to confer upon working people the privileges and the rights conferred by that law—by taking advantage of the processes of the Board itself.

Any good lawyer could almost guarantee any client out-of-hat that he could postpone an effective decision of the Board for at least 3 years. Indeed, the statistics bear it out, and in my own practice, this was a minimum amount of time that we could guarantee.

So that I think that the cease-and-desist approach, as experienced by the National Labor Relations Board, upon which most of this legislation is copied and predicated, had become unwieldy and had become discredited.

When you are dealing with the rights of a person, as this law contemplates, it seems to me that it is vital to consider the times in which we live. Not only is this vital, but it seems to me that you should be interested in an individual going into court, or having an attorney go into court for him. Under our proposal the Government of the United States will be able to go into court so that the individuals, most of whom are disadvantaged, most of whom could not afford counsel, will have the Government provide them a lawyer and go into court before a Federal district judge. The judge has more remedies in his hip pocket to use to bring about justice than any administrative tribunal in the Government of the United States. I would add that we propose an appropriation to the Congress to give this chairman and his Commission the attorneys that they will need, in other words, 100 or 150 lawyers immediately.

Mr. HAWKINS. It was my impression that in the school desegregation cases you were trying to keep them out of court.

Mr. KLEINDIENST. I think it is different when you deal with pattern of practice suits, the patterns of employment discrimination that have been inherited. The lack of attention to these problems in the last 8 years is one problem, and I think a desire to give an aggrieved citizen of this country, who has been discriminated against as a result of his race, color, or national origin, the right to have gainful opportunity is an entirely different problem.

I think there are a lot of defects with respect to the legislation concerning school desegregation cases.

Mr. HAWKINS. I was just simply making the point that you seem to prefer the court enforcement in one set of cases, but in the other set of cases you have decided that it is best to keep them out of court, and better to try to conciliate and to work out agreements.

In other instances, you are saying, "Let's hurry and get into court."

Mr. KLEINDIENST. No, we have not decided that, at all.

Mr. Leonard is the expert in this field, but we advocated in the *Mississippi* case December 1 with respect to the filing of the plans, and, thereafter, the court, pursuant to the Supreme Court's decision, set December 31 as the date for implementation. I don't think that that is equivalent to this problem at all.

When you are talking about all the manifold complex problems of schools, school districts, teachers, transportation facilities in a large school district, it is one thing.

When you are talking about attempting to obtain a means by which you can go into court to enforce the right of an individual citizen for meaningful employment, I think it is another.

In addition to the time that it takes to litigate under the cease-and-desist approach, which I consider to be one area in which I am an expert, if any at all, it is also estimated that it might take a couple of years just to establish the machinery in and of itself by which you can start effectively processing cease-and-desist type of cases.

If we get the money from the Congress to hire the lawyers for the EEOC, with this kind of bill, they should be in court in 10 days or 2 weeks or 1 month.

And I might make one other comment with respect to conciliation, a statement which I think is very important.

With this kind of weapon in the hands of the Government, and given solely to the Commission, which has the expertise, and keeping in mind that the kind of person who would want to litigate is the recalcitrant person who probably has a motive or desire to avoid the law, I think it would make possible a record in terms of effective conciliation even higher than that of the State of New York. I would question Congressman Pucinski, because I share Congressman Reid's pride in the achievement of the State of New York in this area, which I think is the landmark achievement in this whole area of the United States.

Mr. HAWKINS. Mr. Attorney General, under the present law, section 707, can you not go into court now, where there is a pattern and history of discrimination in certain industries?

Mr. KLEINDIENST. You can.

Mr. HAWKINS. You can directly go to court now.

What are you doing in furtherance of that current power that you now have?

Mr. KLEINDIENST. In my prepared statement I listed all of the large corporations and labor unions against which we have brought section 707 cases. I think the labor union field, as Congressman Reid pointed out, probably suggests more active action by litigation than any one field that we have. I pointed out the many large pattern or practice cases that we have.

Mr. Chairman, as a lawyer, I can tell you that when you start preparing a case, the evidence, the investigation, the pleadings, the whole business of a comprehensive pattern or practice suit that not only involves nationwide industries or associations of industries, but national unions, is a very cumbersome procedure, this type of case does not ultimately address itself to the specific grievance of a specific complainant, and that is the disadvantaged person in our society who has gone to the factory gate to apply for a job and is turned down and has no place else to go.

In this case, he would and he will have himself a lawyer, a highly skilled, highly paid lawyer. He will not have to pay a filing fee in court. He will be there in 5 days, and I would really believe in terms of my own background as a lawyer that four or five good specific cases would probably bring about a pattern or practice result, because one thing a Federal district judge would have, Mr. Chairman, is an injunctive power.

He has the power to issue an injunction against that corporation restraining it from discriminating against this particular individual. If that corporation showed up the next day in this court in connection with another grievant, I think that the injunctive power would probably be used in a very decisive manner, not only in terms of words, but in terms of sanctions. Many of us who are concerned in this area feel that good, aggressive litigation on behalf of specific individuals with respect to large companies or large labor unions, and I would like to underscore that last, would probably bring about very quickly pattern or practice relief as a practical result.

Mr. HAWKINS. I don't want to monopolize all the time, because some of the other members I am sure will have some questions.

Mr. Reid.

Mr. REID. Thank you very much, Mr. Chairman.

I certainly want to welcome most warmly Deputy Attorney General Kleindienst, Jerris Leonard, and Mr. Mintz. You have been very patient.

Mr. KLEINDIENST. Thank you, Congressman. It has been very interesting to listen to.

Mr. REID. We are very grateful that you can testify this morning.

First, Mr. Kleindienst, if I might, you have talked about the merits as you see it of the court approach.

Do you have any objections to the cease-and-desist approach, as distinct from your comment that you think it may be more quick, speedy, or expeditious?

Mr. KLEINDIENST. I am an advocate for the President and for the EEOC, and this administration. I want the best. I think that this is the best.

I don't want to give up on the best until it has been indicated to me that we have to take something that is less than that.

But I do want enforcement powers for the EEOC, and this administration does.

Mr. REID. If it could be shown that you would have more effective enforcement powers, that the record sustains this around the country, and that it would provide more expeditious and prompt relief, and I am basing this, as you can suppose, in part on the New York experience, where the fact that the Commission did have enforcement powers permitted it to conciliate well over 90 percent of the cases without having to go into court in the first place, if the record was persuasive in this area, do you have any objection to the cease and desist?

Mr. KLEINDIENST. I don't think it is. I would not have any objection, Congressman, but I don't think it is.

I think the reason why an agency can conciliate its cases is that it has an enforcement tool in its pocket. I believe that you would conciliate more cases if you had a better enforcement tool in your pocket, and I believe that the threat of this Commission being able to go into court on behalf of an individual grievant under this act would conciliate more cases even than has been the experience in New York, which I have always understood has been a very, very good one.

Therefore I don't think that the body of evidence would be persuasive.

Mr. REID. I am perfectly willing to examine the evidence, but my experience with the statute and knowledge of it around the country, and indeed some experience I guess going back over 50 years in this country of this kind of relief in one form or another, I firmly think is persuasive in support of the cease-and-desist route.

Permit me to ask what effect you think this approach, which would involve 50,000 to 100,000 cases a year, would have on the court backlog that now exists.

Mr. KLEINDIENST. Well, I have two answers to that which I think should satisfy you, Congressman.

No. 1, with this kind of an effective enforcement weapon, I don't believe that all the cases would be going into court, as has been the experience in New York. It is just going to be the recalcitrant

company who could afford it, and would deliberately, I think, seek to get around the law.

It was my privilege to testify before the Senate, and also a subcommittee of the House, in respect to the omnibus judge bill, in which we seek some 70 additional judges. My argument was predicated upon the need for the future, upon what we think the need would be in the next 3 or 4 years. With what I expect as a foreseeable diminution in some areas that are now occupying the court's time, and with the optimistic hope that this bill will be passed, we will have next year enough additional judges to accommodate the additional workload created by this law.

Mr. REID. I think if you have a strong Commission with an adequate statute, with a cease and desist power, that the Commission can deal with a case like this, if necessary, in a matter of 1 or 2 months, and particularly if it is an important one, and would set a pattern and practice that would apply widely.

Do you believe the Federal courts could act that promptly?

Mr. KLEINDIENST. Well, Mr. Reid, I think that you don't give a proper weight to the fact that under our proposal the Commission can still do that.

It can hear the case. It can try to conciliate it, and get rid of it administratively. Then, if they fail to the satisfaction of the Commission, it can go into court for the individual.

But most important of all, let's say that the Commission feels that there was not a proper case and taken no action, and an individual felt that there was, just felt in his heart that he was discriminated against, 180 days after the filing of the charge, he can go into the Federal court himself. This again is a very unique right and remedy, and I really don't think that all of the devoted people in this area have really taken the time to think about what we are offering here to specific individuals, who have been deprived of what I consider to be their basic rights.

Mr. REID. Getting to the one particular point, and I am not trying to touch the merits of some of the other suggestions you have raised, how promptly could a court action take place, in your judgment, similar to a Commission action under a cease and desist proceeding?

Mr. KLEINDIENST. Well, I would say that if a Commission wanted to act hurriedly, they could come up with a solution——

Mr. REID. I am talking thoughtfully, not hurriedly.

Mr. KLEINDIENST. I think Mr. Brown's statistics bore this out, and in my opinion the Federal district court would bring about its relief faster than your administrative body would come up with a cease and desist order.

Mr. REID. Would you give this kind of case priority?

Mr. KLEINDIENST. Then you don't have anything, after you have the cease and desist order, you see. That, to me, is the crux of the whole matter. You still don't have anything, because they are not self-enforcing.

In order to enforce it, the Government would then have to apply to a court of appeals in one of our 10 judicial circuits in order to get an order enforcing the Board's order. That is another 3 years.

Mr. REID. To take the point you were making and turn it back in your direction, the fact that you have a cease-and-desist order that

is returnable in the courts is generally sufficient, as the statistics I tried to enter into the record show.

Mr. KLEINDIENST. To get rid of the case; yes.

Mr. REID. My point is on a determination on principle of pattern or practice in discrimination will the courts be in position to act promptly on this, or is this going to be in back of other present court delays, and is there any reason to suppose that this would be quicker, more speedy and expeditious, which I believe is the phrase you used?

Mr. KLEINDIENST. For two reasons: No. 1, this bill provides that these cases will be advanced on the court calendars.

Mr. REID. With priority?

Mr. KLEINDIENST. Yes; they are priority cases.

No. 2, a Federal district judge has a power that no Board or Commission in the Federal Government has in terms of compelling lawyers to do things, accelerating the trial, getting evidence in, getting the thing going. He really has a tremendous amount of power.

It was my experience with the Board for 20 years of very active personal practice, and I cannot believe that this would be any different with EEOC; that because of the number of cases that you are going to have before one Board—and incidentally, keep in mind, Congressman, that you have 93 judicial districts, so that under our proposal cases could be filed all over the United States, whereas you would only have one cease-and-desist Board—that pretty soon they are going to get flooded with cases in one central commission. Then you have all of the procedural delays that good lawyers representing their clients can take advantage of, the briefs that have to be written, the oral arguments, delays because of alleged inability to be at trial, are techniques that lawyers use before these administrative agencies.

A Federal district judge, on the other hand, will tell you that the trial is going to start on February 1, and if you cannot be there, get somebody else from your firm to do it, and it is going to take 4 days of trial, and your brief is going to be in in 5 days, and, "If it is not in, I will decide the case without it," and then, when he decides that case, he issues an order that is self-enforcing immediately, and it is usually not stayed unless unusual circumstances occur.

Mr. REID. Finally, Mr. Chairman, just one final question.

Have you had an opportunity to consult thoughtfully and in some detail with the NAACP or the Leadership Conference on Civil Rights, with those who have had the most experience with this statute, or some of the State commissions, with records of efficacious and expeditious performance because I do not believe that experience with NLRB necessarily is relevant to the experience that has occurred under the cease-and-desist approach in those States which have them.

In any event, have you consulted closely with the groups whom I think have the most experience?

Mr. KLEINDIENST. I have not, personally. I am here primarily to back up Chairman Brown, and I am sure that he has. I think he has had a wide range of dialog. I am confident that he has.

But I have not personally done so because the press of my other duties does not permit me to do it.

I am available to do it, and would like to do it, and have the opportunity to persuade people, because I am trying to help them accomplish their objective.

But a fair answer to your question is that other than casual conversations I have had in committee meetings like this, I have not had extensive conversation of that kind.

Mr. REID. Might I finally say that I hope there can be such discussions, and if their view and the evidence is persuasive, I hope that you would then be willing to support the cease and desist approach.

Equally, we have said we are going to take a hard look at the points you have raised.

Thank you very much.

Mr. HAWKINS. Mr. Pucinski.

Mr. PUCINSKI. Thank you, Mr. Chairman.

Mr. Kleindienst, any way you cut this bill up, it looks to me like another full employment act for the legal profession.

Mr. KLEINDIENST. No. These would be Government lawyers, primarily, who would be involved.

Mr. PUCINSKI. What about the lawyers on the other side? There is going to be counsel on the other side, I presume.

But more seriously, as I read the administration bill and I read your statement, I have to come to a conclusion, and I would like you to dispel that conclusion if I am wrong, that what you really are doing in this administration bill, whether you are aware of this or not, and what is being done intentionally or not, is giving the Attorney General's office veto power over an independent agency.

We established this fair employment practices commission as an independent agency. We presume that it can carry out its responsibilities most effectively as an independent agency.

Now, referring to page 2 of the administration bill, line 9, section (h), the bill provides:

> Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court and in the courts of appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission.

In your statement, on page 9, you say:

> We recognize that, under our proposal, EEOC must have authority to be represented in the lower courts by its own attorneys. I want to be very candid with the subcommittee in telling you that the Department of Justice initially rejected this concept, but we have been persuaded that granting this authority to EEOC is necessary and will not detract from the responsibilities of the Department of Justice to represent the Government in litigation in this vital field.

I must say you make a more convincing argument——

Mr. KLEINDIENST. Thank you, Congressman. I apparently have not convinced you, but I appreciate the compliment.

Mr. PUCINSKI (continuing). Than any counsel I would like to call upon, but I think as we carefully look at this bill, it becomes quite apparent that this independent agency created by the Congress really is surrendering its legal responsibilities to the Attorney General, because when the guidelines are written, while it is true that in this bill we say, "* * * all other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission," you know and I know that when the guidelines are written for the implementation of this act, the Attorney General is not going to have 150 lawyers scooting around this country filing cases in lower courts, getting their

brains beat out, when he has the responsibility of handling appeals in the name of the Government.

I am reasonably certain that while this law would create the impression that Mr. Brown and his 150 lawyers are going to have complete freedom to operate in the lower courts, since this legislation vests in the Attorney General the responsibility to handle all appeals, you obviously are going to have something to say about the kind of cases that are going to be tried and initiated by Mr. Brown's Commission at the trial court level.

I cannot conceive of the Attorney General saying to Mr. Brown, "You turn your 150 lawyers loose around this country, and we will handle all the appeals when they get into a jam and get you all messed up." I cannot conceive of that.

Mr. KLEINDIENST. May I respond to that, Congressman?

Mr. PUCINSKI. Yes, in a second. I just want to make my case to which I want your response.

I see in this law an indirect veto power for the Attorney General over whatever activities this independent agency may engage in.

If I am wrong, I would like you to correct me.

Mr. KLEINDIENST. I would sincerely hope I could, Congressman, because I think you are wrong, but not intentionally wrong.

To begin with, I would like to have you look at H.R. 6228, which is the bill that was introduced by Mr. Hawkins, and on page 11 of it.

Mr. HAWKINS. May I, before you get too far, indicate, and I just discussed it with Mr. Reid, that both of us are in favor of knocking that out, so that if you are going to recommend knocking it out, I certainly support you. I think it is a mistake that it is in this bill also.

Mr. KLEINDIENST. I want to use it as an illustration, Congressman Pucinski, that your own bill has a similar provision, and then I would like to say that, No. 1, the Attorney General will have nothing to do with the conduct of Mr. Brown's 150 lawyers. This is the unique power that this Commission will have, unlike any other Commission, because it has been traditional in this Government, not just with this administration, that all litigation in the Federal courts will be handled by the Department of Justice.

Mr. PUCINSKI. On that point, are you really trying to persuade me to believe that if we vest by law in the Attorney General the responsibility of carrying the appeals, he has to take these cases upstairs——

Mr. STEIGER. Would my colleague yield?

Mr. PUCINSKI. I will in a minute.

Are you trying to tell me, Mr. Kleindienst, that the Attorney General is not going to have anything to say about what happens at the trial court level, and that he will take every appeal that Mr. Brown brings to him?

Mr. STEIGER. Would my colleague from Illinois, Mr. Pucinski, yield?

Mr. PUCINSKI. If he can answer the question, then I yield.

Mr. STEIGER. I wanted to ask a question of the gentleman from Illinois.

It seems to me that my inadequate knowledge of the Federal Government indicates that under the National Labor Relations Board the Attorney General takes appeals.

Mr. KLEINDIENST. No; that is not true. They have their own appellate section.

Mr. STEIGER. Even up to the Supreme Court?

Mr. KLEINDIENST. The Supreme Court is something else.

Mr. PUUCINSKI. I want my colleague from Wisconsin to read the fine print in this administration bill, since he raised the point.

Mr. STEIGER. I always do.

Mr. PUCINSKI. I do not challenge his honesty or integrity.

Mr. KLEINDIENST. Are you talking about me?

Mr. PUCINSKI. Yes, of course.

Mr. KLEINDIENST. Thank you. For the record, will the record clearly show that.

Mr. PUCINSKI. I will tell you that if you will read carefully the provisions of section (h) on page 2, you cannot draw any other conclusion but that the Attorney General is going to have a veto power over the litigation brought by this independent agency.

Mr. STEIGER. I would respectfully disagree.

Mr. KLEINDIENST. May I answer that, Congressman?

Mr. PUCINSKI. Yes; I want you to answer it.

Mr. KLEINDIENST. I know how sincere you are in trying to get something effective in this field, and I acknowledge that, and congratulate you for it, but I respectfully disagree.

The reason that that provision is in our bill, and why it was inserted in Mr. Hawkins' bill, even though he would now say he would like to take it out again, takes us back to the traditional role of the Department of Justice with respect to litigation. There has to be some control or some discipline with respect to appellate cases.

Mr. PUCINSKI. Why don't we have in NLRB——

Mr. KLEINDIENST. You have to have this control in the court of appeals. In an appeal in the Supreme Court, the Solicitor General of the United States represents the Government of the United States in all cases before the Supreme Court.

I would suggest that perhaps no more than 1 percent of the cases that went before a Federal district judge would ever be appealed, and then in order to effectively use your resources, Congressman, the limited resources that the Congress provides us in the Department of Justice in the way of litigation, you then carefully select cases to go on appeal in order to establish principles of law to better effectuate the act. This is the only control that the Department of Justice would have, and knowing Mr. Brown, and having had the pleasure of associating with him and knowing his independence and vigor and also knowing the Attorney General quite well, I might add I can testify to you directly that the Attorney General of the United States would have no control over the activities of the 150 lawyers that Mr. Brown would have.

Those lawyers would go into court, prove their case, and win their judgment, but in terms of an overall effective administration of the law, the Department of Justice I think, and again as a lawyer, should have control over appeals.

Mr. PUCINSKI. Mr. Witness, you may make this statement, and I am sure you make it in all sincerity.

Mr. KLEINDIENST. I do, with all the sincerity I have.

Mr. PUCINSKI. And in behalf of Mr. Brown now occupying that position, I am sure that you stand here before this committee and say,

"They would not abuse these powers. I know these men. I know how they operate."

But when we write this law, this is like forever, and how do I know 5 years from now or 10 years from now, when you and I are very far removed from these activities, some attorney general does not come along and say, "If I have the responsibility of effectuating appeals by the cases brought by this Commission, and the law says I have that responsibility, and nobody else has this responsibility, I am the one that is charged with carrying these appeals, and I insist on having something to say about what kind of cases they are going to bring at the trial court level, because my reputation and the integrity of this Government is at stake when they get their brains beat out at the trial court level," and therefore, he says, "I am sending down some guidelines that state that from now on every case has to be cleared through the Attorney General's office because we have the responsibility of carrying appeal."

What do you do in a case like that? You cannot deny him that right, because you have written in this section (h) the responsibility that he alone is going to carry the appeals.

Mr. KLEINDIENST. Congressman, I think you are reading something into the legislation that is not there, and I can tell you in the next 8 years it is not going to happen. I cannot tell you what will happen when we have some attorneys general as we have had in the past.

Mr. PUCINSKI. That is the advantage of being here 12 years and learning some things.

Twelve years ago, I used to look at the legislation that the administration sent down and say, "Vote it out," and then 4- or 5-years later said, "Did we do this?"

Now, after many years in Government, I read the legislation, and I am perfectly willing to listen to you, or Mr. Leonard, or anybody else, to show me why I am wrong in the conclusion I am drawing, that you do have a veto power written into this act for the Attorney General over an agency that the Congress created as a totally independent agency.

Mr. KLEINDIENST. I respectfully disagree, Congressman.

Mr. HAWKINS. Would you yield at that point?

What is the situation with respect to the Federal Trade Commission, the Federal Communications Commission, the Securities and Exchange Commission? Do you have the same power on appeal with those agencies?

Mr. KLEINDIENST. The Solicitor General of course represents all agencies of the Government before the Supreme Court, and litigation that goes into Federal district court from the bodies that you mention is litigation that is instituted by either a U.S. attorney's office or the Department of Justice.

Mr. HAWKINS. So that on appeal you would conduct the appeal for each of those agencies I enumerated?

Mr. KLEINDIENST. Yes, sir.

Mr. HAWKINS. Not for the NLRB?

Mr. KLEINDIENST. The initial application in Federal district court would be by the United States of America through the Department of Justice, sir.

Mr. PUCINSKI. There is a distinction. We in Congress, when we passed this FEPC, wanted to make a totally independent agency.

Mr. KLEINDIENST. And you still would, sir.

Mr. PUCINSKI. Mr. Kleindienst does make a point that in these other agencies the Justice Department brings the initial action, so that they have the veto power right from the start.

Mr. KLEINDIENST. That is correct.

Mr. PUCINSKI. But there is this indirect veto power, and I want the record to show that you and I have an honest disagreement.

Mr. KLEINDIENST. We really do. I know it is an honest one. We really have an honest disagreement, sir.

Mr. LEONARD. Mr. Chairman, may I add something to this point?

Mr. HAWKINS. Yes, sir.

Mr. LEONARD. Congressman, of course that kind of fear is always attendant, I suppose, in any legislation. I can attest to you, however, that the EEOC has in the last few years intervened in private litigation probably 100 to 200 times. Now, the Justice Department does not set any guidelines for the EEOC for those interventions, nor would we be so presumptuous as to do that.

They are an independent agency. They are charged specifically by Congress with certain areas of interest.

Even if we tried to set such guidelines, I doubt very much whether Mr. Brown and his Commission would accept those guidelines. They are going to exercise their independent judgment and jurisdiction.

I can say to you that I can only think of one instance now where EEOC had come to the Civil Rights Division to the Justice Department and asked us to intervene in a manner in order to bring the weight of the Justice Department behind a particular point of law that EEOC has attempted to establish, I therefore don't really think that this is a justifiable fear.

Mr. PUCINSKI. I am sure that there will be other attorneys who will be testifying here. We will ask other witnesses.

If I am reading this wrong, of course I want to be corrected. On the other hand, if there is merit to what I am saying, perhaps we can work this thing out in some way.

The other thing, Mr. Witness, is that you talked about the fact that you can be in court in 5 days in support of your concept, that rather than having the cease and desist, we ought to have the direct court route, but you failed to mention that you could then be in court, through litigation, taking your appeals all the way up, for several years. So I am not at all persuaded by the fact that we would get into a trial court very quickly.

The recalcitrant employer who has just made up his mind that he is not going to cooperate is prepared to go to the limit. Unfortunately, and I am not criticizing, but under our judicial system we do have the appellate machinery that does take its time.

Mr. KLEINDIENST. May I point out a distinction there, Congressman?

Mr. PUCINSKI. So that while it is true that we may be in court with these 150 lawyers in 5 days, we may be bogged down in that court for 5 years.

Mr. KLEINDIENST. Could I point out a distinction, and I think it is a very real one, and I wish the advocates of cease and desist would

understand it: that except in very rare cases, where a trial judge issues an order, that order is self-enforcing, even though an appeal has been asked for.

Under the cease-and-desist remedy, after you go through its machinery, you have a cease-and-desist order; it is not enforceable until a court of appeals, our second highest court, the court of appeals enters an order enforcing it, and that usually takes 2 to 3 years, whereas the Federal district judge's order is self-enforcing the minute he enters it.

Mr. PUCINSKI. If in the judgment of the committee, or of the majority of this committee, after hearing all the testimony, we decide to go the route of the cease and desist, what would be the Department's position on putting a self-enforcing provision in the cease and desist?

Mr. KLEINDIENST. I would not want to do that, with at least my experience with administrative tribunals.

Mr. PUCINSKI. Why?

Mr. KLEINDIENST. Well, they lack the judicial character.

Mr. PUCINSKI. I think they are starting to show their colors now. Come on in.

Mr. KLEINDIENST. I sincerely believe this, because you don't have litigants protected by the laws of evidence. In too many instances you don't have persons trained to administer these trials.

Based upon my own experience before the National Labor Relations Board, Congressman Pucinski, I don't think that you would find very many people who would want to give the cease-and-desist orders of your administrative tribunal the same efficacy and effect as that of a Federal district judge, and I sincerely believe that as a lawyer. It also presents a constitutional question, I think.

Mr. PUCINSKI. I don't want to quibble with you, but have you not really now answered my original question?

Mr. KLEINDIENST. No, sir; I have not.

Mr. PUCINSKI. The Justice Department really does not trust this agency.

Mr. KLEINDIENST. That is not correct, sir.

Mr. PUCINSKI. I get that feeling, in all honesty.

Mr. KLEINDIENST. No, sir.

Mr. PUCINSKI. You tell me that they don't have the ability to have a self-enforcing cease-and-desist order and those powers, and that you don't trust this agency with those powers, and that you have had a lot of experience with agencies.

Mr. KLEINDIENST. I don't know if I know of very many Federal administrative tribunals composed of persons from all walks of life, and I am not arguing about the necessity for their existence, to whom I would want to confer that power, but I do have a great deal of confidence in the 338 Federal district judges in 93 judicial districts in this country who I think stand at the pinnacle with respect to the administration of justice not only in this country, but in the world.

Mr. PUCINSKI. One final question, and then I want my colleagues to have a chance.

We have I think established here today that on both sides of the aisle there is a desire to strengthen this Commission.

Mr. KLEINDIENST. I think so.

Mr. PUCINSKI. You want to do it one way, and some of us here want to do it in another way, but obviously we are in agreement that we all want to strengthen the Commission's enforcement capabilities.

What would be wrong, in your judgment, wrong with doing both, giving the Commission the power to issue cease-and-desist orders, where negotiations and mediation have failed, and if in the opinion of the Commission the situation is of such a nature, give them the other power?

What is wrong with giving them this intermediate power of cease and desist, so that we can avoid this huge litigation?

Mr. KLEINDIENST. That is certainly a useful area to consider, that is to say, have a cease and desist sort of procedure, and then provide machinery for a trial de novo, if the parties are not satisfied, in Federal district court.

This was one of the areas that was considered, to the extent that we have been able to address ourselves to these problems since January.

The reason we are opposed to it, Congressman, is that you just add to the time. You go through one procedure, and that fails, and you hop on to another. I think that you would wind up with about as many cases in the Federal district court under that procedure as you would with direct court action, the way we propose it.

Mr. PUCINSKI. But when you see the large pattern of discrimination in this country, at all three levels, race, religion, national origin——

Mr. KLEINDIENST. I agree. I deplore it.

Mr. HAWKINS. Sex, too.

Mr. PUCINSKI. Sex and age.

Mr. KLEINDIENST. Why my wife wanted to come down and be equal to me is something I could never understand.

Mr. PUCINSKI. When you see what this does to human beings, don't you think that perhaps this committee ought to try and give that chairman as many alternatives as possible to get the job done as quickly as possible, or I should have said a number of options?

Mr. KLEINDIENST. That is what we think we are giving him, the best and quickest.

Mr. PUCINSKI. That he should use whatever method in his judgment is going to bring the quickest result, and if a cease and desist will do it, use that; if the court order will do it, use that; if mediation and negotiation will do it, use that.

Don't you think we will achieve this goal by giving that Commission the largest and broadest basis to operate from?

Mr. KLEINDIENST. We think we have done so with a Federal district judge order, because his orders are manifold injunctions, including cease-and-desist provisions, money damage, reinstatement with back pay. I think that your proposal would be self-defeating and cumbersome.

Mr. PUCINSKI. I am safe in assuming that if the committee decided to use both the cease and desist and the court procedures that you have outlined, that the administration might consider it favorably?

Mr. KLEINDIENST. Well, if the Congress enacts a law, and it affects the Department of Justice, we are going to enforce it. That is what this is all about.

I am called here as a witness to give a point of view, Congressman.

Mr. PUCINSKI. I am grateful to you for a hopeful answer.

Mr. HAWKINS. The Attorney General says he is for law enforcement. Mr. Clay?

Mr. CLAY. You have described this rater unique technique that you want us to empower the EEOC with, and you have talked about the virtues of going into court as opposed to some other recommendations.

Mr. KLEINDIENST. Yes, sir.

Mr. CLAY. I would like to ask you, under the present law, is it not true that the Justice Department now has the power to file legal actions, and I would like to ask you how many legal suits have been filed since the enactment of this law, and how many have been filed this year?

Mr. KLEINDIENST. I believe since the enactment of the law, 48 pattern or practice suits, and in fiscal year 1969 there have been 19.

Mr. CLAY. Why so few? Are these the only areas where discrimination in employment exists, in these 48 cases?

Mr. KLEINDIENST. Mr. Clay, I think there are two answers to that. One, in this administration and previous ones, I think the Civil Rights Division has not had the lawyers and the resources. The Congress has not appropriated the money to do it in keeping with all the other aspects of the law that they are charged to enforce.

No. 2, your pattern or practice suit—and that is why I feel so strongly about our approach to this bill—is a very complicated kind of lawsuit to prepare, to investigate, and to try.

The empirical, comprehensive type of evidence that you are dealing with, and the extensive, comprehensive kinds of remedy that the court is called upon to fashion, I think, bodes delay. It takes time and delay. That is why we feel so strongly about this.

We would not be deprived of this right, Mr. Clay, but in addition to that, this Commission and its attorneys would be able to go into court for the individual, and I think that he has been the guy who has been left out on the sidewalk in this operation.

And then, Mr. Clay, I firmly believe that a couple of good individual cases against a labor union or an industry that had engaged in these practices would be the shortest, quickest way to get a pattern or practice effect.

Mr. CLAY. The difficulties that you enumerate sound convincing, until you look at the record and you see that private organizations with less resources, with less budget, less attorneys, less investigators, have filed twice as many cases as the Justice Department, with all of the resources that they have.

Now, are we to assume that these private organizations, such as Legal Defense Fund, which has filed over 80 cases with less resources have more dedication than the Justice Department?

Mr. KLEINDIENT. I don't question their dedication, Mr. Clay. I have witnessed it and been proud of their dedication, but the resources of the Justice Department and the Civil Rights Division have to be allocated to many different kinds of legal actions. In a specific area I think some of the private foundations would in fact have more lawyers, and really more money to rifleshot in on a particular kind of case than the Department of Justice would, because of our relative lack of resources.

Mr. CLAY. I think the Legal Defense Fund is zeroing in on as many cases as you are, and they have dispersed their personnel accordingly; so you cannot use that.

I would just like to know why only half the amount of suits have been filed under the Justice Department.

Mr. KLEINDIENST. Primarily because of the lack of resources and because of the type of cases we have brought, Mr. Leonard would tell you that we want more lawyers in the Civil Rights Division and have asked for additional appropriations.

Mr. STEIGER. Will the gentleman from Missouri yield?

Mr. CLAY. I yield.

Mr. KLEINDIENST. Can I just refer Congressman Clay's attention to page 4 of the written statement. I think it will give you an adequate answer to your last question, Mr. Clay.

Mr. STEIGER. I would appreciate the gentleman from Missouri informing the subcommitte as to what kind of cases the Legal Defense Fund to which you have referred has filed. Are these pattern of practice suits?

Mr. CLAY. They have to be. That is what the law says you can file. It is the identical kind that the Justice Department has been failing to file.

Mr. KLEINDIENST. As my statement said, Congressman Clay, we are aware of only four cases in which a private party has won a contested lawsuit charging racial discrimination under title VII, without the Department of Justice intervening as a party.

Mr. CLAY. But the point I think ought to be made is that it has a difficult time going into court under this procedure, and getting adjudication. This is the point.

Now you are coming to this committee and asking us to take all of the cases into court, whereas the other agencies using cease and desist have been successful.

Mr. KLEINDIENST. No, sir.

Mr. CLAY. What you are saying is that it is better to use this procedure than the procedure that has been tried by 13 other regulatory agencies, the cease-and-desist rule, and they have not been cumbersome, and they have not been time consuming, and you talk about how many years it takes on the appeal, but the fact of the matter is that very few cases from NLRB or any of the other regulatory agencies are appealed.

Mr. KLEINDIENST. No, sir.

Mr. CLAY. And last year only 6 percent of all cases that were adjudicated by the NLRB were appealed.

Mr. KLEINDIENST. Sir, we are trying to do an additional thing. We still have the pattern or practice suits in the Department of Justice, but in addition to that, as an added enforcement tool, we are asking the Congress to permit the Equal Employment Opportunity Commission lawyers and staff to go directly into court immediately on behalf of a private grievant. That is an additional remedy which is a lot more precise, quick, and expeditious than even your pattern or practice suit, and in my humble opinion, sir, more expeditious and effective than any cease-and-desist order that any Federal tribunal has in this country.

Mr. CLAY. If these pattern of practice suits are so difficult and so cumbersome and so time consuming, then I think in effect what you should be saying is that they ought to be resolved by a commission rather than taking them into court.

Mr. KLEINDIENST. Most of them are complex because of the unique protected practices of organized labor in this country, of which I am sure you are aware.

Mr. CLAY. I don't think you can blame all of the problems of unfair employment practices on labor.

Mr. KLEINDIENST. But they complicate it.

Mr. CLAY. The primary responsibility for hiring is that of the employer, and to my knowledge none of the employers have ever surrendered that basic right to actually employ to a labor union.

Mr. KLEINDIENST. In the construction union——

Mr. CLAY. Not in the construction industry. I am very much familiar with the construction industry. I am not either trying to protect the unions or the employers, but the problem is the discrimination as it relates to employment, and when we start considering that problem, we may be able to resolve it.

Mr. KLEINDIENST. I agree.

Mr. CLAY. When you say this is a unique problem, and we have to devise unique remedies, that is where the initial problem starts. It is no more unique than any other problem in the country, and we have to start treating it the same as other problems.

Mr. HAWKINS. Mr. Steiger.

Mr. STEIGER. Two questions. One, I think you have done an excellent job.

Mr. KLEINDIENST. Thank you, Congressman. You must be a minority.

Mr. PUCINSKI. We will agree with you on that.

Mr. STEIGER. I must say I am disappointed in that the Office of Contract Compliance is not going to be transferred to EEOC, and I wonder, while on page 13 you make reference to Secretary Shultz' statement, you would be willing to give us some idea as to why you believe that ought not to be transferred.

Mr. KLEINDIENST. Well, OFCC deals with compliance by Federal contractors. The Department of Labor has had, leaving aside some of the collateral problems of organized labor, a vigorous enforcement policy, and has the expertise in the field. It was therefore the considered judgment of the administration to go ahead and leave that in the Department of Labor.

Mr. STEIGER. I will be very candid with you and say I am very disappointed with that decision by the administration.

From the standpoint of at least my State, one of the problems which has arisen has been the apparent, and in some cases, real conflict between those regulations of OFCC and those of EEOC, and then, further complicated by those of the State Industrial Commission.

I for one intend to at least work within the committee to try and combine the two, because I think that would make some sense.

Let me clarify one point that I think you did make, but I want it restated, if you would be willing to do so. That is the point that you made on the fact that if you use cease and desist, what you are in effect saying is no matter how many field staff people, no matter how many attorneys the agency has, in the end all of the decisionmaking process funnels into one single agency point, as contrasted to the approach that the administration has, which is where, with 95 courts available, and with no standard set in the law, such as those which NLRB has, in

which they have exempted certain categories because they simply did not have enough people to handle them, you really are talking about far more effective enforcement plus I think broader enforcement.

Mr. KLEINDIENST. We are talking about something like 340 district judges in 93 judicial districts, each of whom has the staff and the means by which he can bring cases to trial. With rare exceptions, I believe that you can get to trial at the order of most Federal district judges in the United States within 60 to 90 days.

There are two or three judicial districts where that is not true, because of the burden of the caseload, and that is why we want the omnibus judgeship bill.

But I think you are correct, Congressman.

Mr. STEIGER. One thing that somewhat worries me is this point that some have made, that you are going to forego voluntary compliance. I must say I am bothered about that.

I don't see where voluntary compliance is going to be foregone, and you are all of a sudden going to take these cases into court.

Mr. KLEINDIENST. That is the whole argument that we have made here, that with this effective tool in the hands of the Commission, voluntary compliance is going to increase. Congressman Reid brought out the statistics in New York on this point.

The only difference is that we think that this tool would be more conducive to voluntary compliance than a cease and desist order procedure, because a court order would be self-effectuating more quickly than a cease and desist order.

Mr. STEIGER. I am proud of the job you have done today. Thank you.

Mr. KLEINDIENST. Thank you, Congressman.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. HAWKINS. Again, Mr. Attorney General, we would like to thank you and Mr. Leonard and Mr. Mintz for your testimony this morning.

Mr. KLEINDIENST. I would like to say on behalf of our Department how much we appreciate your courtesy, and the stimulating meeting that we have had this morning.

Mr. PUCINSKI. I would like to make the observation that I think we ought to have you people before our committees more often. I think it has been very informative. I am impressed with how well you know your subject, and I think you have helped us a great deal.

Mr. KLEINDIENST. We are here at your invitation.

Mr. HAWKINS. The meeting tomorrow morning will be at 9 a.m., in room 2129. The first order of business will be the panel headed by Mr. Clarence Mitchell of the NAACP.

The hearing is adjourned.

(Whereupon, at 1:25 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Tuesday, December 2, 1969, in room 2129.)

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

TUESDAY, DECEMBER 2, 1969

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

The subcommittee met at 9 a.m., pursuant to recess, in room 2129, Rayburn House Office Building, Hon. Augustus F. Hawkins, presiding.

Present: Representatives Hawkins, Burton, Stokes, Clay, Erlenborn, and Reid.

Staff members present: Robert E. Vagley, staff director, and Michael J. Bernstein, minority counsel.

Mr. HAWKINS. The General Subcommittee on Labor of the House Education and Labor Committee will now come to order.

When we adjourned yesterday, the panel which was represented by Mr. Mitchell, Mr. Robinson, Mr. Harris, and Mr. Rauh was about ready to testify, and that will be the first order of business this morning. I would like, therefore, to welcome at this time to the witness chairs Mr. Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People; Mr. William Robinson, legal defense and education fund of the NAACP; Mr. Thomas Harris, associate general counsel of the AFL–CIO; and Mr. Joseph Rauh, counsel of the Leadership Conference on Civil Rights and vice chairman of Americans for Democratic Action for Civil Rights.

Gentlemen, I am quite sure it is unnecessary for the Chair to indicate our pleasure in having this panel with us today. I am quite sure that other members will be coming in as you proceed, but because of the time element, I know that you would like to go ahead.

All of the statements will be entered in the record at this point and I would like to suggest that each of the witnesses present his statement first and then following that, we will open up the hearing to examination.

I also see that seated at the table is Mr. Bill Pollard of the AFL–CIO, a personal friend of mine from Los Angeles and long champion of the cause of the workingman. It is certainly a pleasure to have Mr. Pollard.

Mr. Mitchell, I suppose you are the first one and, needless to say, it is a personal delight to have you before the committee.

47–445—70——7

A PANEL CONSISTING OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NAACP; WILLIAM ROBINSON, LEGAL DEFENSE AND EDUCATION FUND, NAACP; THOMAS HARRIS, ASSOCIATE GENERAL COUNSEL, AFL-CIO; AND JOSEPH RAUH, COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION FOR CIVIL RIGHTS

Mr. MITCHELL. Thank you, Mr. Chairman.

The order that we will follow is Mr. Robinson of the NAACP legal defense and education fund will be first. He will be followed by Mr. Harris, then Mr. Rauh, and I will be last.

Mr. HAWKINS. All right, you may proceed in that order.

Mr. ROBINSON. I would like to first apologize to the committee for not having a written statement before the committee, but I will endeavor to have my statement reduced to writing and deliver copies to the committee in an appropriate quantity.

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.

Following passage of title VIII of the Civil Rights Act in 1964, and its becoming effective in 1965, we did more than——

Mr. HAWKINS. Mr. Robinson, may I interrupt long enough to suggest that the acoustics in this room are very bad and I think it is going to be necessary for the witnesses to speak more directly into the microphone in order to be heard by the other persons present.

Mr. ROBINSON. Since passage of title VII of the 1964 Civil Rights Act, we have filed more than 80 cases in the U.S. district courts. A list of the title VII cases we are currently handling will be appended to our written statement when it is submitted.

The cases handled by the legal defense fund represent a substantial portion of all cases involving racial discrimination and employment now pending under the act. That includes such cases brought by the Attorney General of the United States, private individuals or other organizations. Out of our experience with these cases we would like to make several suggestions concerning the proposed bill, H.R. 6229, which I understand is identical with H.R. 6228.

We heartily applaud the provision of the bill which gives the Commission cease and desist powers. Long ago it was learned that public rights cannot be effectively enforced by leaving them solely to private litigants. As a result, there has been established the Securities and Exchange Commission Act, the Interstate Commerce Act, pure food and drug laws, 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 administratively on a broad scale.

At the same time our experience in the field of racial discrimination demonstrates that this bill wisely preserves the rights to have private suits alongside administrative enforcement by the Government. The entire history of the development of the civil rights law is that private suits have led the way and Government enforcement has followed.

For example, the first declaration that it was unconstitutional for local institutions supported, in part, by special funds to discriminate on the basis of race came in a lawsuit brought by the legal defense fund, *Simpkins* v. *Moses H. Cohen Memorial Hospital*. 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 embodying the sanction of cutting off Federal funds compel the desegregation of schools, hospitals, and similar institutions. Private parties may also bring suits.

It has been our experience that private parties have done much of the pioneering into such questions as to the duties 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 lawsuit that private parties want, holding that a student's rights to desegregated education included the right to attend schools staffed by teachers who have now been placed on a racial basis.

Following these cases, HEW strengthened its position on the issue. This example can be multiplied many times over.

It is important that black communities maintain competency in the local system, which is something that their lawyers can invoke, even if a Government agency will not. When a complaint is filed against a powerful corporation or labor union, and the Commission or the Department of Justice does not bring it to a successful fruition, the suspicion is that failure to proceed rigorously against these giants has been sanctioned by law. That that might be true has caused much concern among plaintiffs who have long been victims of racial discrimination. Their rights to state their cases before Federal courts with their lawyers are the basis of the insurance against cynicism developing in the black community concerning enforcement of the law.

Unfortunately, however, if prior experience with cease-and-desist business is any indication, it is likely that there will be a movement to strike the independent private action as a price for getting the bill. If such a movement develops, it is important to realize that the bill will have such a major defect if the independent private action is deleted above and beyond the use of initiative and confidence referred to above.

First, there will be no private remedy for nonexpeditious action by the Commission. The Commission is required to find reasonable cause within 120 days, but experience shows that this will be a wish rather than a fact.

Moreover, no time limit after making the reasonable cause finding is imposed. Any conciliation and subsequent hearing procedure can drag on interminably. There should be one, say, to prod the Commission if it drags its heels.

Second, it is not clear that an aggrieved employee can appeal a decision of the Commission dismissing his case for a lack of reasonable cause. An aggrieved party can appeal a final order, but a dismissal for no reasonable cause before a hearing is not called an order in the bill.

This point should be clarified by giving an aggrieved party the right to have a no-cause finding reviewed in Federal court.

The provision in the proposed bill retaining the right of private action should be improved also.

In many of the cases presently pending in various courts defendants have attempted to have their case dismissed on the ground 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 advising him of his right to sue.

It is our experience this 30-day limitation is much too short for the average person to seek assistance in bringing a suit and for the attorney to adequately prepare for the filing of a suit.

We approved the extension of this period to 60 days, but we would suggest that a period of 1 year from the date the right to go into the court arises as being the more appropriate time limitation in which a private party can bring suit.

The bill alters the present section 703(h) dealing with tests as follows: By striking out "to give and to act upon" continuing over on through to "or national origin," and inserting in lieu thereof the following: "to give and to act upon the results of any professionally developed ability test which is applied on a uniform basis to all employees and applicants for employment in the same position and is directly related to the termination of bona fide occupational qualifications and reasonableness to perform the normal duties of the particular position concerned, provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin."

This change is well meant and is desirable insofar as it would help to argue the test must be validated. However, it does not go far enough in insisting upon validation and, therefore, would probably turn out to be an impediment to the full acceptance of the position which the EOC, FOOC and private litigants have been urging in cases pending before the courts.

We urge that the bill be strengthened by insisting that all tests be validated prior to use in hiring or promotion. Moreover, the phrase in the proposed bill calling for uniform administration of tests might undercut a possible need for differential test treatment because of different cultural backgrounds.

This differential kind of procedure has been accepted by some employers and is being urged upon the court in some cases. It seems best, therefore, at this time to delete this section entirely and leave the present language of 703(h) standing.

The proposed bill does not contain a provision to the effect that its enforcement does not affect rights guaranteed under the Railroad Labor Act, National Labor Relations Act and similar laws. It might be that the including of such a provision could be said to be existing law, but it should remove any ground for arguments we have directly encountered in many of the cases to the effect that title VII provision should be held up because of proceedings before the Labor Board, or vice versa.

Coverage under the proposed bill is extended from firms with 25 employees to firms with only eight employees. This is a generally desirable change, but it will be of slight practical importance. There is

even a risk that it may further diffuse the already limited resources of the EEOC and thus hamper rather than aid the development of pressure against larger employers.

This section should be accompanied by increased provisions for its enforcement. Under present law it is unclear how conciliation agreements are to be enforced.

Section 706(i) clarifies this point by making the enforcement of these agreements subject to the general enforcement powers of the Commission. We welcome this clarification of existing law.

We also welcome the extended time in which an aggrieved party can file its charge with the Commission. Under the present law he has 90 days. Under the proposed bill he would have 180 days.

Under present law an aggrieved party unable to afford his own attorney can apply to the court for the appointment of an attorney and the court has power to authorize the commencement of an action without payment of fees, costs or security. We would suggest, however, that the provisions relating to appointment of counsel for indigent persons be made a part of the proposed bill as to appearance by an aggrieved person in cease-and-desist hearings.

In some matter, H.R. 6229 in its present form is very desiable insofar as it gives cease and desist power to the EEOC while preserving the private right of action. The right of private parties is well protected in a Commission proceeding, because they can participate at all stages as parties and can appeal an adverse action.

The enforcement procedure set out under the present law preserves for charges filed before the Commission before the effective date of the proposed bill. This is desirable and assurance that the effort which has been put into existing cases will not be wasted.

In conclusion, I thank the committee for extending its invitation to appear and present 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 House will be fruitful in dealing with many of the deficiencies of the present law.

Mr. HAWKINS. Thank you. You will file a formal statement with the committee?

Mr. ROBINSON. Yes, I will.

(The statement follows:)

STATEMENT OF WILLIAM L. ROBINSON, STAFF ATTORNEY FOR THE NAACP LEGAL DEFENSE AND EDCATIONAL FUND, INC.

My name is William Robinson. I am an attorney with the NAACP Legal Defense and Educational Fund, Inc. (LDF). I am testifying pursuant to an invitation extended by Congressman Dent to participate in a panel of witnesses representing civil rights organizations and to express the views of my organization on House Bill H.R. 6229 which contains proposed amendments to Title VII of the Civil Rights Act of 1964.

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. Following the passage of Title VII of the Civil Rights Act in 1964 and its becoming effective in 1965, we have filed more than 80 cases in the United States District Courts. A list of Title VII cases in which LDF is currently involved is appended to this statement. The cases handled by LDF represent a substantial portion of all of the litigation involving race discrimination in employment now pending under the Act, including such cases brought by the Attorney General of the United States, private individuals

or other organizations. Out of our experiences with these cases, we would like to make several suggestions concerning the proposed Bill H.R. 6220.

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 established 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 administratively 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 development of civil rights law is that private suits have led 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 brought by the Legal Defense Fund (*Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F.2d 959 (4th 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, hospital 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.

It is important that black communities maintain confidence in the legal system as something that they and their lawyers can invoke, even if a government agency will not. When a complaint is filed against a powerful corporation or labor union and the Commission or the Department of Justice does not bring it to successful fruition, the suspicion is that failure to proceed rigorously against these "giants" has been sanctioned by the law. That this might be true had caused much concern among plaintiffs who have long been victims of 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 black community concerning enforcement of the law.

Unfortunately, however, if prior experience with cease and desist bills is any indication, it is likely that there will be a movement to strike the independent private action as a price for getting the Bill. If such a movement develops it is important to realize that the Bill will have some major defects if the independent private action is deleted above and beyond the loss of initiative and confidence referred to above. First, there will be no private remedy for non-expeditious action by the Commission. The Commission is required to find reasonable cause within 120 days but experience shows that this will be a wish rather than a fact. Moreover, no time limit after making the reasonable cause finding is imposed, and conciliation and subsequent hearing procedures can drag on interminably. There should be some way to prod the Commission if it drags its heels.

Second, it is not clear that an aggrieved employee can appeal a decision of the Commission dismissing his case for a lack of "reasonable cause." An aggrieved party can appeal a "final order," but a dismissal for no reasonable cause before a hearing is not called an "order" in the Bill. This point should be clarified by giving an aggrieved party the right to have a "no cause" finding reviewed in Federal Court.

The provision in the proposed Bill retaining the right of private action should be improved. In many of the cases presently pending in various courts, defendants have attempted 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 to seek assistance in bringing his suit and for the attorney to adequately prepare for the filing of a lawsuit. We approve the extension of this period to 60 days but, 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.

The bill alters the present Section 703(h) dealing with tests as follows:

By striking out:

> to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin.

and inserting in lieu thereof the following:

> to give and to act upon the results of any professionally developed ability test which is applied on a uniform basis to all employees and applicants for employment in the same position and is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned: *Provided*, That such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin.

This change is well meant and is desirable insofar as it would help to argue that tests must be validated. However, it does not go quite far enough in insisting upon validation and therefore would probably turn out to be an impediment to the full acceptance of the position which the EEOC, the OFCC, and private litigants have been urging in cases pending before the courts. We urge that the Bill be strengthened by insisting that all tests be validated prior to use in hiring or promotion. Moreover, the phrase in the proposed Bill calling for "uniform administration" of tests might undercut a possible need for differential test treatment because of different cultural backgrounds. This differential kind of procedure has been accepted by some employers and is being urged upon the courts in some cases. It seems best therefore at his time to delete this section entirely and leave the present language of 703(h) standing.

The proposed Bill does not contain a provision to the effect that its enactment does not affect rights guaranteed under the Railroad Labor Act or National Labor Relations Act and other similar laws. It might be that the inclusion of such a provision could be said to be existing law but it 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 Boards or vice versa.

Coverage under the proposed Bill is extended from firms with 25 employees to firms with only 8 employees. This is a generally desirable change but it will be of slight practical importance. There is even a slight risk that it may further diffuse the already limited resources of the EEOC and thus hamper rather than aid the development of significant pressure against larger employers. This section should be accompanied by increased appropriations for its enforcement.

Coverage is not extended to governmental employment under the Bill. This would be a desirable change and should be included. The Fifth Amendment already covers governmental employment. The effect of adding Title VII coverage is for any procedural advantage it might offer such as making counsel fees available. The principal importance of this provision will, of course, depend on the enactment of cease and desist powers of the EEOC. If these powers are granted, a powerful federal agency will be brought into an area of fair governmental employment, an area of vast employment potential which has gone largely untouched except with regard to teacher employment.

Under the present law it is unclear how conciliation agreements are to be enforced. Section 706(i) clarifies this point by making the enforcement of these agreements subject to the general enforcement powers of the Commission. We welcome this clarification of the existing Act.

We also welcome the extended time in which an aggrieved party can file his charge with the Commission. Under the present law, he has 90 days. Under the proposed Bill he would have 180 days.

Under the present law, an aggrieved party unable to afford his own attorney can 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 however, that the provision relating

to appointment of counsel for indigent persons be made a part of the proposed Bill as to appearance by aggrieved person in cease and desist hearings.

In summary, HR6229 in its present form is a very desirable Bill insofar as it gives cease and desist power to EEOC while preserving the private right of action. The right of private parties is well protected in a Commission proceeding because they can participate at all stages as parties and can appeal an adverse action. The enforcement procedure set out under the present law is preserved for charges filed with the Commission before the effective date of the proposed Bill (Section 8). This is desirable and assures that the effort which has been put into existing cases will not be wasted.

In conclusion, I am thankful for the Committee extending its invitation 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 House will be fruitful in dealing with many of the deficiencies of the present law.

APPENDIX

LIST OF NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., TITLE VII CASES PENDING IN FEDERAL COURT

ALABAMA

1. Dent v. St. Louis-San Francisco Railway Co. and Brotherhood of Railway Car Men of America, No. 66-65 (N.D.Ala.)
2. Ford v. United States Steel Corporation and United Steelworkers of America, Civ. No. 66-625 (N.D.Ala.)
3. Gamble v. Birmingham Southern Railroad Company, C.A. No. 68-597 (N.D.Ala.S.D.)
4. Hardy v. U.S. Steel and United Steelworkers of America, Civ. No. 66-423 (N.D.Ala.)
5. Harrison v. Marathon Southern Corp., C.A. No. 5202-68T, (S.D.Ala.)
6. McKinistry & Hubbard v. The United States Steel Corp. C.A. No. 66-423 (N.D.Ala.)
7. Maddox v. Gulf States Paper Corp. C.A. No. 69-628-W (N.D.Ala.W.D.)
8. Muldrow v. H. K. Porter, et al., No. 66-206 (N.D.Ala.)
9. Pearson v. Alabama By-Products Corp., Local 12136 of the United Mineworkers of America, C.A. No. 66-320 (N.D.Ala.)
10. Pettway, et al. v. American Cast Iron Pipe Company, Civ. No. 66-315 (N.D.Ala.)
11. Russell v. Alpha Portland Cement Company, Civ. No. 68-01 (S.D.Ala.)
12. Williams v. Southeastern Metals Co., and United Steelworkers, Civ. No. (N.D.Ala.)
13. Wrenn v. American Cast Iron Pipe and Foundry Company, Civ. No. 66-315 (N.D.Ala.)

ARKANSAS

14. Page v. National Cash Register Company, Civ. No. LR-C-81 (E.D.Ark.)
15. Parham v. Southwestern Telephone Company, Civ. No. LR-68C-71, (E.D.Ark.)

GEORGIA

16. Anthony v. Marion Williamson, Director, and Edward J. Shable, Manager of Atlanta, Georgia Office, Georgia State Employment Security Agency, No. 9047 (N.D.Ga.)
17. Baxter v. Savannah Sugar Refining Co., Civ. No. 2304 (S.D.Ga.)
18. Colbert v. H-K Corporation, Inc., Civ. No. 11599 (N.D.Ga.)
19. Culpepper v. Reynolds Metal Co., C.A. No. 12179 (N.D.Ga.)
20. Grido v. Railway Express Co., Inc., Civ. No. 12330 (N.D. Ga.)
21. Hayes v. Seaboard Coastline Railroad, Civ. No. 2371 (S.D. Ga.)
22. Johnson v. Georgia Highway Express, Inc., C.A. No. 11598 (N.D.Ga.)
23. Jones v. Georgia Power, C.A. No. 1414 (S.D.Ga.)
24. Kemp v. General Electric Co., Civ. No. 2061 (N.D.Ga.)
25. Kendrick v. American Bakery Company, Civ. No. 11490
26. Local Union No. 234 of the Wood, Wire and Metal Lathers Int'l Union and Jackson v. Acousti Engineering Co., No. 10306 (N.D.Ga.)
27. Long v. Georgia Kraft Co., C.A. No. 2033 (ND.Ga.)

28. Moreman v. Georgia Power, C.A. No. 12185 (N.D.Ga.)
29. Phillips v. J.P. Stevens & Co., C.A. No. 774 (M.D.Ga.)
30. Roberson v. Great American Insurance Co., C.A. No. 12182 (N.D.Ga.)
31. Shy v. Atlanta Terminal Co., et al., C.A. No. 12005 (N.D.Ga.)
32. Thomas v. Rich's, Inc., C.A. No. 11892 (N.D.Ga.)

COLORADO

33. Burks v. Denver Rio Grande Railroad, C.A. No. 1153 (D.Col.)

LOUISIANA

34. Burrell v. Kaiser Aluminum and Local 205 of the Aluminum Workers, C.A. No. 67-68 (E.D.La.)
35. Clark, et al. v. American Marine Corp., No. 16315 (E.D.La.)
36. Dupas v. Crosby Chemical Co., C.A. No. 14155 (E.D.La.)
37. Johnson v. Louisiana State Employment Service, No. 13848 (W.D. La.)

MISSISSIPPI

38. Jackson v. Litton Systems, C.A. No. (S.D. Miss.)
39. Miller, et al. v. International Paper Co., et al., C.A. No. 3416 (S.D. Miss.)

NORTH CAROLINA

40. Black v. Central Motor Lines, Inc., C.A. No. 2152 (W.D. N.C.)
41. Bradshaw v. Associated Transport, Inc., C-245-G-67 (E.D. N.C.)
42. Brown v. Gaston County Dyeing Machine Company, Civ. No. 2136 (W.D. N.C.)
43. Brown v. Gaston County Dyestuff Co., Civ. No. 2250 (W.D. N.C.)
44. Griggs v. Duke Power Co., Civ. No. C-210-G-66 (M.D. N.C.)
45. Halrston v. McLean Trucking Company, Civ. No. C-77-WS-68 (W.D. N.C.)
46. Johnson v. Seaboard Coast Line Railroad Company, Civ. No. 2171 (W,D. N.C.)
47. Lea v. Cone Mills Corp., Civ. No. C-176-D-66
48. Lee v. The Observer Transportation Corp., Civ. No. 2145 (W.D. N.C.)
49. Moody v. Albemarle Paper Co. and United Papermakers and Paper Workers, AFL-CIO, Civ. No. 989 (E.D. N.C.)
50. Robinson v. Lorillard Co. and Tobacco Workers International Union, AFL-CIO and Local Union 317, C.A. No. C-141-G-66 (M.D. N.C.)
51. Russell, et al. v. American Tobacco Co., et al., Civ. No. C-2-G-68 (E.D. N.C.)
52. Walker v. Pilot Freight Carriers, Inc., C.A. No. 2167 (W.D. N.C.)

OHIO

53. Head v. Timken Roller Bearing and Local 2173, Case No. 68278
54. Jamar v. Ohio Bureau of Employment Services, C.A. 67-323 (S.D. Ohio)
55. Watson v. Limbach Company, et al., C.A. No. 69-171 (S.D. Ohio)

OKLAHOMA

56. Williams, et al. v. American St. Gobain Corp and Local 10, United Glass and Ceramic Workers of North America, C.A. No. 68-102 (E.D. Okla.)

PENNSYLVANIA

57. Carl v. International Brotherhood of Electrical Workers, Local Union No. 5, C.A. No. 69-1133 (W.D. Penn.)
58. Mack, et al. v. General Electric Company, C.A. No. (E.D. Penn.)

SOUTH CAROLINA

59. Ford v. Western Carolina Tractor Co., C.A. No. 69-862.

TENNESSEE

60. Alexander v. Avco Corporation and Aero Lodge No. 735 of the International Machinist, AFL-CIO, No. 4335 (M.D. Tenn.)

61. Goodwin v. City Products Corp., C.A. No. 68-456 (W.D. Tenn.)
62. Hall v. Memphis Furniture Co., C.A. No. (W.D. Tenn.)
63. Hall v. Werthan Bag Corp., Civ. No. 4312 (M.D. Tenn.)
64. Jennings v. Illinois Central, Civ. No. 68-91 (W.D. Tenn.)
65. Newman v. Avco Corp. and Aero Lodge No. 735 (M.D. Tenn.)
66. Wesley v. Pantaze Drug Stores, Inc., C.A. No. 67-285 (W.D. Tenn.)
67. Young v. Denies Co., Civ. No. (W.D. Tenn.)

TEXAS

68. Barnaba v. Rohm-Haas Chemical Company.
69. Jenkins v. United Gas Corp., Civ. No. 5152 (E.D. Texas)
70. Roy v. Jefferson Chemical Co. & Local 1702 International Association of Machinists & Aero Space Workers, AFL-CIO, C.A. No. 5891 (E.D. Tex.)
71. Smith and Jackson v. Hughes Tool Co., No. 67-4-591 (S.D. Texas)

VIRGINIA

72. Adams v. Dan River Mills, Inc., C.A. No. 69-C-58-D (W.D. Va.)
73. Carlles, et al. v. Sturgis-Newport Business Forms, No. 1153 (U.S.D.C.) (E.D. Va.)
74. Charity v. Continental Can, Civ. No. 5902 (E.D. Va.)
75. Morgan v. Norfolk and Western Railway, et al., C.A. No. 68-C-20-R (W.D. Va.)
76. Moss v. The Lane Co., Civ. No. 68-C-72-R (W.D. Va.)
77. Smith v. United Papermakers and Paperworkers, Civ. No. 5897 (E.D. Va.)
78. Younger v. Glamorgan Pipe and Foundry Co., Civ. No. 68-C-16-116 (W.D. Va.)

Mr. MITCHELL. The next witness is Mr. Thomas Harris, associate general counsel of the AFL-CIO.

Mr. HARRIS. Thank you, Mr. Chairman.

The AFL-CIO has consistently for many years supported effective fair employment practices legislation. Moreover, we have always recognized that such legislation must apply to unions as well as to its employers.

I believe that a certain amount of nonsense was uttered before the committee yesterday as to where the bulk of this problem of discrimination lies. I got the impression listening to Chairman Brown and to Mr. Kleindienst that they thought that unions really were the main source of problem in this area.

Now, in that connection I would like to point out to the committee that the percentage of employment where unions have a substantial voice in hiring is extremely small in the country. The working force perhaps amounts to maybe 45 million people. The membership of the building trades unions, who are the principal group having a voice in hiring, is about 3 million.

You might add maybe another 200,000 for the maritime unions. This would leave you with something like a little over 3 million people out of a work force of 45 million where unions have any voice in hiring.

In something like 90 to 95 percent of the cases it is the employer and only the employer has any voice whatever in hiring.

I mention this simply to put the problem in proper proportion. Nevertheless, we recognize that some unions have in the past discriminated, that regrettably some still do, and we are fully in favor of effective legislation to stop this discrimination, whether by unions or by employers.

This is a position that we have long taken. President Meany testified in 1962 in favor of giving the EEOC enforcement powers modeled

after those of the NLRB. The Civil Rights Act, which the House of Representatives passed in 1964, was along those lines.

However, as the committee knows, the practical exigencies of the situation in the Senate resulted in the present title VII which was worked out between the Department of Justice and Senator Dirksen. Title VII is a lot better than no law at all, but the Federal Government's attempts to insure fair employment practices suffer from two major deficiencies.

In the first place, the EEOC, which is the only Government agency operating exclusively in this field, does not have the enforcement powers it needs. In the second place, there now exists multiple overlapping and conflicting remedies in agencies which lend themselves to unwarranted harassment of unions and employers, though not decentralized and effective enforcement.

As respects enforcement, the committee may be aware that the AFL–CIO has often complained that enforcement of the National Labor Relations Act is ineffective and the committee may therefore wonder how giving the EEOC enforcement powers patterned after those of the Labor Board would make the EEOC an effective agency.

There are three answers. In the first place, though the Labor Board is not nearly as effective as we would like, it is a great deal more effective than the EEOC, which has no enforcement powers at all. In the second place, we would like to see the EEOC given the authority now vested in the Secretary of Labor under Executive Order No. 11246. The withholding of Government contracts is a sanction far more formidable for any company having major Government contracts than any remedy available to the Labor Board.

It is a sanction so formidable that it has never been necessary actually to employ it. The mere threat has brought to heel such companies as Newport News Shipbuilding & Dry Dock and Crown Zellerbach.

In the third place, some employers who resist unionization carry their opposition to great lengths. They do anything necessary to break the union, such as discharging employees who join, even though this conduct is in flagrant violation of the Labor Act.

In fact, some 34 years after the act was passed, this is still the commonest of all types of unfair labor practices. These employers spin out the legal provisions as long as they can and evidently regard any back pay liability as a cheap price for avoiding or postponing unionization.

On the other hand, no employer, or for that matter union, has shown the same degree of intransigence as regards title VII. It is still respectable in some employer circles to violate the law in opposing unions, but it is not respectable to avow racism. Also employers do not have the financial stake in racial discrimination that they have or think they have in opposing union initiative. Thus, the EEOC has a far easier job in this respect than does the NLRB.

If an employer or union is determined to resist the National Labor Relations Act, or title VII, to the utmost, and its counsel used every possible delaying device, enforcement will be very slow and that is true whether initial enforcement be placed in an administrative agency or in the Federal courts. However, this sort of last-ditch resistance has thus far occurred only against the NLRB, not against title VII.

Also the available data suggestions that the National Labor Relations Board, even using a two-step procedure as it does, is faster than the Federal district courts.

I have some figures on the NLRB handling of unfair labor practice provisions. These figures show the median time in days elapsed in processing cases over a period of years. Say for 1968, the latest year available, the median time elapsed in days from filing to complaint is 59 days; from complaint to close of hearing, 64 days; from close of hearing to trial examiner's decision, 106 days; from trial examiner decision to Board decision, 120 days.

The significant figure, the total median time in days elapsed in processing cases from the filing of the complaint to decision in both 1967 and 1968 is 349 days, in the case of the Labor Board. That is somewhat less than 1 year, average time complaint to decision in unfair labor practice cases.

In comparison the median time from filing of complaint to disposition, that is to trial, in civil cases in the Federal courts for 1968, the same year, the total for all U.S. district courts, the median figure is 19 months—more than a year and a half as against less than a year. That is the Federal courts take more than a year and half on the average as against less than a year for the Labor Board.

The delay in some district courts is much worse than this median. In the southern district of New York, the median is 43 months. Obviously you also have the fact if any substantial volume of new litigation were assigned to the district courts, the delays would be worse than they are now.

To put the enforcement function in the district courts, say, in a place like the southern district of New York, would mean no enforcement. You are talking there about a delay of 4 years. Well, that is no enforcement at all.

These figures are taken from the annual report of the Director of the Administrative Office of the U.S. Courts for 1968. I believe that a new report is now available, but the Director told me when it was in process of being printed, all it would show would be slightly greater delay in the district courts. The picture is slightly worse, but otherwise unchanged.

At the Senate hearings Mr. Leonard was asked to supply some figures on how long it took the Civil Rights Division at Justice to litigate cases, and he had supplied some figures. However, they don't really give the information needed, because the only information they give is from the date of complaint to the date of decision to the date of the appeal.

The inordinate delay in the Civil Rights Division is at the investigative stage. To have any meaningful picture of how long it takes to process these cases, we would need to know how long it takes them to get ready to go to trial. That is how long it takes them to file a complaint.

We would need the filing of how long, when the case is filed with the EEOC, if it starts there, how long the investigation there, too, when it was referred to Justice; or if it started at Justice, how long, what date it started at Justice, how long the investigation there was, and when the Department filed a complaint.

It is my impression that those figures which the Government could very easily supply would show that the Civil Rights Division, acting

through the district courts, is much, much slower than the Labor Board in handling unfair labor practice cases.

Thre are some other important advantages of agency as against district court enforcement. The agency should develop an expertise which 100 different district courts, many of which would have few cases, could not be expected to match. Also, the agency should develop a consistent and uniform body of doctrine which 100 district courts can't do.

In both cases the courts of appeals and the Supreme Court would have final review. But appellate review serves only to check arbitrary rulings or clearly erroneous statutory interpretation and not to develop a coherent body of law.

That, in sum, is why we would like to see this enforcement power placed in an administrative agency.

Now I would like to discuss briefly the problem of multiple overlapping and conflicting remedies and the point of harassment of unions and employers which results. While this subject is technical, I think it is necessary because some of the proposals which have been made would make the present situation in this respect even worse.

At the present time a union which is charged with discriminating because of race against an employee it represents, or with making insufficient efforts to prevent the employer from discriminating, may be called to account in the following different forums:

First, it may be sued in Federal court in a suit for breach of duty of fair representation. Second, it may similarly be sued in State court. Third, proceedings can be brought against it before the National Labor Relations Board under the doctrine that breach by a union of the duty of fair representation is unfair labor practice. Fourth, it can be called before a State or city fair employment practices commission, if there is one. Fifth, it can be called before the Department of Labor, the Office of Federal Contract Compliance under Executive Order No. 10925, in the case of employees of Federal contractors or subcontractors.

Sixth, it can be called to account in Federal court in a suit brought by the Department of Justice under title VII. Seventh, there is the EEOC proceeding. The Commission has authority, of course, to enter NLRB-type orders. However, the charging party can go from the Commission into Federal district court. And the title VII is also enforceable by suits in Federal district court by the Attorney General in pattern or practice cases.

These multifarious remedies and forums are not mutually exclusive. And our unions are burdened and harassed by a multiplicity of simultaneous or successive proceedings. An example is the *Crown Zellerbach* case, decided in the fifth circuit last summer. In that case a charge was filed with EEOC in 1965, and the union and the employer negotiated a compliance agreement with EEOC which was satisfactory to that agency and was carried out. Some aggrieved individuals were not satisfied with this settlement, however, and brought suit in Federal district court.

Next, in 1967 the Office of Federal Contract Compliance, Department of Labor, entered the picture and it insisted on certain remedies more far reaching than those governed by the EEOC. When the union refused to agree, the Department of Justice in 1968 filed suit

in Federal district court. The Department, in turn, sought and ultimately secured relief which went beyond that proposed by the OFCC.

The fifth circuit in its opinion observed, "We cannot help share in Crown Zellerbach's bewilderment in the twists and turns indulged in by the Government agencies in this case." The Court held, however, that the Government was not estopped from pursuing the case.

We are strongly of the view that unions should not be subjected to the multiple proceedings, or employers either, for that matter. We believe that equal employment opportunity is a vital national policy which must be fully effectuated.

And I may say that title VII would never have been enacted without the vigorous support of the AFL–CIO. But that does not mean that we can support duplicating and overlapping enforcement procedures which are unduly and unnecessarily burdensome.

Litigation, particularly along the lines of the Senate bill, S. 2453, would greatly improve this situation by setting in the EEOC authority now divided between that agency, the Department of Labor, and the Department of Justice. It would not affect the existing private remedies, and private litigants would indeed be given an additional remedy in that persons aggrieved would have standing as parties in EEOC provisions, which they do not have at the present time in NLRB proceedings. However, we appreciate the desire of minority workers and of the organizations that represent them to retain private rights of action independent of the vagaries of and changes in Government agencies.

We concur in the preservation of those rights. Thank you.

Mr. HAWKINS. Thank you, Mr. Harris. At this point the Chair would like to interrupt the proceedings in order to introduce the members who have joined us. On my right is Mr. Reid of New York. On my left, the order in which they came in, are Mr. Clay, of Missouri, Mr. Burton of California, and Mr. Stokes, of Ohio.

The next witness is Mr. Joseph Rauh, counsel for the Leadership Conference on Civil Rights and vice chairman of the Americans for Democratic Action for Civil Rights.

Mr. RAUH. May I yield for some remarks by Mr. Pollard?

Mr. HAWKINS. Certainly. Mr. Pollard.

STATEMENT OF WILLIAM E. POLLARD, STAFF REPRESENTATIVE, DEPARTMENT OF CIVIL RIGHTS, AFL–CIO

Mr. POLLARD. Mr. Chairman and members of the committee:

In the Department of Civil Rights of the AFL–CIO we work with international unions and the Equal Employment Opportunity Commission.

Mr. HAWKINS. Mr. Pollard, would you pull the mike a little closer to you.

Mr. POLLARD. In the AFL–CIO Department of Civil Rights we work with the international unions and with the Equal Employment Opportunity Commission in an attempt to secure resolution of complaints under title VII of the Civil Rights Act, and we have been engaged in that activity since the inception of the Commission.

From time to time we in our department assist unions and employers in contractual negotiations for the purpose of complying with the title and also in an attempt to secure successful conciliations. We also

regularly discuss with the representatives of the Commission ways and means of improving procedures that may provide more and speedier resolutions of complaints. However, my remarks at the moment would be directed primarily to the negative reference to building trade unions in New York during the testimony and question period that followed yesterday.

As associate counsel Harris said, there are pockets of discrimination in the AFL-CIO and we are certainly working on them. We have 60,000 local unions in the AFL-CIO and less than 150 structurally segregated on the basis of race. However, in New York we have had tremendous progress in the area involving minority group applicants in the building trades.

The latest organization developed by the industry and the unions was done so in the last 6 months, known as the Board of Urban Affairs of the New York Building and Construction Trades Industry, headed by Donald F. Rogers, executive director. The union trustees are Peter Brennan, Charles Johnson, Jr., Thomas W. Tobin, George Daley, Pat Christiansen, and Joseph Sabalino.

The employers representing the construction employers are Thomas J. Broderick, Jeremiah Byrnes, Roger Cordetta, William C. Fenneran, Fred Munday, and Gerard Newman.

The purpose of this urban affairs fund is to advise employers and unions in all matters of training and training programs as required by various legislative acts pertaining to public construction, to advise on matters of compliance and affirmative action programs and to seek and establish standards and uniform procedures that recognize the complexities of the construction industry.

Further, to undertake an extensive research program into the future of the construction industry as it regards new materials, new methods, change in skills, prefabrication, manpower needs, and Governmet commitment on the future construction.

We think this is important because the trades and the employers have launched upon this kind of far-reaching program on their own.

The Workers Defense League, which was formed several years ago and headed by one of the Little Rock nine, Ernie Green, has been very effective in its outreach program in the area of New York. Since this program was started by Ernie Green and his associates, it has subsequently received the approval of the Department of Labor and funding from the Department of Labor, and I merely want to quote some figures in order to show that there is not a static situation existing in the trades in that area.

In Brooklyn since its inception, 475 minority group youth have entered the apprenticeship programs. In Harlem, 344. They are spread through organizations like the carpenters, the electricians, elevator constructors, the glaziers, the lathers, machinists, operating engineers, painters, paper trades, plasterers, sheet metal workers, and tile setters.

This does not indicate that nothing is being done and that the trades are discriminatory as alleged in testimony yesterday and also in reference to replies in response to questions.

Also I want to point out that the IBEW several years ago launched upon an affirmative action program to recruit minorities and said at the time they would take 500 youth and those slots are still open and have not been filled in spite of the fact that annually in conjunction

with the Board of Education of New York City, Pete Brennan and the other building trade unions hold a conference with all graduating seniors of New York schools to make available to them information relating to the trades and to offer to recruit and tutor those who might need further assistance.

I might say for the benefit of the committee that the Bureau of Apprenticeship and Training under the Manpower Administration of the U.S. Department of Labor has an outreach program activity summer chart that is available monthly showing the number of apprentices recruited and indentured in the 53 cities where we presently have outreach programs where the majority of the outreach work is being done.

We have 263,000 registered apprentices in the United States at present which one-fourth have operations annually. One-eighth of all of the apprenticeship operations are in California. Apprenticeship opportunities are based on where job opportunities are, and no more than that.

We don't feel that we are shirking our job and in the recent building and construction trades convention in Atlantic City, that preceded the AFL–CIO convention several months ago, it was pointed out and adopted in convention that additional accelerated programs will be approved for the purpose of bringing in more minority group apprentices into the trades and I think it is important to know that while we haven't gotten as many as we would like to see, we certainly don't want the committee to have the impression that we are dragging our feet in this regard.

Mr. HAWKINS. Thank you, Mr. Pollard. Now Mr. Rauh.

Mr. RAUH. Mr. Chairman, members of the subcommittee, this morning I represent along with Clarence Mitchell the Leadership Conference on Civil Rights, an organization of 125 labor, liberal, civic, religious, civil rights organizations, which have the one common goal of advancing civil rights in America.

I think I can say that on no subject is there any greater unanimity than that we ought to have cease-and-desist powers for the EEOC. I have a certain feeling this morning of having been here before—not only because of the shining faces of the Congressmen who have been with us on this issue, but all of us have been here before on this issue.

Over and over again we have begged the Congress of the United States to give enforcement powers to the EEOC.

Before going into that subject, I would like to clarify one point for the record. The Leadership Conference on Civil Rights backs S. 2453, a bill introduced by Senator Harrison Williams and 35 other Senators. It is my understanding that the sponsors of the bills now before the subcommittee, have the intention of bringing their bills into line with S. 2453, because there are certain differences and we favor the provisions that are set forth in S. 2453.

For example, S. 2453 covers under EEOC all employers of eight or more whereas the present law only applies to employers of 25 or more. Second, S. 2453 covers the State and local employees whereas the present law exempts them. There are other differences, but it is my understanding that those matters are not really in controversy and that a bill will be introduced which will bring the Hawkins-Reid or

Reid-Hawkins bill into line with the bill of the Senators who have been interested in civil rights, as you all have.

Mr. REID. Would the gentleman yield? I would like to point out that those provisions are in H.R. 6228 and 6229, implicitly if not explicitly, but I would agree that a direct statement in the bill would be helpful.

Mr. RAUH. Well, that is fine. The bill that I got from Chairman Dent didn't appear to me to have them in it and if they are in it, that brings everything into line, Congressman Reid.

I think some of us were rather under the impression that that wasn't the case, but if we are wrong, we happily express our error.

Mr. HAWKINS. Mr. Rauh, may I indicate that when the time comes for this subcommittee to write up a bill, I am quite sure that S. 2453 will obviously be the model that we will use. It is possible that some changes are needed even in S. 2453, but certainly Mr. Reid and I and others who are sponsoring the two bills before you, H.R. 6228 and H.R. 6229, are obviously in close agreement with Mr. Williams of New Jersey and his 34 coauthors of S. 2453.

I think the points that you are raising now will obviously be considered by the subcommittee when we begin drafting the final bill. This is to say that we also have some objections to the bills that we have introduced, and that is the purpose of the hearing, to modify the bill to present the most effective bill that we can possibly obtain.

Mr. RAUH. Thank you. Congressman Reid, you are certainly right about the 25 employees down to eight, because Mr. Harris called my attention that that is on page 17 in section 6(a). I haven't yet found the other provision, but it may very well be in there.

We seem to be in total agreement and we just didn't find something in the bill that may be there, as you suggest.

Mr. REID. I appreciate very much your comment and our objective is to get the stronger bill. A combination of the bills put together, we hope, will achieve that result.

Mr. RAUH. Thank you. I think we are all in agreement on that and we can come to the heart of the dispute here and that is over cease-and-desist powers.

Mr. Brown said yesterday, and I copied down his statement, "The key to this agency is enforcement power." I don't understand a man who can say the key to our agency is enforcement power and then be against any enforcing power. And that seems to me what Mr. Brown is suggesting. If there is one thing that is clear in the history of this subject, gentlemen, it is that everybody who has been for civil rights has been for cease-and-desist powers, and everybody who has opposed us in our quest for civil rights has been against cease-and-desist powers.

When Mr. Brown was called upon yesterday to find people on the civil rights side who opposed cease-and-desist powers, he mentioned Senator Goodell. Well, that is remarkable because Senator Goodell is a cosponsor of S. 2453, which has in it cease-and-desist powers.

He also mentioned former Commissioner Sam Jackson of the EEOC. Well, the trouble with that is that all the time that Sam Jackson was on the EEOC, he was telling everybody, including me, how important it was that we have cease-and-desist powers.

Now if the administration has accomplished the same brainwashing of Sam Jackson that it has apparently accomplished of Bill Brown, I can't help that. But what I can say is that for the entire time that Sam Jackson was on the EEOC, he was in favor of cease-and-desist powers and, therefore, the only two examples suggested by Mr. Brown as support for this remarkable position that you oppose cease-and-desist powers do not in fact support his case.

There is, as I say, universal support of cease-and-desist powers by those devoted to civil rights.

Mr. Harris made a very clear exposition of why we need the cease-and-desist powers—the clogged courts, the expertise of the administrative agency, the consistency of doctrine.

You know, Mr. Brown's performance yesterday was one of the most radical performances I have ever witnessed and I use the word "radical" in its proper sense. What he was suggesting was that you throw away 50 years of history. I consider nothing more radical than throwing out of the window the entire lesson of the last 50 years, which has been the desirability of enforcement of regulatory laws by administrative agencies rather than the courts.

From the days of the Federal Trade Commission, where we first had cease-and-desist powers, through their being incorporated into the New Deal laws, and then later on into further laws, the one universal lesson has been that if you are to get enforcement of laws that involve discretionary decisions involving motivation, you have to have those decisions in an administrative body.

There are undoubtedly criminal laws where you do not want to use administrative agencies. But it is a totally different thing when you are trying to get at a man's motivation and there are discretionary factors that have to be weighed. That is what you have here. And, of course, the perfect parallel is the Labor Board, because there you are weighing the employer's motivation, did he discharge the man because he was a union member? Here you are weighing the employer's motivation, did he refuse to hire the man because of the color of his skin? You couldn't have a closer parallel and a greater need for administrative action.

As I said, we have been here before and there isn't much reason for belaboring this. I suppose one has also to suggest that there are areas of the country where the judges, the district judges, are hardly favorable to civil rights.

The picture of going before Judge Cox in Jackson, Miss., rather than the EEOC, is a rather bleak picture. And for someone to come in here and say you can get a better deal from Judge Cox than you can get from the EEOC borders on the humorous. It would be humorous if it wasn't so sad that we should be getting opposition for our drive for cease-and-desist powers from the very people who should be with us.

What are the only two reasons in Mr. Brown's statement for preferring judicial action? First, he is saying courts have better discovery procedures. Well, the administrative remedy has always been more flexible on getting information. Furthermore, as even Mr. Brown conceded, a looser standard of adducing information is possible at the administrative hearing.

Then he says that in court you can get a preliminary injunction. Sure you can, after you have gone through and gotten all of the facts worked out. But you have to have facts, and under the administrative procedure you can get the facts and then, as in the case of the Labor Board, you can go to court for your preliminary relief.

So neither of those reasons really washes.

Why is it that you have this situation where the entire civil rights movement is begging you for cease-and-desist powers, where all the history of 50 years is in favor of cease-and-desist powers, and yet the administration now opposes it?

Well, I would respectfully suggest it is based on some history. In 1964 we had to accept title VII of the 1964 law without cease-and-desist powers. We had to accept that because it was the only way we could get the 1964 bill through. Senator Dirksen said in plain English, bluntly, either give up the cease-and-desist powers, or there will be no title VII, maybe no bill at all.

In the Senate we had to have a two-thirds vote because of the filibuster. So in order to get two-thirds we had to give up cease-and-desist powers and we did give it up. But the day that bill passed, everyone on our side recognized that someday we would have to get that changed and we went to work on it and year after year we tried.

This year again we tried. And it was perfectly clear that Senator Dirksen still opposed cease-and-desist powers and it was equally clear that the administration yielded at that point to Senator Dirksen and adopted this judicial device rather than cease-and-desist powers because of Senator Dirksen's feeling.

Now, a sad event has occurred since then and Senator Dirksen is no longer here. But what is happening and what is such a travesty is that Senator Dirksen's views from the grave have more effect on what is being proposed here by the administration than his successor Senator Scott's views existing today. Because if you look at S. 2453, there is Senator Scott supporting cease-and-desist powers.

Well, everybody is supporting them now except the administration. They are isolated from the entire movement on civil rights. They are isolated from their own leadership in the Congress. They are isolated from 50 years of history for cease-and-desist powers. And it just seems to me that this subcommittee cannot listen to such a—I will try to get the right word—to such a perverted view in the sense of it being contrary to the normal drift of our country's needs and contrary to the views of the knowledgeable people on the subject.

It has been 5 years now since we had to give up cease and desist powers. We need them desperately. If you are really going to make title VII work, on behalf of the entire Leadership Conference on Civil Rights, Mr. Mitchell and I really plead with you to get on with cease and desist powers and get on with them as fast as you can.

Thank you.

Mr. HAWKINS. Thank you, Mr. Rauh.

Mr. Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People.

Mr. Mitchell.

Mr. MITCHELL. Mr. Hawkins and other members of the distinguished committee:

I would like the opportunity to offer for the record my statement without reading it. It has been presented the staff already and I assume is in the hands of the members of the committee.

Also on behalf of the National Urban League, I would like to offer for the record the testimony of Mr. Wendell G. Freeland, who is a member of the national board of trustees of the Urban League. He was here yesterday, having come down from the city of Pittsburgh, but could not attend today. He has supplied his testimony and has also supplied an addendum to his testimony. Both of these are in the hands of staff people and I respectfully request——

Mr. HAWKINS. Without objection those statements will be entered in the record at this point.

(The statements referred to follow:)

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the subcommittee, I am Clarence Mitchell, director of the Washington bureau of the NAACP, and legislative chairman of the Leadership Conference on Civil Rights. The NAACP and the organizations which constitute the leadership conference on civil rights urge passage of H.R. 6228 (the Hawkins-Reid bill) with certain amendments.

The basic purpose of H.R. 6228 is to give enforcement powers to the Equal Employment Opportunity Commission established by title VII of the Civil Rights Act of 1964 and to expand certain functions of that agency. Other witnesses will address themselves to various parts of the proposed legislation. I wish to comment on the need to expand the functions of EEOC to cover discrimination in employment by Government contractors and subcontractors and in federally assisted construction contracts. Also, I shall comment on the need to give the EEOC jurisdiction over discrimination problems in the Federal Government.

In order that the subcommittee may have a pertinent reference on the historical background of these sections, I offer the following excerpts from the first report of the fair employment practice committee published by the U.S. Government Printing Office in 1945. This committee was established by Executive Orders 8802, issued June 25, 1941, and 9346, issued May 27, 1943. The orders issued by President Franklin D. Roosevelt were the first major attempts of the Government of the United States to make a coordinated attack on employment discrimination in Government and in industry. On page seven of the committee's report we find the following statement of its jurisdiction:

Executive Order 9346, as limited by the congressional amendments confers jurisdiction upon the committee to receive, investigate, and dispose to three categories of complaints alleging discriminatory employment practices:

1. Complaints against all departments, agencies, and independent establishments of the Federal Government over whose employment relationships the President is authorized by the Constitution or the Statutes of Congress, made pursuant thereto, to exercise directly or indirectly general supervision and control.

2. Complaints against all employers, and the unions of their employees, having contractual relations with the Federal Government which contain a nondiscrimination clause regardless of whether such contracts pertain to the war effort, and

3. Complaints against all employers, and the unions of their employees, engaged in the production of war materials or in activities necessary for the maintenance of such production or for the utilization of war materials, whether or not these employers have contractual relations with the Government.

In addition, the committee has ruled that its jurisdiction extends to all war training programs financed with Federal funds even though operated by private educational institutions.

The FEPC was established by executive order and its existence was terminated by a parliamentary device known as the Russell amendment. In order to keep the national commitment to fair employment alive, pending the establishment of a statutory agency, civil rights organizations worked successfully for the issuance of presidential orders establishing special agencies to handle com-

plaints of discrimination involving Government contractors and agencies of the executive branch of the National Government. Those of us who urged the creation of these interim Federal fair employment agencies did not advocate that they would continue to exist after Congress passed a national fair employment law. It was obvious in the 1940's and it is equally clear now in the 1960's that confusion, delay and frustration result when the determination of fair employment policies of the Government are scattered among a number of agencies that regard the elimination of discrimination as a minor and troublesome part of their total program.

The most flagrant example of the indifference with which the non-discrimination clause of Government contracts is handled may be found in the action of Deputy Secretary of Defense David Packard dealing with the textile industry. On February 7, 1969, he awarded contracts totalling $9.4 million to three companies on the basis of so called verbal assurances of compliance that he said he had received from the heads of these companies. Apparently Mr. Packard at that time either had not heard of or chose to ignore the office of contract compliance in the U.S. Department of Labor which is supposed to police the non-discrimination clause in Government contracts.

After the Packard action received wide publicity, there was a frantic scramble to repair the damage, but the basic problem remains. The Equal Employment Opportunity Commission does not assume any real responsibility for enforcing the non-discrimination clause in Government contracts and the office of contract compliance moves only as fast and as comprehensively as the Secretary of Labor thinks proper. In fairness it should be said that the present top officials of the Department of Labor are making a sincere effort to move forward, but the odds are heavily against them. Needless to say, the victims of discrimination must wade through a virtual sea of uncertainty when they seek redress. Even the parties who are charged with discrimination cannot be sure of what course of action they should follow because there is always the possibility of overlapping jurisdiction between EEOC and OFCC.

Unfortunately, there has been a considerable amount of selfish activity by those who want to keep the OFCC functions separate from the EEOC. The principle arguments they use are: (1) the OFCC has power to cancel contracts and this permits it to obtain better compliance with non-discrimination requirements and (2) the existing EEOC agency has such a large backlog of cases that it should not be burdened with the contract compliance function. Both of these arguments have only microscopic importance. Throughout the history of the non-discrimination clause in Government contracts the agencies which let such contracts have ignored the clause wherever possible. They usually act only when prodded by outside pressures. The right to cancel a contract for failure to comply with the non-discrimination clause is like the weather—everyone talks about it but no one seems to be able to do anything about it. When there is the possibility of work disruption caused by victims of discriminiation or the filing of a law suit by a private civil rights agency the Government gets busy in this area, but to say that the power to cancel contracts is more important than the orderly system that we support is at best a grossly misleading argument and at worst a thinly disguised effort by those in office to hold on to a function for purely selfish reasons.

Of course it should be clear to all that it would be a mockery to transfer the functions of OFCC to the Equal Employment Opportunity Commission without also transferring the staff of OFCC and all of its funds. It would also be shortchanging the victims of discrimination for Congress to continue to give grossly inadequate appropriations to EEOC. Congress has the power to make certain that there is adequate staff and adequate money to do the job. If that is not clear in this bill it should be made clear by the addition of appropriate language. If Congress does not grant sufficient funds in the appropriations committee then there should be action on the floor of the House and the Senate to see that enough money is provided.

In the field of Government employment the record of discrimination is nothing short of fantastic. One of the most easily checked examples of foot dragging, double dealing and evasion by using technicalities is the Bureau of Printing and Engraving. For many years that agency refuse to permit Negroes to be trained as plate printers. Finally, Secretary of Treasury Humphrey, made a decision during the Eisenhower administration that the discrimination could not be continued. However, it was not until 7 years later under the Johnson administration that this decision was implemented. Meanwhile, of course, a

number of the parties who were entitled to redress were no longer available although some have benefitted.

The type of delay and frustration evidenced by the Bureau of Printing and Engraving case is caused by the system now in effect. Under this system each agency investigates itself with the result that if by some miracle there is a finding of discrimination, its implementation is delayed by various obstructionists. Needless to say, such findings of discrimination are few and far between. In fairness, it must be said that some members of the Civil Service Commission itself and a few of the top officers of the Commission have made valiant attempts to establish workable fair employment policies. Unfortunately, the lower levels of bureaucracy in the commission itself and in the Government agencies usually nullify these policies by using cumbersome procedures that are weighted in favor of those who discriminate and by tolerating supervisory personnel with known records of discrimination. Paradoxically, some of the most extensive discrimination takes place in the largest establishments where volume of employment is high but promotions are low. There is special irony in the fact that even the Office of Economic Opportunity, which is supposed to be trying to correct problems that affect the deprived of our country, has followed employment policies that have kept the top levels of the agency as white as a college fraternity with a color clause barring Negroes from initiation.

It is safe to predict that we will never really correct the entrenched discrimination that exists in the Federal service until there are uniform, fair and strongly enforced policies of nondiscrimination that apply to Government as well as to private industry. The present law and the statute proposed in H.R. 6228 do not permit industry and labor organizations to be the judges of their own conduct in the area of employment discrimination. There is no reason why Government agencies should not be bound by the same rule. Indeed, the Government itself should set the example by being willing to have its action reviewed by an impartial tribunal in a forum where all parties have equal rights to a fair hearing and meaningful redress.

In closing, I wish to state that I am aware of the fact that the administration, speaking through the Chairman of the EEOC, is seeking to obtain passage of a severely restricted bill instead of H.R. 6228. Unfortunately, this is another example of why a great many of the Negroes of the United States are suspicious of the motives of those in and out of the White House who advise the President.

All too often, the end product bears the taint of compromise. I am personally aware of the high character, great ability and skill of Chairman William Brown of EEOC and those who have worked with him to evolve what we now see as the Administration's program. However, not even their great persuasive powers can cover the stark fact that the administration is offering a bill which has only about one tenth of the constructive features that are in H.R. 6228. If we are to prevent "do it yourself" types of settlements that cost time, money, personal injury, property loss and sometimes even the loss of life, we must have the means of giving speedy effective and fair redress in the employment field. Even with the best of programs we cannot always be certain that we can make reason prevail over unleashed anger. However, we are in a better position to reach the angry and frustrated when we can appeal to reasonable men and women by showing that there is an orderly way to right wrongs and to end injustice. H.R. 6228 is the kind of program that reasonable men and women of good will can rely upon. I hope and urge that it be approved by the subcommittee, the full committee, the Congress and the President.

TESTIMONY OF ATTORNEY WENDELL G. FREELAND, MEMBER, BOARD OF TRUSTEES, THE NATIONAL URBAN LEAGUE, INC.

The National Urban League appreciates this invitation and opportunity to appear before this Subcommittee on Labor to add to this body of knowledge the information and evidence the League has accumulated over the years as experts in the area of equal employment opportunity.

My name is Wendell G. Freeland. I am a member of the Board of Trustees of the National Urban League and serve on its Education and Nominations committees. Before joining the National Board two years ago, I served for 15 years with the Pittsburgh Urban League and as president of that organization. An attorney by profession, I have been in general law practice for some 19 years.

The National Urban League is a professional community service organization founded 59 years ago to secure equal opportunity for Negro citizens and other

minories. It is non-partisan and interracial in its leadership and staff. The National Urban League has local affiliates in 93 cities, 33 states and the District of Columbia. Its national headquarters is in New York City and it maintains a Bureau in Washington, D.C. Whitney M. Young is its Executive Director.

A trained, professional staff conducts the day-to-day activity of the League, using the techniques and disciplines of social work in performing its services. This staff numbers more than 800 paid employees whose operations are reinforced by some 8000 volunteers who apply expert knowledge and experience to the resolution of racial problems.

The "Equal Employment Opportunities Enforcement Act", the legislation to which we address ourselves today, would make an invaluable contribution to the protection of the equal employment rights of individuals. It is apparent from the Equal Employment Opportunity Commission's (EEOC) operation since its inception that more effective machinery for enforcement authority is sorely needed.

Equal employment opportunity continues to be a critical problem for 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 and other minorities continues to lag behind their white counterparts. And the outlook for the future is not promising according to a report prepared for the U.S. Commission on Civil Rights by the Brookings Institution, Washington, D.C. That report, Jobs and Civil Rights, noted that:

Every year, for the past thirteen years, the unemployment rate for nonwhites has been twice that for whites. Even with optimistic expectations for the future of the economy, government statisticians currently project that 'the 1975 unemployment rate for nonwhites would still be twice that for the labor force as a whole.' Moreover, when an adjustment is made for the undercount by the Census Bureau of the nonwhite population of working age, the spread between unemployment rates for nonwhites and whites widens.

Title VII of Public Law 88-352, the Civil Rights Act of 1964, under which the Equal Employment Opportunity Commission was established engendered great hope that EEOC would deal meaningfully with the problems surrounding discrimination in employment. Such has not been the case as the Commission itself will attest.

In March of this year the EEOC published Equal Employment Opportunity Report No. 1 based on an analysis of 1966 data covering minority and female employment patterns for 123 cities, 50 states and 60 major industries of all job classifications. That analysis showed an obvious "underutilization of minority group members and women and their concentration in the lower level jobs", and led the Commission to conclude:

If we are ever to achieve the national goal of equal employment opportunity, the business community must get over its hang-up that blacks and Spanish Surnamed Americans are qualified only for entry level or dead-end jobs. Promotion is an important part of equal opportunity.

The report showed that 6.9 per cent of the one and one-half million Negro males were in white collar jobs with one 1 percent at the managerial level; 47.8 percent were laborers and service workers, the economic bottom of the occupational hierarchy. Opportunities for minority women are even more limited and women workers generally, as compared to men, are not fairly represented in the highest-paying occupations.

These findings indicate the need for changes such as are proposed in the Equal Employment Opportunities Act.

The main features of H.R. 6229, which we heartily endorse, include (1) giving the EEOC authority to issue "cease and desist" orders to companies found to be in violation of Title VII of the 1964 Civil Rights Act; (2) consolidating all existing Federal equal employment programs into that of the EEOC; (3) extending coverage to include all Federal, State and local government employees; (4) continuing the right of individuals to initiate private lawsuits as provided in the current law; and (5) giving the EEOC more authority to handle its own legal work without the intervention of the Attorney General.

These are crucial changes which must be enacted into law if equal employment opportunity is to be a reality. The Equal Employment Opportunity Commission was not given the authority to issue judicially enforceable cease and desist orders to back up its findings of discrimination based on race, color, religion, sex, or national origin when it was first established. We know all too well

that conciliation is an inadequate tool for bringing about equal employment opportunity.

The EEOC, therefore, must wait until the Attorney General concludes that a pattern or practice of discrimination exists before it can act. Otherwise, the individual victim of discrimination must go into court as a private party, faced with usual delays and mounting expenses, in order to secure his rights.

The authority to issue cease and desist orders is not a new concept to the Federal government. Other Federal administrative agencies have had such powers for many years, and we can see no practical reason why the EEOC should not be similiarly empowered. Armed with such authority, its conciliation role would certainly improve.

We also favor the consolidation of all equal employment opportunity efforts by the Federal government into one program administered by the Equal Employment Opportunity Commission. The Office of Federal Contract Compliance established by Executive Order 11246 has not been an agressive unit and has gained a reputation of being unwilling to terminate Federal contracts to force compliance. The equal employment opportunity activities of the Civil Service Commission also have not been exemplary. The Civil Service Commission recently inaugurated a new plan for resolving employee discrimination complaints, but there is little hope that these new plans will be successful in providing real opportunity for minority employees. The Commission seemingly concerns itself with the resolution of complaints, giving little or no attention to the more positive concept of affirmative action. Both OFCC and CSC have inadequate compliance staffs to effectively carry out their responsibilities. Consolidation, moreover, would give the effect of a unified national policy and eliminate current duplication of effort.

Large numbers of State and local government employees represent substantial areas where the EEOC sanctions do not reach. By extending the Commission's jurisdiction to include these workers as well as to employers of eight or more persons, the EEOC jurisdiction would more nearly represent a national application of equal employment opportunity policy. Opponents of this provision may argue that the EEOC cannot efficiently handle the increased coverage in view of its current backlog of cases. We do not agree with this thinking, preferring to "presume" that most American employers will simply obey the law. There is also the fact that more private, non-profit agencies will be working to help victims of job discrimination via private law suits, a right which would be continued under the legislation before us today.

H.R. 6229, then, would provide a procedure which would assure every American employee an equal opportunity and at the same time protect the rights of employers. Briefly, that procedure includes the filing of a complaint by an aggrieved person; an investigation of the complaint by EEOC compliance personnel; conciliation if the investigation produces reasonable cause; a hearing in which the complainant participates if the case cannot be conciliated; and finally the issuance of a cease and desist order if discrimination is found.

Mr. Chairman, we all know that the greatest struggle in assuring equal opportunity is related to private business—especially the smaller companies. The problem has been summed up by the Leadership Conference on Civil Rights in an issues-paper prepared by William Taylor, Senior Fellow, the Yale Law School. That paper, Executive Implementation of Federal Civil Rights Laws, said in part:

In employment, recent statistical reports such as those issued by Plans for Progress, indicate some heartening progress in the overall employment records of large companies—progress which undoubtedly is attributable in part to the enactment and implementation of equal employment laws as well as to business sensitivity to riots. But overall statistics tend to mask important deficiencies, such as the continued exclusions of Negroes, Mexican Americans and Puerto Ricans from particular industries and job categories (e.g., the communications industry as revealed by the EEOC hearings in New York). Other bastions of discrimination, such as the continued exclusion of Negroes from many of the building trades, have yielded principally in the places where Federal agencies have made an allout enforcement effort. And some of the major barriers to the employment of low-skilled members of minority groups have this far either been beyond the reach of civil rights agencies (the inaccessibility of industry located in suburban areas, the absence of inadequacy of training programs) or subject only to indirect influence (the use of unvalidated tests to screen employees, disqualification for records of criminal arrest or conviction).

Before closing, Mr. Chairman, I would like to briefly discuss an additional charge which the National Urban League thinks is extremely important.

Section 703(h) of the current law would be amended to assure broader equality in the area of testing—that elusive tool by which too many people have been eliminated from employment or held in low-level positions. The new language says:

. . . to give and to act upon the results of any professionally developed ability test which is applied on a uniform basis to all employees and applicants for employment in the same position and is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular positions concerned: provided, that such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin.

We know that people applying for jobs are often required to take tests which are in no way related to the jobs they would perform. A question which asks: "What is related to a cube in the same way in which a circle is related to a square" can give absolutely no indication of how well a mechanic can tune up a motor or overhaul a transmission. Yet, failure to answer questions such as this could keep an expert mechanic from getting a job. Too many tests are designed to determine how much of the white middle class culture the Negro has absorbed—as opposed to measuring his ability to perform a specific task.

Indeed, some progress is being made in the area of testing. Last November the Labor Department announced a new approach to testing disadvantaged people called the work-samples test. Work-samples tests substitute job production tools and material for written tests. The technique works on the premise that disadvantaged people who have a history of failure in school and fear of taking written examinations will perform better and be guaged better by real job tests.

Before the Labor Department announced its new testing method, the U.S. Commission on Civil Rights issued a report on employment testing in which it said:

The personnel procedures of many employers screen out rather than screen in people. Tests and other hiring procedures which are not pertinent to the performance of job to be done have a harmful effect on members of minority groups because, for the most part, standardized tests have been designed to test the white middle class.

Finally, Mr. Chairman, the National Urban League hopes that through this bill Congress will finally act to make the Equal Employment Opportunity Commission a truly effective instrument for eliminating discrimination in employment and thereby fulfill our commitment to make equal employment opportunity a reality for all Americans.

I thank you.

ADDENDUM TO PREPARED STATEMENT OF WENDEL G. FREELAND

This is an addendum to the prepared statement which members of the subcommittee have already received. I regret very much my inability to remain in Washington to participate in the give-and-take of questions and answers of the committee and the panel.

It now appears that the issue is fairly joined between those who support cease and desist powers for the EEOC and those who support the technique which permits EEOC to seek the aid of the Federal district courts as a party palintiff. Unfortunately, however, the issue is not fairly drawn, for it splits only those who believe that there should be enforcement powers in the area of equal employment opportunity. The opponents of equal employment opportunity—and there are many—and of enforcement powers sit on the sidelines and smile with glee as we, old-line supporters and recent converts, do battle.

Several practical questions arise: Who is responsible for the division which threatens an early Congressional grant of enforcement powers? And should not the burden of proof be on those so responsible?

The record is clear that proponents of cease and desist powers for EEOC have presented their case time after time, in forum after forum, to Congress after Congress, picking up a new supporter here and there and arguing convincingly that the tested techniques of enforcing orders of almost all federal commissions are valid techniques in the problem area of equal employment opportunity. It seems to those of us in the bondocks that just at is apepared that a Congressional grant of cease and desist power had a real chance, another hurdle was built.

Thus, I sugegst that the builders of the new hurdle should have the burden of proof and it should be sufficient at this time for the proponents of cease and desist powers merely to show the weaknesses of jerry-built hurdles.

All of us have noted in the very recent past in Pittsburgh, Chicago, and elsewhere that the battle for equal employment oportunity has been taken to the streets by some of its supporters and its opponents. The vast majority of its supporters, however, continue to look at this body with hope. These supporters of equal employment have constantly urged this body to act with a grant of cease and desist powers in order to strengthen those in America who earnestly believe in the law and the legal processes. We now look to this body to keep the battle for equal employment opportunity out of the streets.

Frankly, some of those supporters, including the NUL, feel that the administration's proposal is a gift horse. Though we are mindful of the admonition, "never look a gift horse in the mouth," we insist that we must look at the animal to see whether it is a horse or a donkey.

We are told that it would take two years for EEOC to tool up in order to use the cease and desist powers which would be granted under the proposals of Mr. Hawkins and others. We are not told, however, that once such process is completed that "two year period" hurdle is irrelevant. We are not told that the cease and desist process, once the tooling up is completed, would be as fast if not faster than resort to the district courts.

We are told that under the Administration's proposal access to the federal district courts would be quick and easy. We are not told, however, that even the government does not win all of its cases and that though EEOC may be an advantaged party in some federal district courts, it will depend upon the Federal district judge in each of the more than 90 districts to determine whether or not a position which EEOC concludes is valid is the prevailing position of the several trial judegs.

The impartiality of the federal judicial system is pointed to with pride. But those of us who know as a fact that discrimination in employment occurs in almost every hamlet and city in the Nation believe it is time to have a non-impartial agency affirm the fact of discrimination and move swiftly to wipe it out.

One does not build a house by collecting carpenters and brick layers and arsonists and building wreckers. Nor should one try to build a scheme for providing equal employment opportunity for those discriminated against by using only impartial or "non-partial" arbiters. Along with the expertness the EEOC has in the field of equal employment opportunity is that most important ingredient called sensitivity to the problems of the aggrieved.

I submit that an expert and sensitive EEOC armed with cease and desist powers will hasten the day when such an agency is not needed in America. Finally, I suggest that supporters of equal employment opportunity in America have a right to seek the most favorable forum for the determination of their complaints. I suggest that the Commission, because of its Genesis, and the courts of appeals of the U.S., because of their record, are "more favorable forums" than the District Courts.

The National Urban League is happy to present its views to the subcommittee. It has been involved so long in the battle for equal employment opportunity that it feels it has developed expertness and sensitivity—and a stack of statistics—all of which are available to the subcommittee upon request.

Mr. MITCHELL. Mr. Chairman, as we were in the process of considering the testimony of the witnesses who are before you, there entered the room a number of persons who are Government employees from various parts of the State of Maryland and various establishments, and I feel duty bound to say to them that on the basis of my knowledge of the members of the committee, starting with Mr. Erlenborn and going all the way through to Mr. Stokes, who is on the other end, you gentlemen have been persons who have shown genuine concern for the problem that is before us and I believe that this is the hope of our Nation.

I think if we are going to resolve the differences that cause conflict, we must come in a forum such as this and we must look to men like yourselves to provide the remedies that will enable us in an orderly way to get justice for those who have genuine grievances.

My testimony has as its principal thrust the importance of including under the bill which has been offered and under the jurisdiction of EEOC when the bill becomes the law, the right to process complaints which involve Government contracts and Government employment.

With respect to Government contracts, we have found in many parts of this country that the fact that a Government contract agency has jurisdiction and EEOC has jurisdiction prevents the development of a uniform method of obtaining redress.

It has been my personal experience that many individuals who have complaints are more or less at sea when they have the question of where shall they go to file them? And indeed it is interesting that the EEOC and the contracts compliance agency have gotten out a publication which shows a dual line by which individuals can file complaints.

If for no other reason than to avoid unnecessary duplication, it would seem to me that we ought to consolidate these two agencies.

I do not say this in a way to reflect on the present Secretary of Labor nor his predecessor nor on the Assistant Secretary of Labor or Mr. Fletcher, who is a very able man. It just seems to me on the basis of experience, and I think this also represents the view of those who support us in the Leadership Conference on Civil Rights, that administratively and in the interest of really coming to grips with these problems we have got to have uniformity of approach.

We cannot afford the luxury of having the moneys that are appropriated more or less dissipated by a number of agencies. It seems to me that we need to have these moneys spent in one place where we can keep an eye on what is happening.

In this connection, Mr. Chairman and members of the committee, one of the defenses that the proponents of keeping these agencies separate have offered is that it is possible to get more money when the contract compliance function is sort of separated out and spread among a number of agencies.

I suppose if one got out his pencil and proceeded on this, on a basis of simple addition, he might very well be able to find that this is true. But the measure of the importance of these agencies is not how much money they get, but what they do with the money after they get it.

I think Mr. Clay in his colloguy yesterday with the representative of the Department of Justice, Mr. Kleindienst, put his finger on something that is terribly important. Mr. Clay pointed out that the NAACP Legal Defense and Education Fund, with a smaller staff but with an equal area of responsibility, was able to do more with less money than the Government agency which is established for the purpose of filing pattern and practice suits; namely, the Justice Department.

I respectfully submit that the reason for this is that the Government agencies, and this is not peculiar to any one administration, I am sorry to say, the Government agencies are officered by career people who no matter what administration is in power try to put the brakes on progress, try to prevent the filing of suits, try to hold back the objectives and achievements.

They do this out of fear sometimes. They do it out of political considerations. And we may as well face that as a fact of life. I think it means that all of us even after the law is passed must have the job

in Congress and those of us in the private organizations of continuing to prod these agencies to do the job that they were established to do.

The final point I would like to make has to do with Government employment. As I have indicated in my prepared statement, historically when this idea of Government action on behalf of individuals who are victims of discrimination got underway, the whole process was centered in one agency, which was then known as the Fair Employment Practice Committee. Because of a technicality that arose in the Senate known as the Russell amendment that agency went out of business.

Those of us who have been interested in this matter through the years tried to keep alive Government involvement. We did this by seeking the issuance of Executive orders on Government contracts and on Government employment.

I am happy to say that the first of those orders was issued under the Truman administration and I had the good fortune to work with the representatives of President Eisenhower's takeover team when the new administration came in and those orders were reissued by President Eisenhower, they were reaffirmed by President Kennedy, and, of course, by President Johnson. Now they have been reaffirmed by President Nixon.

So there has been no exception in any administration to the idea of having fair employment. But our experience has been that in the Government agencies it is impossible to obtain adequate redress, speedy processing, or impartial consideration. Government agencies uniformly have appointed as the hearing officials individuals who have a built-in resistance to giving redress by finding that there is racial discrimination.

The whole process has became a frustration rather than a remedy. It seems to me that the Government of the United States cannot afford to be in the position of saying to employers, of saying to labor unions, that we will establish an impartial body which will review complaints against you, but in the case of the Government itself, we will sit in judgment on ourselves, we will be the jury determining the facts and the value of those facts, and we will give a verdict which always is in our interest.

Therefore, I respectfully urge that the bill as finally reported cover these two vital areas, namely, Government contracts and public employment, both in the Federal and in the State and local levels.

Thank you very much, Mr. Chairman and members, for the opportunity to present my statement.

Mr. HAWKINS. Thank you, Mr. Mitchell. That concludes the panel.

Gentlemen, now it is open season and the Chair is going to suggest that we stick strictly to the 5-minute rule, because we do have a long list of witnesses before the committee. The Chair will only ask one question at this time.

I believe that no one referred to the question of litigation and who should handle all of the litigation before the Commission, whether the litigation, with the exception of appeals to the Supreme Court would be handled by the Commission or by the Attorney General.

I don't know which one of you would best answer that, or would like to answer that. Perhaps Mr. Pauh and Mr. Harris would like to address your answer to the question that I think was raised yester-

day. The two House bills as well as the administration proposal contain provisions which would provide that the litigation would be handled by the Attorney General.

May I say that in the House bill, this provision was inserted because it was drafted by the Attorney General, and I suppose that reflects every Attorney General's—by the "Attorney General" I mean the previous Attorney General—and I suppose this provision reflects the thinking of that office.

Personally, I am opposed to it, even though it is in a bill which I coauthored. But I would like to have the views of the members of the panel.

Mr. HARRIS. I should think that the EEOC should handle its own litigation to the extent that other Government agencies do. The normal pattern is that the Government agency handles its litigation in the district courts or in the courts of appeals. In the Supreme Court it is subject to the overall supervision of the Solicitor General.

But even there, say, the bulk of Labor Board cases are actually argued in the Supreme Court by attorneys from the Labor Board.

I see no reason for singling out the EEOC and saying that it can't handle its litigation in the courts of appeals. That isn't done anywhere else. It isn't done with the Labor Board, it is not done with the Fair Labor Standards Act, where the Labor Department handles the court of appeals litigation. It isn't done with the Federal Power Commission, the Federal Trade Commission. It isn't done anywhere that I know of. And I see no reason for doing it here.

It seems to me it is a part of the objective of centralizing responsibility for enforcing the antidiscrimination laws in the EEOC. It certainly should have the normal power to handle its own litigation.

Mr. HAWKINS. Mr. Harris, do you think that the Attorney General's office, that is, the Department of Justice, really has the competence to handle civil right cases pertaining to employment?

Mr. HARRIS. Well, I suppose you could build up a staff there that would develop the competence. It doesn't have it just normally and by nature. This is rather outside of the normal experience of and background of Department of Justice lawyers, whereas the legal staff of the EEOC is certainly going to be a group which is much closer to this problem and which either already has or will develop much greater experience with it.

I have never thought, for example, that the NLRB cases in the court of appeals would be better handled if they were handled by the Department of Justice. I think the reverse is the true case.

Mr. HAWKINS. May I ask you if there is any member of the panel who disagrees with Mr. Harris' position?

Mr. RAUH. I would like to say that I agree wholeheartedly that the maximum use of EEOC's own lawyers is best from the point of view of civil rights.

Mr. HAWKINS. The only other question I would have, I will also address this to members of the panel, to any member of the panel who participated in the drafting of the administration bill or had knowledge of it prior to the time that it was introduced.

Mr. MITCHELL. I would like to say I had knowledge of it on the basis of conversations with persons in the Justice Department and

on the White House staff. In fact, the present position of the administration is a departure from its original position.

The original position, as I understood it on the basis of my conversations, was that they favored a bill such as we have before us, but they had not agreed that appeals from decisions of EEOC would go to the court of appeals as is done under our bill.

Their proposal was that the appeals from EEOC decisions would go to the U.S. district courts where they would be considered de novo; in other words, reopening the whole record. We were very much opposed to that. And after a considerable amount of discussion on it, the administration apparently abandoned that idea and then came forward with this idea.

By this idea I mean the idea represented by Mr. Brown.

I had an opportunity to voice some opposition to that in a very vigorous way, but the view that I had did not prevail. So that I think the administration was amply warned that those of us who are active in the field of civil rights considered this a very harsh and unfriendly move.

Mr. RAUH. May I paraphrase Mr. Mitchell to say we drove them from one untenable position to another.

Mr. HAWKINS. The Chair will recognize Mr. Reid of New York.

Mr. REID. Thank you very much.

Mr. Robinson, Mr. Mitchell, Mr. Harris, Mr. Pollard, thank you for your very thoughtful testimony. I would like to be a little more precise in getting you gentlemen on the record on this cease-and-desist matter, although I think your point of view is totally clear.

In the testimony of Mr. Brown yesterday he said two things. One is this one:

> When we come to the area of relief, however, I believe that the district court approach is clearly demonstrably preferable to the cease and desist method. The pertinent yard-stick is the amount of time an aggrieved person must wait before he is afforded relief, whether temporary or permanent. This point is central to the discussion, for in cases of employment discrimination, relief too long delayed is often relief denied.

Then he had one other comment later. In arguing the district court approach, he said:

> Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease and desist approach, and aggrieved parties will have their remedy at the earliest possible moment.

I was shocked by that statement. I thought it was inaccurate and I thought it represented a very serious retreat and weakening of the efforts you, among others, have made. Your testimony was eloquently in support of administrative remedies and cease-and-desist action. But just to be totally specific, would you comment as to the accuracy of the proposition, that the district court approach would be more rapid and efficacious whereas the cease-and-desist approach, according to his testimony, embodies a "multiplicity of opportunities for delay?"

That does not accord with my experience, but perhaps you would like to comment.

Mr. RAUH. We feel that Mr. Brown was upside down here, that delays will come from court procedures rather than from the administrative process. Mr. Harris gave the figures before on the length of time in courts. They would obviously be further delayed by a clogging

of the calendar with these new cases. But there is one other point that ought to be made and that is clear under your bill, Congressman Reid, which is that at any time that the Commission has enough facts to move for temporary relief, they can go for temporary relief in court.

On page 8, subsection (k) of your bill, 6229, it says as follows: "The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order," and so forth.

Now, the minute the Commission has got enough facts—it might come from a sworn statement of the charging party, if they believe him and they thought he was telling them the truth and the statement had a semblance of truth and a ring of truth—they can ask for temporary relief.

They might, however, do a day or two's investigation. You can't tell what they would have to do in order to build a prima facie case to go for temporary relief. But there is nothing inconsistent between administrative procedures and temporary relief. When you have enough information, you are ready to go.

It seems to me to say that judicial action is speedier than administrative action is simply to ignore fact and precedent.

Mr. REID. Well, perhaps to simplify the question, is the district court approach really a prescription for no enforcement or exceedingly delayed enforcement?

Mr. RAUH. Well, I think all the administration bill proposes, sir, is to make EEOC a funnel to the courts. You really don't need the EEOC if its only job is to be a funnel to get to court, because there are other funnels, such as Mr. Robinson's NAACP legal defense fund. There is the Justice Department. EEOC would simply be a battery of lawyers going to court. If I can quote an old adversary: "It is the most unheard thing I have ever heard of" to suggest that the real function of an agency is to go to court. That is not the real function of most agencies. That is the function of a criminal prosecution office, I guess, but not of a civil remedial operation.

Their function is to get the matter settled and cease and desist powers will settle most of the cases. Most people are going to give up before they go to court. You are generally going to get compliance during the course of the administrative proceedings.

Mr. REID. Well, that, of course, is entirely correct from the experience we have had in our State commission where I think only something like 1 percent actually went to court because there was compliance long before that stage was reached. So I think you are eminently correct.

Clarence, do you have any comment on that?

Mr. MITCHELL. The only thing I would like to reemphasize is what was brought out yesterday in the colloquy. I think it was when Mr. Kleindienst was on the stand.

The charge was made that this is a veiled method of enabling the Department of Justice to control the pace of these cases. As you know, under the Government's proposal EEOC goes into the court at the district level, but the question of whether this would be an appeal must be determined by the Department of Justice.

I would say on the basis of past experience with Department of Justice officials under all administrations, there would always be a tendency to screen out certain cases which might be very good cases, but which for reasons not related to their merits the Department wouold not want to process. And I think, therefore, it is very important to make sure that EEOC not only can act when it has made a finding, but that it can continue its normal processing of cases as other Government agencies can.

Mr. REID. I think that is very true. And is it not true, as Clifford Alexander has so forcefully and clearly put it in the past, and I believe he is going to testify today, that a commission's integrity and that of the individual commissioner is very much dependent on whether he has true enforcement power in the form of cease and desist orders?

If you deny that power to the Commission, you drastically weaken its capacity for conciliation and effective compliance. To place that power in the Justice Department or in the courts or in a review procedure that goes first through the Justice Department before it goes through the courts seems to me to vitiate the basic authority and capacity to act, which is central to a commission's endeavor.

Mr. MITCHELL. There is no doubt about that and I notice Mr. Robinson, who has been actively involved in the litigation in these cases, wanted to say something. Would you mind if he commented on that?

Mr. ROBINSON. I was going to go back and respond to your first questions, Mr. Reid. Without making an argument against Commissioner Brown or impugn the motives of the Department, whatever they might be, I think we can certainly say that the experience of the legal defense fund with the large number of cases it has handled to date is that cases in court do not move speedily. And that is as a general proposition.

I notice there will be problems under the administrative agency with regard to cease-and-desist powers and it may turn out to be it takes time also. I can't conceive it taking as much time as court proceedings take.

It is particularly onerous when you have cases that are ready for trial and we have a number of cases ready for trial in several district courts, I think there are about half a dozen of them ready in district courts in Tennessee, that the courts simply can't get to .

If there were cease-and-desist powers, you could immediately enter an order with regard to those cases. Having to wait for a trial date in court is quite onerous.

Mr. REID. Thank you, Mr. Robinson, and I would just like to add that I am sure Chairman Hawkins and I and other members of the committee in the markup of the bill will be back in touch with each of you to get your advice, to see that we have a bill that you think is workable and the strongest possible, and if there are provisions not touched on in your testimony today or in other legislation, whether it is in the other body or here, that you think could best be included in this bill, I think I can say for at least two of us we will be very responsive and appreciative of your thoughts.

Mr. HAWKINS. Mr. Burton?

Mr. BURTON. I would like to substitute my time for that of Mr. Stokes and turn my time to Mr. Clay.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. I would like to ask Mr. Harris, you testified that the median time for law cases for 1968 was how many months? I think you said 18 months?

Mr. HARRIS. The median time interval in months from filing to trial, for all Federal district courts, is 19 months.

Mr. CLAY. Is 19 months. For what year?

Mr. HARRIS. That is for the fiscal year ended June 30, 1968.

Mr. CLAY. Now yesterday we heard Commissioner Brown testify to that effect, and he used the same fiscal year 1968, but he came up with a figure of 10 months for the median time.

Now, of course, I know that Mr. Brown was quite confused on a number of other issues yesterday. But how do you explain the difference in your arriving at 18 months and his arriving at 10 months?

Mr. HARRIS. Mr. Brown used a figure which is not the time from filing to trial, but is the time from the case being at issue to trial. In other words, in one case it is when the complaint or the petition is filed to trial, in the other it is when the answer or the responsive pleading is filed.

Mr. CLAY. In other words——

Mr. HARRIS. As you know, any lawyer who wants to delay a matter can delay for several months before the case gets to issue.

Mr. CLAY. In other words, Mr. Brown was attempting to mislead this committee?

Mr. HARRIS. Oh, I wouldn't say that, sir.

Mr. CLAY. I would. Thank you.

Mr. HARRIS. The figure he was using is taken from page 111. The annual report of the Director of the Administrative Office does have the figure both from the time the cases are at issue to trial and also from the time the complaint is filed to trial. If you are comparing it with the Labor Board, on any fair basis, you obviously would take the same thing, that is, from complaint to trial.

Mr. CLAY. One further question. Mr. Brown in his testimony yesterday said that the NLRB has published rules and regulations governing trials which rival the Federal Rules of Civil Procedure in complexity. Would you care to comment on that?

Mr. HARRIS. Well, of course, the Administrative Procedures Act requires that the agency publish these rules to guide practitioners in appearing before it. I think that the rules are meant to be helpful rather than otherwise. I don't think that the unfair labor practice cases before the Board are procedurally very complex.

The repetition proceedings, the appropriate unit determinations and so on, have gotten quite complex, but I don't encounter complaints that the unfair labor practice provisions are excessively complex.

Mr. HAWKINS. Mr. Erlenborn of Illinois. May the Chair indicate that Mr. Erlenborn is the ranking minority member of this committee and very kindly consented to have Mr. Reid precede him because Mr. Reid is a coauthor of the pending bill before the committee.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Mr. Harris, I would like to try to shed a little more light on the question of the time it takes to dispose of cases, because all of the witnesses before us, with the exception of Mr. Brown, have stated

the general proposition that much faster relief would be obtained through the cease-and-desist process.

Now to get back for a moment to the question asked by my colleague, Mr. Clay. I don't have that report before me, but I have some excerpts from it which indicate that in the civil litigation in the district courts, according to the annual report of the Director, which you have before you, the average time from filing to disposition of settled cases is 7 months.

The average time from filing to disposition of cases that go to trial is 19 months. And the average time, or median time, I believe this is, in each instance from filing to disposition of all cases, would be the mix of those that are settled and those that are tried, 10 months.

Now are those figures correct?

Mr. HARRIS. I think that is correct. I think that if you include the cases which look like slightly more than half of the total that are settled out of court, that is, with what they call no court action, then that gets you down to 10 months.

Mr. ERLENBORN. If those figures are correct, I will submit if the witness or a member of this committee wants to mislead anyone, they could use the 7-month figure for settled cases or they could use the 19-month figure for those that are tried. If you want to give an average of all, you would use the 10-month figure that Mr. Brown used.

Mr. CLAY. Would the gentleman yield?

Mr. ERLENBORN. Yes; I will be happy to yield.

Mr. CLAY. The reference was made in comparison to the NLRB cases, and if you would include the settled cases of NLRB, which is in the neighborhood of 95 percent, then the percentage of NLRB cases would be considerably lower. Am I correct?

Mr. HARRIS. Yes. I used this figure to compare it with the speed of the NLRB cases and the NLRB figures apparently include cases that go before the trial examiner and the Board decision.

Mr. CLAY. Would you give us the figure if you took the settled cases of NLRB?

Mr. HARRIS. I don't have that figure.

Mr. CLAY. But it would be considerably less?

Mr. HARRIS. Oh, yes. The great bulk of the NLRB cases are settled.

Mr. CLAY. Ninety-four percent for last year.

Mr. ERLENBORN. I think one of the tests here would be to take the tough case, the one that has to go all the way to decision and enforcement. It would appear that in the district courts that period of time would be 19 monhs; that is, from trial to disposition, and disposition means issuance of a court order which is enforceable.

For reference, let's say that the 19 months is approximately 580 days. In the NLRB cases, the tough ones that have to go to decision and then to the court to get an enforceable order, is 630 days.

So, if we just compare the toughest cases, one with the other, it would appear that the approach to the courts is less time consuming. I just make that as an observation. If you have any comments to make——

Mr. HARRIS. I think I wouldn't agree with it. I think the NLRB figure of 349 days is the one comparable to a district court decision that takes 19 months. Now when you get the cease and desist——

Mr. ERLENBORN. Let me interrupt you for a moment and ask are you referring to an enforceable order or the order of the Board, which

then becomes enforceable only after application to the district court?

Mr. HARRIS. That is what I was coming to.

The respondent may at that point decide to comply with the NLRB order. He faces that issue after 349 days. On the other hand, if there is a district court order, he is not bound simply to accept that. At that point he faces an order that is legally enforceable, which he doesn't in the case of the NLRB. But I believe the difference is more apparent than real, because he has an absolute right to appeal any district court order to a court of appeals.

And so at that point, you are really at the same step in the proceeding. The proceeding goes from the NLRB to the court of appeals. It goes from the district court to the court of appeals. You reach that stage much sooner with the district court.

Mr. ERLENBORN. Of course, the district court order is legally enforceable and there is no automatic stay upon appeal, whereas the NLRB decision is not legally enforceable until the appeal is completed.

Mr. HARRIS. That is true. But I think the difference is more apparent than real because there is an absolute right to appeal any district court order.

Mr. ERLENBORN. I think this colloquy at least shows that there can be a difference of opinion as to which is the most rapid method of disposition and I don't think that Mr. Brown tried to mislead us. If he had, I think he could have used that 7-month figure, as some have used the 19-month figure for the district court.

Let me get to another question. You are familiar, I am sure, with title I of the Landrum-Griffin Act, which is entitled "Bill of Rights for Union Members." Would you agree with Mr. Rauh's explanation that the way to enforce these rights that involve questions of a person's intentions is to give the individual an opportunity for a hearing before some Government panel or review board rather than, as is in the Landrum-Griffin law, requiring individuals to file suit without any Government help, without any help from the Department of Justice?

The aggrieved must file a suit individually in the district court. Would you think that we ought to amend title I of Landrum-Griffin and have a hearing board and cease-and-desist order so that union members may get rapid redress of their grievances against the unions?

Mr. HARRIS. I think there are two different considerations that have to be weighed there. I think that if you want speedy or effective enforcement, that you get speedier and more effective enforcement through an administrative agency. On the other hand, to have an administrative agency enforcing title I would have the drawback of which we are very keenly aware, of putting the Government right in the middle of the internal affairs of unions.

So that I think is undesirable. If, say, the Department of Labor, which I think was proposed at one point, had the supervision of title I at it does of title II, and concerned itself with such issues as whether a union member is improperly deprived of the right to speak at a union meeting, that would, I think, interject the Government into the internal affairs of unions to an undesirable degree and would result or could result in excessive governmental control and influence on the union.

I think it is a matter of balancing one consideration against the other.

Mr. ERLENBORN. I suppose there are a lot of businessmen who feel the same way about Government interference in their business, and I submit it appears only to be a question of whose ox is being gored.

Mr. HARRIS. It comes to a matter of judging what the evil is, whether the evil is so acute that you want to vest this degree of power in the Government to stop it. And I think in the case of race discrimination the judgment that Congress seemed to make was that this was an acute evil calling for an effective remedy, but then the thing got hung up in the Senate and we didn't get the remedy.

I do not think that title I is a terribly effective remedy from the standpoint of the dissident union member. Not only are the court proceedings slow, but they are expensive and he has to bear the burden of them himself. The consideration the other way is the one I have mentioned.

Mr. MITCHELL. If Mr. Erlenborn please, I would like to say something further with reference to the time factor. As you know, in the administration bill it is possible for the agency to engage in a period of conciliation, thereafter we go to the district court and after the district court it is conceivable you could go to the court of appeals.

Following that, you go to the Supreme Court. Under our proposal the agency could shorten this period considerably by stopping at a point where it appeared conciliations were no longer useful. Then it could have a hearing. It would not go to the U.S. district court. It would go to the court of appeals and from there to the Supreme Court.

I feel on the basis of listening to the testimony yesterday and considering all these figures, that a reasonable conclusion would be that just looking at the procedures involved, it would be almost twice as fast going by the route that we propose of an administrative procedure than it would be if you followed the administration's procedure, if for no other reason than our procedure eliminates two of the steps that are in the administration's bill.

Mr. ERLENBORN. You are not suggesting that you wouldn't have that period of conciliation in your approach? The same period would be involved? You wouldn't have the formal hearing before the trial examiner until after the period of attempted conciliation?

Mr. MITCHELL. No. But I say the judgment factor that enters would be important. If you know you have to go into court, it is quite possible that you might conciliate longer than you should conciliate in the interest of the aggrieved party. Whereas if you have the right to hold a hearing, you could shorten the period of conciliation effort when it is clear that the party that you are dealing with is intransigent and does not intend to cooperate.

Mr. ERLENBORN. But under both bills, in that instance, the Board would have the right, or the Commission would have the right, to seek temporary relief in the courts.

Mr. MITCHELL. Well, in our case the temporary relief could be obtained in the district court if you needed to preserve the status quo in order to protect the rights of the individual.

Mr. ERLENBORN. That would be true in the administration bill as well.

Mr. MITCHELL. Well, that would be true in the administration's bill, but under the administration's bill you go to a court at the district level for the entire remedy, which deals with the question of fact as

well as the question of law. Whereas under our bill, essentially when you get into court, you are dealing with a question of law which doesn't require a review of the entire record of facts.

Mr. HAWKINS. Gentlemen, we have to move on. I am sorry.

Mr. ERLENBORN. Could I make one last observation?

Mr. HAWKINS. I think I have given you 15 minutes.

Mr. ERLENBORN. I thank the chairman.

Mr. HAWKINS. Go ahead.

Mr. ERLENBORN. I was going to make the observation that there are really two very important points here. Mr. Rauh raised one, and that is the feeling concerning the response of district court judges to this type of case, the fear that they will not be too responsive in some areas of the country.

But I think there is another one that has not been touched on that I hope some of the witnesses might expand on and that is the question of rules of evidence and rules of civil procedure in the district court and rules of procedure before the Commission. I think this is one of the key elements that has not been discussed because the rules of procedure before the Commission will allow hearsay evidence, will allow a good deal more latitude than in the district court; and I think this is one of the reasons you people favor that approach.

Mr. RAUH. I think that is correct, that there is more latitude in the administrative process, and properly so. You get a man, a hearing examiner, who is a real expert in this field, he begins to get a feel of whether people are discriminating and whether people are telling the truth and he can move quickly on that basis and we would be all for it.

In answer to some of your questions, Mr. Erlenborn, I would like to make this point to you. What you are getting here, if you give a different kind of administrative relief to Negroes than to workers, is a kind of second-class enforcement citizenship. I think that is a dangerous thing right now—to give minorities the feeling that they don't have the normal administrative procedures that go with their rights.

I just don't think it is a good time in this country to say to Negroes, "Your rights aren't going to be enforced the same way as workers' rights are."

Mr. ERLENBORN. We did it to the coal miners by doing away with the Coal Mine Safety Board of Review, so I guess they are second-class coal miners.

Mr. RAUH. I happen to know a little bit about the coal mine thing.

Mr. HAWKINS. Let's not get on that subject. This subject is large enough.

Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

I would just like to say I think the panel has done an excellent job and for that reason I don't have any extensive questioning. I do have one question I would like to pose to my old friend Clarence Mitchell though. In your prepared text, Mr. Mitchell, you make reference to the transfer of OFCC from the Labor Department over to EEOC. And, of course, in your text you give us your advice as to what Congress should do in the event of such a transfer.

I wonder if you would elaborate just a bit for us as to the advan-

tages which you possibly see in such a transfer from the Labor Department over to EEOC.

Mr. MITCHELL. I think one of the important things that we have got to do in the area of employment discrimination, because of race, is to develop a body of coherent law in this country that can be used as a guideline for the processing of cases. I don't see any possibility of doing that when you have, as we now have, three parts of the Government having the authority to establish precedents, some of which might be widely different from others, and no final body which would resolve those differences between precedents.

I think that it is unfair to the parties who are charged with discrimination, not to be able to look to some kind of a guideline, some kind of a record, some kind of a precedent, which represents the final authority at least at the time the matter comes before the tribunal, whatever it might be.

I also know of my own knowledge that these agencies as a matter of fact are not required to cooperate with each other. And while I don't want to say that any one particular individual or any one administration is responsible, I do know as a fact that there have been times when they have worked at cross-purposes. Also I think that in the case of the individual who has a complaint, he certainly ought not to have to run to five or six different bureaus or subofficials to know what is the right place at which he can get a remedy.

As it is now, if an individual has a problem, if he is lucky, he would go to, say, EEOC and if they felt it was not something they wanted to handle, they would direct him to the proper individual in the Office of Contract Compliance. If he is lucky, as is usually the case, he finds out the hard way what is the right place to go.

Mr. ERLENBORN. Would the gentleman yield just briefly?

Mr. STOKES. Yes, sure.

Mr. ERLENBORN. I realize I have had more time than other members, but I feel because of the loyal opposition here—let me ask this question very quickly. The Office of Contract Compliance, in that period, could give you a whole different set of sanctions, blacklisting, loss of contract and so forth. Would you suggest if we put this function in the Commission, we should have the same set of enforcing procedures as we have for all others before the Commission, or would you carry over the old set of sanctions, the blacklisting and so forth?

Mr. MITCHELL. I would suggest returning to the original format, which was the inclusion of all of these powers under one agency, which at that time was the wartime Fair Employment Agency.

Mr. ERLENBORN. But the same sanctions for all cases rather than two different classes?

Mr. MITCHELL. I would say with respect to Government contracts, as you know, Government being one of the contracting parties, would necessarily have certain remedies and powers as a contracting party that would not exist where it is a contest between the Government and a party who does not have a contract with the Federal Government. Therefore, I would say it seems imminently fair that all of the existing powers which are now in the Office of OFCC, since they are powers of the Government of the United States, should be vested in the Equal Employment Opportunity Commission, which is a part of the Government of the United States.

Mr. STOKES. Mr. Chairman, Mr. Mitchell has saisfactorily answered my questions and I have no further questions.

Mr. HAWKINS. Mr. Burton?

Mr. BURTON. Let me commend the panel for their excellent presentation. If you see me reading a newspaper, it is not that I am so bored by it all, but we have been around this road so many times we really ought to get down, as I am sure is the determination of Chairman Hawkins and most of us, to reporting the most comprehensive bill that we can construct.

Mr. HAWKINS. Thank you, Mr. Burton. I want to thank the members of the panel for the very excellent presentation. Certainly it has added a great deal to the subject matter.

Thank you, gentlemen.

Mr. HAWKINS. The next witness is Mr. Clifford Alexander, a practicing attorney and former Chairman of the Equal Employment Opportunity Commission.

Mr. Alexander, certainly it is a pleasure to have you before the committee. It was a sad day for many of us when you made a sudden exit from Federal service, which we deeply regret, but we do know you have over the years contributed a great deal in this field and we certainly look forward to your testimony this morning.

STATEMENT OF CLIFFORD ALEXANDER, ATTORNEY AT LAW, AND FORMER CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. ALEXANDER. Thank you, Mr. Chairman.

Chairman Hawkins and distinguished members of the General Subcommittee on Labor, it is a privilege to appear before you today. I appreciate your kind invitation to discuss H.R. 6228 and related bills to amend title VII of the Civil Rights Act of 1964.

The principal purpose of H.R. 6228 is to give cease-and-desist authority to the Equal Employment Opportunity Commission. I believe this is a most important addition to the power of the Commission. Cease-and-desist authority is a necessary prerequisite for any regulatory agency.

The list is long of those agencies that presently possess this kind of enforcement power. The time has come, in fact, long since past, for the Equal Employment Opportunity Commission to have the necessary tools to really do its job. Job discrimination is a gross form of lawlessness. To eliminate this lawlessness, the Federal Government should have a strong agency with the requisite tools and budget to do the job.

H.R. 6228 and its procedures gives individuals, unions, and companies several opportunities to present all the facts they feel to be relevant. It is important as this proposed law recognizes not to judge anyone as discriminating before a clear and careful examination of all sides is presented.

Under our form of government, regulatory agencies have traditionally had cease-and-desist authority in order to correct the evils they are set up to eradicate. If the Congress grants to the Equal Employment Opportunity Commission cease-and-desist authority, it will say to millions of Americans that the Federal Government stands by to defend their lawful request for equal opportunity in employment.

Those who would be serviced are black, brown, native Americans, and women.

I think it is important to stress here that job discrimination against females is pervasive in our society, and adequate tools to correct these injustices are a necessity. I feel, therefore, that if you give adequate tools to the Equal Employment Opportunity Commission and insist that the Commission utilize its present potentiality, you will have the continuing gratitude of women and minorities throughout the Nation.

The Nixon administration has backed off from supporting cease-and-desist authority. Instead, it presents to you a procedural change in title VII of the Civil Rights Act of 1964. All that the Nixon administration proposes is the shifting of the ability to originate lawsuits from the Justice Department to the Equal Employment Opportunity Commission.

While there are conceivable advantages to this shift, it does not get to the core issue. The core issue is: Will the Federal Government insure the rights of all Americans to work when qualified, to be promoted when capable of doing the job, to have equal conditions of employment? The Nixon administration proposal is deficient on several other counts.

First, only a very small sample—less than one in a hundred—would receive even the possibility of satisfaction under their bill. By the statements of administration representatives they would only bring a small sample of suits on behalf of individuals in the Federal courts.

Second, any lawyer familiar with procedures and problems in Federal courts knows how long it takes to process a case today. On August 11, 1969, when the Senate was considering a similar bill to H.R. 6228, Senator Eagleton pointed out that the job discrimination case of *H. K. Porter Steel Co.*, filed in the northern district of Alabama on June 23, 1967, was tried on August 12, 1968. It was decided on December 30, 1968. It is presently on appeal, and still pending appeal.

Senator Eagleton pointed out numerous other cases in the equal employment field where, though more than 3 years had passed, still had not been resolved. In the *United States* v. *the St. Louis Building Trade Union*, filed in the eastern district of Missouri on February 4, 1966; tried June 15, 1967; decided March 7, 1968, appeal is still pending and no final result has been obtained. So the individuals whose rights had been denied by a discriminating employer or union under the Nixon administration bill could flounder in Federal court for years.

Third, having only the right to bring suit requires a great many lawyers on the staff. The Justice Department has already questioned whether it had the manpower to enforce school desegregation even when told to do so by the Surpeme Court. It also requires the reestablishment of facts that are proven more speedily and more expertly under oath in a regulatory commission hearing.

This is December of 1969. From the period of time that the Justice Department has been operating, it has filed only seven pattern or practice suits for the entire year. This is the same administration that tells you that it has come forward with a perfect remedy for employment discrimination in the courts and with the present power that it now has in Justice it exercised it only seven times all year (pattern or practice suits). Last year an insufficient number of suits, 31, were instituted, but that is far greater than seven in 1969. But this is the administration that stresses the utilization of the Federal courts.

Fourth, under the administration bill, there would be a complete loss of calendar control. Necessarily and rightfully the Federal courts set their own priorities. If cease and desist were given to the Equal Employment Opportunity Commission, the Commission could say which cases it felt were of great importance and, on its own motion, give those cases priority.

Fifth, the provisions of title VII of the Civil Rights Act, if left solely to court actions, are subject to a variety of interpretations which could easily come from numerous judges in various geographic locations.

Sixth, virtually every expert in the field of administrative law, regulatory commissions and governmental organization feels that cease-and-desist authority is a far more effective tool than exclusive reliance on court suits.

The advantages of cease and desist are numerous. Let me cite just a few:

It is clear that rapid and equitable remedies for thousands of individuals who have been discriminated against would be offered.

People with a recognized expertise in the field of eliminating discrimination would be making decisions.

The Commissioners of the Equal Employment Opportunity Commission would finally be assigned the proper role of Commissioner and be in a position to make decisions enforceable with a cease-and-desist order.

The right to bring pattern or practice suits could be maintained in the Justice Department and cease-and-desist authority would be added to the presently existing authority—rather than the administration's suggestion of keeping things as they are but making a vague and questionable procedural shift.

Cease-and-desist authority would be carried out by a less formal administrative agency procedure in marked contrast with the austerity of the courtroom. It would also mean that the aggrieved person would be able to participate more fully and comfortably in the adjudication of their rights.

This administration, during its recent campaign, talked a good deal about black capitalism. One must assume that if their programs were to get off the ground, the purpose would be to move blacks up the economic ladder. Well, it has been proven beyond any reasonable doubt that discrimination in employment is the most severe economic barrier to blacks.

If minority economic wherewithal is to improve significantly, discrimination must be substantially eliminated from the American scene. Cease-and-desist authority in a strong Commission can bring about the necessary changes. If this administration is serious about protecting the rights of individuals, then it has a potential vehicle for the protection of these rights. The vehicle is a bill like H.R. 6228 which puts teeth into EEOC.

This would clarify for the American public that minorities and women will have equal and enforced rights when it comes to attaining job opportunities.

May I also take this opportunity to express my sincere thanks to the members of this subcommittee for their firm, reasonable and con-

structive leadership in the field of equal employment opportunity. I am personally grateful to you for the support given the Equal Employment Opportunity Commission during my chairmanship.

Thank you, sir.

Mr. HAWKINS. Thank you, Mr. Alexander. I think your statement speaks for itself. It is certainly a well-prepared and excellently presented one. Unfortunately we don't have a great deal of time to ask all of the questions that I know the committee members would like to ask you.

First, I would like to direct perhaps a few questions to the manner in which the agency is now being operated. It would appear that there is a policy of stifling public hearings and of stalling even on court action. I refer to what has been indicated by at least the press that there is a feeling that public hearings would create adverse publicity to those who are being accused of discrimination.

I know that in the Los Angeles hearings that some of us attended, Mr. Stokes, Mr. Clay, and myself, that we were quite impressed that the evidence was rather substantial that some industries in the Los Angeles area were discriminating, and I think a recommendation was made by the Commission that specifically directed the Attorney General to bring some action against the movie industry.

I am wondering what is happening as a result of those hearings, whether or not you feel that the Commission has an effective weapon to use even in public hearings before they move on to even asking for additional power, whether that power that they are now using is effectively being used, whether or not the Attorney General has indicated real sympathy for even the cases that have been referred by the agency, or if we are seeing in a sense a lot of rhetoric with very little substance to back it up.

Mr. ALEXANDER. I think, sir, on two points—one, first of all, it was unanimously recommended by the Commission, including the present Chairman of the Commission, that a suit be filed against the International Alliance of Theatrical and Stage Employees, the unions involved in the movie industry, that was recommended on March 13. It was sent to the Justice Department within a day or two after that.

The Justice Department had not reacted. According to what I have heard, there was a request for the records of the movie industry on the west coast and when those records came back, only then did they realized it was a pattern-or-practice suit against the movie industry. So came June of 1969, the Justice Department decided it would then perhaps investigate the movie industry. It decided, however, it did not have sufficient funds to do this. We—EEOC—authorized money for the Justice Department to send investigators out to California to investigate discrimination in the movie industry.

The staff level recommendations, at the Justice Department, as I understand it, were clearly that there was a pattern or practice of discrimination. A full complaint charging it against the movie industry and against various unions was sent up through the Justice Department to the desks of Messrs. Kleindienst and Mitchell.

There it rested. It was not acted upon for several days, and then supposedly was sent back for further study and investigation. Further study and investigation took place and investigations continued on the part of Justice Department attorneys. Again a firm and clear recom-

mendation for filing of a pattern-or-practice suit was made. It was made during the summer. It was made on several subsequent occasions.

Came September and the fall and now again talking about a case that was developed publicly on the record, was unanimously recommended to the Justice Department, and where a complaint of discrimination had been drawn up—came September, still nothing had happened.

I understand that the Justice Department then decided it wanted to talk to the movie producers and get some of their records. I believe that Walt Disney, though I am not sure—but from our testimony we heard at the hearings it would sound like Walt Disney—refused to cooperate with the Justice Department, and would not even discuss the elimination of discrimination, would not even discuss the possibility of correcting the problem with justice before a suit was filed in Federal court.

With this obstructing, the Justice Department still decided it wouldn't really like to file a suit at this time, so they considered and continued to confer and conciliate.

As an example, not a single Chicano, not a single black in the city of Los Angeles, that you know far better than I do, Congressman Hawkins, how many people who would be happy to have such jobs, that had many movie companies, that had not a single Chicano or a single black in any kind of supervisory job and not even had them even in the lesser paying jobs.

That seems to be what happened to the suit at the Justice Department. We sit here in December. To my knowledge that suit has not been filed by this administration that again brings the Congress a bill that is going to rely on the court process. The date, again, of institution by the unanimous EEOC was March 13. The date today, I believe, is December 2.

Mr. HAWKINS. Maybe I was a little kind in saying they were merely stalling. I possibly should have used a stronger phrase.

Mr. ALEXANDER. I think on the other point, of whether there should be public hearings, before I left the Commission, I moved that we have public hearings. I was told that I was out of order to make that motion and moved it several times again.

I couldn't get the present Chairman to hold a meeting on that subject. I believe since I have left the Commission, that Commissioner Ximenes, who is also a Commissioner, has moved and walked out on a Commission meeting because it would not even consider the matter of holding a public hearing.

To this date, to my knowledge there has been no public hearings set by the Commission. Once a hearing is set, the important thing is that you must set it and decide where you are going to go and then ask your staff to spend somewhere from 6 months to a year to plan it. So even if there were a great change of heart within the administration that seems to be calling the tune over there, it would not bring about a pubic hearing probably in the year 1970.

I think to show some of the results of hearings, because we held two important ones, it would be sort of interesting to look at New York City. One of the major targets, one might say, of our public hearings there was the advertising industry, concerning the employment of Puerto Ricans and blacks, and recently the advertising industry put out in the New York Times an article indicating that

it had increased its Puerto Rican and black employment from the date of our hearings (January 1968) from 7 to 11 percent.

I think that we also talked to the New York Times and I think they have probably tripled or quadrupled the number of black reporters they had since the date of January 1968. Banks and insurance companies and others who sent reports to EEOC show marked increases of blacks and Puerto Ricans in significant policy level jobs.

There were vice presidents named to a couple of insurance companies as well as hundreds upon hundreds of employees in various positions. I think the presumption that seems to operate now is that discrimination really doesn't quite exist, or if it does, we don't want to show it the light of day.

What we found when I was at the Commission was it was rampant in unions and in companies and one needed the vehicle of the public hearing to show the public.

Mr. REID. I thank the chairman for yielding.

I want to compliment Mr. Alexander for his excellent testimony, which I think is clear and specific and clearly in support of the need for enforcement powers in the form of cease and desist orders. That is what we wish to succeed in doing and, equally, to try to strengthen the bill that comes out of the subcommittee in any way that would appear to be efficacious. I also want to thank him for his service as Chairman of the Equal Employment Opportunity Commission and to say that his voice is listened to in the United States. I thank him very much for coming this morning.

Mr. HAWKINS. Only one other question, Mr. Alexander. I am a little shocked that this agency, which is pretending to represent a policy of employment without discrimination and certainly to indicate that it wishes to move ahead, is now bogged down in a lot of unresolved cases.

My understanding is that the backlog is more than 4,000 cases, that settlements take anywhere from 14 months to 3 years, that practically none of the top-level supergrade positions are being filled. It seems a little strange that this agency is asking others to fill positions on the basis of qualifications when it has found it very difficult apparently all throughout 1969 to locate individuals to fill positions within the agency.

Can you possibly explain why it would take so long to settle cases, why there should be such a backlog of cases, and why in spite of all of their requests for additional money, they are not able to apparently locate individuals to fill positions at this particular time?

Mr. ALEXANDER. Well, Congressman Hawkins, I think that at some stage the President or his representative said to the people that he assigned to do business over at EEOC that they should really lower their voices and they should see to it that action slows to a grinding halt.

The jobs that have remained vacant at the agency are jobs that are required for any agency to do a sufficient job. When it comes to the backlog that we suffered from, when I was Chairman we suffered from it as well as the present Commission. The job of Director of Compliance has been unfilled now since my resignation. The job of Staff Director is unfilled. The job of Director of Research is unfilled. The Director of Administration for the entire agency is unfilled. The

Director of Program Planning and Review is unfilled. The job of Director of Technical Assistance is unfilled.

These are all jobs that pay $25,000 to $33,000, so it would seem to me that there might be at least a few hungry candidates, who would be interested.

Mr. HAWKINS. From our one district alone I think I could submit that many.

Mr. ALEXANDER. And I think, again, we are talking about from May first of this year to December, and those jobs are unfilled.

The charge that you, the Congress, has given to the Commission is unfilled. And I think perhaps most importantly the concept of what the Commission is not understood. The concept and fact, as I understand the law, is that you set up an independent Commission, you, the Congress, that you made it bipartisan, five Commissioners, and no more than three from one party, that you the Congress set terms of years for those Commissioners, and that the political problems or lack of same of an administration should have no particular bearing on the enforcement of discrimination.

And it seems to me that it should become clear that the Commission is a product of the work of the Congress, reporting to it. Obviously the support of a President would be helpful and a public statement that has not been forthcoming as yet of strong support for strong legislation and for the total and rapid and immediate elimination of discrimination would be helpful from the Chief Executive.

Mr. HAWKINS. Thank you. Mr. Clay?

Mr. CLAY. Mr. Alexander, I think you might have left out one of the supergrade positions that is still unfilled and that is General Counsel. Am I correct that that that position is held by an acting person at this point?

Mr. ALEXANDER. To the best of my knowledge, and the reason I left that one out, I am not sure. They have identified a person. I don't know whether he has been appointed yet. I think they have identified a person to name to that job.

Mr. CLAY. I think he is still acting, and with the emphasis on court procedure as we have heard in the testimony from the Commissioners, certainly a most important function I would think would be to get a General Counsel.

Can you tell us how many supergrades they have in the EEOC office?

Mr. ALEXANDER. Well, to the best of my recollection in the Washington office there were 15 supergrade positions. In the field I believe there were another seven.

Mr. CLAY. And, apparently half of the supergrade positions are vacant at this point?

Mr. ALEXANDER. Well, at one stage, and this was no longer than a month and a half ago, it was either 12 or 13 of the 15 supergrades in Washington were vacant. I believe that all of the regional directors have continued to do their job, but I think this was true no more than 2 months ago, that either 12 or 13 out of 15 supergrades were vacant.

Mr. CLAY. To your knowledge, has any of these supergrade positions been filled since you left?

Mr. ALEXANDER. The General Counsel and, I believe, the Director of Congressional Liaison.

Mr. CLAY. Those are the only two that have been filled?

Mr. ALEXANDER. To my knowledge; that is correct.

Mr. CLAY. One other question we have asked all the previous witnesses who have had a great deal of experience in the field of civil rights is, were you consulted by the administration before the drafting of their bill?

Mr. ALEXANDER. Well, I think this is important to say. I haven't said it before. The President sent a memorandum to the Attorney General on February 13, 1969, indicating they wanted the Attorney General to look into what is the present administration bill. That supposedly was dreamed up sometime in August. The memo requested to my recollection that the Attorney General respond within a month. The reason I saw the memo, was a copy was sent to me. I have not seen a copy of a reply if there was one. I was not consulted concerning this specific bill that you have before you today.

Mr. CLAY. I understand you still have a great deal of contact on the Hill. Are you in a position to tell us who might have drafted the administration bill?

Mr. ALEXANDER. Well, it seems to me it was done in the Justice Department, is my best guess, and not here on the Hill. And it was given to the present Chairman and then he has said various things about it since then.

But the first author of a bill like this that I remember, although I think it goes back before this, was then-Congressman Goodell.

Mr. CLAY. We are familiar with his anticivil rights position.

Mr. ALEXANDER. I think he now is for cease-and-desist legislation. In fact, he is backing the Senate bill. But the bill was to my knowledge not originally drafted at EEOC.

Mr. CLAY. Thank you.

Mr. HAWKINS. Nobody seems to want to claim authorship of the bill.

Mr. ALEXANDER. That to me, Congressman, is quite understandable.

Mr. ERLENBORN. Thank you, Mr. Chairman.

I wonder, Mr. Alexander, could you tell us how many of the supergrade positions were vacant a couple months ago when you were Chairman.

Mr. ALEXANDER. When I was Chairman, at sometime during my chairmanship they all were filled.

Mr. ERLENBORN. I mean at the time you left as Chairman.

Mr. ALEXANDER. At the time I left as Chairman there were a few of these jobs that were vacant. Let me give them in two categories.

One category, both of them happened to be black nominees, was held up at the Civil Service Commission for the job of Director of Research and to be acting because they wouldn't approve him at the Civil Service Commission.

Mr. ERLENBORN. Just in the interest of saving time, because our time is limited, if you could just give me the number.

Mr. ALEXANDER. I can't give you the exact number. I can give you a guess that seven or eight of them were filled.

Mr. ERLENBORN. Seven or eight of the 15 or of the 22?

Mr. ALEXANDER. Of the 15. Of the 22 I would say 16 or 17.

Mr. ERLENBORN. There were seven or eight vacancies in the Washington supergrade positions that were vacant at the time you left as Chairman?

Mr. ALEXANDER. I am sorry, it is less than that. At the time we had a Staff Director of General Counsel, Director of Compliance. We had the Director of Research that the Civil Service Commission would not approve. We had the Deputy Staff Director that the Civil Service Commission would not approve. We had a Director of Congressional Liaison. We had a Director of Program Planning and Review. We had a Director of State and Community Relations. We had a Director of Administration.

I would say eight or nine of the 15 in Washington were filled and all of the seven or eight in the field were filled when I was Chairman.

Mr. ERLENBORN. In fact, there are supergrade vacancies in substantial number, which is not without precedent?

Mr. ALEXANDER. It is without precedent. This is the first time that so many supergrades have been vacant in the history of the agency.

Mr. ERLENBORN. In your prepared testimony, page 2, the last sentence, you say:

> All that the Nixon administration proposes is the shifting of the ability to originate lawsuits from the Justice Department to the Equal Employment Opportunity Commission.

Do you really feel that that statement is accurate?

Mr. ALEXANDER. Yes, I do.

Mr. ERLENBORN. My understanding, and I am no expert in this, but my understanding is that the jurisdiction of the Justice Department now is limited to the pattern of practice suits.

Mr. ALEXANDER. Congressman——

Mr. ERLENBORN. And under the proposal the jurisdiction would cover all?

Mr. ALEXANDER. The exact language of title VII, section 707, which grants the Justice Department power, is pattern OR practice of discrimination. It is easy to interpret any individual case of discrimination as a practice of discrimination. The word is "or," the key word. It is not "pattern and practice," it is "pattern or practice."

So any individual practice today could be undertaken by the Justice Department presently under section 707.

Mr. ERLENBORN. Then you are making the interpretation that the intent of Congress in the utilization of those words was to say that each case should be within the jurisdiction of the Justice Department for filing suits?

Mr. ALEXANDER. No; I did not say that was the intention of Congress. The Congress, it is my understanding, discussed this long and hard, and particularly people on the House side wanted to grant cease-and-desist authority. That was the intention here.

A last-minute compromise on the bill with the late Senator Dirksen created a powerless, toothless agency that was actually thought of as an interim device. It was my understanding of the initial passage of this section that cease-and-desist authority was to be added to it and that it was to be added to it because that is the way any other administrative agency has been set up in the past.

Mr. ERLENBORN. I hope you will forgive me but I am compelled to say that you use some tortuous reasoning to justify your statement that the only proposal the Nixon administration makes is to shift responsibility to originate lawsuits from the Justice Department to the Commission. I just can't buy that statement.

Certainly there is an expanded authority for the filing of lawsuits here over cases that were not subject to the filing of lawsuits except by the individual.

Mr. ALEXANDER. I must disagree, sir. The law read clearly "pattern or practice."

Mr. ERLENBORN. This is an interpretation that you have made, but you say it is clear to the intention of Congress.

Mr. ALEXANDER. I can read you section 707 or you can read it to me. It says "pattern or practice." That means any individual case.

Mr. ERLENBORN. You interpret that to mean every individual case.

Mr. ALEXANDER. Could be instituted by the Justice Department.

Mr. ERLENBORN. You think that was the intention of Congress?

Mr. ALEXANDER. I can't speak to the intention of Congress other than what I have said. They hoped cease and desist would be added within a year. That, I think, was and is the intention of Congress.

Mr. ERLENBORN. You have a facile mind and the words roll out quickly. I just don't see how you can justify——

Mr. ALEXANDER. Let me say it a little slower please. The cease-and-desist legislation has been passed by the House of Representatives. Cease-and-desist legislation has been reported out of the full Labor and Public Welfare Committee of the Senate. Cease-and-desist legislation has been supported to my knowledge orally by a majority of the Senate and the House.

The history of this act, as I understand it, is that a commission was to be set up and that Commission was set up hopefully with cease-and-desist authority. As earlier witnesses testified, Senator Dirksen made a condition of the passage of the Civil Rights Act of 1964 that cease-and-desist authority be taken out.

To my knowledge it was the intention of the drafters of this legislation that as soon as a short period of time has passed, cease-and-desist legislation would be given to EEOC just as it is given to other administrative agencies without exception.

Mr. ERLENBORN. Do you really feel that the answer you just gave me is at all responsive to my question?

Mr. ALEXANDER. I really feel——

Mr. ERLENBORN. We weren't talking about cease-and-desist authority. We were talking about the authority of the Justice Department to initiate lawsuits. We are talking about the proposal in the administration bill for the Commission to originate lawsuits, and now you are talking about cease and desist.

As I say, you are very facile and words roll out, but you are not answering my question. You are not justifying the statement which I think is absolutely clear to the fact.

Mr. ALEXANDER. Then all I can say is I disagree with you, sir. I think I have answered your question. If I could read to you——

Mr. ERLENBORN. Was there anything in the statement that I referred to on pages 2 and 3 that has to do with cease-and-desist authority? How can you give me an answer relating to cease-and-desist authority when I am asking you a question about a statement you have made concerning the authority to file lawsuits?

Mr. ALEXANDER. Which I believe is accurate, despite what you have said. I think that you say in your own bill, and I quote from lines 10, 11, 12, and 13 of the document:

Provide that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the Courts of Appeals of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission."

The supervision of legislation even under your present bill is under the aegis of the Attorney General of the United States and the Justice Department.

Mr. ERLENBORN. At the appellate level?

Mr. ALEXANDER. And the general supervision, therefore, is under the supervision of the Attorney General.

Mr. ERLENBORN. The district court level.

Mr. ALEXANDER. Let me read some more to you.

Mr. ERLENBORN. Is that your interpretation?

Mr. ALEXANDER. "The Commission shall have the power to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to recommend institution of appellate provisidns in accordance with subsection (h) of this section, when in the opinion of the Commission such provisions would be in the public interest, and to advise, consult, and assist the Attorney General in such matters."

Mr. ERLENBORN. Is that the district court level for the average or is this for intervention in suits filed by individuals?

Mr. ALEXANDER. It seems to me to be everything and it is the only instance when I know an administrative agency is so hamstrung and so required to report to an Attorney General.

Mr. ERLENBORN. Your understanding of this bill, then, is that the Commission does not have the authority to file its suits in the district court and to conduct those suits, but it is under the direction and control of the Department of Justice?

Mr. ALEXANDER. Practically and legally, I think that is the way it is interpreted.

Mr. ERLENBORN. Again this is your interpretation?

Mr. ALEXANDER. All I know is just mine. I think it is subject to any individual interpretation and I offer here only my individual interpretation.

Mr. ERLENBORN. I don't want to take any more of the chairman's time. I think that any questioning that I might conduct with this witness is going to be fruitless because he still hasn't explained why he would be talking about cease and desist authority in relation to the sentence that I asked him, which was my very first question. He is glib, but he is not responsive.

I thank the chairman.

Mr. HAWKINS. I think he didn't answer the way you wanted him to answer.

Mr. ERLENBORN. Just be responsive to my question is all I ask, Mr. Chairman.

Mr. HAWKINS. Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

Mr. Alexander, I don't have Mr. Erlenhorn's problem. You can speak at your natural rate in reply to my questions.

First, let me say I welcome you here and commend you upon the testimony which you have given us. Mr. Clay and Mr. Hawkins and I

did have the great privilege and honor of attending the hearings that you conducted in Los Angeles and we were extremely impressed with the great service which you have rendered not only for EEOC, but for this Nation in revealing the blatant discrimination that had existed in the industry in that particular area.

As I recall at that particular hearing, your Commission brought out the fact that one particular employer had some 90 percent of its business with the Federal Government and yet this particular industry was in the aerospace industry and had no blacks, no Mexican-Americans, no Spanish-surnamed people in any of the upper echelon positions of that industry.

To your knowledge, has EEOC done anything at all about this kind of blatant discriminatory practice in this industry?

Mr. ALEXANDER. Well, to my knowledge I have not seen anything specific that has been done. I would throw in the caveat, however, that if an individual case has come up, that it would be handled by the Commission with confidentiality and, therefore, would perhaps be underway and not subject to public scrutiny.

To my knowledge, the Department of Labor which would have jurisdiction over the contracting power under the Office of Federal Contract Compliance, has not taken any action against any of the substantial contract holders on the west coast that had insignificant numbers of minority employees.

Mr. STOKES. Is total discretion lodged in the chairman of this committee with reference to whether public hearings shall or shall not be conducted?

Mr. ALEXANDER. No; it is not, sir. This is a decision that is made by the full commission and each of now four, then five, Commissioners take a vote and make a decision.

Mr. STOKES. It would have to be entertained by the Chair?

Mr. ALEXANDER. I made such a motion there be a hearing and it was ruled out of order and I made it again and I understand since I left the Commission in August, it has been made and not acted upon or ruled out of order. I think Commissioner Ximenes requested there be public hearings and again that was ruled out of order.

Mr. STOKES. Thank you very much.

Mr. ERLENBORN. Mr. Chairman, I thank you for 1 additional minute. I am not going to ask a question, but merely read a section that relates to the question that I asked the witness a minute ago and to which he gave an answer which was his interpretation.

I read from the administration bill, page 2, section (h):

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court or in the courts of appeals of the United States pursuant to this title.

And let me underlie this next sentence:

All other litigation affecting the Commission, or to which it is a party, shall be conducted by the Commission.

I thank you, Mr. Chairman.

Mr. CLAY. Thank you.

Mr. Alexander, we certainly want to thank you for coming and

presenting the testimony this morning and we assure you that the committee got quite a bit from your testimony.

Thank you.

Mr. HAWKINS. Again I would like to thank you for your very excellent presentation. I hope that one day you will return to Federal service. Possibly it won't be under this administration.

Mr. ALEXANDER. I seriously doubt it will be during this administration.

Mr. HAWKINS. The next witness is Dr. Hector Garcia, chairman of the American GI Forum. Dr. Garcia, it is a pleasure to have you before the committee.

STATEMENT OF HECTOR GARCIA, MEMBER, U.S. CIVIL RIGHTS COMMISSION; ACCOMPANIED BY DUUEN LUJAN

Mr. GARCIA. I would like to introduce Mr. Duuen Lujan, who is also here with me. He is the past chairman of the New Mexico American GI Forum.

First, let me state I wish to thank you for the opportunity to present my views on getting cease-and-desist enforcement for the Commission. Secondly, although I am a member of the U.S. Commission on Civil Rights, and although we have approved the giving of cease-and-desist powers to the Commission I am here only as a representative of the American GI Forum for the United States, which is a national veterans family organization with branches in about 20 States throughout the Nation.

I am a doctor of medicine and I am deeply interested in the employment situation of all the groups, especially the Mexican-American groups throughout the Nation. We number over 7 million, most of us residing in the Southwest. Half of our people in Texas live in poverty. The rest of the people throughout the Nation, a great percentage of them, still live in poverty.

We, who have been involved in the civil rights of the Mexican-American, have coined a statement which is not too pleasing, but which is certainly factual and to the point. That is: "The only way which a Mexican-American family can effectively get out of poverty is by collecting the life insurance on their sons or fathers or brothers who are Vietnam casualties."

In several counties in the State of Texas, as we number the Vietnam casualties in some of them have 100 percent Mexican-Americans, in some of them 90 percent, and most of them where we do live over 50 percent casualties. Therefore, I am here to tell you gentlemen that there must be another way which the Mexican-Americans can get out of the poverty level. And this is the employment factor.

From personal experience and also dealing with people who come to see me, who voice a complaint, against discrimination and lack of equal employment opportunity, let me assure you present procedure is not working at all. We expect a man who has been denied an opportunity for advancement for a job to file a complaint.

It may take him months before he even gets an answer. By the time that he is finished, he has lost his job, he is looking for another and then months later we tell him to go ahead and hire an attorney to represent him in a court when by now he is broke.

Well in spite of the feeling of the legal profession in Texas, many of those attorneys are not going to take this man's case because they are going to run against the wishes or certainly the philosophy of the "predominant prejudiced employment class" in the State. So therefore I here state that I support cease-and-desist authority for the Equal Employment Opportunity Commission.

I have worked in the civil rights field for more than 20 years and find that affirmative-type programs without cease-and-desist enforcement powers for the Equal Employment Opportunity Commission makes no sense at all.

The companies, unions, and employment agencies do not take affirmative action seriously and the Equal Employment Opportunity Commission and employees' action to secure justice become an exercise in frustration. I contend that as the Commission presently operates, that is, without enforcement powers, it generates more frustration than justice.

As chairman of the American GI Forum, I am constantly reminded by the minorities of the Nation—the Mexican Americans, the blacks, the Puerto Ricans, the Indians, and others—that they would rather express their employment discrimination complaints in the streets by way of demonstrations or through the news media or both and not through an agency that offers only a possibility of redress of their grievances.

I am aware of the excellent work done by the Commission within their meager resources and lack of power. The day, however, has come when the Commission must be allowed to operate effectively.

There has been some argument as to the type of enforcement powers which would be the most effective. There is no question in my mind that cease and desist is the much better approach than power to go to court.

The primary arguments by proponents of lawsuits include:

1. It takes too long to gear up for cease and desist.
2. Cease and desist costs more than the present budget can stand.
3. Lawsuits could be started by the Commission immediately.

The arguments are ambiguous and misleading. The Commission as constituted now has the mechanism to start the first case the day after a bill is signed into law.

Too much is made of the cases that may finally make it through the administrative process and end with a cease-and-desist order. The fact is that with cease-and-desist powers the first 100 complaints after the law is signed would proceed as follows:

1. Settled voluntarily	65
2. Settled administratively	27
3. Commission order	8

The point is that EEOC is ready today to accept a complaint and settle and, if necessary, receive the first eight of 100 cases that may eventually end in cease-and-desist orders.

In regard to budgetary consideration, as realists we know that necessary funds will be hard to come by. In 1964 when the Equal Employment Opportunity Commission was created, the first fiscal year budget was only $2 million. As it became evident that the amounts appropriated were far short of the need, the Congress pro-

ceeded to increase EEOC appropriations. The matter of employment discrimination is too important for Congress to give it a low priority in allocating tax moneys.

But be that as it may, Congress will decide the priority and allocation of funds and for now it is important to focus on the need for cease-and-desist powers for the EEOC.

At this point, let me interject here that experience with the civil rights intention of the Attorney General in cases other than this, and I would say this, I publicly stated to them time and time again that they don't seem to be too much interested in the problems of the Mexican Americans, and it takes many months for them to do something and sometimes we never know whether they had anything or not.

So I can't see again where the civil rights section has tried to help us in the problems affecting Mexican Americans.

Mr. Chairman, in all honesty we must repudiate such an approach. When a man files a sincere complaint of discrimination, it is the most important case in the world to him and his family. It matters little to him whether his case is the prosecutor's dream in terms of legal niceties or whether it is a muddy, obscure case.

Yet, under the lawsuit approach, EEOC would play God and through some subjective process decide that this man's case will be filed for court action and that man's case will hang on in limbo if it cannot be conciliated. To hope that there will be a ripple-like effect, even from pattern discrimination suits, is to close one's eyes, cross one's fingers, and try to leap across the chasm, hoping that one's prejudgment was accurate.

Mr. Chairman, the Mexican American people in general and the GI Forum in particular cannot subscribe to this hit-and-miss approach to job discrimination. At the present time, the Commission's percentage of complaints from Mexican Americans is small—not because they are not victims of the same degrading discrimination as the Negro, but because they are just now taking the steps toward claiming their full civil rights and they cannot chance losing all they have on a complaint for which there is no certainty of enforcement at the other end of the pipeline. Under cease-and-desist mechanism, each party would be personally assured of action if this case has merit.

The Mexican Americans and other minorities of this Nation have long awaited relief from job discrimination. Cease-and-desist authority is one answer to our problem for it would treat all segments, private and public, in a fair manner.

I wish to thank the chairman, and let me assure you again this situation is not working. You would have to get the EEOC the powers to issue cease-and-desist orders. I wish to thank you for your time.

Mr. HAWKINS. Dr. Garcia, I would like to thank you, too. I know that the American GI Forum in the Los Angeles area has done an excellent job and you, as a founder of that organization, I think, deserve a lot of the credit for that.

I think your statement is one of the clearest that has been presented before this committee and I certainly think that it is well directed to the real critical issues involved in this problem.

I want to thank you.

Mr. CLAY. I only have one question.

To your knowledge, were any Mexican-Americans consulted in the drafting of the administration bill?

Dr. GARCIA. No, sir. I happen to know Ximenes, who is a friend of mine. He has made a motion for open meetings. I know he feels frustrated and talking personally he felt like getting out because of the lack of ability of the Commission to settle the problems of the people and I have encouraged Ximenes to stay. This is not the first battle we have ever lost. We have to stay in there and fight it out. We have trust in Congress in that Congress will give us the "cease and desist" power to stop this discrimination of our people and other minority groups.

Mr. CLAY. I might say that the open hearings in Los Angeles revealed there was blatant discrimination against Mexican-Americans in all of the industries that were brought before the Commission.

Dr. GARCIA. Congressman Clay, let me say this: At one time or another in the very beginning of the EEOC, I saw a list of companies along the Texas gulf coast of Mexico, that's Gulf of Mexico. At that time I read 10 companies with over 18,000 names employed by the eight companies and none of them had a Mexican-American. I think there was only one black.

If the committee would like to get to the factual statistical facts I would suggest that you request this list that I happened to see at one time. It is fantastic, out of 18,000 or 20,000, no Mexican-Americans and one or two blacks. And these were the most powerful companies, involving oil companies, insurance companies, transportation companies, steamship companies, and so forth.

Mr. CLAY. No further questions.

Mr. ERLENBORN. Thank you, Mr. Chairman.

And I, too, want to thank you, sir, for your testimony before this committee. I want to say that it has been given in all candor and honesty. It does honor to your cause and to your organization and it shows respect for this Congress. I wish that all witnesses who appeared before this committee would have the same candor and honesty with this committee and show the same respect for the Congress and our legislative process, and I thank you again for your testimony.

Mr. STOKES. No questions.

Mr. HAWKINS. Thank your, Dr. Garcia.

Mr. HAWKINS. The next witness will consist of a panel of spokesmen representing the Federal Government employees from Maryland and the vicinity.

My understanding is that Mr. Albert Henderson—would these that I call please come to the witness stand? Mr. Albert Henderson, representing the Social Security Administration; Mr. Wardell Clark, U.S. Coast Guard Yard; Mr. Richard Williams, the Edgewood Arsenal; Mr. Italy Overton, Aberdeen Proving Ground; Mr. Theodore Newkirk, representing the Patuxent Naval Training Center.

Have you decided the order in which you would like to testify?

Mr. Williams, you are the first witness.

Mr. MITCHELL. May I ask the indulgence of the committee? There has come from Maryland a group which is made up of very distinguished clergymen, Government employees, and others. I would appreciate it if you would allow them to stand in order that you and the committee might see that these employees are backed by the com-

munity and also these gentlemen are accompanied by their counsel, Mrs. Mitchell of Baltimore. I would appreciate if she could sit at the the table with them.

Mr. HAWKINS. Mrs. Mitchell, would you come forward and sit at the table? It is certainly a pleasure to have you, Mrs. Mitchell. I know the excellent work that you have done. Would the others who are not mentioned, please, why not all of them come forward so we can at least recognize their presence.

A PANEL CONSISTING OF ALBERT HENDERSON, SOCIAL SECURITY ADMINISTRATION; WARDELL CLARK, U.S. COAST GUARD YARD; RICHARD WILLIAMS, EDGEWOOD ARSENAL; ITALY OVERTON, ABERDEEN PROVING GROUND; THEODORE NEWKIRK, PATUXENT NAVAL TRAINING CENTER; MRS. MITCHELL, COUNSEL FOR GROUP; WILLIAM BROWN, ABERDEEN PROVING GROUND; GEORGE PETTIT, ABERDEEN PROVING GROUND; JOHN WHITE, PRESIDENT, BALTIMORE CHAPTER, NATIONAL ALLIANCE OF POSTAL WORKERS; WELDON CHRISTOPHER, FORT DETRICK; WILLIAM SHANNON, U.S. COAST GUARD YARD; AND MR. CHAMBERLAIN, U.S. COAST GUARD YARD

Mr. WILLIAMS. I would also like to request that some of the other persons in the way of complainants sit with us at the table.

Mr. HAWKINS. Specifically, whom would you be referring to?

Mr. WILLIAMS. I would like for Mr. William Brown, from Aberdeen; Mr. George Pettit, from Aberdeen Proving Ground; Mr. John White, who is president of the Baltimore chapter of the National Alliance of Postal Workers; Mr. Weldon Christopher, from Fort Detrick—Mr. Pettit I mentioned, from Aberdeen Proving Ground—and Mr. William Shannon, from the U.S. Coast Guard Yard; Mr. Chamberlain, from the same installation.

Mr. HAWKINS. I think we have sufficient seats here. Would those named please come forward?

Mr. WILLIAMS. I would like to request the members of our delegation from Maryland to rise please. This is a delegation of Federal workers in Baltimore and its environs and throughout the State of Maryland.

Mr. HAWKINS. Mr. Williams, it certainly is a pleasure for me on behalf of the committee to welcome all of these witnesses. It is rather unusual to have such a large number of witnesses before the committee. I can assure you that we are delighted to have you present today and certainly look forward to your testimony.

I hope that you will recognize that we do have an element of time. At least you will be witnesses to the fact that Congress is not completely playing around, but that some of us are quite busy. It is a pleasure to have you before the committee and we will be very glad to hear the testimony that you will give.

Mr. WILLIAMS. Thank you very much, Mr. Chairman.

With reference to the representation of our delegation, we had anticipated a considerably larger number. We anticipated overflowing this chamber, in view of the interest that was exhibited at some of our meetings. However, I have learned that a good number of peo-

ple are reluctant to attend assemblies of this kind or any public assemblies dealing with the racial discrimination question, and for this reason we have the representation that you see.

Mr. Chairman and members of the subcommittee, I am Richard Williams, chairman of the Equal Employment Opportunity Committee of Maryland, an organization of employees of the Federal Government in Maryland.

We, the Equal Employment Opportunity Committee of Maryland, in concert with others, feel that it is vitally essential that H.R. 6228 be passed. This legislation will tremendously aid in the black man's struggle to lift himself from the mire of segregation and discrimination and find his rightful place in this great Nation of ours. Members of our Maryland delegation are from the various Federal installations and agencies.

We have heard the legal aspect of the hearing this morning and we want to lend our support to the human element phase of it. There are heart-rending tales of woe from the aggrieved people involved here, and a number of the people sitting at this table are witnesses to that effect.

Among the installations and agencies represented in our delegation are: The U.S. Coast Guard yard, Curtis Bay, Md.; Social Security Administration, Baltimore, Md.; the U.S. Army's Fort George G. Meade, Edgewood Arsenal, Fort Holabird, Fort Detrick, Aberdeen Proving Ground, all Maryland installations; the Patuxent Naval Air Test Center, Patuxent River, Md.; the U.S. post office in Baltimore; and the Baltimore regional office of the Veterans' Administration.

We support H.R. 6228 for the following reasons:

1. Racially discriminatory practices in Federal employment continue to be so rampant and widespread that the administration of the equal employment opportunity program by the Civil Service Commission has proved to be a failure.

2. Equal employment opportunity complainants are afraid to come forward and present their complaints to management officials for fear of continuing harassment and reprisals. This violates the individual Federal worker's rights under the civil service regulations, the equal employment opportunity Executive order and the regulations promulgated pursuant thereto, and the Constitution of the United States.

3. Few satisfactory resolutions are made of complaints of racial discrimination in hiring and promotional opportunities because Federal officials, under the Civil Service Commission's system, sit in judgment on themselves. This situation is ineffective and unworkable.

4. Lower level supervisors willfully and wantonly practice racial discrimination in assignment and promotional opportunities and with impunity because management never disciplines the wrongdoers.

5. The commanders of the various defense installations, and the directors of the various agencies, lack a personal commitment to the high principles of equal employment opportunity. There are beautiful affirmative action programs which have recently been set up, but they are beautiful on paper. They lack the flesh and blood to make them a living reality.

One commanding officer said recently, "You can't change people's attitudes." The reply of an equal employment opportunity leader to

him, "When a man elects to work for the Federal Government, shouldn't he leave his prejudiced attitudes and actions at the front gate?" The commanding officer shrugged his shoulders.

6. Equal employment opportunity officers are powerless under the present system. They can only recommend corrections to commanding officers or higher officials who readily exercise their veto power. Too many equal employment opportunity officers are forced to work hand in hand with management because management discriminates against them also. Other equal employment opportunity officers cooperate with management to preserve the status quo. They never find racially discriminatory practices in employment.

7. Most cases drag on for many months, even years. Complainants get bogged down in such a morass of reprisals and harassments, the expenditures for personal counsel at hearings, rather than having the management-oriented representative provided by the EEO system. They finally become completely demoralized, and many suffer impairment of physical and mental health.

They suffer losses of annual leave to pursue their complaints. They become frustrated and emotionally upset over the intransigence of management and the ineffectiveness of the equal employment opportunity procedures under the Civil Service Commission. The Government also sustains heavy losses in man-hours, and expenditures for processing fruitless investigations leading to futile hearings.

I am an example of this state of affairs.

I have been employed at the U.S. Army's Edgewood Arsenal, Edgewood, Md., for 16 years. I am a graduate of Morgan State College with a major in biology, and a veteran of World War II. I am a research biologist in the Body Armor Group of the Bio-Physics Laboratory at Edgewood Arsenal, Md.

As so many of my fellow black employees, I am allowed to progress so far, then I am frozen while my fellow white employees are able to advance to the top of the career ladder.

Prior to March 6, 1968, I had been a GS–11 research biologist for 5 years. My individual efforts to break through the racial barriers to promotion were fruitless. Thus, on March 6, 1968, I filed a formal equal employment opportunity complaint with the equal employment opportunity officer of the U.S. Army, Washington, D.C.

Let me inject a point here. I made a statement earlier that racial discrimination is practiced indiscriminately and that is evidenced by the members of the panel and the individuals of the panel and the individuals that you see sitting around this table who are in various disciplines.

Let me go on.

I had been a GS–11 since 1963, and my supervisor had promoted everyone else in the unit but me.

On or about October 1966 I submitted a form 57 to the Civil Service Examiner's Board at Edgewood Arsenal to be rated for a GS–12 position of research biologist. I was certain that my supervisor, because of his past actions, would not give me a favorable recommendation. Therefore, I subsequently applied to the Civil Service Examiner's Board at Aberdeen Proving Ground, Aberdeen, Md., and the Inter-Agency Board for Southern Ohio, Dayton, Ohio.

On November 7, 1966, I received notice from Edgewood Arsenal CSEB that I was ineligible for a GS–12 "due to the lack of required

experience level." On July 28, 1967, I received an eligible rating of 91 for a GS–12 general biologist from the Ohio Inter-Agency Board. On May 19, 1967, I received an eligible rating for biologist GS–12 from Aberdeen Proving Ground CSEB.

I then submitted another application for a rating to Edgewood Arsenal CSEB on or about November 1967, from which I received an ineligible rating on January 4, 1968. I appealed this rating to the Philadelphia regional office of the U.S. Civil Service Commission. On January 31, 1968, I received a notice that I was qualified for a research biologist, GS–12, and that my application had been returned to the Interagency board in Baltimore with instructions to assign a numerical rating to my application for a grade GS–12 and that I would be sent an amended notice of rating.

This confirmed my longstanding complaint of the continuing discrimination against me in promotional opportunity by my supervisor, the chief of my department, and the condonation of it by the civilian personnel office at Edgewood Arsenal. However, even after the Philadelphia regional office of the U.S. Civil Service Commission had reversed Edgewood Arsenal and rated me eligible for the GS–12 position, management would not promote me.

Upon filing my EEO complaint on March 6, 1968, reprisals and harassments were my lot. My supervisor refused to give me equally important project assignments. Fellow workers following the supervisor's policy would not speak to me. I was not allowed to attend policymaking and top-level conferences with my fellow workers. I was denied permission to take training courses which would advance my professional abilities. Supervisory criticisms multiplied.

Nevertheless, I kept to my charted course in processing my EEO complaint. I filed supplemental EEO complaints. I was offered a promotion to a GS–12 if I would withdraw my request for a formal hearing. I had to go to the Special Assistant for Equal Opportunity in the U.S. Army Materiel Command to confirm my right to an immediate promotion and at the same time to proceed with the formal hearing on the many other discriminatory actions of management against me. So I was promoted to a GS–12 research biologist.

My hearing lasted 3 days in April 1969. In August 1969 the acting commander at my installation approved the recommendation of the EEO officer that my supervisor should be reprimanded. Almost 4 months have passed. The reprimand has not been implemented. Rather, the installation, just prior to the release of the EEO officer's recommendation, gave a public commendation to my supervisor for his long years of service in the body armor program. However, the EEO officer also recommended that I be transferred to another department where he supposed I would have a more pleasant working environment. This is always the solution under the present administration of the EEO program: Transfer the EEO complainant rather than remove the discriminatory supervisor. For this, and other reasons, I have appealed to Washington.

What can I do other than to appeal? I must continue to fight this injustice. I cannot subscribe to the philosophies of some of the black militants who believe that the only way to get justice is to destroy the system. Rather, I say make the corrections in the system. H.R. 6228 is an imperative correction.

My wife, Mrs. Joyce Williams, an employee at Fort Holabird, is also a victim of racial discrimination. Ironically, we both have simultaneous complaints on file.

Mrs. Irma Jones and Mrs. Nannie Barton, GSA retirees—one 22 years, the other 25 years—retired as a result of physical distress and bacause they couldn't tolerate the injustice any longer, were GS–1 for the entire period of their employment.

There are other sad stories at Edgewood Arsenal installation. There is a gentleman who has been a WB–4 for 14 years. Mr. Weldon Christopher, at Fort Detrick, has had an official file, an official complaint file for 5 years, since 1965. These are unresolved cases. There are others.

Mr. Wardell Clark, serving on this panel, a fiscal accounting clerk, GS–4, at the Coast Guard yard, filed a complaint November 23, 1968, that is unresolved. He has 12 years at his present agency and 22 years of Federal service.

Theodore Newkirk, a member of this panel, an electronic technician, Patuxent Naval Test Services, 15 years at the present installation, 20 years Federal service.

My wife, a security closing clerk, for the Holabird installation, filed a complaint in January 1958. That is unresolved; 5 years at the present installation, 9 years of Federal service.

Mr. Albert Henderson, equal employment opportunity specialist, Social Security Administration, also a complainant, filed in January 1969, which is unresolved; 8 years service, an outstanding record.

Mr. Milford Elsee, mechanic, automotive, Fort George G. Meade, filed many complaints for job opportunities for which he was highly eligible. He always received a notice of unselected, not selected. His situation has been in existence for several years, which is unresolved. He has had 5 years of continuous duty at Fort George G. Meade, 18 years of Federal service.

Mr. Wendell Christopher, microbiologist, Fort Detrick, filed a complaint in 1965. The complaint was resolved by the Civil Service Commission unsatisfactory to the complainant, by the Grievance and Appeal Board there and a finding of "no discrimination" was made. This man has been in service for 15 years.

Mr. Italy Overton, on our panel, educational specialist, Aberdeen Proving Ground, filed a complaint April 1, 1969; unresolved. He was detailed in the job and actually doing a job for 8 months, but a white was brought in from another department and selected for the position which he was already doing and the individual has fewer qualifications.

Mr. William Brown, WB–6 at Aberdeen Proving Ground, 17 years there, filed for 30 promotional opportunities and always the best qualified on the register, but never selected.

George T. Pettit, human factors engineer, 23 years Federal service, filed a complaint in 1967, which is unresolved. With that gentleman I would like to conclude my statement to you and I would like to refer you to the next speaker on the panel, Mr. Theodore Newkirk.

Mr. HAWKINS. Mr. Newkirk, we are very glad to have your testimony on this point.

You are from the Patuxent Naval Training Center, is that correct?

Mr. NEWKIRK. Yes, sir.

I am a GS–9, electronic technician, employed in the Technical Support Division at the U.S. Naval Air Test Station, Patuxent River, Md. I am a 10-point veteran of World War II, 40 percent disabled veteran, and the father of nine children. I live at Lexington Park, Md.

On July 8, 1967, I filed a complaint of discrimination practiced against me solely because of my race by Francis P. Hanagan, GS–14, branch head of the instrument facility; Kenneth L. Wilkinson, GS–14, branch head of antisubmarine warfare; Morton E. Riegel, GS–16, technical director, weapons system Tests; H. W. Stoffers, GS–14, communication engineer branch head; Roland K. Beard, GS–12, assistant unit head, antisubmarine warfare; J. A. Barolet, GS–13, attack branch; and Edward H. Ocker, Chief, industrial relations department.

I have been employed by the Federal Government for 20 years, and since 1954 I have been employed at the Naval Air Test Center, Patuxent River, Md. I began as a WB–3d step electronic technician. Subsequently, I was promoted in 1956 to a GS–7 electronic technician, and in 1958 to a GS–9 electronic technician. But for 11 years I have been frozen at this level because of a system of isolation of the Negro employees to prevent them from getting into the positions to make promotions. I have seen white electronic technicians, with much less seniority, placed on jobs where they can get the work experience to be promoted. I have been systematically denied these opportunities.

Some of the white employees, with less experience and training than I, have been placed to supervise me. I have watched them go on up the career ladder, while I remain hamstrung by racial prejudice.

I have applied for lateral transfers so that I could get into positions to be promoted, but I have been refused every time.

These practices are in specific and continuous violation of the President's Executive order on Equal Employment Opportunity in Government. I registered complaints to my chain of command up to the Chief of the Industrial Relations Department. The result was a transfer to further isolation.

More specifically, in April 1967, I applied for promotion to Electronics Technician, GS–11, PA No. 12–C, which was advertised and for which I was the only one qualified. No one was appointed to this position. However, I received no notification of this until the middle of May 1967.

I applied for the promotion to electronics technician, GS–11, PA No. 15–A, in May 1967. I was advised that the position was filled by Francis Gough, white, GS–9, who was a Wage Board employee when I was already a GS–9 electronics technician.

It is my considered judgment and belief that the failure to promote me in these last two specific jobs was solely due to the racially discriminatory practices against me by my supervisors and the Industrial Relations Department, which is making a mockery of the President's Executive order.

This is not only my experience, but it has been the experience of other Negro employees. Our aspirations to climb the career ladders, encouraged by the Federal Government in its merit promotion program, have been completely frustrated by the continuous racially discriminatory practices in employment at this Federal installation.

I have received an award for a beneficial suggestion for the improvement of electronic equipment. I have been praised on a number of occasions for outstanding performance, but this has fallen on deaf ears when I sought to climb the career ladder, which seems to be available only to white employees.

Having exhausted all appeals for justice within the chain of command through the normal grievance procedures, at no avail, I requested a full-scale investigation, under the Equal Employment Opportunity procedures, and a formal hearing of my complaint. I further requested my promotion to the GS–11, PA No. 12–C electronics technician position, which was still vacant at the time I filed my formal EEO compaint on July 8, 1967.

I also requested that the investigation and hearing embrace the entire system of employment at the station which keeps Negro employees isolated from work experiences which will enable them to be promoted, which results in their being kept at the low-level brackets of employment opportunities.

A Civil Service Commission's inspection committee made a superficial investigation of the station. The Negro employees welcomed the committee believing that the committee was really interested. The committee spent less than a day. There were approximately 15 black employees gathered to register their complaints. The committee was in such a rush that they gave each employee approximately 5 minutes to explain his grievance. It was a sham. The captain of our installation has announced that they gave our test center a "clean bill of health."

The formal hearings on my complaint ended on February 27, 1969. They were conducted by a hearing officer who prides himself on being "white, southern, rural, educated and resident in the State of Virginia his entire life with the exception of 5 years' service with the U.S. Navy during World War II."

He further states:

> His lifetime intimate contact with members of the Negro race has provided an insight into the problems associated with discriminations by the white component of society over the Negro race.

This hearing officer withheld his findings and recommendations until August 1, 1969, after a second EEO complainant's hearing had been conducted by him. In the meantime the job vacancy for which I had applied, which was vacant at the time I filed my complaint, had been filled by a white employee.

In his findings, the hearing officer engaged in a great deal of doubletalk finding some racially discriminatory practices on the base, but none against me. He made no recommendation with regard to the promotion unfairly withheld from me. He said nothing about the open and blatant intimidation of one of my witnesses by one of my supervisors, except report same to the captain of the station, who has done nothing about it.

To date there has been no final finding from the captain or other official from which I can appeal. I am still a GS–9 electronic technician. I have used the Equal Employment Opportunity procedures, but have gained nothing.

Therefore, I wholeheartedly support H.R. 6228. The Equal Employment Opportunity program is wonderful on paper, but that is all

it is—on paper. The Patuxent Naval Air Test Center cannot investigate itself. The Civil Service Commission has proved inadequate. We need a separate agency with power to investigate the appallinng failures of the EEO programs in Federal employment, with the power to make immediate corrections.

I want to thank you.

Mr. HAWKINS. Thank you, Mr. Newkirk.

Mr. Williams?

Mr. WILLIAMS. Yes. Next we would like to hear from Mr. Albert Henderson of the Social Security Administration.

Mr. ERLENBORN. Before the next witness I am going to have to leave as we are all to make the quorum call and I will not be able to return because I have a matter on the floor. Could I ask one question of the two witnesses who have already testified?

You both have testified in favor of H.R. 6228. I don't have a copy of that before me, but I think it is identical with H.R. 6229.

Mr. HAWKINS. That is correct.

Mr. ERLENBORN. Neither of those bills, as far as I can see, would extend jurisdiction over your type of employment to the Equal Employment Opportunity Commission. There is no defense if the employer, that would include Federal Government or Federal or State agencies. I say this as one who was in the legislature of the State of Illinois and was present and voted at the time we created the State FEPC. I felt at the time it was a mockery to say to the employers in the State of Illinois that you had to file an equal employment practices, but the State of Illinois didn't have to.

I presume maybe it is the intention to amend these bills, but as far as I see at present, 6228 or 6229 would not extend any coverage.

Mr. HAWKINS. May I clarify that?

You are correct. Subsequent to the introduction of H.R. 6228 and 6229, Mr. Stokes and Mr. Clay and I had introduced two other bills. One of the bills would cover Federal employees and place them under the same jurisdiction as we propose in H.R. 6228 and H.R. 6229. The second bill would cover State and local employees and we have announced and had announced in the introduction of the other two bills we would seek to have those two bills incorporated in 6228 and 6229, or a similar bill which might be passed out of this committee.

So you are correct. But we have stated publicly that we do intend to cover such cases as have been discussed by the witnesses this morning.

Mr. WILLAMS. It is these amendments, Mr. Erlenborn, that we place our desperate hopes in.

Mr. HAWKINS. Now you had another witness.

May I also explain, Mr. Erlenborn said that there is a call of the House and that Members of the House are supposed to answer the rollcall. Some of us, however, intend to stay and there are some who may be leaving and may be returning. So don't become too worried if you see us move in and out.

Mr. WILLLIAMS. I would like to make another statement. You don't have copies of all the testimony, but we should hope to get copies to you later on. I hope you won't be too inconvenienced.

Mr. HAWKINS. We would certainly appreciate that and without objection, all of the statements you would submit will be included in the record.

Mr. WILLIAMS. That is another request I intended to make.

Mr. HENDERSON. Thank you, Mr. Chairman. I am sorry we are going to miss the benefit of Mr. Erlenborn's strenuous——

Mr. HAWKINS. I would like say that minority counsel, Mr. Mike Bernstein, who is a very capable counsel I assure you, is here and he is representing the minority, so that the minority is not going to be unrepresented.

Mr. HENDERSON. Thank you.

Mr. Chairman, it is a privilege to appear before you and to present some of my experiences and observations. My name is Albert Henderson. I am presently an equal employment opportunity specialist, GS-13, at the headquarters of the Social Security Administration, located in Baltimore.

Previously, the other side of your legistlative coin, I was a contract compliance specialist with the same agency. I have been employed by this agency in a number of progressively responsible positions since 1956. That office is located in New York City, Indianapolis, and Battle Creek as well as Baltimore. I am testifying as a private citizen, of course, while on annual leave.

My EEO and contract compliance work has taken me to many parts of the United States. They have permitted me to work with various leaders of the black, Puerto Rican, and Mexican-American communities in pursuit of EEO objectives. I was an official observer at the white collar hearings EOC held in New York City in January of last year and I want to say how impressed I was not only by the hearings and the nitty-gritty that characterized the Commission's activities there under its former Chairman, Mr. Alexander, but how impressed I have been subsequently by the results to which former Chairman Alexander referred.

I said then and I say now as an individual I wish we had more people like him in Government.

From such perspectives in my relations with a sizable number of Federal employees around the country, I know that the EEO program as administered by the Civil Service Commission is viewed with abiding suspicion and experience mistrust. I personally know of many more cases, many times the number of cases that you heard about today, not just talking about my own agency but talking about a number of Government agencies.

Many of us who have been promoted have no faith in the system and I am one of these. Filing an EEO complaint is notoriously a reprisal-risking exercise in futility. In view of what appears to be, gentlemen, an institutionalized inability to find discrimination in all but a minute percentage of cases, I assume that we take seriously the right of people to equal employment opportunity.

Therefore, in the light of my experience, there is only one solution and that is the restructuring of our EEO program management to help give those who know what discrimination is all about a measure of confidence in the integrity of the merit promotion system.

The EEO program is not a management tool, is not management property, it is the property of the citizens of the United States, the employees of the United States, and those who apply for employment in the United States. This is a fact that I believe has become

lost in the shuffle of bureaucratic nullification oftentimes allegedly because of fear of congressional flack, budgetary nonsupport.

Government-wise, too many minority employees and women are concentrated at the lower grade levels, often as a result of discrimination. Comparatively few minority group persons are entering the Government above the journeyman level and are in management positions. There remain many, many examples, gentlemen, of organizational enclaves from which minority group persons appear to be excluded, a fact obscured by gross statistics and the rhetoric of improvement.

Affirmative action is considered to be reverse discrimination by management officials, supervisors, and employees who believe that the minority group utilization problem stems entirely from a shortage of qualified minority group job candidates. I have never heard of any official being replaced for failure to carry out EEO responsibilities, or for failure to develop and administer realistic affirmative action plans such as are required by Executive orders.

As a matter of fact, a Civil Service Commission audit of my agency's personnel management concluded last year failed to identify and zero in on most of our EEO shortcomings. As far as overall numbers are concerned, my agency's record in employing and upgrading Negroes is one of the best in Government, thanks in part, a large part, to increased staffing need by medicare and other new or expanded program responsibilities.

However, there are numerous offices and components at our headquarters around the country where the commitment of the Commissioner of Social Security to a model EEO program has not been implemented, I might add has never been implemented. I have been putting my head against a stone wall in urging, first, more stringent program appraisal; second, more specific and meaningful policy guidance; and, third, against management persons who haven't gotten the EEO message.

I am a member, gentlemen, of our special staff for labor relations and equal opportunity. On July 14, 1969, which incidentally, as you may know, is Bastille Day, I found it necessary to file a complaint of discrimination with the Department of Health, Education, and Welfare, alleging first discrimination on the basis of race and color; second, unequal opportunity for advancement; third, unequal treatment; and fourth, specific deficiencies in our agency's EEO program.

The respondents are the director of my special staff and the equal employment opportunity officers of the Social Security Administration. I am awaiting the results of the investigation that has been conducted by an employee of another constituent agency of HEW and I would like to add just a few remarks quickly in conclusion.

Speaking still as an individual, but as a member of—thinking of myself as a member of management, it is very clear that one can commit a cardinal sin if one identifies with the victims of discrimination while working in the EEO area and does not identify with those members of management, who act as if the Executive Orders 11246 and 11478 were just pieces of paper.

This kind of identification is a kind of identification that is contrary to my experience as a black man in American society, as a person

who has been promoted a number of times by his employer, and it is the kind of identification that I cannot make.

I would like to add that I would identify with Dr. Garcia. It has been a privilege to work with both Mexican-American and Puerto Rican organizations and leaders around the country and especially in terms of the Mexican-Americans in L.A. and Puerto Rico and in New York City, and I incidentally regret that a Puerto Rican representative has not appeared as far as I know for these hearings.

But I had with them and their legitimate concerns, too, the underutilization of Puerto Ricans by the Federal Government in New York City where there are something like a million Puerto Ricans estimated to live today. That underutilization is worse than the underemployment of blacks in any section of the United States.

But I want to say again I thank you for the opportunity to testify before you. We welcome your questions, if you have any.

Mr. HAWKINS. Thank you, Mr. Henderson.

Mr. Williams, we will hear from all of the witnesses before returning to questions. Mr. Williams, do you have another witness?

Mr. WILLIAMS. Yes; I would like for Mr. Italy Overton, educational specialist at Aberdeen Proving Ground, to make a statement at this time.

Mr. HAWKINS. Mr. Overton.

Mr. OVERTON. Mr. Chairman, my name is Italy Overton. I am employed at the U.S. Army Ordnance Center and School, Aberdeen, Md. You do not have a copy of my statement before you. I hope to get you a copy of this before the day ends.

I am here to testify in support of House bill 6228. And there are many reasons why I believe that the equal employment opportunity program should be placed under the Equal Employment Opportunity Commission. I am sure you are aware that discrimination continues today against nonwhite workers in spite of all the Executive orders that have been issued. Figures published by the Civil Service Commission itself show this to be a fact.

It is always difficult for an agency to investigate itself and find something wrong. It has been demonstrated that agencies have rarely, if ever, found discrimination when investigating themselves. Therefore, they can't make corrections and as a result discrimination continues.

As long as the EEO program continues to be managed in this fashion, discrimination will continue. Enforcement of the various Executive orders on EEO is either nonexistent or ineffective. And despite the best intentions of top management, the EEO programs are rendered ineffective by those in the middle ranks in charge of implementing them.

Many minority group members have lost faith in EEO programs and it is somewhat disgusting to see so many EEO policies and so very little EEO practices. I lodged a complaint, discrimination complaint, at the Aberdeen Proving Ground and it arose because of nonselection for a promotion to GS–12 as an education specialist.

The selectee for the job was a white man of two and a half years' official service, who had been hired in the department about two and a half years before. I have been employed at Aberdeen Proving Ground since 1954. I started as a GS–5 and I am now a GS–11.

Because of this promotion into this job, this man is now my supervisor. And I thought that we had sort of gotten rid of this kind of thing a long time ago. And I cannot see and management has not been able to explain to me in the hearings that we have had and in the discussions that we have had why this man was selected over me.

So I appear here this morning hoping that something that I say here will help change this discriminatory situation under which we live. I want to thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, Mr. Overton.

Mr. Williams, your next witness.

Mr. WILLIAMS. Mr. Wardell Clark.

Mr. Wardell Clark is fiscal accounting clerk at the U.S. Coast Guard yard in Maryland.

Mr. CLARK. Mr. Chairman, members of the subcommittee, my name is Wardell F. Clark, employed as a fiscal accounting clerk at the U.S. Coast Guard yard located in the Curtis Bay area of Baltimore, Md.

I will not detail my charge of racial discrimination I placed against the officials of the U.S. Coast Guard yard back in November of 1968, but I will try to be as specific as possible to keep from making it too long and drawn out.

I was transferred from Fort Holabird to the U.S. Coast Guard yard in January of 1957. This transfer provided me with a GS–4, which was one step higher than the GS–3 I occupied at Fort Holabird.

My position at the U.S. Coast Guard yard was a timekeeper in the Public Works Department where I remained for a period of 10 years until they—management—decided to downgrade my position in September 1967 from a GS–4 to a GS–3 for no apparent reason because my duties had not been changed any. In fact, my duties became more involved by the adding of an extra shop to the department eventually.

Consequently, they left with me two alternatives, and they were to accept a position as a GS–4 clerk in the Mail and Files Section located in the Administration Building or a GS–4 Fiscal Accounting Clerk, the latter of which I chose because I thought it offered me the best chance for advancement which to present has proved to no avail.

Through my failure to communicate with my supervisor, who is white and also with management, I finally filed a formal complaint by writing a letter to Mr. William F. Fowler, Jr., who was the Director of the Civil Service Complaint Department, in November of 1968, as I stated above in the second paragraph.

My complaint was the failure of management to promote me to a GS–5 after constantly applying and preparing myself for same while at the same time the white employees who were hired after me had no trouble at all being promoted and, in some cases, they did not prepare themselves at all for the higher positions and did not even qualify in some instances.

My complaint and charge also included unfair distribution of the workload to my disadvantage, abrupt and unpleasant manner in the way my supervisor talked to me and not toward the white workers, the failure of my supervisor in allowing me to use the telephone and other direct duties listed in my job description of which he allowed the white workers to utilize, et cetera.

Also, management has denied me my within-grade increase which was due me on January 26, 1969, and I still have not received same, although they could not find any fault in my work performance and my ratings have all been satisfactory. Also, at the time my within-grade increase was denied me, two white workers received their increases.

I have been in hearings now at the U.S. Coast Guard yard for eight days, beginning on Thursday, October 30, 1969, but the days have not been in succession and the hearings are to resume on Wednesday, December 3, 1969, with the hope of ending no later than Thursday, December 4, 1969.

From what I understand, a decision will be rendered by the hearing officer, which becomes final after reviewing all the facts. I am hoping for a just decision which in my opinion should be rendered in my favor because of the unjust acts that have taken place against me by management.

Allow me to amend with the fact that all of such acts of discrimination are only shown toward the Negroes employed at the U.S. Coast Guard yard and none against the white workers. Of course, this has been a practice for years.

There is another Negro employee by the name of Wrighter Chamberlain, a painter, employed in the paint shop at the yard, who has had a hearing in process since the latter part of September 1968 and it did not end until February 1969.

Mr. Chamberlain told me himself that his lawyer asked Mr. Shankle, who is in charge of EEO affairs at Coast Guard Headquarters, three questions regarding racial discrimination against Mr. Chamberlain, and Mr. Shankle has not come up with answers to any of the three questions to present. These questions were asked of Mr. Shankle back in February of 1969, and it is now December 1969, which is plenty enough time, I should think, to give an answer to same. It appears quite obvious that Mr. Shankle cannot supply the answers because Mr. Chamberlain's charge is valid and just.

Also, there was another Negro employee by the name of William Shannon. Mr. Shannon, what is your position?

Mr. SHANNON. Plastics worker.

Mr. CLARK. He was employed in the plastic shop and he personally told me that management fired him three separate times prior to June 1969, primarily because Mr. Shannon was not afraid to stand up to them and be counted. Management later had to eat crow and rehire him each time and also pay him back money for this unjust act.

Mr. Shannon finally resigned a little while later. Did you recently transfer?

Mr. SHANNON. They wanted me to accept my job back, but I told them I had qualified for a job at the Post Office and that I knew once I got back in the Coast Guard what was going to happen, so I took the job with the Post Office.

Mr. CLARK. Deviating from the U.S. Coast Guard Yard, I would like to mention a case presently unresolved at Fort Detrick, located in Frederick, Md., a Negro employee by the the name of Weldon Christopher, a microbiologist, GS–9, formerly a GS–11 before being demoted due to unjust practices of alleged racial discrimination.

Since I have written this into any transcript and Mr. Christopher

wasn't aware of the fact he was going to be called forward, I will try to relieve him of what he might say himself, because I obtained this information from him direct.

Mr. Christopher was promoted in July of 1963 to GS–11 as a microbiologist under the merit promotion program. His supervisor at the time was a white employee, GS–12. There were two other employees who were both white, also under the supervision of the GS–12, who were both lower in grade than Mr. Christopher.

Mr. Christopher said soon after the denial of his within-grade increase, his supervisor began assigning him special problems far too difficult for him to find a solution to and just outright told him to find another job. He was due his periodic step increase in July of 1964, but 30 days before, on June 23, 1964, his supervisor approached him about a few discrepancies in his work performance to avoid him from getting same.

He was also told by his supervisor on June 23, 1964, that he was going to assist him in his work in order that he would obtain his increase due him in July of 1964, but this promise was never followed through by his supervisor.

Management also went along with the supervisor's judgment on this matter, although Mr. Christopher had fully shown in the past and present his worthiness for his rightful and just pay increase. Then in August of 1964, Mr. Christopher was given a 90-day warning notice and was told by his supervisor that he would again assist him, but this proved to no avail and finally on December 21, 1964, a document regarding his work performance being unsatisfactory was written up and signed by his supervisor, but Mr. Christopher had no knowledge of it at all and was never approached on same.

He said he did not notice it until in February of 1965—is this correct?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. When approaching his Division Chief on some other pertinent matter he found this notice of unsatisfactory rating was on his Division Chief's desk and at that precise time was when his Division Chief showed and mentioned it to him.

It was at this point or a little while thereafter that Mr. Christopher became fed up and finally approached his Division Chief and told him that he just could not take any more of such unjust acts and brought formal charges of alleged discrimination against his officials and management. Is this correct, Mr. Christopher?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. Mr. Christopher also told me that his supervisor was not ever making available publication on his (the supervisor's) work on research in his field for the scientific public, as most men in his position does periodically.

Furthermore, he produced records at his hearing to refute his supervisor's statement about his not being qualified for his duties. They detailed him in a library to read scientific books from June 1965 to February 1967. Is this correct, Mr. Christopher?

Mr. CHRISTOPHER. February 1967.

Mr. CLARK. This was in a GS–9 job, but still receiving GS–11 pay. They finally put him back in the laboratory to work, but not in his original position, between February 1967 until September 1967, still

being paid as a GS–11 and eventually on the same month of September 1967 demoting him to a GS–9.

Is this correct?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. Just to think, this was 1 year and 7 months depriving a man of actually performing his scientific duties just to read books. I personally consider this absurd on management's part to even condone such an act. Also, here is an employee who in 1962 was recommended by his former supervisor, $100 for his participation on an invention of which two other employees were involved. Is this correct?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. Now he did not become the recipient of this monetary award until some time in 1965, at which time he was being reprimanded by his present supervisor.

Mr. Christopher also informs me that management did not see fit to send his supervisor to school to study the fundamentals of supervision until after he had pressed charges against them.

Is that correct?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. I also understood that his supervisor himself was found to be incompetent, but nothing was done about this at all by management and in my opinion he should have been replaced instead of maintaining a position of such dire importance.

Mr. Christopher also stated to me that there are only 15 professional Negro employees remaining at his installation, but about double that amount of Negro employees on the same level have resigned since 1963 because of discriminatory practices in and around the installation, but they are afraid to carry their grievances to management because of reprisals such as he is now facing.

Finally, after Mr. Christopher's hearing proved to no avail, he went to the U.S. Civil Service Commission's Board of Appeals and Review, which as we all know has been proven to be discrimination in Mr. Christopher's case and did find other discrepancies, but did not state what they were.

Is that correct, Mr. Christopher?

Mr. CHRISTOPHER. That is correct.

Mr. CLARK. Last but not least, he also stated his installation lost one Negro Ph.D. in 1969 and another Negro Ph. D. in 1968 because of alleged discrimination.

In view of all the above facts, and since Mr. Weldon Christopher has been employed at Fort Detrick for the past 15 years, Mr. Wrighter Chamberlain at the U.S. Coast Guard yard for the past 20-some years, Mr. William Shannon for a brief spell at the yard, and myself for the past 12 years, I am requesting that the honorable members on the Subcommittee of Labor of the House Committee of Education and Labor vote on removing the equal employment opportunity program from the hands of the U.S. Civil Service Commission and place it under the direct authority of the Equal Opportunity Commission, which has proven to be the most effective in such cases past and present.

Thank you for your cooperation.

Mr. HAWKINS. Thank you.

Mr. CLARK. Mr. Chairman, I would like to get explained to me a little more explicitly Mr. Erlenborn's remarks or your statement on the

H.R. 6228. Was I under the impression that this bill is not to remove the equal employment opportunity program from out of the hands of the U.S. Civil Service Commission and place it under the authority of the EEO Commission?

Mr. HAWKINS. No, the explanation was that there are two other bills that would be added to H.R. 6228 as proposed, that would have the effect of placing Federal employees, State employees, and local government employees under the jurisdiction of the EEOC.

In addition to that, there has been testimony from Mr. Clarence Mitchell and others that the contract compliance and the equal employment functions of other agencies, particularly those that have been created by executive order, should also be placed under the same jurisdiction.

I think Mr. Reid indicated that he favored placing the powers of these other agencies under H.R. 6228 and I as a coauthor also indicated I favor doing that likewise, so that the recommendation that you made in your concluding statement that this committee should vote to do so is endorsed both by Mr. Reid and myself and I am confident that we will make that recommendation to the other members of this subcommittee.

Mr. CLARK. But it will be primarily for this purpose, is what I really want to know.

Mr. HAWKINS. Primarily what we are seeking is to place all of the programs relating to discrimination in employment under one agency. And that would be the Equal Employment Opportunity Commission. This was the original intent, as Mr. Mitchell indicated.

Those who sponsored the Equal Employment Opportunity prior to the Civil Rights Act of 1964, but due to the fact that there was an 82-day filibuster, we thought at that time that we could not go all of the way and to get a Civil Rights Act passed, we had to compromise.

Now, having obtained a Civil Rights Act, we are now in the process of trying to strengthen it and to make it do what we originally wanted that Act to do, so that those of us who are sponsoring H.R. 6228 and H.R. 6229 are definitely committed now to placing all of the antidiscrimiation in employment programs under the Equal Employment Opportunity Commission and to give to that Commission the power to issue cease and desist orders.

Does that answer you?

Mr. CLARK. I believe that answers my question or gets the message to me better.

I would like to——

Mr. HAWKINS. We still have a long way to go. I don't want to mislead you. We still have to have the approval of the full committee, the House and the Senate, but I think that it is obvious that we are much closer today than we have been for a long time. At least we have the main difference of two groups, each seeking to strengthen the law but disagreeing as to ways it should be done. And I think that it is significant that this is the first hearing that I have ever been a party to, and I think that I have been fighting for equal employment opportunities since 1932— this is the first time I have never known of an opposition witness.

I doubt—I don't know about the last two witnesses. They, we hope, will be heard from soon. But so far there has not been one opposition witness. That doesn't mean there isn't opposition, but I think it is significant that those who oppose equal employment opportunities are not willing to come forward and to be questioned and to show their face. I think that at least is some progress.

Mr. CLARK. I have about 30 copies here that I would like distributed to the committee.

Mr. HAWKINS. Without objection, that will be done.

(The statement referred to follows:)

STATEMENT OF WARDELL F. CLARK, FISCAL ACCOUNTING CLERK, U.S. COAST GUARD YARD, BALTIMORE, MD.

Mr. Chairman and members of the subcommittee, my name is Wardell F. Clark, employed as a Fiscal Accounting Clerk at the U.S. Coast Guard Yard located in the Curtis Bay Area of Baltimore, Maryland.

I will not detail my charge of racial-discrimination I placed against the officials of the U.S. Coast Guard Yard back in November of 1968, but I'll try to be as specific as possible to keep from making it too long and drawn out.

I was transferred from Fort Holabird to the U.S. Coast Guard Yard in January of 1957. This transfer provided me with a GS–4 which was one (1) step higher than the GS–3 I occupied at Fort Holabird.

My position at the U.S. Coast Guard Yard was a timekeeper in the Public Works Department where I remained for a period of ten (10) years until they (Management) decided to down-grade my position in September 1967 from a GS–4 to a GS–3 for no apparent reason because my duties had not been changed any, in fact my duties became more involved by the adding of an extra shop to the Department eventually.

Consequently, they left with me two alternatives, and they were to accept a position as a GS–4 clerk in the Mail and Files Section located in the Administration Building or a GS–4 Fiscal Accounting Clerk, the latter of which I chose because I thought it offered me the best chance for advancement which to present has proved to no avail.

Through my failure to communicate with my supervisor who is white and also with management, I finally filed a formal complaint by writing a letter to Mr. William F. Fowler, Jr. who was the Director of the Civil Service Complaint-Department in November of 1968 as I stated above in the second paragraph.

My complaint was the failure of Management to promote me to a GS–5 after constantly applying and preparing myself for same while at the same time the white employees who were hired after me had no trouble at all being promoted and in some cases they did not prepare themselves at all for the higher positions and did not even qualify in some instances.

My complaint and charge also included unfair distribution of the work load to my disadvantage, abrupt and unpleasant manner in the way my supervisor talked to me and not toward the white workers, the failure of my supervisor in allowing me to use the telephone and other direct duties listed in my job description of which he allowed the white workers to utilize and etc.

Also, Management has denied me my within-grade increase which was due me on January 26, 1969 and I still have not received same although they could not find any fault in my work performance and my ratings have all been satisfactory. Also, at the time my within-grade increase was denied me, two white workers received their increases.

I have been in hearings now at the U.S. Coast Guard Yard for eight days beginning on Thursday, 30 October 1969, but the days have not been in succession and the hearings are to resume on Wednesday, 3 December 1969 with the hope of ending no later than Thursday, 4 December 1969.

From what I understand a decision will be rendered by the hearing officer which becomes final after reviewing all the facts. I am hoping for a just decision which in my opinion should be rendered in my favor because of the unjust acts that have taken place against me by Management.

Allow me to amend with the fact that all of such acts of discrimination are only shown toward the Negroes employed at the U.S. Coast Guard Yard and none against the white workers.

There is another Negro employee by the name of Wrighter Chamberlain, a painter, employed in the Paint Shop at the yard who has had a hearing in process since the latter part of September 1968 and it did not end until February 1969.

Mr. Chamberlain told me himself that his lawyer asked Mr. Shankle who is in charge of EEO affairs at Coast Guard Headquarters three (3) questions regarding racial discrimination against Mr. Chamberlain and Mr. Shankle has not come up with answers to either three of the questions to present. These questions were asked of Mr. Shankle back in Februa.y of 1969 and it is now December 1969 which is plenty enough time I would think to give an answer to same. It appears quite obvious that Mr. Shankle cannot supply the answers because Mr. Chamberlain's charge is valid and just.

Also, there was another negro employee by the name of William Shannon who was employed in the Plastic Shop and he, personally, told me that Management fired him three separate times prior to June 1969 primarily because Mr. Shannon was not afraid to stand up to them and be counted. Management later had to eat crow and rehire him each time and also pay him back money for this unjust act.

Mr. Shannon finally resigned a little while later—just before the arrival of the EEO Officer in June of 1969—and went into the post office where his chances for advancement were more advantageous.

Deviating from the U.S. Coast Guard Yard, I would like to mention a case presently unresolved at Fort Detrick located in Frederick, Maryland, a Negro employee by the name of Weldon Christopher, a Micro Bioligist, GS-9 formerly a GS-11 before being demoted due to unjust practices of alleged racial discrimination.

Mr. Christopher was promoted in July of 1963 to GS-11 as a Micro Bioligist, under the merit promotion program. His supervisor at the time was a white employee, GS-12. There were two (2) other employees who were both white also under the same supervision of the GS-12 who were both lower in grade than Mr. Christopher.

Mr. Christopher said soon after the denial of his within grade increase, his supervisor begin assigning him special problems far too difficult for him to find a solution to and just out right told him to find another job.

He was due his periodic step increase in July of 1964 but thirty days before on June 23, 1964, his supervisor approached him about a few discrepancies in his work performance to avoid him from getting same.

He was also told by his supervisor on June 23, 1964 that he was going to assist him in his work in order that he would obtain his increase due him in July of 1964 but this promise was never followed through by his supervisor.

Management also went along with the supervisor's judgment on this matter although Mr. Christopher had fully shown in the past and present his worthiness for his rightful and just pay increase.

Then in August of 1964, Mr. Christopher was given a ninety day warning-notice and was told by his supervisor that he would again assist him but this proved to no avail and finally on December 21, 1964, a document regarding his work-performance being unsatisfactory was written up and signed by his supervisor but Mr. Christopher had no knowledge of it at all and was never approached on same.

He said he did not notice it until in February of 1965 when approaching his Division Chief on some other pertinent matter and there this notice of unsatisfactory-rating was on his Division Chief's desk and at that precise time was when his Division Chief showed and mentioned it to him.

It was at this point or a little while thereafter that Mr. Christopher became fed up and finally approached his Division Chief and told him that he just could not take anymore of such unjust acts and brought formal charges of alleged discrimination against his Officials and Management.

Mr. Christopher also told me that his supervisor was not ever making available publication on his (The Supervisor's) work on research in his field for the scientific public as most men in his position do periodically.

Furthermore, he produced records at his hearing to refute his supervisor's statement about his not being qualified for his duties. They detailed him in a library to read scientific books from June 1965 to Feb. 1967 in a GS-9 job but still receiving GS-11 pay. They finally put him back in the laboratory to work but not in his original position between Feb. 1967 until Sept. 1967 still being

paid as a GS–11 and eventually on the same month of Sept. 1967 demoting him to a GS–9.

Just to think, this was one (1) year and seven (7) months depriving a man of actually performing his scientific duties just to read books. I, personally, consider this absurd on Management's part to even condone such an act. Also, here is an employee who in 1962 was recommended by his former supervisor, one hundred dollars for his participation on an invention of which two other employees were involved.

Now he did not become the recipient of this monetary award until sometime in 1965 at which time he was being reprimanded by his present supervisor.

Mr. Christopher also informs me that Management did not see fit to send his supervisor to school to study the fundamentals of supervision until after he had pressed charges against them. I also understand that his supervisor himself was found to be incompetent but nothing was done about this at all by Management and in my opinion he should have been replaced instead of maintaining a position of such dire importance.

Mr. Christopher also stated to me that there are only fifteen professional Negro employees remaining at his installation but about double that amount of Negro employees on the same level have resigned since 1963 because of discriminatory practices in and around the installation, but they were afraid to carry the grievances to Management because of reprisals such as he is now facing.

Finally, after Mr. Christopher's hearing proved to no avail, he went to the U.S. Civil Service Commission's Board of Appeals and Review, which as we all know has been proven to be discriminating within its own structure and they stated that were no findings of discrimination in Mr. Christopher's case and did find other discrepancies, but did not state what they were.

Last but not least, he also stated his installation lost one Negro Ph. D. in 1969 and another Negro Ph. D. in 1968 because of alleged discrimination.

In view of all the above facts, and since Mr. Weldon Christopher has been employed at Fort Detrick for the past fifteen years, Mr. Wrighter Chamberlain at the U.S. Coast Guard Yard for the past twenty some years, Mr. William Shannon for a brief spell at the yard, and myself for the past twelve years, I am requesting that the honorable members on the subcommittee on labor of the House Committee on Education and Labor vote on removing the equal employment opportunity program from the hands of the U.S. Civil Service Commission and placed under the direct authority of the Equal Opportunity Commission which has proven to be the most effective in such cases past and present.

Thanking you for your cooperation.

Mr. HAWKINS. Mr. Williams, does that conclude your witnesses, because we are running out of time?

Mr. WILLIAMS. It does conclude our testimony in support of this measure. However, at this moment I would like to identify to the subcommittee other individuals who are complainants, who haven't, I feel, been properly identified.

One is Mr. William Brown, carpenter, WB–6, Aberdeen Proving Ground; Mr. George Pettit, human factors engineering; and two women who are equal employment opportunity complainants. Mrs. Joyce Williams, would you please stand, and Mrs. Bertha Scott.

Mr. HAWKINS. Mrs. Mitchell, I was going to give you an introduction. I was going to save you for the last. Are we at that point?

Mrs. Mitchell, I certainly want to welcome you before the committee. Those of use who have known Clarence Mitchell for such a long time and have worked with him have such admiration and respect for him, we sometimes overlook the fact you may be the moving spirit of that family. It certainly is a pleasure to have you before the committee today and we hope that we can see you as often as we see Clarence Mitchell around these halls.

Mrs. MITCHELL. Thank you.

We are keeping the spirit of equal employment opportunity bright on the Maryland homefront. We are proud to be a part of a family

that is dedicated to pursuing within what we feel is the best Government best form of government that man has yet devised to govern himself. The corrections that are needed to make the governmental objectives a reality for everyone, and now as a grandmother I sense the urgency of the time.

Mr. Williams has said a word about the militant, some of the militants who feel that there is no hope within this system. We must move with a sense of urgency to make the needed corrections now. I say again as a mother of four sons and as a grandmother that time has run out in this Nation on the question of racial discrimination. It is a vermin infection of the whole democratic fabric and the only way to eliminate it, as far as job opportunities in Federal agencies, is to set up an agency that will do a policing job.

It is time for us to take the gloves off and say what racial discrimination and segregation does, not only to the victim, but to the supervisor, the employer, the commander of the installation, who perpetuate it.

In Mr. Christopher's case he never had an unfavorable action anywhere in his 201 file until he threatened that he was going to file a charge of discrimination, and then rapidly in order came the notice to withhold his within-grade step increase and then being put on probation and to finally being forced to file his equal employment opportunity complaint.

Because the system, the way it is regulated now, because commanders and agency heads feel that an equal employment opportunity complainant who files a complaint blackballs the agency, they begin to organize an almost massive effort to prove the complainant wrong and the hearings turn out to be adversary hearings.

And the complainants become discouraged and the rest of the Government workers are afraid of the reprisal. They see these heartily lonely souls suffering, and the whole cause is damaged and weakened, and I say to you again, Mr. Chairman and members of the committee, when you have the Civil Service Commission's Board of Appeals saying that in only 2 percent of the cases that have come to them for review during the last year they find racial discrimination, I am saying something is wrong with that Board of Appeals and Review.

The same thing is true with the Defense installations. The U.S. Army Board of Appeals and Review, headed by Mr. Crangstorf and Mr. Berlin. They delight in telling you that in 60 percent of the cases that came before them last year, they made corrections, but in only 2 percent did they find racial discrimination. And I said to them, "Why have your board at all? Why not just scrap your board?"

If you say that these are just Civil Service irregularities and violations and you can never or seldom find discrimination, why have the equal employment opportunity program? It is these types of contradictions from which our young people, white and black, all over the Nation are in rebellion. We can't preach one thing and then practice another.

And the lack of commitment of the commanders of installations is deplorable. The installations in Maryland especially. We just have beautiful executive orders posted from the commanders, supposedly implementing the equal employment opportunity executive order of the President, but they are just pasted on the bulletin board and

for the first time we are getting Negro supervisors who discriminate because they are afraid to buck the system—Negro equal employment opportunity officers who participate and support the discriminatory system because they are prisoners of the kind of relationship in which they find themselves.

And so we have race divided against race again, because the system just won't work. We have got to bring out of these agencies the equal employment opportunity function and put it in an agency with—don't just put it there, but give the money and the staff and the powers to eliminate it.

And, Mr. Chairman, I just want to thank you for this opportunity and for your patience with these complainants. They have suffered, every one of them has suffered, each one of them has been through 2 to 4 years of effort and each one of them has suffered physical impairment of their health.

There is a pattern that goes through these complainants throughout Maryland in the various installations. They developed psychomatic gastroenteritis. Mr. Williams is hiding it, but he has gone up against his commander, he is losing all of his hair. This is the kind.

Mr. HAWKINS. He has a lot more than I have, I think.

Mrs. MITCHELL. This is a home front battle and we appreciate this opportunity and we urge you, we the adults of this generation, to move and move now to show the democracy can work, because we have the will to make it work.

Thank you.

Mr. HAWKINS. Mrs. Mitchell, I certainly want to commend you for the statement which I think well summarizes the witnesses. I hope that you and the witnesses will not feel that their time has been wasted here today.

I think that the efforts of such persons as have testified today will move this Congress, this administration, that will obtain some correction. The committee is deeply grateful for this opportunity to have listened to them.

I think it shows great courage on their part and certainly we have benefitted from it and in addition to what we are now doing, I can assure you that as the acting chairman of the committee I will discuss the matter with the chairman, Mr. Dent. It is highly conceivable that other action can be taken, more specifically on some of the cases that have been filed with this committee, because it seems to me that the time has arrived when we have got to go after some of these agencies that are violating even existing laws.

Maybe we can't do any more than irritate them and keep on them and serve as an overview of what is going on, but certainly I am sure that this committee is deeply grateful for what has been said today and we will do everything possible to seek corrections.

Mrs. MITCHELL. Thank you. And Mr. John White, who is president of this region, of the National Alliance of Postal Employees, is here. He is processing case by case these complaints throughout this area and has the same type of frustrations and will present a statement for the record through your committee.

Mr. HAWKINS. Without objection, his statement will be entered in the record when received.

Mr. WILLIAMS. One last word.

We also feel deeply honored and grateful, the entire body of us, for this opportunity to plead the cause of the oppressed before this subcommittee.

Mr. HAWKINS. Thank you very much, Mr. Williams and the other witnesses.

Mr. HAWKINS. The next witness is Mr. Jerry Clark, representing Mr. Jerry Wurf, president of the American Federation of State, Country, and Municipal Employees.

It is a pleasure to have you before the committee. I think that Mr. Clay perhaps is more familiar with the work of the American Federation of State, County, and Municipal Employees than anyone of the members of this committee. He seems to give you a very good character recommendation. I would suggest that in view of the time and in view of the fact we may be called in at any time to vote on a matter, that if you can possibly accommodate the committee by briefing your statement, it will be entered in the record at this point. Maybe by referring to it, giving us a summary of it, we may be able to expedite the time.

Mr. CLARK. I will try to shorten the remarks, Mr. Chairman. I am Jerry Clark, legislative director of American Federation of State, County, and Municipal Employees, AFL–CIO, and I am representing at this time the statement which the president of our international, Jerry Wurf, intended to make today, but was unable to because of a conflict of schedule.

STATEMENT OF JERRY WURF, PRESIDENT, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, AFL–CIO

Mr. CLARK. Mr. Chairman and members of the subcommittee, the union of which I am president has as its jurisdiction the rapidly growing area of State, county, and municipal employment. This is the sector recently studied by the U.S. Civil Rights Commission and found to be permeated with discrimination. We, therefore, have a special interest in Representative Hawkins' bill, H.R. 13488, which would extend to our members coverage under title VII of the Civil Rights Act of 1964, and H.R. 6228, which would strengthen the title in other ways.

The Civil Rights Commission's finding of discrimination in non-Federal public employment came as no revelation to us. For many years our union has, in fact, exposed and battled discrimination wherever we have encountered it.

However, our ability substantially to affect hiring practices is limited by management's historical insistence on maintaining the right to hire whomever it pleases for whatever jobs it pleases. It is here, at the hiring gate, that the discriminatory pattern is firmly established—whites, for the most part, in supervisory, managerial, professional, white collar, and skilled occupations; minority group members mostly in the service of unskilled categories.

We regard this as a shameful situation—not only because our members are victimized by such discrimation, but particularly because discrimination financed by public moneys and carried out by Government against its own citizens is especially indefensible.

In essence, discrimination in the non-Federal public sector means that minority group individuals are being shut out of the better-paid opportunities in the Nation's fastest growing employment area. Yet this is the very area to which they should be able to turn for equitable treatment.

According to the Bureau of the Census, State and local payrolls increased, between 1967 and 1968, by 484,000 jobs—or 5.5 percent. Some 9,835,000 wage-earners in State and local employment last year earned a total of $4.75 billion—more than twice the size of the Federal civilian payroll.

We are speaking, therefore, of an employment sector large enough—if its own practices were in order—to exert a healthy influence on the hiring patterns of entire communities. It is an employment area with the potential for substantially reducing the alarming unemployment rate among minority youth, thereby converting their despair into hope.

Unfortunately, there is little in the recent history of non-Federal public employment to indicate that State and local governments have within themselves the impetus to correct their own discriminatory patterns. The impetus will have to be supplied by Federal legislation.

Now, if I may, I will brief some of the next pages of the report.

The Civil Rights Commission report, which I presume all of you have seen on the situation, on non-federal public employment, points out and highlights the fact that in those cities where laws do exist forbidding discrimination, that the lot of the minority group employees is substantially better than where those laws do not exist, but we cannot hope that these laws will be enacted in all 50 States, and a Federal law we feel would have this same kind of impetus.

In the important recruitment, hiring and job placement categories, we have also had our own reasearch department, the American Federation of State, County, and Municipal Employees, compare the maximum rates of pay for the municipal employees in four States, whose employees are covered by State or local antidiscrimination laws, and in four where there is no such coverage. And we took two categories. And they are the refuse collectors, and the auto mechanics. And the different percentage, dollarwise, which is illustrated by a table at the conclusion of the statement, indicates that the disparity between these two groups of employees is far greater in the absence of law than it is in the presence of law. And traditionally, blacks and in the Southwest, Mexican Americans, are hired into the refuse collector category rather than into the auto mechanic category.

I would like to conclude and in order, I hope, to leave some time for discussion or questions, if you like, that we commend to you, with equal enthusiasm, most provisions of H.R. 6228, as it will be amended by Representative Hawkins, including especially the following.

1. Coverage of establishments with eight or more employees.

2. Empowering of the Equal Employment Opportunity Commission to issue cease and desist orders and to require reasonable remedies.

I would call your attention to the recently-announced experience of the Wage and Hour Division, which has an enforcement mechanism similar to that being proposed by the administration for title VII. The Division reported that it had succeeded in collecting only one-third of the $89 million which employers were found to owe workers because of illegal underpayments. We believe that the EEOC, if given

adequate authority and staff, should be able to bring about compliance and proper remedies in more than one-third of the cases it adjudicates.

3. Improvement of the title VII language relative to "professionally-developed ability tests" to provide that such tests be directly job-related.

We are convinced that only a law with broad coverage enforced by a commission with strong powers and a strong staff, will ultimately be able to generate the kind of credibility that will discourage employers from discriminating, and, in those instances where the diehards persist, will encourage members of the minority community to come to the EEOC with confidence. Obviously, no Commission can hope to address itself to each and every case of discrimination in the Nation. It can hope to create such a "no-nonsense" image that would-be discriminators would not dare. We share that hope—but we know it can never be realized unless the Congress moves against this insidious problem with firm conviction.

Mr. HAWKINS. Thank you, Mr. Clark.

Mr. CLAY. Well, I certainly want to commend Mr. Clark for coming over in the absence of Jerry Wurf. I would like to ask that if such a procedure as you are now recommending, Federal employees be included, and State and municipal employees be included in the provisions for receiving redress under this law, do you think that perhaps you could have averted the tragedy that happened in Memphis during the garbage workers' strike?

Mr. CLARK. It is certainly quite possible. And, of course, similar situations exist in many communities, many States.

Mr. CLAY. I am very familiar with the need for this type of legislation, Mr. Chairman, so I won't delay the hearings any further on questions.

Mr. HAWKINS. Mr. Stokes?

Mr. STOKES. No questions.

Mr. HAWKINS. Mr. Bernstein?

Mr. BERNSTEIN. No.

Mr. CLARK. One of the parts of the statement which I condensed goes along with the idea that Congressman Clay has presented. This again comes from the Civil Rights Commission report:

This attitude was articulated by the personnel director of the State highway department of a large Southern State, who was quoted by the Civil Rights Commission (on page 62 of its report) as saying, in reference to the absence of black secretaries in his department:

"There are no Negroes at all. It will be a while before we do hire them. The people in the office don't want them. We are not required to hire them by the Civil Rights Act of 1964. . . . States and municipalities are excluded by the Civil Rights Act from hiring Negroes. . . ."

Mr. CLAY. Mr. Clark, would you tell us the name of that State?

Mr. CLARK. Georgia.

Mr. CLAY. Well, Missouri is exactly the same as Georgia. We have one State Highway Patrolman David E. McPherson in Missouri. He has been there for 4 years now and it was quite a maneuver to get him employed. Our Highway Department in the State of Missouri has over 8,000 employees and less than 20 are black. And I suspect that the same situation prevails throughout the country with no exceptions.

Mr. HAWKINS. Thank you. Thank you, Mr. Clark, for appearing

before the committee. We appreciate the patience that you have displayed and certainly we want to apologize for having kept you so long.

Mr. CLARK. Thank you, sir.

Mr. HAWKINS. The next witness to be heard from just happens to be a lady, Mrs. Lucille Shriver, federation director of the National Federation of Business and Professional Women.

Mr. CLAY. I am also familiar with them, too.

Mr. HAWKINS. Mrs. Shriver, I certainly want to apologize for having kept you so long but I think you understand that we have no control over the time.

STATEMENT OF MRS. LUCILLE H. SHRIVER, FEDERATION DIRECTOR, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.; ACCOMPANIED BY DR. PHYLLIS O'CALLAGHAN, LEGISLATION DIRECTOR

Mrs. SHRIVER. I know that, Mr. Chairman.

Mr. HAWKINS. And it is a pleasure to have you before the committee because I think that too little has been said about women.

Mrs. SHRIVER. We will have to get in our 2 cents worth.

Mr. HAWKINS. And I know you are going to talk about women.

Mrs. SHRIVER. I am glad to be here, Mr. Chairman, and to have with me Dr. Phyllis O'Callaghan, who is the legislation director of the National Federation. We want to submit this statement to urge the subcommittee to favorably report pending legislation to further promote equal employment opportunities for American workers.

The National Federation of Business and Professional Women's Clubs, Inc. (BPW) is composed of some 180,000 working women who live in all the 50 States, plus the District of Columbia, Puerto Rico, the Virgin Islands and in every congressional district.

Our organization was founded just 50 years ago this July in St. Louis to serve the interests of all the working women of America and not simply our membership alone. BPW is open to any working woman, and the federation's membership includes secretaries, lawyers, assembly line workers, clerks, teachers, doctors; in short, women engaged in virtually every occupation imaginable.

Our objectives remain as they have been for 50 years: To elevate the standards and promote the interests of women in business and the professions; to bring about a spirit of cooperation among working women and to extend and expand their opportunities. Moreover, we seek to remove barriers from, and actively assist in, the personal development of all workers by helping to create a working environment most suitable to both working men and women, for we are convinced that as workers they share the same interests.

Mr. Chairman, the working women of America who constitute almost 37 percent of the work force are no strangers to discrimination. Private and public studies of the role of women in the working population clearly indict both sectors for the underuse and misuse of the capabilities and potentialities of the working woman. Our members welcomed the addition of the word sex to title VII of the Civil Rights Act of 1964, hoping that an effective attack would thenceforth be launched on employment, promotion, and retirement discrimination.

Although BPW has nothing but praise for the efforts of the Commissioners who have served on the Equal Employment Opportunity Commission, which seeks to bring about compliance with title VII of the 1964 Civil Rights Act, and for their staff, we believe that they have labored under extreme difficulties.

In fact, the National Federation of Business and Professional Women's Clubs finds a certain substantial deficiency in that agency, specifically, a lack of authority to issue judicially enforceable cease-and-desist orders in cases of employment discrimination. It is primarily this that brings us before you today, to comment on the proposed legislation.

Title VII of the Civil Rights Act of 1964 has not accomplished its intended purpose for a variety of reasons. In the first place, the agency created to administer the act, the Equal Employment Opportunity Commission (EEOC), lacks adequate enforcement authority, in fact, lacks almost any enforcement authority. Under title VII the Commission is authorized only to conciliate a case through conference and persuasion, if it has found reasonable cause to support a charge of employment-related discriminiation. If the EEOC is unsuccessful in achieving complaints, it will notify the charging party that a civil action may be filed by him or her against the named respondent in a U.S. district court. The Commission has no power to compel compliance with the act.

A two-fold discouraging effect results from these requirements and omissions. In many cases the individual involved has neither the time nor the money to prosecute the case himself: secondly, the inability of the Commission to take appropriate judicial action inhibits its capacity to even bring about conciliation.

Since passage of the Civil Rights Act of 1964, BPW has repeatedly supported legislation that would provide EEOC with the authority to issue cease-and-desist orders against discriminatory practices and to enforce such orders in the Federal courts. This power is similar to that exercised by many Federal agencies, such as the National Labor Relations Board, the Federal Trade Commission, and the Federal Power Commission, as well as by the vast majority of State fair employment commissions.

We believe that if title VII is to be meaningful, the agency charged with its enforcement must have adequate authority. We therefore welcome the strengthened capacity proposed at this time, namely the power to conduct administrative hearings and issue cease-and-desist orders should conciliation efforts fail; such orders being enforceable in the U.S. courts of appeals. We are convinced of the need for that critical enforcement capability, which we believe will encourage conciliation efforts, even provide motivation for successful mediation.

Mr. Chairman, we would comment briefly on another proposal that has been made regarding enforcement of title VII of the Civil Rights Act of 1964. This proposal would provide that charges of unlawful or discriminatory employment practices would continue to be filed with the EEOC. This agency would conduct investigations and, where there is reasonable cause to believe a violation has occurred, if conciliation fails, the EEOC would be able to file a complaint in an appropriate Federal district court.

The National Federation of Business and Professional Women's Clubs, Inc. is fully aware of the arguments both for and against

using this method of enforcement rather than that of providing the Commission with cease-and-desist powers.

Having carefully considered both approaches to this imperative need for enforcement capability, our organization continues to favor granting EEOC the authority to issue cease-and-desist orders which are judicially enforceable. The burden of proof, the weight of litigation falls on the offending employer with this kind of enforcement proceeding.

We believe that the critical need is for definite, vigorous powers for the Commission itself. We are willing to accept changes, to consider other proposals, as we have, but the weight of history and experience lead us to believe that those regulatory agencies which have cease-and-desist powers are the most effective. We would not want to experiment with other proposals, which at best, one might hope would increase enforcement capability, but for which there is no proof; the weight of evidence clearly indicates to us the preferability of legislative proposals that have been tried and tested and have been successful. The need is too urgent; the goal is too important.

Mr. Chairman, we would close with one more comment. The Civil Rights Act of 1964 is now 5 years old. It is the law of the land. It requires equal employment opportunity for all people regardless of race, religion, ethnic origin, sex.

We believe it is time to take action to remedy the legislative defect which denied to the Equal Employment Opportunity Commission the power to carry out the congressional mandate it was given—namely implementation of the law.

We therefore urge you and the members of this committee to give to this legislation the highest priority and to bring forth amendments to the powers of the Commission that will assuredly place this Nation behind a national goal of equal employment opportunity. We urge that you approve that legislation which will provide the Equal Employment Opportunity Commission with the cease-and-desist authority as a way of reaffirming our national commitment to real equality of employment opportunities.

I want to thank you on behalf of the National Federation for giving us this opportunity to be here.

Mr. HAWKINS. Thank you again, Mrs. Shriver. When Mr. Reid and I introduced this pending bill back in February, we issued a statement and I would like to read several lines from the statement we issued at that time.

Most women are not getting the chance to do equal work when one considers their educational attainment and availability for full-time life careers. It seems we often educate them as fully as men but then use them in factory jobs, clerical and service work. They, as well as racial minorities, are highly unrepresented in technical, managerial and better paying positions.

I just want you to know we recognized then and we do recognize now that women are being discriminated against and we stand on this statement. I think that your testimony this afternoon rather certainly documents the procedure that we have outlined in the proposal which we have selected.

I don't know what else we can add other than to commend your organization for its very fine work that it has been doing over the

years and we certainly appreciate the support which you are giving to us in these hearings.

Mr. Clay?

Mr. CLAY. Yes, I would like to ask, with all of the apparent discrimination against women in this country, have there ever been any suits brought by the EEOC to challenge some of the cases of discrimination?

Mrs. SHRIVER. Yes, by them.

Mr. CLAY. Are there any pending now or have they been resolved?

Mrs. SHRIVER. The *Rosenfield* case is pending now. The *Bowie* case has been settled.

Mr. CLAY. Only one or two?

Mrs. SHRIVER. There are more than that. That is one we are participating in. We had participated also in the *Bowie* case.

Mr. CLAY. Did you bring them, or did the EEOC, did the Justice Department bring suit?

Dr. O'CALLAGHAN. Mr. Clay, that is what I was going to mention. The Attorney General had not brought those suits. The EEOC is in a supporting role.

Mr. CLAY. Recommended them?

Dr. O'CALLAGHAN. Is supporting the plaintiff as *amicus* and we have gone in as *amicus curiae*.

Mr. CLAY. Your organization filed the suit?

Dr. O'CALLAGHAN. No, the individuals filed the suit.

Mr. CLAY. To your knowledge, has the Justice Department filed any suits?

Dr. O'CALLAGHAN. They have not on sex discrimination.

Mr. CLAY. Relative to discrimination because of sex?

Dr. O'CALLAGHAN. Not on a pattern or practice of discrimination. They have never used that to cover sexual discrimination.

Mr. CLAY. Mr. Stokes?

Mr. STOKES. Mr. Chairman, I would just like to commend these ladies upon the excellent testimony they have given us here this morning, and it has been a pleasure to have had you here. Thank you very much.

Mr. HAWKINS. Mr. Bernstein?

Mr. BERNSTEIN. No.

Mr. HAWKINS. I suppose this won't take very long to answer. Has the impact of this legislation been to force upon the States a reevaluation of the so-called protective laws for women and would you think that as we move ahead in this field that most of these laws will become rather obsolete?

Mrs. SHRIVER. I think most of them are now. Certainly some of them.

Mr. HAWKINS. As I understand, most of the cases that have been taken into court have really upheld the approach of title VII rather than a protection to the State laws which presumably were to protect women but actually have in most instances, discriminated against them?

Mrs. SHRIVER. That is right. We do not consider them protective.

Mr. HAWKINS. Do you consider this a desirable trend?

Mrs. SHRIVER. Yes, sir.

Mr. HAWKINS. Thank you very much, Mrs. Shriver.

Mrs. SHRIVER. Thank you, sir.

Mr. CLAY. I was going to say just recently I heard of a number of cases where women went to court and the courts ruled in their behalf, the administrative decisions down the line have been made to actually file the ruling of the courts. In California, for instance, I think a woman challenged the law that says that a woman cannot be a bartender. And the courts ruled in her favor but the Commissioner of Alcohol out there has completely ignored the court rulings.

Here in the District of Columbia recently a woman challenged the requirements set up for becoming a member of the Police Department. And as soon as the courts ruled in her favor the Commissioner of Police changed the requirements for women for applying for that Department and increased the weight and height measurements to a ridiculous figure. I mean very few women are going to meet this requirement.

Mrs. SHRIVER. That is true.

Mr. STOKES. In those kind of cases, I would think, Mr. Clay, what they should do in bringing their action is ask for some form of injunctive relief and have the court at the time it issues its decree, issue a permanent injunction against the party involved and I think that would eliminate this kind of administrative juggling to get around a court decision.

Mr. CLAY. We have to do something, Mr. Stokes. I would hate to see the women start burning the country down.

Mr. HAWKINS. This remark I would like off the record.

(Discussion off the record.)

Mr. HAWKINS. Our final witness this afternoon is Mr. John L. Kilcullen, General Counsel of the Conference of American Small Business Organizations. Mr. Kilcullen, you may proceed.

Mr. KILCULLEN. Thank you, Mr. Chairman.

STATEMENT OF JOHN L. KILCULLEN, GENERAL COUNSEL OF THE CONFERENCE OF AMERICAN SMALL BUSINESS ORGANIZATIONS

The Conference of American Small Business Organizations, an association representing over 40,000 small business firms located throughout the 50 States, is strongly opposed to any measure which would give an administrative agency of the Government such as the Equal Employment Opportunity Commission direct enforcement powers of the type proposed in H.R. 6228.

We believe that the businessman as an American citizen should not be deprived of his right of access to the courts, and to have all disputes and controversies fairly and impartially decided within the established judicial processes. When Congress enacted the Civil Rights Act of 1964 it expressly recognized this right, and clearly specified that disputes involving alleged employment discrimination under that act would be heard in the Federal district courts. H.R. 6228 would now take that function away from the Federal district courts and give it to a government administrative agency, the Equal Employment Opportunity Commission.

The Commission would thus become the investigator, the prosecutor, the judge and the jury in all situations involving allegations of employment discrimination against an employer. The only access an employer would have to the courts would be by way of review by the

Circuit Courts of Appeals of decisions and orders of the EEOC, after lengthy and protracted administrative proceedings, and any such review would be limited to the record and findings of fact made by the administrative agency. The opportunities for oppression and harassment of a business firm under such procedures are enormous.

Our members know from experience with other Government administrative agencies, such as the National Labor Relations Board, that impartiality and objectivity is seldom, if ever, found among the agency members and staff personnel. Complaints of antiemployer bias of the NLRB have reached such proportions that a committee of the Senate last year conducted extensive hearings and received thousands of pages of testimony documenting the heavily biased rulings and decisions of that Board over a period of many years.

The Equal Employment Opportunity Commission is no exception to the rule. It is well known that the personnel of that agency are hyper-zealous in seeking out examples of employment discrimination. They look for discrimination under every bed, and they automatically ascribe an unlawful and improper motive to the employer against whom a discrimination charge is filed. Our members have experienced instances where a Commission investigator showed up with an obvious chip on his shoulder and conducted his investigation with a most arrogant and rude attitude toward anyone and everyone on the management side. At first we felt that these were probably isolated or unusual instances, but we have since come to learn that they more closely represent the normal and usual approach by this agency and its staff personnel.

Quite frankly our members do not feel that the EEOC as it is presently constituted can act with any reasonable impartiality. They fear that whatever decisions and rulings would emanate from it under this proposed enlargement of its powers would have a strong anti-employer bias, and that to give such an agency increased enforcement powers would only accentuate and encourage the heavy-handed approach which has characterized its actions to date.

We favor instead the approach taken in H.R. 13517 which would authorize the EEOC to institute civil actions in the Federal district courts to obtain compliance by a respondent against whom a charge has been filed. There is no question that prompt and effective enforcement could be accomplished in this manner, and at the same time the respondent's right to his day in court would be fully preserved. The bill also authorizes the EEOC to seek intervention by the Attorney General in civil rights suits brought by an aggrieved party under section 706 of the Civil Rights Act, and in appropriate situations empowers the Attorney General to apply for preliminary or temporary injunctions to restrain continuing violations pending final disposition of the charge. These provisions of H.R. 13517 would, we feel, give appropriate recognition to the role of the courts and would prevent the type of abuse that would result from placing broad enforcement authority directly in the EEOC.

We are not here expressing our disagreement with the purposes of the Civil Rights Act of 1964, nor are we asking that it not be fully and effectively enforced. This law has become the law of the land and as good citizens our members respect it as such and make every conscientous effort to abide by its terms and provisions. Our mem-

bers feel, however, that no law is a good law unless it is fairly and justly applied. In the long run title VII of the Civil Rights Act of 1964 will gain public acceptance and respect only to the extent the public becomes convinced that the agencies charged with its administration are doing an impartial and responsible job. The prevailing opinion among the members of the Conference is that this is not now the case.

As a final point we would make the observation that the employment relationship in this country is being smothered under a mountain of governmental restrictions and regulations. Nowhere else in the world does there exist such massive governmental control of every aspect of employer-employee relations. The rules and regulations of agencies such as the Wage and Hour Division, the NLRB, the EEOC, the Employment Security Division of the Department of Labor, and others, cover literally tens of thousands of pages of closely packed print, so much so that if a small businessman were to try to familiarize himself with everything the Government requires of him he would have no time left to devote to his business.

We therefore feel it is time for Congress to begin looking for ways to reduce the volume of Federal labor regulations and restrictions, rather than loading on additional ones such as would flow from the expanded EEOC powers proposed in H.R. 6228.

Mr. HAWKINS. Without objection, at this point in the record I am inserting a "case study" presented in the December 1969 issue of the George Washington Law Review (33 GWLR 273–278). The editor has kindly given the chairman permission to have the study reprinted in our hearings.

(The article referred to follows:)

Hoover Rowel—A Case Study[73]

The policy of equal opportunity as expressed by Congress, and the required actions, as set forth in the executive orders and Civil Service Commission regulations, are clear. A system has been created. But does it work? The case of Hoover Rowel suggests that it does not.

In 1959 Hoover Rowel and seven of his fellow Negro employees in the Grounds Maintenance and Landscaping Unit at the National Institutes of Health (NIH) filed a written complaint of racial discrimination with their supervisors. Specifically, they charged that Negroes in the unit were systematically denied training opportunities, promotions and supervisory positions because of their race. There is no record of any action having been taken with respect to these charges.

On November 3, 1964, Rowel and nine others again filed with the chief of the unit a written complaint renewing essentially the same allegations. Although the complaint was apparently referred to the NIH personnel department, again no action was taken. In April 1965 Rowel sought aid from the Civil Rights Committee of the American Federation of Government Employees (AFGE), which filed an official complaint under the executive order with the Equal Employment Opportunity officer of HEW. An investigator contacted the complainants, who repeated their charges, but no acknowledgment of the complaint was received. When the AFGE representative called the officer, she was told, to her total surprise, that the complaint had been withdrawn. After ascertaining that the complaint had *not* in fact been withdrawn, the AFGE representative again contacted the EEO Officer—only to be informed that the file had been "misplaced." A

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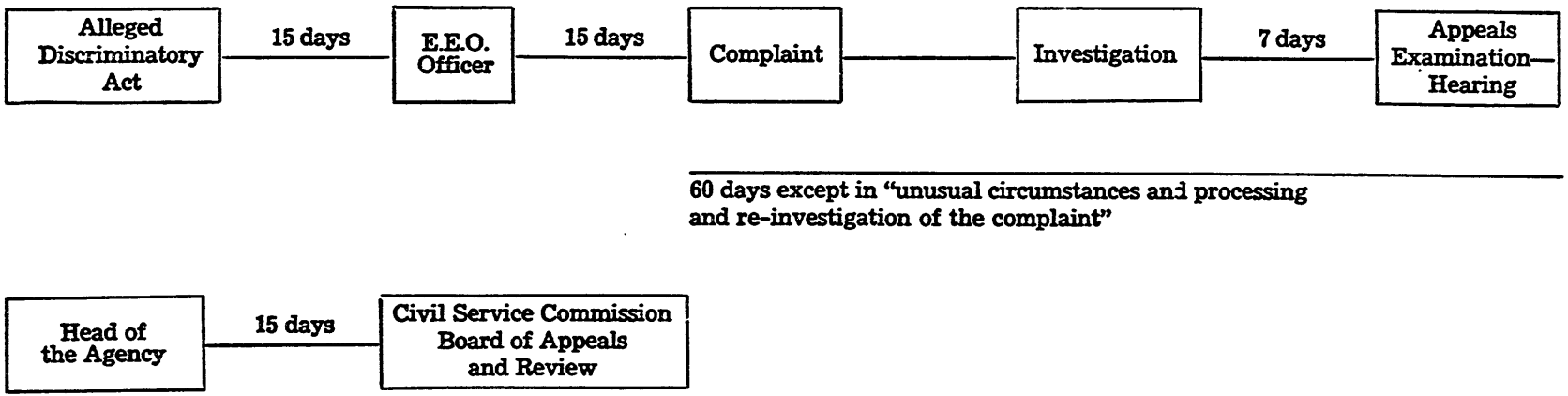
73. Complaint of Discrimination on the Basis of Race (Negro), Hoover Rowel et al., located in the Civil Service Commission files. The *Review* has been privileged to have access to the files of Mr. Rowel's attorney, from which the bulk of the following information was obtained. Access to information from official sources was not afforded the staff. *See* Appendix, *Availability of Information, infra.*

HOW TO BRING A COMPLAINT OF DISCRIMINATION*



* Compiled from Part 713, Civil Service Commission Regulations

new complaint was filed on May 7, 1965, and on May 14th, HEW formally assigned an investigator.

Cognizant of Civil Service regulation requiring a resolution of a discrimination complaint at the agency level within sixty days of receipt, the AFGE representative made written inquiries as to the status of the investigation on August 3, 1965. Included in this letter were three proposals for affirmative action, as required by the executive order:

> (1) A reappraisal of all job titles, grades and actual job duties in the Grounds Maintenance Unit;
>
> (2) establishment of a promotion ladder with stated and specific requirements for each step to be widely publicized in the unit; and
>
> (3) training for all employees to enable them to ascend the ladder.

When questioned about the delay, the investigator commented that he was "not interested" in the requirements of the executive order.[74] Finally, late in February, 1966, the AFGE representative again called about the status of the investigation. She was informed that the case had been decided and closed on January 3rd. None of the complainants or their representatives had been informed of the findings, the decision or the right to appeal. The time limits for appeal had long since passed.

On February 28, 1966, more than nine months after the second complaint was filed, an unsigned copy of the findings and dismissal was finally received. Although there was a finding of no discrimination, the decision nevertheless adopted the three remedial proposals suggested by the AFGE representative in August. On that basis, complainants' representatives agreed to defer a hearing and an appeal in order to allow the agency to satisfactorily implement the recommendation, but preserved the complainants' rights to a hearing and an appeal. As of October, 1969, no remedial action has been taken.

Throughout 1966, while waiting for NIH compliance with the recommendations, it became apparent that little would be accomplished without legal force. Meanwhile, Rowel, the leader of the group of complainants, was being subjected to continual harassment. This culminated in early June, 1966 when he was suspended for insubordination—namely, for making an emergency phone call relating to an automobile accident involving his son. Rowel had been denied permission to make the call on work time, and unable to complete his call over his lunch hour, he had signed out for an hour of leave. Rowel requested a hearing which was held on July 20.[75] The hearing committee exonerated him completely, noting the ridiculousness of

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74. The investigator also explained that "he has such good relations with his Negro employees that they voluntarily stayed away from his annual employees' barbeque because they knew it would cause him embarassment with his neighbors if Negroes were seen as guests in his back yard." NCACLU, *Civil Liberties*, Vol. 1, No. 3.

75. Rowel's notification of the July 20th hearing, considered adequate by management, was dated July 18 and required him to submit names of his representatives and witnesses well in advance of the hearing.

the charge and the discrepancies in the testimony of witnesses for the supervisor. When Rowel asked for a copy of the opinion, as was his right under NIH regulations, NIH refused even to let him see it.

In October, 1966, dissatisfied with progress on the recommendations and frustrated by the denial of a copy of the opinion in Rowel's adverse action hearing, the AFGE representative requested assistance from the American Civil Liberties Union (ACLU). The ACLU agreed to provide an attorney, and after a direct appeal to HEW Secretary Gardner and a threat to bring suit, the ACLU attorney was given a copy of the opinion in Rowel's hearing. By December 1st the ACLU attorney had been granted permission to reopen the discrimination case, and an amended complaint was filed on January 31, 1967. This complaint alleged discrimination against Negro employees of the Grounds Maintenance and Landscaping Unit in the following ways:

(1) By unfairly and arbitrarily failing to promote qualified Negroes;

(2) by consistently promoting Whites into supervisory jobs and not promoting Negroes superior or equal in qualifications, ability, and experience;

(3) by not establishing and publicizing orderly guidelines for promotion;

(4) by not publicizing job vacancies;

(5) by not providing Negroes with job training;

(6) by unfairly and arbitrarily utilizing job descriptions to deny advancement to Negroes;

(7) by utilizing job descriptions having little or no relationship to actual duties; and

(8) by coercing, intimidating and harassing Negroes.

The Deputy EEO Officer conducted an exhaustive investigation of the charges set forth in the amended complaint. Pending the result, HEW offered some suggested resolutions of the problem to Rowel. But each proposed resolution involved transferring him out of the unit. No provisions for training to allow him to progress within the unit were ever made, nor was promotion to the job for which he was already qualified without further training recommended.

On June 21, 1967, the Deputy EEO Officer handed down his decision, which stated the following conclusions:

A. The investigation produced statistical evidence to support the allegation that Negro employees in Grounds Maintenance are not promoted above the WB-5 level. The concentration of Negro employees at WB-2, WB-3, WB-4, and WB-5 is disproportionately high and tends to sustain the allegation.

B. The allegations that Negro employees are restricted to lower paying jobs and are denied supervisory status is sustained.

* * *

D. The allegation that white employees are promoted over Negroes of comparable experience and qualification is supported.

* * *

F. The allegation that no Negroes are employed on the office staff is substantiated. The definition of "office jobs" to include supervisory level employees sustains the validity of the allegation.

G. The allegation that coercion, intimidation, harassment and racial insults are directed at Negro employees is a matter of high probability but is found less than conclusive. It is ordered that appropriate officials at higher levels must address themselves to this matter.

Findings C, E, H, I and J stated that the other allegations were either unsupported or supported in part.

On June 30, 1967, the ACLU attorney requested a departmental hearing in order to work out a set of proposals for relieving the situation which the Deputy EEO Officer had found to exist. The hearing was finally held on February 14th and 28th and March 13, 1968, and a decision was supposed to be reached by September 25th. At the hearing evidence was adduced which fully corroborated the previous finding of discrimination. For example, testimony was offered to the effect that one of the white men with low seniority but promoted in preference to Rowel was a functional illiterate and that Rowel and his co-workers had to read the daily instructions to their new supervisor before he could give the orders. By November, when no decision had yet been made, the ACLU attorney notified HEW that it was again in violation of the regulations and the executive order.

Finally issued on December 10, 1968, the decision supported the conclusions the Deputy EEO Officer had reached a year and a half earlier. Yet, conspicuously absent from the decision was any provision for an effective remedy. No disciplinary action was taken against the supervisors who had been found to engage in racial discrimination, and no reparation in the way of a promotion or back pay was offered to the complainants. Indeed, there is nothing to indicate that matters had changed much in the Grounds Maintenance Unit at NIH. Accordingly, the ACLU attorney filed for review before the Civil Service Commission Board of Appeals and Review. Briefs were submitted in early January, 1969; in September the Commission handed down its decision: Affirmed; requested relief denied. The case was referred to an investigative group at the Commission to ascertain whether disciplinary action against the supervisors was called for. The investigators found such action to be unwarranted.

That is where the matter stands now. It has taken ten years for the administrative process to acknowledge what Hoover Rowel knew all along—that he was discriminated against. As was stated in the Complainants' Memorandum to the Commission:

> This long history of neglectful and purposeful delay, harassment of complainants, and frustration of efforts to end racial discrimination in the section, makes it imperative that effective remedies be devised and enforced in this case, not only to do justice to the complainants, but also to restore the dignity and integrity of the Department.

Mr. HAWKINS. Thank you, Mr. Kilcullen. Are there any questions? (No response.)

I am submitting the following statements for inclusion in the hearing record.

(The statements referred to follow:)

STATEMENT OF NATHAN T. WOLKOMIR, PRESIDENT, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. Chairman and Members of the Subcommittee, my name is Nathan T. Wolkomir. I am President of the National Federation of Federal Employees, which is the first and largest of the independent general unions of Federal employees with members in virtually all Government departments and agencies world-wide. The NFFE has been advancing the welfare of Federal employees for over 50 years.

The Subcommittee is presently addressing itself to H.R. 6228, a Bill to further promote equal employment opportunities of American workers. H.R. 6229 is an identical bill and S. 2453 is a bill on the same subject which has been introduced in the United States Senate. The Bills, cited as "Equal Employment Opportunities Enforcement Act" would amend the Civil Rights Act of 1964 to prevent unlawful employment practices. The Equal Employment Opportunity Commission is the arm of the Federal Government empowered to prevent persons from engaging in unlawful employment practices.

H.R. 6228 and H.R. 6229, as presently drafted, are not applicable to Federal employees or applicants for employment in the Federal Government. Nor are these House bills applicable to employees of State or local governmental agencies. S. 2453 would be applicable to these groups of persons.

I would like to say that the Equal Employment Opportunity Program in conformity with the policy expressed in Executive Order 11478 and implementing regulations of the United States Civil Service Commission together with the procedures of the Federal departments and agencies to prohibit discrimination because of race, color, religion, sex, or national origin has provided aggrieved Federal employees and applicants for Federal employment the opportunities to have decisions on such matters rendered after investigation and hearing.

The Federal employees and applicants for employment have these matters handled through the present governmental process provided by the Civil Service Commission and the departments and agencies. Thus, prevention of unlawful employment practices on these matters are already being handled with respect to Federal employees and applicants for such employment.

Further, the Civil Service Commission and the departments and agencies have demonstrated the ability to handle these matters. They have the machinery set up for processing complaints of discrimination because of race, color, religion, sex or national origin in accordance with existing regulations and procedures. It would therefore appear unnecessary to transfer jurisdiction of these matters involving Federal employees or applicants for Federal employment to the Equal Employment Opportunity Commission. I feel that these functions should remain with the Civil Service Commission and the departments and agencies and not be included in the functions of the Equal Employment Opportunity Commission.

Mr. Chairman, the National Federation of Federal Employees is keenly aware of the importance of this matter. It is our intention now and in the future, as it has been in the past, to observe very closely the operations of the Civil Service Commission in relation to the whole equal opportunity program to be certain that the objective of equity and fair play, and equal opportunity is in fact attained.

In this connection we have been encouraged by a recent Commission report which shows that the number of formal discrimination complaints has shown a marked decrease as a result of the functioning of Equal Employment Opportunity Counselors in the several departments and agencies. New procedures adopted by the Commission permit an individual who believes that he or she has been the subject of discrimination in any aspect of Federal employment because of race, color, religion, sex, or national origin to seek informal resolution of the problems through an EEO Counselor.

This calls for impartial investigation, further attempts at informal settlement, an opportunity for a hearing before an in dependent third-party appeals examiner who makes a recommended decision, and then a decision within the particular agency. Further appeal rights are available to the complainant to the Civil Service Commission's Board of Appeals and Review.

In view of the progress made to date—which while certainly not meeting with the approval of all by any means is nevertheless quite substantial—and in the light of recent additional tangible steps by the Commission to further implement and advance the program—it is our view that to make the administrative change contemplated in S. 2453, effecting Federal employees, actually could have the effect of setting back rather than advancing the program as a whole. Certainly that would almost inevitably be true with respect to the near-term; the long-range effect likewise is questionable.

Therefore, we do not believe that the circumstances point to the desirability of a switch in administrative responsibility . . . and definitely not at this time. But I would emphasize again, Mr. Chairman, the determination of the NFFE to continue to give this very crucial aspect of employee relations the kind of continuing attention which the importance of the issue so clearly indicates is needed.

The comments which we offer are an indication of the views of our members. On behalf of the National Federation of Federal Employees I desire to thank the Subcommittee for the opportunity of presenting this statement for the record.

STATEMENT OF GERARD C. SMETANA AND SIMON LAZARUS, JR., ON BEHALF OF THE AMERICAN RETAIL FEDERATION

Mr. Chairman and Members of the Subcommittee: This statement is submitted on behalf of the American Retail Federation. Gerard C. Smetana is a lawyer in Chicago, Illinois, specializing in labor law. He was formerly a trial attorney with the National Labor Relations Board. He has lectured on the subject of equal employment opportunity at the University of Chicago, Graduate School of Business Administration and Northwestern University, School of Law. He is a contributing editor of "The Continuing Labor Law" published by the Labor Law Section of the American Bar Association.

Mr. Lazarus is a lawyer in Cincinnati, Ohio, engaged in the general practice of law with special emphasis on employee relations matters. He has lectured to various business, civic, and educational organizations on the subject of employment discrimination, fair labor standards, and labor relations.

Both Mr. Smetana and Mr. Lazarus are members of the American Retail Federation's Employee Relations Committee and members of its Equal Employment Practices, National Labor Relations Board, and Wage-Hour Subcommittees. Mr. Lazarus is Chairman of its Subcommittee on Legislation and Regulations.

The American Retail Federation is a Federation comprising over 78 national and state retail associations. The membership of these associations totals some 800,000 retailers, with close to 6,000,000 employees, and consists of a wide variety of retail businesses ranging in size from small local stores to large national chains. The Employee Relations Committee of the American Retail Federation, of which we are members, is drawn from the various retail associations which make up the Federation and from individual companies, both large and small, which are individual members of the American Retail Federation. That Committee has initiated a number of policy statements on existing and proposed federal labor legislation.[1]

When Congress created the Equal Employment Opportunity Commission in 1964, it intended to provide a solution to one of the acute social problems of the day—baseless discrimination against qualified members of minority groups resulting in their underemployment and lack of reasonable advancement opportunities for those minority members fortunate enough to become employed.

It was made clear to the 88th Congress that in order to stamp out this insidious evil there was needed a strong pronouncement of National policy favoring equal employment opportunity in private industry and a vehicle for exercising a force to insure compliance with the declared policy. There were clearly differing opinions, however, on how to achieve these results. No less than a

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[1] See, e.g., *Hearings Before the Subcommittee on the Separation of Powers, Committee on the Judiciary, on Congressional Oversight of Administrative Agencies (NLRB)*, Senate, 90th Cong., 2nd Sess. (1968); *Hearings Before the Special Subcommittee on Labor, Committee on Education and Labor, on H.R. 11725*, House, 90th Cong., 1st Sess. (1967); *Hearings Before the Subcommittee on Labor, Committee on Labor and Public Welfare, on S. 256*, Senate, 89th Cong., 1st Sess. (1965) and *Hearings Before the Subcommittee on Labor, Committee on Education and Labor, on H.R. 77, H.R. 4350, and Similar Bills*, House, 89th Cong., 1st Sess. (1965).

dozen comprehensive bills[2] were introduced and more than 530 hours of debate took place. Finally, after such lengthy consideration, Congress concluded that it would facilitate the settlement of complaints, both with regard to the number of cases which could be handled and the speed with which they could be satisfactorily concluded, to have the determination of employment discrimination made by the Federal District Courts. The present Title VII, containing an enforcement provision to that effect, was therefore enacted.

The impact of such legislation has been substantial. The EEOC's First Annual Report noted that the Commission had received 8,854 complaints, rather than the projected 2,000 cases, which is characterized as a "dramatic response to the new law (which) reflected the confidence of civil rights organizations and minority persons in this new avenue to relief from discrimination." The Commission's Third Annual Report published this year, similarly renders a glowng report of the progress the EEOC has already made expressing satisfaction with the number of conciliations achieved, the affirmative action programs inspired, the legal precedents which had been developed, the data that had been accumulated, the state action that had been prompted and the new devices which had been implemented of public "confrontation and visitation" of target industries and areas. Further, the Report indicates the EEOC was now handling an incoming annual volume of almost 15,000 cases.

Despite such achievements, however, the Commission continues to suffer from two serious handicaps. First, as Chairman Brown discussed before the Senate Labor Subcommittee on Labor and Public Welfare on companion bills to those before this Committee, the EEOC's present backlog of cases is "tremendous." He estimated that it presently requires 18 months to two years from the time a charge is filed until conciliation can even be attempted. This backlog is caused, in large part, by the inability of the Commission in Washington to rule on the merits of those cases in which a field investigation has been completed. For example, the EEOC's last Annual Report indicates that during the 1968 fiscal year, the Commission completed investigations in 5,368 cases and that, in approximately two-thirds of the cases which were actually decided by the EEOC, there was a positive finding of "reasonable cause" against the respondents. This means that, if the Commission had ruled on all of the cases in which investigations had been completed, over 3,500 cases would have been referred to conciliation. This actual number, however, was only 1,573 cases.

Second, there is a patent need to amend the enforcement scheme contained in Title VII. The Commission is now relatively powerless to change discriminatory employment practices of respondents. After a failure of conciliation efforts, the allegedly aggrieved person is simply left to make his way alone in the unfamiliar and formidable milieu of the courts in order to obtain redress. This is clearly not a realistic enforcement procedure.

This Committee has before it several bills which seek to correct these deficiencies in the Act. These bills are H.R. 13517 introduced on behalf of the Administration by Mr. Ayres; H.R. 14632 introduced by Mr. Roybal; H.R. 6228 introduced by Mr. Hawkins; and H.R. 6229 introduced by Mr. Reid. We believe the Administration bill introduced by Mr. Ayres is the better of the solutions. The bill introduced by Rep. Ayers would give to the Commission authority to institute a civil action in the Federal District Courts, in the event of failure of conciliation, where it is found that there is reasonable cause to believe that discriminatory employment practices have occurred. In addition, a person claiming to be aggrieved would have the right to institute a civil action within six months of filing a charge with the Commission in the event the EEOC failed to do so. The present authority of the Attorney General to institute pattern or practice suits would not be distributed. And finally, the Ayres bill (H.R. 13517) would permit the Commission to seek temporary or preliminary relief in the Federal District Courts on the filing of a charge where such prompt judicial action is necessary to carry out the purposes of the Act.[3]

We believe that the principle of determination of employment discrimination by Federal District Courts is a sound one. Titles I through IV of the Civil Rights Act of 1964 are presently enforced through the Federal courts. As Deputy Attor-

[2] Actually, 172 bills in this general area were considered by the Subcommittee of the House Committee on the Judiciary. Moreover, Senate bills had been introduced in Congress in every year from 1943 to 1963.

[3] The American Retail Federation is concerned that the injunction language of subsection 3(f) of the Ayres Bill may be overly broad. Amending such language to require at least a prerequisite finding of "reasonable cause," as required by Section 10(1) of the National Labor Relations Act, would appear desirable.

ney General Kleindienst stated in his testimony before the Senate Labor Subcommittee on Labor and Public Welfare concerning companion bills introduced in the Senate:

"The appropriate forum to resolve civil rights questions—questions of employment discrimination as well as such matters as public accommodations, school desegregation, fair housing, voting rights—is a court. Civil rights issues frequently arouse strong emotion. United States District Court proceedings provide procedural safeguards to all concerned; Federal judges are well known in their areas and enjoy great respect. The forum is convenient for the litigants and impartial, the proceedings are public and the judge has power to fashion a complete remedy and resolution to the problem."

The Ayres Bill avoids the creation of yet another administrative agency with quasi-legislative, quasi-judicial, and quasi-executive powers. The advantages of the agency approach—expertise in marshalling evidence and in the prosecution of matters before the District Court, as well as political independence—are preserved. The disadvantages of such an approach—the creation of a policy-making tribunal embodying perhaps a particular social philosophy, which is not bound by decisions of courts of appeals [4] and which may prove unresponsive to the desires of Congress [5]—are, however, obviated. The Ayres Bill also permits the Commission to take an active enforcement stand rather than compromise such a position by a posture of quasi-judicial neutrality toward the problems that Title VII seeks to correct. As Chairman Brown observed in his testimony before this Committee, the Ayres Bill avoids the conceptual problem of the prosecutor and trier of fact being members of the same family. It provides, in short, a more appropriate vehicle for the enforcement of the law.

The Ayres Bill also provides for the possibility of a self-enforcing court cease and desist order at an earlier stage of the proceedings.

An order entered by an agency is not self-enforcing; [6] an order of the Federal District Courts, however, is self-enforcing and recourse to appellate courts from such an order is limited in the same manner as other Federal civil suits.[7] In addition, the knowledge that a court order can be obtained at such an early stage substantially discourages respondents from contesting matters where a reasonable conciliation is possible. On the other hand, many respondents are willing to take their chances on the determination of an agency, before whom they are already, and decide about compliance after such a determination but prior to the institution of court proceedings. If prompt results are one of the main goals of the Commission, particularly by means of conciliations, the approach of the Ayres bill would have a more extensive impact on the problems of employment discrimination.

The agency enforcement approach was utilized in the labor field in the 1930's because of the inability or the unwillingness of courts at that time to meet such problems as Congress saw them. In instance after instance, courts enjoined picketing and striking and otherwise demonstrated a reluctance to allow employees the right of self-organization. This situation does not presently exist in the area of employment discrimination. Proponents of the agency approach have not found fault with the courts in the field of equal employment opportunity. Indeed, the courts have proven themselves to be able judges of discriminatory

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[4] See, e.g., *Armco Steel Corp.* v. *Ordman*, — F. 2d. —, 70 LRRM 3181 (6th Cir., 1969), where, as part of proceedings characterized by the Court as "vexatious, harassing, arbitrary, oppressive and capricious," the NLRB's refusal to honor a determination of a court of appeals was described by that Court as "little less than an affront."

[5] See, *Congressional Oversight of Administrative Agencies (NLRB)*, Hearings before the Subcommittee on Separation of Powers, Committee on the Judiciary, United States Senate, 90th Congress, 2nd Sess. (1968).

[6] The necessity of obtaining a court of appeals decision enforcing an agency order may result in considerable delay. As pointed out in a recent address to the ABA Labor Law Section Convention by Mr. Howard J. Anderson, Senior Editor for labor services of the Bureau of National Affairs, Inc., in connection with proceedings before the NLRB: ". . . the 'hard cases' can run on for years. It was 13 years before the employees found to have been unlawfully discharged in the *Mastro Plastics* case collected their back pay. Moreover, the *Darlington* plant closure case was begun in 1950 and was not finally closed until this year." 71 LRR at 632.

[7] Under Rule 4 of the Federal Rules of Appellate Procedure, a notice of appeal must be filed by a private party within 30 days, and by the United States within 60 days, from the entry of the judgment of the District Court. In addition, the Ayres Bill also contains a provision that while Commission attorneys will conduct EEOC District Court matters, any subsequent appellate litigation is to be conducted by the Attorney General. Accordingly, if the Commission loses a case in the District Court, the Justice Department, after receiving the recommendations of the Commission, will decide whether to take an appeal therefrom.

employment practices and to be most willing to implement the declared national policy opposing such discrimination. As stated in the testimony of Martin E. Sloan, Special Assistant to the Staff Director, U.S. Commission on Civil Rights, on December 4, 1968, before a Congressional panel investigating enforcement of Executive Order 11246 "here (enforcement of the Executive Order and Title VII of the Civil Rights Act of 1964), as in other areas of civil rights, the Judiciary has led the way." [8]

The court approach has worked well in the enforcement of the Fair Labor Standards Act where a procedure similar to that proposed in the Ayres Bill is utilized. In enforcing this Act, the Department of Labor handles over 70,000 investigations annually and instituted, during the 1969 fiscal year, over 1,800 court actions.[9] Notwithstanding such volume and a two year statute of limitations, the Department prevails in approximately 97 percent of such litigation.[10] The Department has also had similar success, and significantly clarified the law through a court approach, in the administration of the Equal Pay Act of 1963, an area closely parallel to the sex discrimination provisions of Title VII.

Another helpful analogy is the enforcement procedure of the Age Discrimination in Employment Act. In the Committee discussions prior to the passage of that bill, there was considerable discussion as to the appropriate enforcement vehicle for handling age discrimination cases. Many of the same arguments which are being heard now were also raised then. Congress proceeded to decide in favor of the court approach, and against an agency approach, in enacting the Age Discrimination in Employment Act. As Senator Javits, one of the supporters of such an approach, declared:

"I believe that the most effective way of accomplishing these objectives is to utilize the Administrator of the Wage and Hour Division of the Labor Department to administer and enforce the Act. This is the approach utilized in my bill, S. 788, which has been co-sponsored by Senators Allott, Kuchel, Murphy, and Prouty. The Wage-Hour office is an existing nation-wide structure into which the functions of enforcement of the age discrimination law could easily be integrated. Here is a ready-made system of regional directors attorneys and investigators which has vast experience in making periodic investigations similar to those which would be required under the age discrimination law

"The Administration's bill on the other hand would require the establishment of a wholly new and separate bureaucracy . . . replete with regional directors, attorneys, and investigators, as well as trial examiners. Aside from the needless duplication of functions involved, one result of the administration's approach will surely be the same delays which plague so many of our agencies, such as the EEOC and the NLRB. The EEOC, for example, is already years behind in disposing of its docket. Such delay is always unfortunate, but it is particularly so in the case of older citizens to whom, by definition, relatively few productive years are left. By utilizing the courts rather than a bureaucracy within the Labor Department as the forum to hear cases arising under the law, these delays may be largely avoided." [11]

The Ayres Bill also permits a person claiming to be aggrieved to institute a civil action within 180 days from the filing of a charge if the EEOC has not instituted a suit within that time. We believe that this provision has several benefits. It will materially assist in the reduction of the EEOC's present decisional backlog; when the Commission is unable to decide a case promptly, the person claiming to be aggreived may seek such an initial determination directly from the Federal courts and correspondingly reduce the EEOC's backlog. Private lawsuits, moreover, as previously described before this Committee by NAACP

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[8] The Third Annual Report of the Equal Employment Opportunity Commission comments upon the favorable reaction of the courts in resolving the cases in this area which have been brought before them. (pp. 11–13). A recent Report presented to the Labor Law Section of the American Bar Association similarly noted that recent major developments under Title VII included:

"The issuance of more than 140 court decisions involving Title VII in the period between June 1968 and June 1969. Many of the decisions resolved substantive issues.

"The filing by the Attorney General of *more than 40* 'pattern-or-practice' actions under Title VII, and the issuance of decisions by the courts in some of the cases." Report on Equal Employment Opportunity Law, reprinted at 71 LRR 553 (August 25, 1969) (Emphasis supplied).

[9] Annual Reports of the Secretary of Labor.

[10] See Anderson, Legislative Outlook for Equal Employment Opportunity, 71 LRR 629, 632 (August 25, 1969).

[11] Statement of Hon. Jacob K. Javits before the Senate Subcommittee on Labor and Public Welfare on S. 830, "To Prohibit Age Discrimination in Employment," 90th Cong., 1st Sess. (1967).

Legal Defense Fund Director-Counsel Greenberg, have made a traditional and significant contribution to the developent of the law in various areas of civil rights. And, finally, the Ayres Bill removes the uncertainty and procedural barriers which surround the institution of private civil suits under the present Act.[12]

H.R. 13517 introduced by Mr. Ayres also retains the authority of the Attorney General to institute a pattern or practice suit. Such actions have played an important part in the enforcement of Title VII. As Deputy Attorney General Kleindienst observed before the Senate Labor Subcommittee on Labor and Public Welfare on companion bills to those before this Committee, such cases "have affected more workers and afforded relief to more members of minority groups than all the private litigation under Title VII put together." It surely seems unwise, therefore, at this critical juncture in the effort to obtain equal employment opportunity, to remove the Department of Justice's resources and expertise from the administration of the Act.

In sum, the American Retail Federation vigorously supports the Administration's proposal as encompassed in the Ayres Bill. It believes that this Bill effectively invokes the experience and skill of the Commission in the investigation of charges and the prosecution of unconciliated wrongs; that it utilizes an existing framework of enforcement to elminate start-up time and a backlog build-up; that it avoids the potential problems of lack of responsiveness involved in the creation of an administrative agency with quasi-judicial, quasi-legislative, and quasi-executive powers; and that it permits for the speedy issuance of a fully enforceable order thereby encouraging meaningful conciliation and precluding dilatory tactics.

Statement of the Greater Pittsburgh Area Chapter of the National Organization for Women

The members of the Greater Pittsburgh Area Chapter of the National Organization for Women consider it essential to have "cease and desist" powers granted to the E.E.O.C. The Justice Department has to our knowledge never entered a single case, certainly not one involving discrimination based on sex, although clearly invited to do so by the wording of the Civil Rights Act of 1964. Even when clear patterns of discrimination exist, as in the entry into some construction trade unions, the Justice Department has not acted. There is no evidence that the Justice Department ever will. The result is that the burden of litigation has to be borne by the individual aggrieved. The cases that are brought to court are usually those in which the E.E.O.C. has found just cause for complaint but the respondent has refused to comply. The complainant has right already on his side but still must wait through the long drawn-out process of the courts for satisfaction. It must be kept in mind that justice delayed is tantamount to justice denied.

H.R. 6228 would do much to correct the administrative difficulties that surround the Civil Rights Act of 1964. The National Organization for Women urges the committee to give it favorable attention and speedy action.

Many members of the National Organization for Women are college students or college graduates. They complain that discrimination, particularly because of sex, is common in educational institutions. Tax supported colleges are no better than the private colleges. As evidence of this discrimination we include an editorial from Psychology Today for December 1969 (circulation 400,000). The data in the editorial show that the number of women employed tapers off to zero as the level in the hierarchy increases. This trend is the same in every discipline.

Educational institutions are exempt from the equal employment opportunity laws. We think this should be reconsidered. Exemptions might be granted on request—such as a request by a Roman Catholic Seminary to advertise for a Roman Catholic teacher—although that might not be granted. A blanket exemption to all institutions, as now exists, merely invites discrimination.

Educational institutions should be in the forefront of social change. The principle of nondiscrimination should be taught by precept and by example: an individual should be considered on individual capacities and not on the basis of

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[12] There is, for example, the issue of the timeliness of private District Court actions with reference to prior conciliation efforts, i.e., whether such efforts are directory or jurisdictional. See e.g., *Dent v. St. Louis-San Francisco Ry. Co.*, 406 F. 2d 399 (5th Cir., 1969); *Johnson v. Seaboard Coast Line R. R.*, 405 F. 2d 645 (4th Cir., 1969); and *Choate v. Caterpillar Tractor Co.*, 402 F. 2d 357 (7th Cir., 1968). This issue is resolved by Subsection 3(e) of the Ayres Bill.

characteristics generally attributed to a group. Unfortunately, educational institutions often ignore this principle.

In summary, we recommend:

(1) Strong support for H.R. 6228.

(2) An amendment so that educational institutions would be covered by the act.

PSYCHOLOGY TODAY

DON'T CALL ME LADY

The average male thinks of himself as kind to women, especially if they happen to work for him, and he expects them to appreciate his generosity. Most go along with the act. But over the last few months, in thousands of offices and academic departments, men have found themselves walking blindly into walls of cold, womanly anger.

One of the livelier scenes came this fall at the annual psychologists' convention in Washington. A pipe-smoking Ph.D. made the mistake of talking down to Jo-Anne Gardner, physiological psychologist from Pittsburgh.

"Don't call me lady," Gardner said as if she were correcting a backward freshman. "I feel about that word the way a black person feels about 'nigger' or 'boy,' And don't call us 'girls' either."

Gardner, who is always vivacious and almost always gracious, is an active leader in NOW (National Organization for Women) and had just emerged at the head of AWP, the newly formed Association for Women Psychologists. She and the whole women's movement caught their male colleagues by surprise. Convention planners had been prepared for protests by students, the black caucus, and two organizations of white radicals. These forces turned out to be relatively tame compared with the women, once they got going.

Meanwhile, a continent away, in San Francisco, Alice S. Rossi of Goucher College led a well-planned coup at the annual sociology convention. Gardner and Rossi had compared notes in advance, of course, and were also collaborating with militant women in political science and anthropology on protest plans for other professional conventions. The unrest was spreading through the academic Establishment and out into such corporations as General Dynamics.

Women sociologists provided hard data on one cause of their rage. In 188 major graduate schools, they reported, women wash departmental dishes and seldom sit at the head of the table. They account for:

37 per cent of the M.A. candidates.

30 per cent of the Ph.D. candidates.

27 per cent of the full-time instructors.

14 per cent of the assistant professors.

9 per cent of the associate professors.

4 per cent of the full professors.

1 per cent of the department chairmen.

That 1 per cent is overstatement. Only one of the 188 sociology departments has a woman chairman—Rita Simon at the University of Illinois in Urbana. On the boss level, sociology is 99.7 per cent male.

The deeper, broader causes of womanly anger have begun to turn up, albeit slowly, in social-science research. You may have been sensitive to some of this work in *Psychology Today*'s recent issues. In one article, Naomi Weisstein argued—carefully and eloquently—that male psychologists have defined women's inherent traits to suit the tastes of a masculine culture.

The assumption of feminine inferiority has been self-fulfilling. Matina Horner at the University of Michigan found, to her horror, that women have a "motive to avoid success": When men and women compete on achievement tests, women are only half as likely as men to exceed their noncompetitive scores. Articles now being edited report data that is just becoming available on the changing role of women in the family, on the job, and in the general ferment of society.

George A. Miller suggests (page 53) that a psychological revolution is now under way. By changing people's perceptions of themselves, scientific psychology changes their definition of what they can be, and thus changes their behavior. One specific example, though Miller doesn't mention it, is the women's movement now rising out of behavioral science. Unlike the feminist movement of the 19th Century, the new forces do not demand the right to be like men. Jo-Ann Gardner and her friends emphasize the distinctive qualities of womanhood and search for ways to use their special talents in every field.

"We want to liberate men from their stereotype, too," Gardner says.

Active groups in the behavioral studies are providing a professional cadre for larger groups such as welfare mothers and factory workers. Women lawyers have pressed charges against Colgate-Palmolive for discrimination against women in hiring.

One-fourth of the cases being investigated under the 1964 Civil Rights Act charge companies with being unfair to women, white as well as black. Women civil servants operate a busy underground inside the Federal agencies. Some pretty militants use theater-of-the-absurd tactics—e.g., bra-burning—to protest rituals such as the Miss America Pageant that treat women as objects rather than as persons.

Says Gardner: "We don't worry about our image."

Out of their new perceptions of themselves, Americans may take seriously the notion that women are people. Since this theory has never been tested before, it will lead to some fairly confusing times for us men as well as for the more delightful half of humanity.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., November 26, 1969.

Hon. JOHN H. DENT,
Chairman, Committee on Education and Labor,
General Subcommittee on Labor,
Washington, D.C.

DEAR MR. CHAIRMAN: In regard to HR 6229 and similar bills to amend Title VII of the Civil Rights Act of 1964, I wish to inform you that I support cease and desist powers for the Commission. On August 11 I testified for the Subcommittee on Labor on the issue of cease and desist as well as other legislation. Attached is copy of my statement.

Sincerely,

VICENTE T. XIMENES,
Commissioner.

STATEMENT OF VINCENTE T. XIMENES, COMMISSIONER EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, BEFORE THE U.S. SENATE SUBCOMMITTEE ON LABOR

Mr. Chairman and Members of the Subcommittee, I am Vincente Ximenes, Commissioner of Equal Employment Opportunity. I support Senate Bill 2453. At my request the Commission reviewed Equal Employment Opportunity legislation on May 12, 1969. The consensus was that we continue to insist on cease and desist powers for the Commission.

Prior to the May 12 meeting, I consistently proposed and explained the need for cease and desist powers to organizations, legislators and the general public.

In view of what I thought was the Commission's position as well as my belief in the need for comprehensive legislation I have wholeheartedly supported:

1. Cease and desist authority.
2. Coverage for companies and unions of 8 persons or more.
3. Coverage of federal Civil Service employees.
4. Coverage of state and local employees.
5. Federal government contract compliance activity transfer to EEOC.

We have suffered too long to engage in "games people play." We have suffered too long to continue employment tokenism for the blacks, Mexican Americans, Puerto Ricans, Indians, Orientals, Spanish Americans and South and Central Americans. Our nation will not survive in its present form, even with our magnificent moon landing feat and technical know how, if cease and desist and the other parts of Senate Bill 2453 as well as other meaningful civil rights do not become a reality soon.

Senate Bill 2453 is the most comprehensive and meaningful job discrimination legislation ever proposed. Comprehensiveness coupled with cease and desist authority is the answer to job discrimination against blacks, Mexican Americans, Puerto Ricans, Indians, Orientals, Spanish Americans, females and other groups. S. 2453, if enacted, constitutes a master stroke against the evils of job discrimination.

In the Los Angeles hearings I found that in that metropolitan area the ABC, NBC, and CBS networks employed only 75 Spanish Surnamed persons out of 3,500 total employees. The picture is the same for blacks and other minorities.

As we look across the nation at private industry employees, we see over 75

percent of all minority employees holding blue collar and service jobs while only about 50 percent of all white employees hold such jobs and these are primarily the better paying, more prestigious craft classifications. These patterns are local, they are regional and they are nationwide. They are monotonous in their similarity.

In the federal government the same patterns exist. In 1967, 87 percent of all black general schedule employees were in grades one through eight; 76 percent of all Mexican American GS employees were in grades one through eight; and 83 percent of all Indian GS employees were in the one through eight category. The above compares with 56 percent in grades one through eight for *all* employees. In five southwestern states the Department of Interior, for example, employed 3,650 persons in grades 12–18 and only 35 of these were Spanish Surnamed. Similar breakdowns are there to be seen within the wage board and postal field pay categories.

At the local level, the record of the City Public Service Board of San Antonio serves as example of the need to extend our coverage. In 1968 this municipality owned board had 14 Negro employees of whom 0 were in service or labor classifications and 807 Mexican Americans of whom about 616 were laborers, 157 were operatives and 34 were classified above grade five. Mexican-Americans and Negroes account for nearly 50 percent of the total population of the city of San Antonio.

While I served in the double capacity of member of the Equal Employment Opportunity Commission and as Chairman of the Inter-Agency Committee on Mexican Affairs (1967 to early 1969), I received hundreds of complaints from Mexican Americans regarding federal government discrimination in hiring and the whole gamut of work and wage conditions. Often these came to me in my capacity as an Equal Employment Opportunity Commissioner. I could do nothing to help them. It was only through the Inter-Agency Committee that we could seek relief for these persons. But the tools at our disposal were uncertain and limited to presenting the employee's complaint to appropriate officials and counseling the aggrieved party. Several times we set up meetings between federal officials and community persons. However, these measures were all dependent on the good will of those involved—a tenuous thread on which to hang the relief of an employee who has suffered discriminatory action.

I strongly believe that these minority patterns of employment spell historical and systematic discrimination, in and out of government, at all levels. Therefore, only a systematic, comprehensive approach will do the job of controlling and finally eliminating the sickness in our employment markets.

The President's recent welfare proposal states that those poor, who can, must work to eat. I agree with the statement if at the same time the doors to job opportunity are opened wide by private, federal, state and local government sectors of our economy. The comprehensive job opportunity measures proposed in S. 2453 would certainly help the welfare situation for the minorities who suffer from job discrimination.

The people, the captains of industry, the organizers of labor, the officials of government know what is needed. There is no compromise or middle road between the right and the wrong. We are either committed to end job discrimination—as we are committed to the Spirit of Apollo—or we are playing games. At any rate, we fool only ourselves, not the people who see the blindfold of Justice gone askew and feel her jaundiced eye upon them.

Mr. HAWKINS. The hearings will be adjourned subject to the call of the chair.

(Whereupon, at 1:55 p.m. the subcommittee adjourned, subject to the call of the chair.)

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

TUESDAY, APRIL 7, 1970

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

The subcommittee met at 10 a.m., pursuant to call, in room 2257, Rayburn House Office Building, Hon. Augustus F. Hawkins presiding.

Present: Representatives Hawkins, Pucinski, Stokes and Bell.

Also present: Representative Reid.

Staff members present: S. G. Lippman, special counsel; Michael Bernstein, minority counsel.

Mr. HAWKINS. The meeting will come to order.

This is a meeting of the Committee on Education and Labor, the General Subcommittee on Labor.

Mr. John Dent, who is the chairman, is absent this morning on congressional business, and he asked me to act as the acting chairman for the hearings on H.R. 6228, H.R. 6229 and H.R. 13517, pertaining to equal employment opportunity enforcement procedures.

Mr. Dent indicated in a letter to the Civil Service Commission that during the course of the hearings on pending equal employment opportunity bills amendments were offered, one of which would extend coverage of title VII to Federal, State and municipal employees and transfer the equal employment opportunity functions of the Civil Service Commission to the Equal Employment Opportunity Commission.

This provision is already included in a Senate companion bill, S. 2453.

It was for that reason we thought it desirable to ask a representative of the U.S. Civil Service Commission to come before the committee. The witness which we have asked to appear before the committee this morning is Mr. Irving Kator, who is Director of the Federal Equal Employment Opportunity Division of the U.S. Civil Service Commission.

Mr. Kator, would you care to seat yourself at the witness table, please, and proceed?

STATEMENT OF IRVING KATOR, DIRECTOR, FEDERAL EQUAL EMPLOYMENT OPPORTUNITY, U.S. CIVIL SERVICE COMMISSION

Mr. HAWKINS. Do you have a written statement, Mr. Kator?

Mr. KATOR. Yes, Mr. Chairman, I do. May I read that?

Mr. HAWKINS. As you see fit. If you care to read the statement, that would be satisfactory. Would you proceed then?

Mr. KAYOR. Thank you, Mr. Chairman, and let me, if I may, read the statement, and I may summarize it in part, and let me provide an opportunity for any questions that the committee may wish to ask.

I am pleased to have the opportunity to appear before this committee to testify on H.R. 6228, a bill to further promote equal employment opportunities for American workers. My testimony will relate to one of the proposed amendments which Chairman Dent in his letter to Chairman Hampton of March 19, 1970, indicated had been offered during earlier hearings on the bill. This amendment would transfer responsibility for equal opportunity in Federal Government employment from the Civil Service Commission to the Equal Employment Opportunity Commission.

The Civil Service Commission strongly opposes the proposed amendment. In our judgment, removing leadership responsibility for equal employment opportunity from the Civil Service Commission would seriously weaken the equal employment opportunity effort in the Federal Government, be a disservice to Federal employees and applicants for employment, and be detrimental at this critical juncture to the Government's effort to make equal opportunity a reality in every aspect of Federal personnel operations.

Some history of the equal employment opportunity program in the Federal Government may be useful to members of this subcommittee and help make clear why we believe the proposed amendment would be undesirable.

The Civil Service Commission has had responsibility for leadership of the equal employment opportunity program in Government since September 1965.

Immediately prior to that time, responsibility was lodged in the President's Committee on Equal Opportunity, and before that with different organizations of Government, none of which were in the mainstream of Government operations.

In 1965, under Executive Order 11246, responsibility for assuring equal employment opportunity in the Federal Government was transferred to the Civil Service Commission.

There were compelling reasons for this transfer, in our judgment. Even prior to the transfer, we had been working very closely with the President's Committee, helping it accomplish its purpose.

In the latter stages of the Committee's existence, we were, in fact, providing staff assistance to handle the discrimination complaints it was receiving and working with Federal agencies in a number of different ways on behalf of the Committee.

Without detracting in any way from the work of the Committee because it was operating in a difficult and sensitive area, it was clear that to be effective equal opportunity needed to be moved closer to internal Government operations.

It was evident that a program which was operating outside the normal channel of decisionmaking could have only a limited impact in assuring equal employment opportunity in every aspect of personnel management. This was a motivating factor in moving the responsibility for guidance and leadership to the Civil Service Commission.

To build on the progress that has been made, responsibility for equal opportunity must remain, in our judgment, with the Civil Service Commission. We believe that true equal opportunity can result only from the closest integration of equal employment opportunity with the personnel management function.

Equal opportunity must be involved in every aspect of personnel management, including recruitment, placement, promotion, training and all other actions taken by agencies which have an effect on their employees.

Because the Commission as the Government's central personnel agency has legal authority to prescribe employment practices, it is in the best position to assure that there is in fact equal opportunity in all employment processes and that an affirmative action program to assure equal opportunity in all employment processes is carried out at all levels of Government.

The authority we exercise over agencies' personnel practices, the directions we issue to agencies on personnel operations, and our inspections of agency operations are some of the reasons why significant progress in equal opportunity has been made since the Commission assumed leadership responsibility in 1965.

That progress is demonstrable and is probably greater than in any previous comparable period. At the end of 1967 (the latest date for which figures are now available, although within the next few weeks the results of our November 30, 1969, census will be published), almost one-fifth of total Federal employment was minority group. This was one-half million jobs filled by minority Americans.

Also, the nonwhite proportion of the Federal work force was approximately 16 percent compared with 10.8 percent of nonwhites in the work force generally. While there are still heavy concentartions of minority employees in the lower grade levels, during the period 1965–67 minority group Federal employees were moving up in grade at a faster rate than the overall increase in those levels.

For example, while total employment in grades GS–9 to 11 increased 11.9 percent, Negro employment in those grades went up 38.4 percent. In grades GS–12 to 18, the overall increase was 19 percent; the increase in Negro employment was 65.4 percent. I do not want to mislead you, we are talking small total numbers at these higher grade levels but the trend is apparent.

We recognize full well that statistics can never tell the whole story in this sensitive area, but the ones I have cited are a demonstration of progress.

At the same time we recognize that many challenges exist which we must face in the years ahead to assure continuing progress.

We have broken the barriers which kept many minority people out of Federal employment; now we need to move forward to new ground. We need to develop upward mobility for lower grade employees, provide training opportunities so employees may advance to higher grade levels, improve our recruitment effort so men and women of all ethnic backgrounds may serve at professional levels and assume leadership positions in the future, and assure a positive commitment to equal employment opportunity from every Federal manager up and down the line.

To attain these ends, the President on August 8, 1969, issued Executive Order 11478 on equal opportunity in Federal employment. For the first time in an order on this subject, the specific responsibilities of agency heads for affirmative action to assure equal employment opportunity are mapped out.

The order emphasizes the integral nature of equal employment opportunity and personnel management in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

In a letter to agency heads accompanying the order, the President emphasizes that equal employment opportunity must become part of the day-to-day management of Federal agencies. For this reason, the President continued the assignment of leadership responsibility in the Civil Service Commission.

Conforming H.R. 6228 to Senate Bill S. 2453, which contains the provision for transferring responsibility for equal employment opportunity in the Federal Government to the Equal Employment Opportunity Commission and which is one of the issues before this subcommittee, raises, in the Commission's judgment, serious legal questions which involve the authority of the Civil Service Commission under the Civil Service Act.

The Civil Service Commission has statutory responsibility in connection with the employment process in the Federal Government and this makes it impractical to place oversight responsibility for equal employment in another agency.

The provisions of S. 2453 would place the EEOC squarely in the middle of the personnel management operations of the Government and would be, we believe, in basic conflict with the provisions of title V of the U.S. Code which places these responsibilities with the Civil Service Commission. But aside from the legal questions, the transfer of responsibility for equal employment to EEOC is bad in principle for the reasons I have cited.

The EEOC is necessarily complaint oriented. The receipt and adjudication of complaints of discrimination is an important aspect of assuring equal employment opportunity, but it is far from the total program.

Affirmative action—the moving out by agency heads and their managers to take the steps necessary to make equal employment opportunity a reality in every aspect of personnel operations—is the road to meaningful equal employment opportunity.

The Commission as the Government's central personnel agency and as the President's agent for equal opportunity is in the best position to assure that affirmative action is carried out by Federal agencies.

At the same time, we give full attention to discrimination complaints. As of July 1, 1969, we instituted a completely revised system for handling discrimination complaints from Federal employees. The new system puts heavy emphasis on informal resolution of complaints. More than 6,000 counselors have been appointed and trained in Federal agencies throughout the world to consult with and help employees who believe that they have been discriminated against.

If informal resolution fails, an investigation is made by staff independent of the organizational unit in which the complaint arose and another attempt is made at informal resolution after the investigation.

If settlement is still not reached, the complainant is informed that he has a right to a hearing by a third party appeals examiner, one who is not an employee of the agency in which the case arose.

In most cases, these appeals examiners will be Civil Service Commission employees who have been specially trained to handle these duties. The appeals examiner will make a recommendation to the agency head and if the agency head does not elect to follow this recommendation, he must indicate in writing his reasons and provide them to the complainant along with the recommendations of the appeals examiner. The complainant may then appeal to the Commission's Board of Appeals and Review for final administrative adjudication.

In developing this new system, we were hopeful that informal resolution would be possible in most cases. Preliminary data received from agencies on equal employment opportunity counseling and complaint processing give us reason for confidence in the system.

During the first 6 months of operation under the new procedures (July through December 1969), nearly 6,000 (5,741) Federal employees sought informal resolution of their problems through equal employment opportunity counseling.

In this same time period, 482 individuals went on to file formal complaints of discrimination.

On the average, agencies now receive only about half as many formal complaints each month as they did before equal employment opportunity counselors were trained and made available to employees and applicants.

At the same time, the cases are being handled faster and corrective action is being taken where necessary. Cases on hand have been reduced by 23 percent since last July 1 and the number of cases in process beyond our deadline—60 days without a hearing and 90 days with a hearing—have been reduced by 13 percent.

Appropriate corrective action is also being taken. Out of 425 complaints closed by agencies since July 1, 1969, corrective action was taken on 137 or 32 percent. The corrective action directly benefited the complainant in 74 cases; 21 were promoted; 15 reassigned in accordance with their wishes; 19 received training opportunities; and disciplinary action against 19 was canceled.

In 63 other cases, corrective action included additional training for supervisors and creation of training opportunities for employees in dead end positions. In two cases, disciplinary action was taken against supervisors.

In our judgment, the transfer of the equal employment opportunity function to the Equal Employment Opportunity Commission would orient the entire program toward complaints and have the effect of elevating all complaints to the Commission level and weaken efforts at informal resolution.

While there is justification in providing for employees in the private sector to appeal on discrimination grounds to a separate agency, such as EEOC, that same arrangement already exists in the Federal Government by the provision for employees to appeal decisions by agencies on discrimination complaints to the Civil Service Commission.

The Commission now hears adverse action cases and other cases where employee rights are concerned and there is no reason why it should not hear cases on discrimination complaints.

By being the action agency for equal employment as well as the appellate body to hear discrimination complaints cases, the Commission is in a position to move into problem areas disclosed by complaint cases.

In addition, when a discrimination complaint is lodged, it is in connection with other aspects of the work relationship, such as promotion, work assignments, or as a defense in an adverse action taken by an agency against an employee.

To separate the handling of appeals on discrimination grounds from appeals on these other grounds which are heard by the Civil Service Commission would create diffusion rather than coherence in the complaint process. This arrangement would be a backward step to the situation which existed under the President's Committee on Equal Opportunity.

Mr. Chairman and members of the committee, nondiscrimination and assurance of equal employment are integral parts of the Federal personnel management system. To give an agency other than the Civil Service Commission responsibility for equal employment opportunity would splinter and diffuse leadership and, in effect, place dual authority over a single subject matter. This is a situation we must avoid.

Last July, the Commission completed a thorough study of the Federal Government's equal opportunity program. Based on this study and the recommendations contained in it, the President issued Executive Order 11478 to which I referred and a memorandum to agency heads directing action on all aspects of nondiscrimination and equal employment opportunity.

He asked that his memorandum be distributed to each supervisor in the Federal Government so that they could see first-hand the new directions on equal employment opportunity which the President had set out. This was done.

A number of significant actions affecting equal employment opportunity have been taken since Executive Order 11478 was issued:

Chairman Hampton met with the top staff of all Federal agencies to make clear our commitment to EEO and to explain the new program directions.

We reorganized in the Civil Service Commission to strengthen our equal employment staff in one office under our Executive Director, who serves as the coordinator for employment, and we set up full-time equal employment opportunity representatives in each of our 10 regional offices to carry EEO action directly to field installations.

We authorized agencies for the first time to maintain minority statistics on minority employment on ADP equipment so that they and we could keep current on progress. We are asking for statistical progress reports from agencies on a 6-months basis rather than on a biennial basis as in the past.

We directed agencies to include in the ratings of supervisors an evaluation of their performance in the area of EEO. The supervisor is the key to assuring equal employment opportunity and rating him on his performance in this area is an important step.

We directed agencies to develop incentive programs to stimulate and reward managers and others for exceptional performance in achieving equal employment opportunity.

We have begun new training programs aimed at Federal managers on their responsibilities for EEO. We are producing two motion pictures in the area of equal employment to assist agencies in their training efforts.

We directed agencies to develop new affirmative action plans, specific in detail, to carry out the new directions in EEO. We are now reviewing these plans and will return them to agencies where we believe stronger actions or more specific details are called for.

I might add, parenthetically, Mr. Chairman, that we have already sent action plans back to agencies and provided guidance to them on how the plan should be strengthened to assure strong programs within the agencies.

We have developed guidance to agencies so they can develop programs to assure upward mobility on the part of lower level employees. The issue today for minority employees is not simply jobs; it is to qualify so they can move up the ladder to more responsible and higher income jobs. This is the thrust of our new equal opportunity program as it relates to all lower level employees.

We are maintaining close liaison through periodic meetings with representatives of minority group organizations such as the Urban League, NAACP, LULAC, and the various women's organizations so our EEO program can be responsive to felt needs.

We are working out cooperative education programs so that our work-study programs will reach minority students. We have met with representatives of minority schools in this connection. We are also looking at all our testing devices so as to assure that these examinations are a valid basis for selection.

We have been able to obtain a lifting of manpower ceiling restrictions to aid in hiring and training hard-core disadvantaged persons in Federal agencies. We have begun work on the public service careers program to train and upgrade disadvantaged persons to be employed in Federal agencies. This is a $10 million program, aimed at providing new opportuniities in public service for disadvantaged persons.

It also provides for upgrading of the persons already on the roles.

We have a number of other action items coming down the pike. Guides to agencies on internal evaluation of their equal employment opportunity programs will be released shortly. These will help agencies evaluate their own progress, and we will follow up with our on-site inspections. These are done without waiting for complaints. We have made EEO reviews in over 500 installations each year for the past 3 fiscal years and have made recommendations to strengthen the EEO program.

And we have certainly not forgotten women. We have incorporated the Federal women's program into the overall equal employment opportunity program. We have raised the attention level of the program by assigning responsibility for it to the agency's Director of Equal Employment Opportunity who is usually an official at the assistant secretary level. We have directed agencies to include in their action plans items directed to assuring equal opportunity for women, including

part-time employment opportunities, consideration of need for day-care centers, and other matters affecting employment of women. We have directed agencies to appoint a women's program coordinator to assist the Director of Equal Employment Opportunity.

We believe these steps will result in major progress in equal employment opportunity in the Federal Government. These steps have been possible because as the central personnel agency we are in the position to fully integrate equal employment opportunity with the total employment system and move forward with affirmative action. While handling individual complaints is an important part of our effort, it is only part; the most important thing we can do is to move vigorously in concert with Federal agencies to develop affirmative actions designed to achieve equal employment opportunity.

We have made progress in the Federal Government, but this is not to say more must not be done. The way to attain our goal, however, is not including in H.R. 6228 a provision transferring responsibility for Federal equal employment opportunity from the Civil Service Commission to another agency.

What we must maintain is a single, coherent line for equal employment opportunity and personnel management. They are sides of the same coin and must be directed by the same agency if progress is to be continued and the rights of all Americans to fair and equal treatment by their Government in all aspects of the employment relationship are to be assured.

Mr Chairman, thank you for your courtesty. That concludes my statement. I will be glad to answer any questions.

Mr. HAWKINS. Thank you, Mr. Kator. I have several questions that have been raised by the statement you have just presented.

On page 5, you indicated that there would be serious legal questions involving the authority of the Civil Service Commission under the Civil Service Act. Are you suggesting that we cannot by legislation give you "disresponsibility"?

Mr. KATOR. No, I am certainly not suggesting you could not. All I am saying, Mr. Chairman, is that legislation under the Civil Service Act provides certain personnel management responsibilities now to the Civil Service Commission. Under the legislation as we read it, and as our attorneys read it, this proposed amendment would place these responsibilities which are now with the Civil Service Commission for personnel management with another agency, the Equal Employment Opportunity Commission.

Mr. HAWKINS. I assume, then, it is just judgment as to whether or not the Congress wishes to do that. There would obviously be no legal difficulties if Congress decided, in its judgment, it wanted to do so.

Mr. KATOR. No; and if the Congress decided it wishes to amend the Civil Service Act by these provisions, it certainly could be done.

Mr. HAWKINS. Now, you indicated in your statistics about the progress that has been made. Do you know how many minority employees there are, let us say, in the higher grade GS–11 and above?

Mr. KATOR. Yes, I am able to tell you as of 1967 the number of employees that we have in those grade levels. The more recent figures that we will be producing as of a few weeks are simply not available now, but they will indicate in more depth the same information. I believe we have the book on that. Pardon me one moment, Mr. Chairman. I will try to get those figures.

Mr. HAWKINS. Yes.

Mr. KATOR. Mr. Chairman, I may give some comparison since I indicated we thought there had been some progress made.

Mr. HAWKINS. What I am interested in is what is the situation for the very latest for which you have data?

Mr. KATOR. The latest date for which I have data now is 1967, which would indicate that at grades GS–9 through 11, 12,631 Negro employees, 4.3 percent of the total employment at those grade levels is Negro.

Mr. HAWKINS. 4.3?

Mr. KATOR. 4.3. Now, that is simply on the general schedule.

In addition, for Wage Board employees, I have a breakdown for $8,000 and over, and that figure for Negro employment in 1967 is 3,259. That is 3.9 percent.

Mr. HAWKINS. That is at what level?

Mr. KATOR. That is $8,000 and over.

Mr. HAWKINS. What grade level is it?

Mr. KATOR. Well, that doesn't go by grade levels; that goes by salary levels. This is the wage board.

Mr. HAWKINS. What grade level would that be comparable to?

Mr. KATOR. Well, it would run from now probably a GS–8 and over, because about $8,000 would be a GS–8.

In the postal service, I can give you figures on PFS–9 through 11 and 12 through 20. The total there was in 1967, 674 positions, for 5.5 percent of the employees in those grade levels.

In other pay plans, again I have a figure for $8,000 and over. These are other pay plans that are not included on the general schedule, such as foreign service and similar plans. For $8,000 and over, 2.1 percent or 692 Negro employees at those levels.

Now, I have similar figures for Spanish-American which I can give the committee if they would like to have them.

I would like to point out that between 1965 and 1967, black employment in the civil service increased from 309,000 to 390,000 and increased from 13.5 percent of the total employment to 14.9 percent of total employment.

Spanish-American employment in that same period went from 38,000 employees to 67,709 employees, an increase from 1.8 percent to 2.7 percent.

American Indians in that same period of time went from 9,367 in 1965 to 16,365 in 1967.

Oriental employment in the Federal Government increased from 1965, when it was 9,532 to over 20,000 in 1967, from 0.4 to 0.8.

In total, what had happened between 1965 and 1967 is that the increase in the minority employment was 2.6 percent of total. There was a switch. Caucasian employment was 81 percent in 1967 as opposed to 83.6 percent in 1965.

If the chairman would like to have the similar figures on Spanish-Americans, I can do that. For the five Southwestern States, I think I am able to do it. Our new statistics will have them nationwide without regard to the five Southwestern States.

Mr. HAWKINS. When will the statistics be ready?

Mr. KATOR. Within 2 weeks. I will be glad to supply them.

Mr. HAWKINS. I assume, then, we had better forgo any real specific questions on that until that time. But it would appear to be rather

obvious, however, that these statistics, which indicate a great proportion of nonwhites in the Federal workforce, are somewhat misleading because the concentration of these nonwhite employees in the lower grades.

Mr. KATOR. Yes.

Mr. HAWKINS. And I think the committee would be interested in the latest figures indicating the percentage of minorities, both Negro and Spanish-American, as well as the women who are employed in the higher grades, let us say, at GS–11 and over, as compared to those who are concentrated in lower grades.

Mr. KATOR. May I say this, Mr. Chairman, that we will be glad to supply those figures as soon as they are available.

I would, if I may—I just don't have the figures in the form that I could hand them out now—make a prediction that what we will show is that despite a decrease in the total work force, my best prediction would be that we will show some overall gains in minority employment.

But much more important from our standpoint, I think we will show very significant gains in the grade levels of minority employees; the increase of minority employment in middle and upper grade levels will exceed those shown in any other period and will significantly exceed the percentage growth, if any, in the particular salary level and will exceed the percentage of increase in these levels by Caucasian employees.

Mr. HAWKINS. Mr. Kator, the fact is, however, that these so-called increases are at a very low level; if you have one employee and you double that, you have a terriffic percentage increase. But the fact remains that you still would have only two.

Now, I am somewhat familiar with some of the departments. I think the largest, of course, is the Department of Defense. Do you know the number of Negroes in supergrades in the Department of Defense?

Mr. KATOR. I don't know the entire figure. I think in the Department of the Army there are two, as I recall, that Secretary Resor mentioned, and I would believe that they are generally low.

This is true of many Federal agencies, Mr. Chairman.

The thrust of our new equal employment opportunity program and why we believe it is a credible program and makes sense is that we recognize that this is the problem today. The problem is that our minority employees are concentrated in the lower grade levels. It is no longer a problem of simply opening doors and bringing people in and leaving them at the lower grades.

We recognize the responsibility to do something to help these minority employees to qualify for higher level jobs. In Chairman Hampton's memorandum to the President before the President issued the Executive Order 11478 he indicated this is the thrust of the program. This is what he said:

> We recognize what has been done in the Federal Government is that many employees have been brought in, but are being left to languish, in effect, at the lower grade levels.

Mr. HAWKINS. I appreciate the thrust in terms of rhetoric, but I don't appreciate it in terms of what has been accomplished. Let us get back to the Department of Defense. Out of 523 supergrades, there are exactly two Negroes. Now, this is less than several years ago. We went from 5 to 4 to 3, and now down to 2. This doesn't show any progress. This has been a reduction in 2 years' time from 4 to 2.

Mr. HAWKINS. Now, I don't see any thrust in Executive Order 11478. It is set up in beautiful language and talks about on-site inspection and affirmative action programs and putting the responsibility on that department head when actually in this, the largest of all Federal Departments and certainly one that should be more sensitive, I should think more than any other Federal agency, only two persons have been discovered in this agency, either by recruitment or advancement.

Mr. BELL. If the gentleman will yield. Possibly the problem is that there ought to be more Republican Negroes in supergrades than there are.

Mr. KATOR. I don't think I will comment on that.

Mr. HAWKINS. I don't think you want to comment on that. As a matter of fact, these two employees, the ones who quit, were Republicans.

Mr. KATOR. Mr. Chairman, let me say that we are not here to say that two supergrades in the Department of Defense is a good record, or in other agencies is a good record.

What we are here to say is that we are beginning to see, and we will see with our new statistics, considerable increase of Negro, Spanish-American and other minority employees moving out of the lower grade levels. I anticipate this will affect our supergrade levels as well.

The important thing is that what is happening now is an upward movement. It is no longer static, and when Secretary Resor himself has indicated, as he did recently, his awareness of this problem, I expect these things will happen.

Mr. HAWKINS. Well, certainly we appreciate that testimony. However, it is always the same story. In these hearings we are constantly told things are not what they should be, but they are going to be better because they have a new thrust. Then the next year something else happens.

Now, Executive Order 11478 was issued on August 8, 1967. The Senate hearing on this same subject, and specifically the same provision to include Federal employment under the Equal Employment Opportunity Commission, started on August 11. Now, it seems that the Executive order was issued just a few days before the hearing on the very subject, and at that time, which was not quite a year ago, but certainly a considerable time ago, the Senate committee, according to the testimony which I was able to read somewhat, indicated that we were going to make progress.

You are indicating now, almost a year later, that it hasn't quite started, but it is going to get started.

Are these efforts to forestall the transfer of this responsibility to another agency, or are we in fact making this progress that you speak about?

Until we get the statistics, certainly we can't accuse you of not having made considerable progress, but it seems to me that percentages are not in your favor and that we have a long way to go. Perhaps an agency which is more independent, outside of the agency that has to judge itself, may be in a better position to undertake this responsibility, not that the new agency would completely deny to you

the principle of equal employment opportunity within your own agency. It seems to me that both can be done without conflict.

Mr. KATOR. Well, Mr. Chairman, let me say this: As far as keeping saying we are going to make progress, I am quite willing to say we have made progress and our statistics will reveal this progress within the next few weeks. I think you will be satisfied that there has been progress made.

Now, this will not mean that the supergrade levels of the Government will immediately get 10 or 15 or 20 percent black or Spanish-Americans, as the case may be. This will come.

But I will say it is very important, not just to talk about two positions at the supergrade level out of 500, or whatever the figure happens to be, but to talk about the thousands of Federal minority employees who have been locked into the lower grade levels who are now having an opportunity for the first time to start making their way up the career ladder.

This is really where our progress is being made. This is not to denigrate the need for minority group persons at the top levels. The thing is that these people are now working their way up to managerial and responsible positions, and I urge you not to think there has not been any progress because the Department of Defense may have two supergrades.

I can show you other departments, Mr. Chairman, where significant change has occurred. In the Department of Transportation, I understand, a significant change has occurred and even at the supergrade levels.

Mr. BELL. Will the gentleman yield?

Mr. HAWKINS. I yield.

Mr. BELL. Do you have any indication, Mr. Kator, that if this function were transferred to the Office of Equal Employment Opportunity that there would be any improvement? What makes you think that would improve it?

Mr. KATOR. I see no reason to think it would improve. Our experience tells us quite the contrary. From our experience, looking at the President's Committee on Equal Opportunity, you need an agency that can get the job done, an agency that can integrate fully what is being done with recruiting and employment and testing. This must be fully integrated with equal employment opportunity. If a recruitment program is directed solely at white schools, we will have white applicants come up.

Mr. BELL. As a matter of fact, it seems quite possible that it could become more confusing and more difficult when you have two different agencies trying to do the same thing to some extent. You would have conflicts. Possibly you would have the right hand not knowing what the left hand is doing, and we might end up causing more disturbance with less results.

Mr. KATOR. I agree wholeheartedly.

Mr. BELL. Is this possible?

Mr. KATOR. It is possible, and in fact I think what we are trying to say there is we would cause confusion and there would be a lack of coherence, as far as agency responsibility is concerned, whoever is responsible, the Civil Service Commission or the Equal Employment Opportunity Commission.

The EEOC, as I indicated in the testimony, is necessarily complaint oriented.

We feel progress is going to be made by working on such things as upward mobility of Federal employees. This is a thing that the Civil Service Commission, because of its large training apparatus, is able to do better than any type of agency outside.

Mr. BELL. Perhaps, Mr. Kator—I came in late because I was at another committee meeting and I didn't hear your statement—but possibly you might enlighten us as to what programs you have to solve the problem that Mr. Hawkins is concerned about, that is, elevating qualified minority employees to supergrades. Is there any kind of educational or training program you have that would be helpful in spurring this movement?

Mr. KATOR. Yes. What we have underway now is a program, as we call it, upward mobility. This will go out and be shortly issued to the agencies to provide them specific directions on what they can do internally to help their employees acquire the skills so they can qualify for higher level jobs. We anticipate from this a significant effort on the part of agencies to move their employees up the ladder.

Now, this program in and of itself—and I don't want to mislead you on this—won't immediately reach the supergrade levels. But we need competent people to choose from to go into our supergrade levels, and this has been the problem. Negroes in the past have been discriminated against and have not served in Federal employment to the extent they should have.

Mr. BELL. But basically, to get to Mr. Hawkin's problem——

Mr. HAWKINS. It is not just my problem.

Mr. BELL. Correction.

I think Mr. Hawkins will grant that we are all very concerned about the problem, but it is a question of finding the most practical approach. It would seem to me that the Equal Employment Opportunity Commission would be more concerned about just complaint proceedings.

Mr. KATOR. Yes.

Mr. BELL. Whereas the civil service organization would be concerned about policy and about the problems that you just spoke about, and determining an aptly programed policy of trying to solve the problem. I think the Equal Employment Opportunity organization might have more of a problem in developing this policy.

Mr. KATOR. They may be more of a problem than a solution, and I think this is true, because they are complaint oriented. They tackle a situation when there are complaints. We pride ourselves on the fact we don't have to wait for complaints. We want to go out and try to assure affirmative action.

Mr. BELL. I am sure Mr. Hawkins understands that most of the time we agree but sometimes we disagree on some of these areas.

Mr. HAWKINS. We may have different districts.

Mr. Kator, as I understand, the procedure now is that the Equal Employment Opportunity administrator, or whatever he is called within the department, is named by the head of that department?

Mr. KATOR. Yes, the Director of Equal Employment Opportunity.

Mr. HAWKINS. The Director of Equal Employment Opportunity is named by the head of that department?

Mr. KATOR. Yes, sir.

Mr. HAWKINS. Is it not possible for the discriminatory pattern within a department to be in some way traceable to the head of that department? Would it not reflect on him, or possibly could it be that the policy itself flows from the top of that department down?

Mr. KATOR. Well, Mr. Chairman, I hope, of course, this is not the case.

Mr. HAWKINS. Is it possible, though?

Mr. KATOR. Certainly it is possible.

Let me say this, however: that the Executive order places the responsibility on the head of the agency to assure affirmative action toward equal employment opportunity. This is the head of the agency's responsibility. It is the responsibility of the head, such as the Secretary of Transportation, to do something within that Department. So the Director of Equal Employment Opportunity is an action agent who, on behalf of the head of that agency, will have his work reflect, obviously, and must reflect, the attitude of the head of the agency toward equal employment opportunity.

But let me add that my personal feeling which has resulted from working with the agency top level officials is that there is a genuine commitment at the top levels to get things done.

Our problem in the past has been that somehow we have never been able to translate that commitment on down the line. Actually, equal employment opportunity happens down the line. It just doesn't happen with the agency head issuing a statement, and he is quite sincere when he says this is equal employment opportunity, but it happens when the manager there on the spot makes the decision.

Mr. HAWKINS. Well, let us say a complaint is filed within that department. The director, who is appointed by the head of that department, then is in the position that he has to pass judgment on a discriminatory matter which affects the head of that department?

Mr. KATOR. Well, it may, but let me add that under the new procedure there is a third party appeals examiner who makes the initial decision. He has no connection with the agency whatsoever. He hears the case and he makes a recommendation. He can say, "I find discrimination; promote the man." He can say that.

Mr. HAWKINS. That individual is also a civil service employee, is he not?

Mr. KATOR. He is an employee of the Civil Service Commission but not an employee of the agency in which the complaint arose. If the complaint arose in the Department of Defense, the man who is to hear that case, if there were a hearing, would be a man from the Civil Service Commission or another agency completely outside the Department of Defense.

Mr. HAWKINS. Now, this man then makes the recommendation to the head of that agency?

Mr. KATOR. He makes a recommendation to the Secretary of that Department.

Mr. HAWKINS. Who was the one who appointed the director in the first instance, the original director, right?

Mr. KATOR. Yes.

Mr. HAWKINS. Then, let us say he is not satisfied. What is the next step?

Mr. KATOR. If the head or Secretary of that Department doesn't believe that the decision of the appeals examiner was proper, he has the right to say, "I don't buy this decision." But what he must do is put it in writing for the reasons he disagrees with that decision.

That information is then all given to the complainant who then has an opportunity to come to the Civil Service Commission Board of Appeals and Review for the complete review of the total package.

Mr. HAWKINS. Now, is that a matter of right that he has? Does he have this as a matter of right?

Mr. KATOR. To come to the Civil Service Commission, yes.

Mr. HAWKINS. What about a hearing?

Mr. KATOR. He has a right to a hearing. He has a right to a hearing by a third party, an independent appeals examiner.

Mr. HAWKINS. We are confining it to the Civil Service Commission at this point.

Mr. KATOR. I am sorry. If you are talking about the Civil Service Commission as an agency, if an employee files a complaint, the complaint is investigated.

Mr. HAWKINS. If he files, he appeals with the Civil Service Commission?

Mr. KATOR. Yes, initially he files with the Civil Service Commission. An investigation is made by the Civil Service Commission; however, by people who have no responsibility to the organization head in which the complaint arose.

For example, we would investigate a complaint in a regional office by someone coming out from Washington, having no connection with the regional office. After the investigation, a decision would be made as to whether the allegations were correct or not.

Mr. HAWKINS. But the point is: Does the Civil Service Commission have to entertain the appeal?

Mr. KATOR. Yes, the Civil Service Commission as an organization.

Mr. HAWKINS. Is it possible then they can deny review?

Mr. KATOR. No. The employee has an opportunity, whether he is in the Commission or outside, the procedure is exactly the same——

Mr. HAWKINS. How many appeals have been made to the Commission?

Mr. KATOR. To the Commission itself?

Mr. HAWKINS. Yes.

Mr. KATOR. In a year, we do approximately 350. These are appeals to the Commission's Board of Appeals and Review, approximately 350, Government-wide.

Mr. HAWKINS. I have some other questions, but maybe we had better let some of the other members ask a few.

Mr. Pucinski?

Mr. PUCINSKI. Mr. Kator, how many Federal employees are there that are covered by the Civil Service procedures?

Mr. KATOR. Approximately 2½ million.

Mr. PUCINSKI. On page 10, you say: "We have authorized agencies for the first time to maintain minority statistics on minority employment."

What does the Commission use as a definition of a minority?

Mr. KATOR. We are using the same definitions now that are used by other Federal agencies, such as EEOC. The categories we use are:

Negro, Spanish-surname-American, American Indian, Oriental, and then we have special categories for Aleuts and Eskimos.

Mr. PUCINSKI. Isn't it a fact that the Civil Rights Act of 1964 bars discrimination because of race, religion, and national origin?

Mr. KATOR. Yes.

Mr. PUCINSKI. What is your criteria in the Civil Service Commission for determining discrimination because of national origin?

Mr. KATOR. Mr. Pucinski, I am not sure I understand entirely the question, but it is up to the individual who would say that because "I was foreign-born I am being discriminated against." This would be the problem.

Mr. PUCINSKI. Do you have the rules or regulations or directives, or have you taken as the position of the Civil Service Commission to advise people that they have such rights?

Mr. KATOR. Yes.

Mr. PUCINSKI. What have you done in that connection?

Mr. KATOR. All agencies have been notified and all employees are notified by various posters and materials put out by their agencies of their right.

Mr. PUCINSKI. Their right to what?

Mr. KATOR. To appeal, and having a hearing on any matter where they feel they have been discriminated against.

Mr. PUCINSKI. But what are your criteria for an employee determining whether or not he has been discriminated against because of his national origin?

Mr. KATOR. This is up to the employee.

Mr. PUCINSKI. That is pretty silly, isn't it, up to the employee? You have regulations or rules, don't you? You have volumes of guidelines and regulations on all of the other minority groups. You say in a case of national origin you leave it up to discretion of the employee.

Mr. KATOR. If the employee alleges he has been discriminated against because of national origin, then that case will be heard on the basis of——

Mr. PUCINSKI. But what is the basis for this employee to ascertain whether or not he has a bona fide complaint?

Mr. KATOR. That is to national origin?

Mr. PUCINSKI. What are the ground rules you have set up to deal with that part of the Civil Rights Act which bars discrimination because of national origin?

Mr. KATOR. The entire complaint system, Mr. Pucinski, works on the basis that the individual employee who feels he has been discriminated against has an opportunity to come forward. Now, he may come forward on the basis he believes he has been discriminated against because he is a Negro.

Mr. PUCINSKI. Do you have a guideline for that?

Mr. KATOR. It is up to the individual.

Mr. PUCINSKI. Do you have rules and regulations for that?

Mr. KATOR. No, we don't tell the man whether he is a Negro or not; this is up to the man. It is the same thing for national origin. If he says in fact, "I am being discriminated against because of my national origin," we will hear the case on that basis.

Mr. PUCINSKI. Well, isn't it strange that the Equal Employment Opportunities Commission has recognized the fact that there have to

be some guidelines and standards, and they have adopted specific rules and regulations and guidelines dealing with discrimination because of national origin? Yet, you haven't seen fit to do that, have you?

Mr. KATOR. No, we frankly have not. This is a matter which may be well for us to look into. We would be delighted to do so. We have not at this point felt the need to do so.

Mr. PUCINSKI. How many complaints have you had since the act was adopted charging discrimination because of national origin?

Mr. KATOR. National origin is an extremely small percentage of our total complaints. I would have to estimate, and it is approximately 2 percent of total complaints which would be national origin.

Mr. PUCINSKI. Why do you suppose that figure is so low, because people are not being discriminated against because of national origin, or because they have no guidelines, no directives, no instruction, and do not know what the basis for filing such a complaint is?

Mr. KATOR. I hope it is because they don't feel they are being discriminated against because of national origin.

Mr. PUCINSKI. Well, I would invite you to look at some of the lists of civil service employees, and I will make a contribution to your favorite charity if you find many people of Slavic background with the people of other national groups. You can look through these lists and look through hundreds and hundreds of names and it is a rare occasion that you will find somebody of Slavic background working for the Federal Government.

Now, how do you explain that phenomenon when a large percentage of the Nation's population is of the various Slavic backgrounds?

Mr. KATOR. I can't explain that. I can say that if an individual files a complaint on the basis he has been discriminated against because of his Slavic background, this would be a case that would be handled under national origin.

Mr. PUCINSKI. But you haven't told me yet, and I am sure you haven't told 2½ million people who work for the Federal Government, how does one proceed to file such a complaint? What are the bases?

Now, in the case of EEOC, guidelines have been handed down on this subject. You people in the Civil Service Commission apparently feel there is no such need for that.

Mr. KATOR. Well, did they hand down guidelines on what is national origin?

Mr. PUCINSKI. Yes, they did. And you know what happened? When they did that, all of a sudden the number of complaints began to increase because people began to realize that there was some hope and some recourse. Carl Rowen once said, when he was Assistant Secretary of State, that if you don't belong to the club, you don't get a job in civil service.

As I look over the list, and I look over people who have applied to civil service for jobs and get turned down, I think he is right. I think you have a private club going over there, and I will tell you this: It is no accident, in my judgment, that you can look through thousands and thousands of civil service employees and find only under most rare conditions people of Slavic background.

Now, how do you account for that?

Mr. KATOR. Mr. Pucinski, I can't account for that. I don't know the composition of the Federal service on the basis of national origin.

Mr. PUCINSKI. Well, why do we have in the Federal law a provision which bars discrimination for national origin when you people at the agency haven't made any effort to enforce that part of the law?

Mr. KATOR. I want to make this clear, that we have informed employees that they have the opportunity—and I think what you tell me is that we haven't said, "If you are of Slavic origin," that may be a situation where it would be national origin.

Let me assure you that we do give very specific consideration of this matter at the Commission. What we do now is tell people that if you have a complaint on the basis of race—and we don't tell them what their race or national origin or religion is—if you have a complaint, if you feel you have been discriminated against because of any one of those factors—and sex—you can then file a complaint with the Civil Service Commission.

Now, we felt, frankly—and maybe we are wrong—maybe we haven't provided enough guidance, as you have indicated, and I would be glad to see whether we should, because we want every employee to have the opportunity to use the complaint system because we want to completely kill off any vestige of discrimination that is of national origin.

Commissioner Andolsek, of the Civil Service Commission, is certainly of Slavic background, and he would be very much concerned with something of this nature.

Mr. PUCINSKI. I am concerned over the fact that while you make this statement before the committee today on all the things you have done to eliminate discrimination at the Civil Service Commission level, the best figures you can give this committee are the 1967 figures which are 3 years old.

Now, that doesn't indicate to me there is a current running awareness of the committee of this particular problem.

Mr. KATOR. Yes, I indicated earlier, Mr. Pucinski, that our latest figures will be available within 2 weeks. I just regret they are not available now.

Let me add, as I indicated in the testimony, that we are now updating the figures every 6 months, so we will have current data every 6 months.

Mr. PUCINSKI. You finally said on page 13, "While handling individual complaints is an important part of our effort, it is only part."

Mr. KATOR. Yes.

Mr. PUCINSKI. Well, if you have done all of the things you claim you have done here to eliminate discrimination, why not have a separate agency sit in judgment on these cases? I get the feeling that leaving this thing in the Civil Service Commission is like having the fox watch the chicken coop. I think there is kind of a conflict of interest. The Commission wears two hats: on the one hand it sets up, supposedly, the rules and regulations for barring discrimination because of race, religion, national origin and sex, and then it is supposed to sit as judge on how effective the rules are and programs that it has promulgated.

It is analogous to the Tariff Commission where they set tariffs and then they sit in judgment as to whether or not those tariffs have hurt American industry.

I really believe there is merit to the proposal that there ought to be some other agency other than the Civil Service Commission looking

over your shoulder to see whether or not the programs that you have promulgated really have led to nondiscrimination.

Mr. KATOR. Let me say this, Mr. Pucinski: There are people who look over our shoulder, certainly this committee, the Congress, and our reports and the Equal Opportunity reports are public records, and these give an opportunity to other agencies, including the Civil Rights Commission, to determine what kind of a job we are doing.

So I really don't feel we need anybody looking over our shoulder. The matter of whether you are making progress in equal employment opportunity is a matter which I think can be determined from the public records, and I say that there has been, and there will be considerably more progress.

The important question, I think, before the committee is how can you best get the job done? How can you best get it done? Should it be an agency which is outside the mainstream of Government decision-making? Should it be part of a watchdog like EEOC? I am not here to tell you that some States don't operate that way.

The city of Philadelphia has a human relations commission which sits over and looks. And a lot of places do.

Frankly, I think it is wrong, and I think it is basically wrong in terms of the fact that you are going to get a complaint oriented system rather than an affirmative action to get something done.

Mr. PUCINISKI. Now, we have passed a law. We have set up criteria in this country. We have set up a national policy in this country, and we said there shall be no discrimination because of race, religion, national origin, or sex or age, under certain circumstances.

Now, assuming that I was a Federal employee, we know that our hard-working Federal employees keep one eye on their job and one eye on the promotion list, and this is perfectly understandable. I don't hold this against them. I think every human being wants to advance. Everybody wants to achieve a little higher pay scale. So I don't hold this against them.

But supposing I were a Federal employee whose career over the next 30 years was in the tender hands of the Civil Service Commission. Do you think that I am going to file a complaint of discrimination when I know that if I am wrong, if my appeal is turned down and I am found to have no basis for this complaint, that I will then have to depend on this Commission for the next number of years in terms of my advancement?

Now, I don't think that this worker is going to do that. I don't think he is going to take advantage of his Federal rights under the law if you sit as the judge and jury.

As I said, it is like having the fox watch the chicken coop. I don't think that you ought to be sitting in judgment over your own policies.

I think some other agency ought to be sitting in judgment over your policies.

Mr. BELL. Will the gentleman yield?

Mr. PUCINSKI. I yield.

Mr. BELL. I would suggest to the gentleman that the same situation would be true if there were an equal employment opportunity control. He would have the same situation if he had to appeal to them. It would get back to the Commission and the Commission could get back to the employer.

Mr. PUCINSKI. Let us assume that a Federal employee feels he is discriminated against. If this rule is changed, he goes to the EEOC, and the EEOC finds he has not a valid complaint; they turn it down.

Now, let us assume that the reverberations and repercussions have developed. He now has a chance to go right back to EEOC and say this is what happened to me as a result of my coming down to you and complaining about being discriminated against.

But if he is dealing with the Civil Service Commission, he has exhausted his remedies except to go into court, perhaps.

Mr. KATOR. He hasn't exhausted his remedies. He can do the exact same thing with us as he can do with the EEOC.

I think one point that is being missed here is that no person likes to complain. I think he is also concerned about what this means in terms of his career. But let me assure you that as far as that individual is concerned, his reluctance is not going to be any less whether the EEOC or the Civil Service Commission handles it.

This is a practical, honest to goodness problem we are dealing with in giving employees an opportunity to complain. They are not going to be any more likely to want to go to EEOC than they are to be to any other agency or the Civil Service Commission.

Mr. PUCINSKI. I think you have answered the question yourself, Mr. Kator, and if there is any basis and any validity for this change, it is your own statement that this would become complaint oriented.

Mr. KATOR. Yes.

Mr. PUCINSKI. That is the very purpose of the act. The purpose of the act is to set up machinery where a human being who feels he is being discriminated against because of his race, his nationality, his religion or sex or age has recourse. Up to now he hasn't had that recourse. The fact that you don't have any figure better than 1967 indicates to me he still doesn't have much of a recourse.

Mr. KATOR. I will have better figures in 2 weeks.

Mr. Chairman, let me just answer that one point, as far as the complaint procedure is concerned. I am sorry, would you just restate that, Mr. Pucinski?

Mr. PUCINSKI. I said that you stated in your testimony that if you were to set up a separate mechanism, the agency would become complaint oriented.

Mr. KATOR. Now, what I wanted to say—and I am sorry I forgot it there for a moment—is that the main part of equal employment opportunity is getting affirmative action so employees don't have anything to complain about; that we do wipe out discrimination; that we do give them an opportunity to move up the line.

Now, if we are going to rely solely on having 1,500 people or 2,000, or whatever the number is, complain to us and that is the total affirmative program, it is not worth a hill of beans. It is, frankly, not worth a hill of beans.

Mr. PUCINSKI. That is exactly why I want to spare you that problem. We think we ought to set up an agency like the Equal Employment Opportunity Commission which is geared, tooled up and organized to handle these complaints, so that we don't interfere with your work in trying to run a 2½-million-person installation.

Mr. KATOR. Let me make clear, I don't mean it would interfere with our work. It does not. It is simply that more action and more results

are obtained from, it seems to me, affirmative action than through the handling of complaints.

We don't denigrate at all the importance of complaints, but there is a lot more involved in equal opportunity than simply handling complaints. You are quite right, that is what we say in our testimony.

Mr. PUCINSKI. Let me tell you, I have one more question. I don't think there is anything more insidious that besets a human being than discrimination, whether it is because of his religious beliefs or the color of his skin or the national origin, or whatever other factors may be involved. Of course, we have some very serious problems.

I think that this is a very serious problem, and as you have pointed out in some areas, particularly in the area of discrimination because of national origin, sometimes it is very difficult to pinpoint but no less insidious.

This is why I was impressed with the EEOC as against your own policies.

I am going to place in the record today a decision handed down by the EEOC which holds an employer responsible for violation of title VII of the Civil Rights Act because he permitted a situation to exist in shop with the employees, all sorts of indignity and ridicule to a little foreign-born worker who was working in that shop.

(The document follows:)

A LANDMARK DECISION BARRING INDIGNITIES AGAINST AN AMERICAN BECAUSE OF HIS NATIONAL ORIGIN

The SPEAKER pro tempore. Under previous order of the House, the gentleman from Illinois (Mr. Pucinski) is recognized for 30 minutes.

Mr. PUCINSKI. Mr. Speaker, the Equal Employment Opportunities Commission has handed down a landmark decision which, in my judgment, may finally put an end to those scurrilous ethnic jokes in America and the insidious practice of harrassing Americans because of their ethnic origin.

In an unprecedented decision against an employer, the Commission held in case No. CL 68-12-431 EU. that "the Commission cannot regard the tolerance of ridicule of national origin as either a common or allowable condition of employment."

This case came about when the complainant who came to this country from Poland after World War II, filed a complaint with the Commission that his rights under the Civil Rights Act had been violated by constant harrassment by his fellow employees because of his national origin.

The commission held that reasonable cause exists to believe that the employer violated title VII of the Civil Rights Act by permitting shop harrassment of the foreign-born employee because of his national origin.

The Commission held further that:

Tolerance by first-line supervisors of ridicule of national origin cannot be condoned as common or allowable condition of employment.

Mr. Speaker, I shall place in the RECORD at the conclusion of my remarks the entire Equal Employment Opportunities Commission decision.

This particular worker began working in the crane repair shop at the employer's steel mill in 1957 as a production employee.

The Commission's report states that beginning in 1965, eight years after he began working for this employer, he allegedly was subjected to continuous harassment from fellow employees.

He became a buff of "Polish" jokes among other shop employees who laced other witticisms with vulgar "Polish" names and generally derogatory remarks about his ancestry.

The Commission found other harassment directed at this immigrant worker took physical form in the following actions:

Driving a vehicle at him only to stop short of striking him.

Throwing objects at his feet.

Lighting welding torches near his face.

Assigning him jobs beyond his physical capacity.

Requiring him to sweep out the plant while other employees rested.

In their defense, the employees involved denied the charges of harassment, asserting that this immigrant worker himself had called fellow workers vulgar names and had repeatedly accused them of mistreating him. Even one of the charging party's own witnesses testified that he was hypersensitive.

The telling of "Polish" jokes was common in the shop, the witness related, and other employees of Polish descent took such jests good naturedly.

But the Commission held that—

The Commission cannot regard the tolerance of ridicule of national origin as either a common or allowable condition of employment. The charging party's fellow employees knew or should have known of his sensitivity, and the telling of such "jokes" constitutes disparate treatment violative of the Act, assuming the remarks were made with the implied consent, approval or knowledge of Respondent employer.

The Commission stated further:

In light of the evidence presented here, we deem it reasonable to conclude that Respondent employer, at least on the primary level of supervision, was aware of the complained of incidents. We are aware of the fact that at least two of the employees accused by Charging Party of harassing him were of Polish descent themselves. We find it unremarkable that persons of Polish descent have engaged in discrimination against a foreign-born fellow employee.

Mr. Speaker, I believe that this is a landmark decision. It is historic and will affect millions of Americans in their day-to-day conduct with their fellow Americans.

Through this decision, the Commission restores dignity to all Americans regardless of their ethnic background and, surely, through this decision, the Commission serves official notice as a national policy that discrimination because of national origin will not be tolerated any more than racial or religious discrimination.

Moreover, the Equal Employment Opportunities Commission brings into the open what many of us have known for many years privately, that, tragically, there exists in this country ethnic discrimination.

It continues to be a serious social problem, just as serious as the problem of racial discrimination or religious discrimination, but unfortunately a good deal more difficult to detect or prove.

I know well the indignities and the suffering of this brave person who brought these charges before the Commission.

The Commission cannot divulge the name of the individual or his employer because under Commission rules an effort must be made to try to mediate this situation and abate the practices which the Commission found illegal. If the practices cannot be abated, then the Commission can ask the U.S. Attorney General to seek appropriate action under title VII against the employer which includes injunctive relief against the practices and indignities suffered by this worker.

Mr. Speaker, there are millions of immigrants who have come to this country since the turn of the century including Italians, Poles, Slovaks, Irish, Germans, and various others who have found their way into the plants of America.

They know well, perhaps better than most of us, the indignities that they frequently suffered if they had a strange or difficult name, or if they did not speak the language.

These are the people who built America.

These are the people who made this country what it is today.

These are the people who through their hard work brought to this continent a concept of human dignity.

But we know the indignities that they suffered; the ridicule; the exploitation, because they were "foreigners."

As Thoreau once said, they suffered those indignities in "silent desperation" because there was nowhere to turn for help.

And the fact remains that even at this late date, it is not uncommon to hear an American of Italian descent referred to as a "Wop," an American of Irish descent referred to as a "Mick," an American of Polish descent referred to as a "Polack," an American of German descent referred to as a "Kraut," and all the other appellations and undignified and shameful names that we call many of our fellow Americans.

Even Bob Hope continues to call Americans of Polish descent "Polacks" when he should know better.

So I believe this decision is most important and most timely, because this decision focuses at once on the undeniable fact that America, this great, wonderful, beautiful Republic of ours, is an inspiring mosaic, a mosaic of people of many nationalities, many religions, many races.

This historic decision brings into the open the ethnicity of America.

I hope that this decision will be carefully followed and carefully read. I hope this decision will help focus a national policy on the fact that we Americans cannot condone the indignity of ridiculing anyone—whether its because of his race, his religion and now because of his national origin. For indeed it has been this diversity of national origin, brought to the shores of America from many lands, which has made this country so different from all other social orders.

We have people who have come here from all over the world, bringing with them the richness of their cultures, bringing with them the richness of their spirit, bringing with them the richness of a belief in the dignity and the humanity of man.

My subcommittee has been holding hearings for some months on the Ethnic Studies Center bill. During these hearings we discovered the tremendous amount of Americans who know practically nothing about their fellow Americans, people who work together and live together in the same communities and yet know so little about each other.

We have also found in these hearings that one of the great problems of America today is that while this Nation is a magnificent mosaic of many people, many cultures, many religions, many races, there has been over the years a consistent effort to homogenize us into a single monolith. This may very well be the source of all the trouble in this country today.

We have tried to deny our ethnicity.

We have tried to deny the fact that each of us is just a little bit different from each other.

We have tried to conceal the fact that we are a nation of many nationalities, many cultures.

We have tried to deny the fact that there is no conflict between a person being proud of his national origin, his ethnic background, and yet be a proud, loyal, patriotic, dedicated American, loyal to the principles of the United States.

And so again I say, Mr. Speaker, that this is a landmark decision because it brings out into the open something that so many of our American citizens have suffered in silent desperation.

The person who brought this action was a brave individual—and I wish I had his name, I wish I could identify him, this person who was brave enough to go before the Equal Employment Opportunities Commission and file a formal complaint and seek redress in the orderly process of a quasi-judicial proceeding, rather than to seek his redress through violence or anarchy.

And I say that so long as the Equal Employment Opportunities Commission moves in this direction, recognizing that all Americans, regardless of their race, color, creed, sex, or age, are entitled to equal treatment as dignified citizens, we are strengthening the fibers of this Republic.

I suggest that this decision has brought to the Equal Employment Opportunities Commission a new dimension of respect for, indeed, the Commission has recognized the strength of America lies in her ethnic groups and they are entitled to equal rights as citizens.

The strength of America is not in belittling each other and not harassing those of us who are less fortunate than others, but rather through bringing about a mutual respect.

I should think that this decision would be of particular concern and interest to the large body of Latin Americans who today are our largest "forgotten minority" in this country and who continue at the bottom of the economic ladder because of language difficulties and because of unfamiliarity with American customs. People who have come here and want to work and make their contribution for the growth of this great Republic, but who find themselves the butts of scurrilous jokes and the kind of antagonisms and the kind of indignities than this one worker had to suffer in this plant.

I am sure that across this country there are millions of our senior citizens who remember well the indignities they suffered in a factory simply because they did not speak the language or because they had a name that was difficult to pronounce.

I hope the decision of this Commission will spread across this land and I hope all Americans will realize we are a Nation committed to the equality and the dignity of our fellow men. Just because a man is of foreign extraction, or because he has a name that is difficult to pronounce, or because perhaps he does not speak the language as well as the rest of us, is no reason to believe he is any less an American. He is entitled to the full protection of the laws of our land and he is entitled to share in the glory of this Republic.

I think the Equal Employment Opportunities Commission in this landmark decision has given a whole new dimension and meaning to the glory of being an American.

The Commission's decision follows:

CASE NO. CL68-12-431EU

Reasonable cause exists to believe that employer violated Title VII by permitting shop harassment of foreign-born employee because of national origin. Tolerance by first-line supervisors of ridicule of national origin cannot be conducted as common or allowable condition of employment. 108.12

Reasonable cause does not exist to believe that union violated Title VII just because shop steward was among those engaged in unlawful harassment. Steward was acting in capacity as employee, not as steward, when discriminatory acts occurred. Moreover, union took steps to end harassment, including grievance in charging party's behalf. 108.21

Charging party, who was born in Poland, entered the U.S. in 1956 and began work in the crane-repair shop at the employer's steel mill in 1957. As a production employee, he was represented by the union, whose membership elected him steward for the crane shop.

Beginning in 1965, he allegedly was subjected to continuous harassment from fellow employees. He became a buff of "Polish" jokes among other shop employees, including those also of Polish descent, who laced other witticisms with vulgar "Polish" names and generally derogatory remarks about his ancestry. Other harassment directed at charging party took physical form:

Driving a vehicle at him only to stop short of striking him.

Throwing objects at his feet.

Lighting welding torches near his face.

Assigning him jobs beyond his physical capacity.

Requiring him to sweep out the plant while other employees rested.

In their defense, the employees involved denied the charges of harrassment, asserting that charging party himself had called fellow workers vulgar names and had repeatedly accused them of mistreating him. Even one of the charging party's own witnesses testified that he was hypersensitive. The telling of "Polish" jokes was common in the shop, the witness related, and other employees of Polish descent took such jests good-naturedly.

"The Commission cannot regard the tolerance of ridicule of national origin as either a common or allowable condition of employment. Charging Party's fellow employees knew or should have known of his sensitivity, and the telling of such 'jokes' constituted disparate treatment violative of the Act, assuming the remarks were made with the implied consent, approval or knowledge of Respondent Employer.

"In light of the evidence presented here, we deem it reasonable to conclude that Respondent Employer, at least on the primary level of supervision, was aware of the complained of incidents. We are aware of the fact that at least two of the employees accused by Charging Party of harassing him were of Polish descent themselves. We find it unremarkable that persons of Polish descent have engaged in discrimination against a foreign-born fellow employee."

Mr. PUCINSKI. Now, the EEOC has an understanding. It is geared; it has orientation. I doubt very seriously, with all due respect to the Civil Service Commission, whether you have that orientation, whether you have that sensitivity that the EEOC has been created to develop.

Mr. KATOR. Well, Mr. Pucinski, I think we have the sensitivity. I think in our new office of equal employment opportunity we have that same kind of sensitivity. I don't think this is anything confined to the EEOC.

Mr. PUCINSKI. I will watch your results——

Mr. KATOR. Please do.

Mr. PUCINSKI. On discrimination because of national origin, and I will write you in 6 months, and I want to know what is happening in your shop.

Mr. HAWKINS. Mr. Reid.

Mr. REID. Thank you, Mr. Chairman. I want to thank you, Mr. Kator, for your testimony and the thoughtful character of your response this morning.

First, if I might, to get a little clarification, you indicate the Civil Service Commission now has something on the order of 6,000 counselors?

Mr. KATOR. Yes, sir.

Mr. REID. Plus an unidentified number of examiners who come into the picture if a counselor is unable to resolve the matter by conference and conciliation. How many examiners do you have?

Mr. KATOR. We have currently 60 trained appeals examiners.

Mr. REID. Then, if they can't resolve the matter, a recommendation is made to the agency head, and if the agency head does not wish to follow this recommendation, he must indicate in writing his reasons and apply them to the complainant.

In other words, if the agency head finds with the appeals examiner, then, presumably, if it is a recommendation to resolve the discriminatory question, the head of the agency acts to resolve it.

If he disagrees, then the complainant has the right to appeal to the Commission's Board of Appeals, which I think you called the Commission's Board of Appeals and Review, for final administrative adjudication.

Mr. KATOR. Yes, sir.

Mr. REID. Now, what happens if that Board holds that on the merits there is not probable cause of discrimination for a finding of that character? Is that the final remedy for the complainant?

Mr. KATOR. Yes, the Commissioners themselves may be petitioned to reopen the case, but, in essence, what you have said, the Board of Appeals and Review is the final administrative adjudication.

Mr. REID. Do you have any enforcement powers other than those exercised voluntarily by the Commission's procedures?

Mr. KATOR. We have significant powers, yes. We order the agencies now, for example, to promote an individual; we order them to take disciplinary action against an individual. We can, under our authority, withdraw all authority from the agency for personnel management——

Mr. REID. Do you have authority to grant backpay under that?

Mr. KATOR. No; we do not have. The Civil Service Commissioners have recently considered, and have under consideration now, a possible legislative proposal to provide backpay.

Mr. REID. In many States, if probable cause is found concerning job discrimination, whether or not the State commission enforces this finding through a cease and desist order, the State commission usually has the power to order backpay from the moment the discrimination started. Does the Civil Service Commission have the same authority on the Federal level?

Mr. KATOR. Right. We have asked the General Accounting Office whether agencies have that power; the Comptroller General has said

no. We have then faced up to the issue that legislation would be appropriate, and, as I have said, we have this under advisement.

Mr. REID. Now, if the complainant feels he is aggrieved under the procedures of the Civil Service Commission and finding has not been to his advantage, can he go to the Equal Employment Opportunity Commission and start de novo?

Mr. KATOR. No; his next remedy would be in the courts if he had still been discriminated against and was not satisfied.

Mr. REID. In other words, this procedure, as you presently have it structured, precludes relief through the Equal Employment Opportunity Commission?

Mr. KATOR. Yes.

Mr. REID. Is there a reason for that?

Mr. KATOR. Well, under this procedure we are carrying out the same functions as any appellate body when a matter of this kind comes to its attention. And the Commission, our Board of Appeals and Review, handles all sorts of employee appeals, adverse actions, for example. Oftentimes in an adverse action case, this is where the agency has taken action against the employee, one of the defenses is, "I am being discriminated against." So to try to separate these two things and giving something to EEOC and something to the Civil Service Commission to us seems to be an awkward way of doing business.

Mr. REID. Do you apprise the individual complainant at the outset of the proceeding that he has an option to elect proceeding under the Equal Employment Opportunity Commission or under Civil Service Commission procedures, and if he elects one or the other, it precludes the other?

Mr. KATOR. A Federal employee would not have an opportunity to proceed under the EEOC, would not have an opportunity to get a hearing before the EEOC.

Mr. REID. No Federal employee?

Mr. KATOR. No employee. Title VII of the Civil Rights Act does not get to Federal employees; it does not affect Federal employment. In fact, I believe there is a provision in there which calls upon the President to use his powers to establish the necessary avenues, and the President has done this by the issuance of the latest Executive order, Executive Order No. 11478.

Mr. REID. So as it stands under the law, your understanding of it, a Federal employee has no relief through the Equal Employment Opportunity Commission. Is there any reason for that?

Mr. KATOR. Well, Mr. Reid, I am not completely familiar with that part of the history of the Civil Rights Act. I think it was the feeling of the Congress at that time that this was—and as we say, equal employment opportunity and personnel management go hand in hand—and that the President and his agency heads should be committed and must be and are committed to equal employment opportunity, and it is their job to assure this.

I think it makes more sense for the Government as an employer to operate in the fashion that we do now than to have some other agency simply handling the complaints or get involved in the personnel management process, as the proposed amendment to the House bill would suggest.

Mr. REID. Let me ask a different kind of a question. You have presented some figures indicating an upward mobility of minority groups in lower grade levels. What are the facts relative to the executive management level, and do you have authority under civil service regulations now to promote someone from a low grade to a high grade in one jump, if you decide that for reasons of discrimination that individual has been prevented access to an area compatible with his skill?

Mr. KATOR. We would be limited by various acts of Congress as far as promoting the individual. He would have to go into the next grade level or go to any grade level for which he is qualified and can meet the qualifications.

As far as simply promotion, there are certain legislative requirements he must meet, such as being in grade a year.

Mr. REID. Well, to give you a parallel, one of the problems now in union employment is that if you go through the apprenticeship program, you also have to go through a certain period of time before you can become a journeyman.

Mr. KATOR. Yes.

Mr. REID. And yet you may well be a fully qualified bricklayer working on nonunion jobs as a fully qualified journeyman, but there is no way under the system in the unions whereby you can automatically be brought into the union as a journeyman. I was wondering if there was a parallel to civil service?

Mr. KATOR. I spoke in terms of promoting the man, and normally you promote the man to the next level. There is no reason why any man, regardless of grade level, could not apply for an examination at a higher grade level, say a midlevel or senior level, and then if he is qualified for the job, to be appointed from that register to that higher position.

Mr. REID. Have you in fact done that with minority group civil service employees?

Mr. KATOR. This would be a matter of whether they were qualified for the higher level position.

Mr. REID. Do you have to set up any mechanism to determine that?

Mr. KATOR. Do you mean as part of the discrimination complaint procedure?

Mr. REID. No; not necessarily. For example, when I was chairman of the New York State Human Rights Commission, one thing we set out to do was find what was wrong with the New York State procedures in failing to seek out ability. We found virtually every department used to say where they have ability they promote, but in many cases they did not seek out ability and had no idea it existed. As a result, there was very little promotion in the upper reaches of the State government.

Mr. KATOR. Right. I mentioned earlier in the testimony our program for upward mobility where we will actively search out talent.

Mr. REID. How active is that?

Mr. KATOR. Well, the program will be released shortly, and we believe it will be very active.

Mr. REID. What has it been heretofore?

Mr. KATOR. Well, hertofore it has been generally in the discretion of the agency to make the best utilization of its own manpower, and many of the agencies have done many of the things we will be telling them to do now. Others have not.

Mr. REID. Well, let me ask you a quick question. Have you at the upper reaches of the civil service a significant number of Spanish Americans or Puerto Ricans or American Indians and blacks, any one of those four?

Mr. KATOR. Do you mean by "upper reaches" in the supergrade levels?

Mr. REID. Yes. What I could call the executive vice president of a bank, for example.

Mr. KATOR. Well, the supergrade level might be a little bit above that, but Mr. Hawkins and I had some discussion on that earlier, and we agreed that at the supergrade levels the proportion of minority employment is not in accordance with what it is in the total Federal service.

Mr. REID. Well, I don't know about the total Federal service.

Mr. KATOR. In the total Federal service it is good.

Mr. REID. Not in the upper reaches. I am not talking about a bank that has now said we have now 30 secretaries and that is all we are going to bother with. The answer is how many vice presidents and presidents have you in the bank? There the record has been poor.

Mr. KATOR. The record has been poor in the past, and I think our new figures will show considerable progress in the moving up of the middle grade levels and higher grade levels.

Mr. REID. Do you have a single Spanish American in the supergrade level?

Mr. KATOR. Yes.

Mr. REID. You do?

Mr. KATOR. Yes. As a matter of fact, all of our minorities are represented in the supergrade levels.

Mr. REID. Could you send this information to us, if the chairman has no objection to that? I would be very interested to see what you have and what you consider your supergrade levels in terms of numbers in relation to ability and population.

Mr. KATOR. Yes. Mr. Reid, you are now talking about the supergrades, 16, 17, and 18.

Mr. REID. I am.

Mr. KATOR. I would be glad to show you what our most recent statistics will reveal.

Mr. REID. If you would just send a letter to the committee detailing that.

Mr. KATOR. Yes.

(The information requested follows:)

U.S. CIVIL SERVICE COMMISSION,
May 12, 1970.

Hon. JOHN H. DENT,
Chairman, General Subcommittee on Labor,
Committee on Education and Labor, Washington, D.C.

DEAR MR. DENT: This will reply to your letter of May 8, 1970, and respond to the requests of Mr. Hawkins and Mr. Reid who during the hearing on H.R. 6228 on April 7, 1970 asked for certain information about minority and women employment in the Federal Government at certain pay levels. I regret that I was unable to get this material to you sooner. We plan to attach the enclosed tables to

an explanatory press release to be published in the immediate future. We are making this material available to the Subcommittee prior to its public release and we would appreciate it if it could be for Subcommittee use only until our release is distributed.

The tables I am attaching will answer the specific questions asked by Mr. Hawkins and Mr. Reid. Overall, the minority employment statistics gathered as of November 30, 1969 show that minority persons hold more of the better paying jobs than they held in any previous period covered by a minority survey. Despite a decline in total Federal employment of approximately 20,000 positions between the 1967 and 1969 survey, the number of minority employees increased from 496,472 in 1967 to 500,536 in November 1969, from 18.9% to 19.2% of the work force.

The overall increase in minority employment reflects an increase of about 4,000 Spanish-surnamed Americans while total employment of other minority groups remained essentially the same. However, Negro employment increased in all major pay plans except in Wage Board jobs.

The chart that follows Table 6 shows that gains among members of minority groups have taken place at a faster rate than among non-minority groups. There were 8,800 more minority group employees in Grades 5–8 in the General Schedule than in 1967; 5,400 more in Grades 9–11; 2,500 more in Grades 12 and 13; and 721 more in Grades 14 and 15. At Grades 5–8, the rate of increase for minority employees was 16.8%, compared to 3.2% for non-minorities. In Grades 9–11, minority employment increased by 27.1%, non-minority by 6.9%. In Grades 12 and 13, minorities increased by 36.4%, non-minorities by 12.3%. In Grades 14–15, minorities increased by 48.4%, non-minorities by 14.8%.

Table 4 compares the percentage of minority employees by grade groupings in 1967 and 1969. For example, in Grades 5–8, 15% of employees in these grades were minority in 1967 and 16.7% in 1969. In Grades 9–11, 6.8% were minority in 1967, and 7.9% in 1969. In Grades 12–13, 3.6% were minority in 1967, 4.3% in 1969. In Grades 14–15, 2.5% were minority in 1967, and this figure was 3.2% in 1969.

Table 7 gives a specific response to Mr. Hawkins on the number of minority employees in Grades GS–11 and above in the General Schedule. At Grade GS–11, there were 9,750 minority employees as of November 30, 1969, out of a total employment of 147,788 at this grade level. This is 6.7% of total employees at this grade level. At Grades GS–11 and above, there were 21,302 minority employees as of November 30, 1969. Table 7 shows a complete breakdown of the General Schedule by each grade level through Grade GS–18.

In addition to data on General Schedule employees, Tables 8, 9 and 10 gave data on employment of minority persons under Wage Board systems, Postal Field Service and in other pay systems. PFS–12 is equivalent to GS–11 and represents approximately $12,000 in annual salary. Therefore, in addition to GS and PFS grade levels, minority employees at $12,000 and above in the Wage Systems (Table 8) and in the other pay systems (Table 10) should be included to get the total minority employment at GS–11 or equivalent and above. This would add approximately 2,000 additional minority persons at these grade levels.

I am also enclosing a copy of the "Study of the Employment of Women in the Federal Government (1968)". This is the latest available information and another study is now being made. The 1968 study shows that there were 31,667 women employed at GS–11 and above. This is 7.1% of total employment at these grade levels. Employment of women at each grade level is shown in Table 13 of the enclosed study.

I want to apologize again for the delay in getting these figures to you. I would be happy to meet with the Subcommittee or any of the members to go over these figures in detail. We believe they are very significant and show that minority employees are now moving into mid-level and senior positions. We expect these gains to continue and we will make every effort to assure an effective equal employment opportunity program in the Federal Government.

Sincerely yours,

IRVING KATOR,
Director, Federal Equal Employment Opportunity.

TABLE 1 -- DISTRIBUTION OF ALL MINORITY GROUPS COMBINED, BY PAY CATEGORY AS OF NOVEMBER 30, 1967 AND 1969

Pay System	1967		1969		Percent Change
	Number	Percent	Number	Percent	
All Pay Systems	496,672	100.0	500,536	100.0	0.8
General Schedule and Similar	173,951	35.0	181,726	36.3	4.5
Wage Systems	166,506	33.5	152,967	30.6	-8.1
Postal Field Service	151,602	30.5	158,945	31.8	4.8
All Other	4,613	0.9	6,898	1.4	49.5

TABLE 2 -- PERCENTAGE DISTRIBUTION OF MINORITY GROUPS WITHIN PAY CATEGORY, AS OF NOVEMBER 30, 1969

Pay System	All Employment	Minority Group Status					All Other
		Total	Negro	Spanish Surnamed	American Indian	Oriental	
All Pay Systems	100.0	19.2	15.0	2.8	0.6	0.8	80.8
General Schedule and Similar	100.0	14.1	10.7	1.8	0.8	0.8	85.9
Wage Systems	100.0	27.6	19.7	5.7	1.0	1.2	72.4
Postal Field Service	100.0	22.7	19.5	2.5	0.2	0.6	77.3
All Other	100.0	11.9	9.8	1.2	0.3	0.7	88.1

TABLE 3 -- INCREASE (OR DECREASE) IN THE NUMBER OF MINORITY AND NON-MINORITY EMPLOYEES BETWEEN NOVEMBER 1967 AND NOVEMBER 1969, BY GRADE GROUPING

Grade Groupings	Non-Minority		Minorities	
	Number	Percent Change	Number	Percent Change
GS- 1 - GS- 4	-48,286	-17.44	- 9,635	-10.35
GS- 5 - GS- 8	9,602	3.24	8,788	16.76
GS- 9 - GS-11	19,157	6.93	5,423	27.06
GS-12 - GS-13	22,279	12.26	2,468	36.42
GS-14 - GS-15	8,719	14.78	721	48.42
GS-16 - GS-18	- 183	- 3.39	10	11.49

TABLE 4 -- PERCENTAGE OF EMPLOYEES IN SPECIFIED GRADE GROUPINGS, BY MINORITY GROUP STATUS, AS OF NOVEMBER 1967 AND NOVEMBER 1969

Grade Groupings	Non-Minority		Minority Groups			
			All		Negro	
	1969	1967	1969	1967	1969	1967
Total, All Grades	85.9	86.3	14.1	13.7	10.7	10.5
GS- 1 - GS- 4	73.2	74.8	26.8	25.2	21.6	20.5
GS- 5 - GS- 8	83.3	85.0	16.7	15.0	13.0	11.6
GS- 9 - GS-11	92.1	93.2	7.9	6.8	5.1	4.3
GS-12 - GS-13	95.7	96.4	4.3	3.6	2.5	2.1
GS-14 - GS-15	96.8	97.5	3.2	2.5	1.5	1.2
GS-16 - GS-18	98.2	98.4	1.8	1.6	1.2	1.2

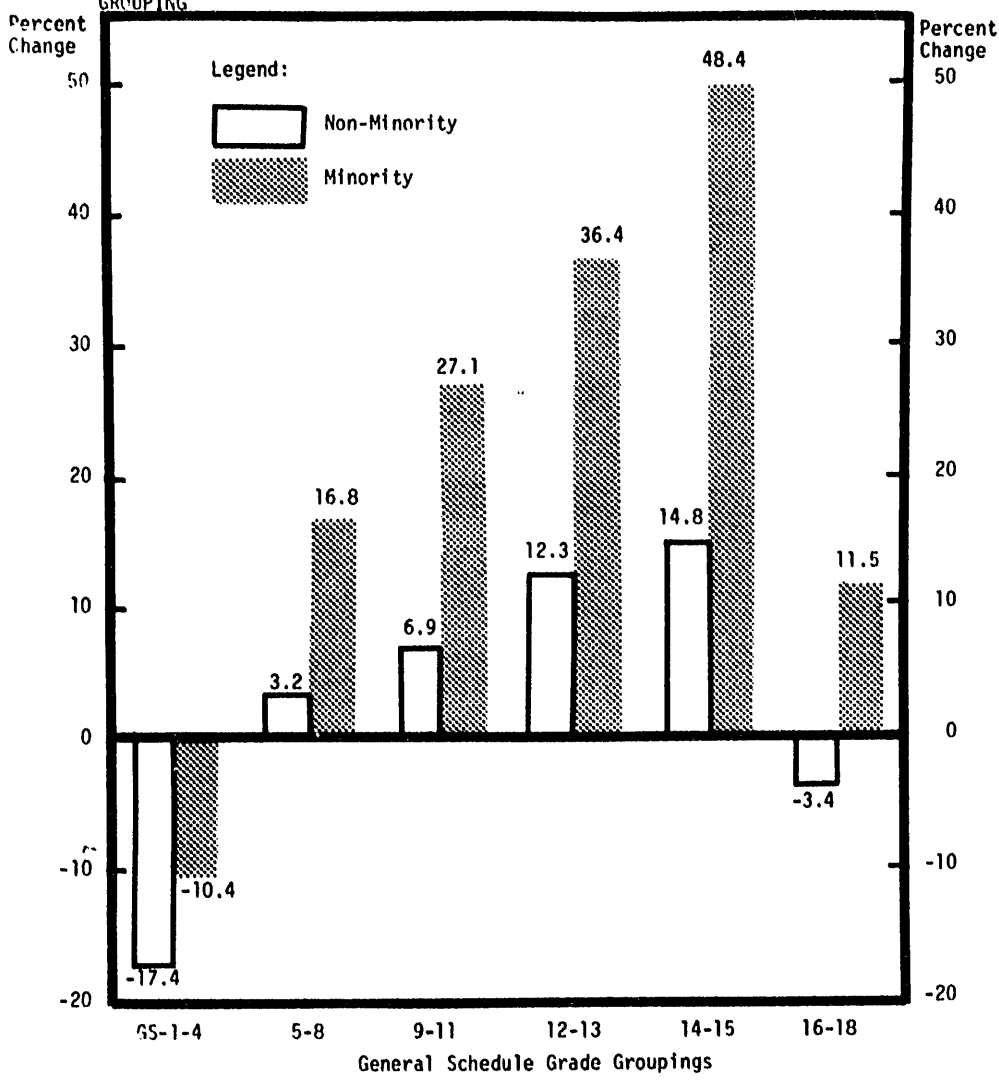
TABLE 5 -- PERCENTAGE OF MINORITY AND NON-MINORITY EMPLOYEES BY SALARY GROUPINGS UNDER WAGE SYSTEMS AS OF NOVEMBER 1967 AND NOVEMBER 1969

Salary Groupings	Non-Minority		Minority Groups			
			All		Negro	
	1969	1967	1969	1967	1969	1967
Total, All	72.4	72.1	27.6	27.9	19.7	20.4
Up Thru $5,499	44.7	50.1	55.3	49.9	45.2	40.5
$ 5,500 Thru $6,999	59.1	70.6	40.9	29.4	31.9	20.8
$ 7,000 Thru $7,999	75.5	83.6	24.5	16.4	15.6	10.5
$ 8,000 Thru $8,999	82.5	90.1	17.5	9.9	10.4	5.4
$ 9,000 Thru $9,999	86.3	94.0	13.7	6.0	8.2	2.9
$10,000 Thru $13,999	91.9	96.1	8.1	3.9	4.2	1.3
$14,000 Thru $17,999	92.2	97.6	7.8	2.4	3.9	0.5
$18,000 And Over	96.2	97.8	3.8	2.2	2.1	...

TABLE 6 -- INCREASE (OR DECREASE) FROM NOVEMBER 1967 - 1969 IN THE NUMBER OF MINORITY AND NON-MINORITY EMPLOYEES BY SALARY GROUPINGS UNDER WAGE SYSTEMS

Salary Groupings	Non-Minority		Minorities	
	Number	Percent Change	Number	Percent Change
Up Thru $5,499	-47,474	- 68.88	-42,186	- 61.37
$ 5,500 Thru $ 6,999	-73,050	- 45.28	- 6,158	- 9.16
$ 7,000 Thru $ 7,999	-16,928	- 13.77	10,167	42.02
$ 8,000 Thru $ 8,999	55,347	144.85	15,589	370.11
$ 9,000 Thru $ 9,999	18,500	72.92	5,366	330.22
$10,000 Thru $13,999	32,185	256.60	3,435	670.90
$14,000 Thru $17,999	2,057	277.60	219	1,216.67
$18,000 And Over	698	775.56	29	1,450.00

PERCENTAGE INCREASE OR DECREASE IN THE NUMBER OF MINORITY AND NON-MINORITY EMPLOYEES BETWEEN NOVEMBER 1967 AND NOVEMBER 1969 BY GRADE GROUPING



At grade levels GS-5 through GS-15, gains among members of minority groups have taken place at a faster rate than they have among non-minority groups. As a result, there are 8,800 more minority group employees in grades 5-8 than in 1967, about 5,400 more in grades 9-11, nearly 2,500 more in grades 12-13, and 721 more in grades 14-15.

1969 MINORITY GROUP STUDY

TABLE 7

ALL AGENCY SUMMARY

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1969

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL ALL PAY SYSTEMS..	2,601,639	389,251	15.0	73,619	2.8	16,478	.6	21,188	.8	2,101,103	80.8
TOTAL GENERAL SCHEDULE OR SIMILAR.....	1,289,114	137,919	10.7	23,681	1.8	9,752	.8	10,374	.8	1,107,388	85.9
GS- 1	1,919	998	52.0	129	6.7	14	.7	11	.6	767	40.0
GS- 2	23,222	7,093	30.5	629	2.7	417	1.8	138	.6	14,945	64.4
GS- 3	114,952	27,599	24.0	3,587	3.1	1,943	1.7	688	.6	81,135	70.6
GS- 4	171,954	31,562	18.4	4,835	2.8	2,677	1.6	1,136	.7	131,724	76.6
GS- 5	153,009	24,713	16.2	3,887	2.5	1,445	.9	1,206	.8	121,758	79.6
GS- 6	74,182	9,849	13.3	1,380	1.9	321	.4	539	.7	62,093	83.7
GS- 7	112,833	10,823	9.6	2,193	1.9	785	.7	991	.8	98,101	86.9
GS- 8	27,386	2,453	9.0	395	1.4	65	.2	251	.9	24,222	88.4
GS- 9	155,283	9,682	6.2	2,624	1.7	883	.6	1,474	.9	140,620	90.6
GS-10	18,069	638	3.5	185	1.0	33	.2	193	1.1	17,020	94.2
GS-11	147,788	5,998	4.1	1,739	1.2	549	.4	1,464	1.0	138,038	93.4
GS-12	121,533	3,322	2.7	1,033	.8	289	.2	1,101	.9	115,788	95.3
GS-13	91,728	2,048	2.2	585	.6	184	.2	683	.7	88,228	96.2
GS-14	44,312	720	1.6	312	.7	107	.2	348	.8	42,825	96.6
GS-15	25,625	358	1.4	154	.6	33	.1	178	.7	24,902	97.2
GS-16	3,721	40	1.1	7	.2	5	.1	9	.2	3,660	98.4
GS-17	1,113	16	1.4	5	.4	2	.2	2	.2	1,088	97.8
GS-18	485	7	1.4	2	.4			2	.4	474	97.7

1969 MINORITY GROUP STUDY

TABLE 8

ALL AGENCY SUMMARY

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1969

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL WAGE SYSTEMS.....	554,443	109,356	19.7	31,778	5.7	5,392	1.0	6,441	1.2	401,476	72.4
UP THRU $ 4,999	20,484	11,605	56.7	1,777	8.7	133	.6	357	1.7	6,612	32.3
$ 5,000-$ 5,499	27,528	10,100	36.7	2,088	7.6	329	1.2	170	.6	14,841	53.9
$ 5,500-$ 5,999	37,657	14,524	38.6	3,136	8.3	596	1.6	343	.9	19,058	50.6
$ 6,000-$ 6,499	51,992	16,379	31.5	2,971	5.7	581	1.1	585	1.1	31,476	60.5
$ 6,500-$ 6,999	59,678	16,780	28.1	3,773	6.3	741	1.2	627	1.1	37,757	63.3
$ 7,000-$ 7,999	140,355	21,896	15.6	9,665	6.9	1,398	1.0	1,406	1.0	105,990	75.5
$ 8,000-$ 8,999	113,357	11,755	10.4	5,706	5.0	898	.8	1,462	1.3	93,536	82.5
$ 9,000-$ 9,999	50,863	4,150	8.2	1,763	3.4	303	.6	795	1.6	43,872	86.3
$10,000-$11,999	38,554	1,696	4.4	750	1.9	233	.6	564	1.5	35,311	91.6
$12,000-$13,999	10,121	337	3.3	122	1.2	122	1.2	123	1.2	9,417	93.0
$14,000-$15,999	2,046	61	3.0	30	1.5	46	2.2	20	1.0	1,889	92.3
$16,000-$17,999	989	56	5.7	9	.9	11	1.1	4	.4	909	91.9
$18,000-$19,999	495	8	1.6	4	.8			2	.4	481	97.2
$20,000-$21,999	210	3	1.4	4	1.9			3	1.4	200	95.2
$22,000-$23,999	78	4	5.1							74	94.9
$24,000-$25,999	10					1	10.0			9	90.0
$26,000-$27,999	4									4	100.0
$28,000-$29,999	4	1	25.0							3	75.0
$30,000 AND OVER	18	1	5.6							17	94.4

1969 MINORITY GROUP STUDY

TABLE 9

ALL AGENCY SUMMARY

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1969

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL POSTAL FIELD SERVICE.....	700,304	136,322	19.5	17,494	2.5	1,182	.2	3,947	.6	541,359	77.3
PFS- 1	481	243	50.5	20	4.2	4	.8	4	.8	210	43.7
PFS- 2	4,265	2,048	48.0	213	5.0	11	.3	58	1.4	1,935	45.4
PFS- 3	27,565	3,550	12.9	501	1.8	129	.5	89	.3	23,296	84.5
PFS- 4	61,885	28,829	46.6	2,702	4.4	77	.1	416	.7	29,861	48.3
PFS- 5	463,835	89,493	19.3	12,222	2.6	696	.2	2,732	.6	358,752	77.3
PFS- 6	41,693	8,354	20.0	1,041	2.5	65	.2	389	.9	31,844	76.4
PFS- 7	12,957	709	5.5	125	1.0	48	.4	99	.3	12,036	92.9
PFS- 8	18,956	1,881	9.9	230	1.2	25	.1	122	.6	16,698	88.1
PFS- 9	10,705	399	3.7	89	.8	27	.3	25	.2	10,165	95.0
PFS-10	8,696	327	3.8	87	1.0	14	.2	31	.4	8,237	94.7
PFS-11	4,141	174	4.2	27	.7	5	.1	6	.1	3,929	94.9
PFS-12	2,522	122	4.8	13	.5	3	.1	7	.3	2,377	94.3
PFS-13	1,455	52	3.6	9	.6			5	.3	1,389	95.5
PFS-14	1,324	74	5.6	8	.6			5	.4	1,237	93.4
PFS-15	1,146	35	3.1	8	.7	2	.2	5	.4	1,096	95.6
PFS-16	584	9	1.5	8	1.4	1	.2			566	96.9
PFS-17	231	6	2.6	2	.9					223	96.5
PFS-18	139	5	3.6							134	96.4
PFS-19	62							1	1.6	61	98.4
PFS-20	24	2	8.3							22	91.7
PFS-21	15									15	100.0
4TH CLASS POSTMASTERS	6,903	18	.3	106	1.5	23	.3	1		6,755	97.9
RURAL CARRIERS	30,720	52	.2	83	.3	52	.2	12		30,521	99.4

1969 MINORITY GROUP STUDY

TABLE 10

ALL AGENCY SUMMARY

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1969

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL OTHER PAY SYSTEMS	57,778	5,654	9.8	666	1.2	152	.3	426	.7	50,880	88.1
UP THRU $ 4,999	3,361	677	20.1	82	2.4	79	2.4	13	.4	2,510	74.7
$ 5,000-$ 5,499	1,373	364	26.5	22	1.6	8	.6	10	.7	969	70.6
$ 5,500-$ 5,999	3,211	682	21.2	29	.9	5	.2	12	.4	2,483	77.3
$ 6,000-$ 6,499	3,847	1,059	27.5	44	1.1	3	.1	15	.4	2,726	70.9
$ 6,500-$ 6,999	3,679	735	20.0	51	1.4	9	.2	53	1.4	2,831	77.0
$ 7,000-$ 7,999	6,062	685	11.3	76	1.3	9	.1	56	.9	5,236	86.4
$ 8,000-$ 8,999	5,408	437	8.1	58	1.1	11	.2	54	1.0	4,848	89.6
$ 9,000-$ 9,999	3,339	196	5.9	61	1.8	6	.2	27	.8	3,049	91.3
$10,000-$11,999	7,912	407	5.1	64	.8	5	.1	57	.7	7,379	93.3
$12,000-$13,999	3,897	89	2.3	48	1.2	7	.2	28	.7	3,725	95.6
$14,000-$15,999	3,074	76	2.5	24	.8	3	.1	28	.9	2,943	95.7
$16,000-$17,999	2,989	65	2.2	25	.8	2	.1	20	.7	2,877	96.3
$18,000-$19,999	2,119	44	2.1	20	.9	1		17	.8	2,037	96.1
$20,000-$21,999	1,423	36	2.5	18	1.3			10	.7	1,359	95.5
$22,000-$23,999	1,854	37	2.0	21	1.1			10	.5	1,786	96.3
$24,000-$25,999	539	15	2.8	2	.4			2	.4	520	96.5
$26,000-$27,999	541	5	.9	3	.6			3	.6	530	98.0
$28,000-$29,999	1,076	13	1.2	9	.8	1	.1	3	.3	1,050	97.6
$30,000 AND OVER	2,074	32	1.5	9	.4	3	.1	8	.4	2,022	97.5

1969 MINORITY GROUP STUDY

TABLE 12

ALL AGENCY SUMMARY

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1969

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT.
TOTAL ALL PAY SYSTEMS..	2,601,639	389,251	15.0	73,619	2.8	16,478	.6	21,188	.8	2,101,103	80.8
TOTAL GENERAL SCHEDULE OR SIMILAR.....	1,289,114	137,919	10.7	23,681	1.8	9,752	.8	10,374	.8	1,107,388	85.9
GS- 1 THRU 4	312,047	67,252	21.6	9,180	2.9	5,051	1.6	1,993	.6	228,571	73.2
GS- 5 THRU 8	367,410	47,838	13.0	7,855	2.1	2,616	.7	2,927	.8	306,174	83.3
GS- 9 THRU 11	321,140	16,318	5.1	4,548	1.4	1,465	.5	3,131	1.0	295,678	92.1
GS-12 THRU 13	213,201	5,370	2.5	1,618	.8	473	.2	1,784	.8	204,016	95.7
GS-14 THRU 15	69,937	1,078	1.5	466	.7	140	.2	526	.8	67,727	96.8
GS-16 THRU 18	5,319	63	1.2	14	.3	7	.1	13	.2	5,222	98.2
TOTAL WAGE SYSTEMS.....	554,443	109,356	19.7	31,778	5.7	5,392	1.0	6,441	1.2	401,476	72.4
UP THRU $5,499	48,012	21,705	45.2	3,865	8.1	462	1.0	527	1.1	21,453	44.7
$ 5,500 THRU $ 6,999	149,327	47,683	31.9	9,880	6.6	1,918	1.3	1,555	1.0	88,291	59.1
$ 7,000 THRU $ 7,999	140,355	21,896	15.6	9,665	6.9	1,398	1.0	1,406	1.0	105,990	75.5
$ 8,000 THRU $ 8,999	113,357	11,755	10.4	5,706	5.0	898	.8	1,662	1.3	93,336	82.5
$ 9,000 THRU $ 9,999	50,863	4,150	8.2	1,743	3.4	303	.6	795	1.6	43,872	86.3
$10,000 THRU $13,999	48,675	2,033	4.2	872	1.8	355	.7	687	1.4	44,728	91.9
$14,000 THRU $17,999	3,035	117	3.9	39	1.3	57	1.9	24	.8	2,798	92.2
$18,000 AND OVER	819	17	2.1	8	1.0	1	.1	5	.6	788	96.2
TOTAL POSTAL FIELD SERVICE.....	700,304	136,322	19.5	17,494	2.5	1,182	.2	3,947	.6	541,359	77.3
PFS- 1 THRU 5*	595,654	124,173	20.8	15,847	2.7	992	.2	3,312	.6	451,330	75.8
PFS- 6 THRU 9	84,311	11,343	13.5	1,485	1.8	165	.2	575	.7	70,743	83.9
PFS-10 THRU 12	15,359	623	4.1	127	.8	22	.1	44	.3	14,543	94.7
PFS-13 THRU 16	4,509	170	3.8	33	.7	3	.1	15	.3	4,288	95.1
PFS-17 THRU 19	432	11	2.5	2	.5			1	.2	418	96.8
PFS-20 THRU 21	39	2	5.1							37	94.9
TOTAL OTHER PAY SYSTEMS	57,778	5,654	9.8	666	1.2	152	.3	426	.7	50,880	88.1
UP THRU $6,499	11,792	2,782	23.6	177	1.5	95	.8	50	.4	8,688	73.7
$ 6,500 THRU $ 9,999	18,488	2,053	11.1	246	1.3	35	.2	190	1.0	15,964	86.3
$10,000 THRU $13,999	11,809	496	4.2	112	.9	12	.1	85	.7	11,104	94.0
$14,000 THRU $17,999	6,063	141	2.3	49	.8	5	.1	48	.8	5,820	96.0
$18,000 THRU $25,999	5,935	132	2.2	61	1.0	1		39	.7	5,702	96.1
$26,000 AND OVER	3,691	50	1.4	21	.6	4	.1	14	.4	3,602	97.6

* INCLUDES 4TH CLASS POSTMASTERS AND RURAL CARRIERS

1969 MINORITY GROUP STUDY

ALL AGENCY SUMMARY

TABLE 13

FULL-TIME EMPLOYMENT AS OF NOVEMBER 30, 1967

PAY SYSTEM	TOTAL FULL-TIME EMPLOYEES	NEGRO		SPANISH SURNAMED		AMERICAN INDIAN		ORIENTAL		ALL OTHER EMPLOYEES	
	NUMBER	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT	NUMBER	PCT
TOTAL ALL PAY SYSTEMS..	2,621,939	390,842	14.9	68,945	2.6	16,469	.6	20,416	.8	2,125,267	81.1
TOTAL GENERAL SCHEDULE OR SIMILAR.....	1,270,051	133,626	10.5	21,450	1.7	9,606	.8	9,269	.7	1,096,100	86.3
GS- 1 THRU 4	369,968	75,846	20.5	9,687	2.6	5,500	1.5	2,078	.6	276,857	74.8
GS- 5 THRU 8	349,020	40,494	11.6	6,688	1.9	2,476	.7	2,790	.8	296,572	85.0
GS- 9 THRU 11	296,560	12,631	4.3	3,631	1.2	1,147	.4	2,630	.9	276,521	93.2
GS-12 THRU 13	188,514	3,893	2.1	1,102	.6	381	.2	1,401	.7	181,737	96.4
GS-14 THRU 15	60,497	696	1.2	333	.6	97	.2	383	.6	59,008	97.5
GS-16 THRU 18	5,492	66	1.2	9	.2	5	.1	7	.1	5,405	98.4
TOTAL WAGE SYSTEMS.....	596,647	121,829	20.4	32,024	5.4	5,725	1.0	6,928	1.2	430,141	72.1
UP THRU $5,499	137,672	55,742	40.5	9,593	7.0	2,344	1.7	1,066	.8	68,927	50.1
$ 5,500 THRU $ 6,999	228,535	47,432	20.8	14,869	6.5	2,367	1.0	2,526	1.1	161,341	70.6
$ 7,000 THRU $ 7,999	147,116	15,396	10.5	5,862	4.0	708	.5	2,232	1.5	122,918	83.6
$ 8,000 THRU $ 8,999	42,421	2,300	5.4	1,239	2.9	157	.4	516	1.2	38,209	90.1
$ 9,000 THRU $ 9,999	26,997	789	2.9	330	1.2	83	.3	423	1.6	25,372	94.0
$10,000 THRU $13,999	13,055	166	1.3	124	.9	62	.5	160	1.2	12,543	96.1
$14,000 THRU $17,999	759	4	.5	5	.7	4	.5	5	.7	741	97.6
$18,000 AND OVER	92			2	2.2					90	97.8
TOTAL POSTAL FIELD SERVICE.....	698,346	132,011	18.9	14,776	2.1	1,057	.2	3,758	.5	546,744	78.3
PFS- 1 THRU 4*	601,160	123,632	20.6	13,626	2.3	917	.2	3,337	.6	459,648	76.5
PFS- 5 THRU 8	77,746	7,805	10.0	1,034	1.3	124	.2	374	.5	68,409	88.0
PFS- 9 THRU 11	14,985	467	3.1	87	.6	13	.1	39	.3	14,379	96.0
PFS-12 THRU 15	4,050	97	2.4	27	.7	3	.1	7	.2	3,916	96.7
PFS-16 THRU 18	369	7	1.9	2	.5			1	.3	359	97.3
PFS-19 THRU 20	36	3	8.3							33	91.7
TOTAL OTHER PAY SYSTEMS	56,895	3,376	5.9	695	1.2	81	.1	461	.8	52,282	91.9
UP THRU $6,499	17,493	2,325	13.3	338	1.9	51	.3	173	1.0	14,606	83.5
$ 6,500 THRU $ 9,999	15,724	596	3.8	169	1.1	18	.1	162	1.0	14,779	94.0
$10,000 THRU $13,999	10,122	240	2.4	81	.8	4		73	.7	9,724	96.1
$14,000 THRU $17,999	7,033	129	1.8	60	.9	4	.1	33	.5	6,807	96.8
$18,000 AND OVER	6,523	86	1.3	47	.7	4	.1	20	.3	6,366	97.6
**											

* INCLUDES 4TH CLASS POSTMASTERS AND RURAL CARRIERS

STUDY OF EMPLOYMENT OF WOMEN IN THE FEDERAL GOVERNMENT—1968

U.S. CIVIL SERVICE COMMISSION, BUREAU OF MANAGEMENT SERVICES

(Tables to study retained in Subcommittee permanent file.)

PREFACE

This Study of Employment of Women in the Federal Government provides comprehensive statistics for evaluating the status of women in comparison to the total full-time white-collar Federal workforce for the years 1966 and 1968.

The purpose of the data is to supply a tool for agency use in assessing progress and in identifying areas where greater efforts must be made to assure equality of opportunity for women. The format of the presentation will allow agencies to prepare individual self-evaluations and plans for future action.

President Nixon recently reinformed the total equal employment opportunity program by stating, "I am determined that the Executive Branch of the Government lead the way as an equal opportunity employer." As a part of our responsibility under Presidential directive, we present this study for your use.

ROBERT E. HAMPTON, *Chairman.*
JAMES E. JOHNSON, *Commissioner.*
L. J. ANDOLSEK, *Commissioner.*

BACKGROUND

Chronologically, the employment of American women in public service antedates the United States Government itself. A woman postmaster, appointed in 1773, had been in office 14 years when the Constitution was signed. There are four other isolated cases on record of women employed in the postal service in the early years of the Nation, but Government service was almost exclusively a man's world until the middle of the 19th century.

The Treasury Department made the first major breakthrough between 1862 and 1868 by hiring a number of "lady clerks." Prejudice was overcome little by little, not by any theoretical considerations of abstract justice but by the job performance of the women themselves. In 1868 one converted Treasury supervisor voiced the conviction of many, that "female clerks are more attentive, diligent, and efficient than males and make better clerks."

The Civil Service Act of 1883 marked the real turning point in Government careers for women. Under the merit system, established by that Act, women were permitted and even encouraged to compete in civil service examinations on the same basis as men. The first woman appointed to a civil service position made the highest score on the first civil service examination given in Washington in 1883, and received the second appointment.

Equal pay for women lagged far behind equal opportunity to compete in examinations. In 1864 a maximum salary of $600 a year for female clerks in Government was established by law; male clerks were receiving $1200 to $1800. Six years later, in 1870, a new law gave department heads permission to pay equal salaries to women for equal work, but very few of them chose to do so. Equality of the sexes with respect to pay finally became a reality when the Classification Act of 1923 established the present pay system whereby the salary rate for each job is determined solely on the basis of the duties and responsibilities that make up the job. The Federal Government was the first among major employers to put into effect the principle of equal pay for equal work.

The last legal barrier to full equality of opportunity for women in the Federal service was removed in 1962. The 1870 law which gave agency heads authority to appoint women to the higher clerkships at the same salaries as men "in their discretion" was interpreted for many years as legal authority for them to request *only* women, or *only* men, in filling positions. For a great many positions, and for almost all positions in the higher grades, the agencies asked for men only.

A 1962 ruling by the Attorney General, who reviewed the law following a request by the President's Commission on the Status of Women, declared the former interpretation unjustified and invalid. Then in 1965, in order to preclude any possibility of reversion to the previous policy, Congress repealed the law itself. Consequently, Federal departments and agencies may no longer specify sex in filling any but a very few, specific positions approved by the Civil Service Commission. With the removal of this barrier, the framework for true equality of men and women, with respect to opportunity for appointment and advancement in the Federal service, was finally achieved.

Executive Order 11375, issued in 1967, reinforced the intent of the Federal Service to achieve equal opportunity for all persons by adding sex to existing Executive Order 11246, which had prohibited discrimination in Federal employment because of race, color, religion or national origin. This amendment gave the Federal Women's Program the same emphasis throughout Government as all other elements of the Equal Employment Opportunity Program. It gave clear public notice that the program for women, designated as the Federal Women's Program, is a permanent and integral part of the Government's implementation of the equal opportunity policy enunciated in the Civil Rights Act of 1964.

During the last 18 months, the Civil Service Commission has published a series of guidelines strengthening the Federal Women's Program. Significant elements included requirements for a formal agency Plan of Action, the designation of a Federal Women's Program Coordinator in each agency and periodic progress reports to the Commission. At the same time, the Commission established an office and staff to provide Commission leadership to the program on a continuing basis.

Primary program efforts have been directed toward three main objectives: (1) creating the legal, regulatory and administrative framework for achieving equality of opportunity without regard to sex; (2) bringing practice in closer accord with merit principles through the elimination of attitudes, customs and habits which have previously denied women entry into certain occupations, as well as into higher-level positions throughout the career service; and (3) encouraging qualified women to compete in examinations for Federal employment and to participate in training programs leading to advancement. Some recent highlights of the CSC activities in the Federal Women's Program include:

The issuance of program requirements and inspection criteria for agency guidance.

An in-depth study of the statistical reporting systems, resulting in additional data collection and improved analysis and reporting.

Increased emphasis on crediting unpaid/volunteer work as qualifying experience in nationwide examinations.

The publication of "Women in Action", a Federal Women's Program newsletter summarizing quarterly agency reports of FWP activities.

Studies to find solutions to new problems such as the need for separate maternity leave provisions.

A review of agency outreach methods of expanding recruiting efforts to reach talented women for mid-level and senior-level positions.

A significant increase during 1968 in the number of women employees receiving 8 hours or more of classroom instruction.

Recruiting and hiring statistics reflect progress. Some of the major nationwide examinations used as avenues to career opportunities indicate that more women are taking advantage of opportunities for entry into executive/management positions.

The Federal Service Entrance Examination (FSEE)—a major vehicle for intake of college graduates into career trainee positions—also reflected an increase in women's interest, for example:

Women hired from the FSEE increased from 1,507 in 1963 (18% of a total of 8,148 selected) to 3,878 in the 1968 calendar year (39% of a total of 10,056 selected).

A survey of a sample of women's colleges showed 19% of available students—those looking for jobs—competed in the 1967 FSEE compared to 7.5% at colleges generally.

The same survey showed Federal recruiters represented 18% of all recruiters visiting women's colleges, as compared to 11% of all recruiters visiting other colleges.

In Mid-Level Positions—covering grades 9–12—approximately 9% of the 4,471 hires in 1968 (calendar year) were women. This percentage of appointments corresponds exactly to the percentage of women eligible on these registers.

At the Senior-Level—covering grades 13–15—in the first 6 months of FY 1969 there was a total of 390 appointments, of which 31 or about 8% were women, as compared to 4% women eligibles on the register.

Occupations of women are extending to new areas. First-time placements include a woman Tug Boat Captain, Irrigation Officer, Free Gyro Repair Foreman, Structural Engineer, Customs Inspector and Aviation Operations Inspector.

Occupational groupings with the largest percentage of women employees (e.g., over 50%) are: personnel management; general administration; medical,

hospital, dental, public health; and library and archives. But a great majority of the women in these occupations remain in clerical and lower-grade technical jobs.

Occupations with the smallest percentage of women employees (under 5%) are veterinary medicine; engineering and architecture; equipment facilities and service; investigation; and commodity quality control—inspection and grading. In some of these fields, e.g., engineering and architecture, there is a special problem because so few women matriculate in these fields in college.

The profile of the Federal workforce continues to reveal a heavy concentration of women in lower grade levels and clerical positions, although the total number of women employed continues to increase. Comparison of 1966 and 1968 full-time white-collar employment by General Schedule and equivalent grades is shown in the following chart:

FULL-TIME WHITE-COLLAR EMPLOYMENT—GENERAL SCHEDULE AND EQUIVALENT GRADES

Grade groups	Oct. 31, 1968				Oct. 31, 1966			
	Total employment	Number of women	Percent of women in grade group	Percent of total women employed	Total employment	Number of women	Percent of women in grade group	Percent of total women employed
1 to 6	1,113,059	525,381	47.2	78.7	1,064,920	492,989	46.3	79.9
7 to 12	672,753	132,865	19.7	19.9	578,218	109,086	18.9	17.7
13 and above	171,594	6,409	3.7	1.0	148,251	5,206	3.5	.8
16 and above	(9,635)	(147)	(1.5)	(.02)	(9,656)	(161)	(1.7)	(.02)
Ungraded [1]	6,464	2,579	39.9	.4	45,673	9,939	21.8	1.6
Total	1,953,870	667,234	34.0	100.0	1,837,062	617,220	33.6	100.0

[1] For the most part, "ungraded" are support staff to the Federal judges and courts throughout the United States; however, the 1966 figure includes 4th-class postmasters and rural carriers of the Post Office Department, most of which would have equated to the 1 to 6 grade grouping.

The 617,220 women employed by the Federal Government on October 31, 1966, represented 33.6% of the total white-collar workforce. By October 31, 1968, the percentage increased to 34.0 percent reflecting the employment of an additional 50,014 women.

Women in grades 1–6 increased by 32,392 or 6.6 percent. This compares with an increase of 4.5 percent of the overall population in these grades.

The number of women in grades 7–12 increased by 23,779 positions or nearly 22 percent since 1966. Total employment in this grade group increased by 16.3 percent during the same period.

Although there was a sizable percentage increase for women at levels 13 and above (23.1 percent or 1,203 positions), the number employed at these levels still represents about 1 percent of the total women employed in white-collar occupations, as compared to 12.7 percent for men.

The 1969 Federal Women's Program Review Seminar brought together 125 participants from 49 agencies to evaluate program performance and recommend future action and priorities. The conference identified the following major needs for continuing emphasis and study:

Increasing the understanding at all management levels of the economic advantages of fully utilizing the talent and ability of women employees.

Promoting public awareness of Federal Government opportunities for women by encouraging women to prepare for all occupations, publicizing achievements of women in top-level positions and building rapport with community organizations and other groups.

Developing job design and employment practices which are better suited to women' life styles, such as more part-time employment, maternity leave benefits, and federally sponsored day-care centers.

Increasing training and motivation of women through early guidance on occupational choices, job counseling, improved management training and utilization.

Study of Employment of Women in the Federal Government—1968

INTRODUCTION

This study presents statistical information on full-time Federal civilian white-collar employment. 1968 data are compared with that collected in 1966. Both surveys, conducted by the Civil Service Commission, provided for submission by the Federal agencies of comprehensive reports showing full-time employment as of October 31.

COVERAGE

The data presented in this study is representative of white-collar government employment (General Schedule Classification and other non-wage systems) worldwide. Excluded are employees of the Board of Governors of the Federal Reserve System, members and employees of the Congress, employees of the Central Intelligence Agency and the National Security Agency, and foreign nationals employed overseas. In 1968, as in 1966, data were collected for four major geographic areas only. They are: (1) the Washington, D.C. Metropolitan Area [1]; (2) United States (i.e., the 50 States) excluding the Washington, D.C. Metropolitan Area; (3) Territories of the United States; and (4) Foreign Countries.

PRESENTATION AND UTILIZATION OF DATA

Throughout this publication, occupational groups and occupations within groups are those provided for in the *Handbook of Occupational Groups and Series of Classes*, published by the Civil Service Commission. The exception to this coverage is the Postal Operations Group, encompassed within the single Postal Field Service system, which is provided for in the *Personnel Handbooks, Series P–1*, published by the Post Office Department.

The grade distribution data shown in Tables B, C, and D, represent "grades or levels" of the various pay systems considered equivalent to specific General Schedule grades. For those positions not under the General Schedule (GS) pay system, grade equivalency was derived by comparing the GS salary rates with the corresponding salary rates in other pay systems.

More specifically, this was done in most instances by comparing the 4th step of the GS rates with comparable rates in other pay systems. At the GS–15 level and below, this method of equating the various pay systems is quite satisfactory. The reasons this method (as well as the others that we investigated) is unsatisfactory for the GS–16, GS–17, and GS–18 levels is due to the impact of the statutory salary limitation of $28,000, which affects GS–16 at steps 8 and 9 and GS–17 at step 3 and above. What this does is to produce a bunching at the $28,000 level. Thus at the $28,000 level, most employees in non-graded pay systems are equated with GS–18. For this reason equivalency data pertaining to employees in GS–16, GS–17, and GS–18 should be used with considerable caution. If the three grades are considered as a composite, the equivalency problem is for practical purposes eliminated.

Data for employees whose annual salary rates are above the General Schedule (e.g. Executive Pay Act, some Public Law type positions) is identified in the tables as "ABOVE 18." Employees for whom no grade or salary was reported are identified as "UNGRADED." For the most part these are in the Judicial Branch, representing support staff to the Federal judges and courts throughout the United States. In 1966, however, 4th class postmasters and rural carriers were also

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[1] The Washington, D.C. Metropolitan Area includes: the District of Columbia; Montgomery and Prince Georges counties, Maryland; the cities of Alexandria, Fairfax and Falls Church, and the counties of Arlington, Fairfax, Loudoun and Prince William, Virginia. Loudoun and Prince William counties were included as of July 1967.

reported ungraded. All "grades or levels" are listed even though there may be no employment in some instances. Annual salary rates paid under the General Schedule for 1968 and 1966 are shown in the salary table at the end of this publication.

Utilizing the previously described grade equivalencies, occupations within the various pay systems have been classified according to three major categories. These categories, presented in Tables E and F, are based on the level of work performed and are defined as follows:

Category III—Positions in occupations (primary professional, technical, or administrative at "grade or level" 5 and above) requiring at the entry level:

(a) Baccalaureate or higher education; *or*

(b) Equivalent professional, technical, or administrative experience.

Category II—Positions requiring specialized education or experience:

(a) Technician positions primarily at "grade or level" 4 and above requiring either specialized experience or specialized education above the high school level; *or*

(b) Clerical, aid, or support positions above the entry levels requiring specialized experience or education.

Category I—Positions requiring minimal specialized education, experience, or skill:

(a) primarily entry level clerical, aid, and support positions "grade or level" 3 and below; *or*

(b) entry level Postal Field Service positions "grade or level" 5 and below.

Being of a widely varied nature, positions in the general series (GS–301, 501, 1001, 1701, 2001, and 2101) are assigned to the above categories on the following basis:

"Grade or level" 9 and above—Category III.
"Grade or level" 4 through 8—Category II.
"Grade or level" 3 and below—Category I.

The percentage of women in both columns, "Employment 31 October 1968" and "Employment 31 October 1966," represent the percentage of women with respect to total employment for each of those years (i.e., the number of women divided by the total employment for that year). With the exception of Table F, where zeros are shown, both the "Number" and "%" columns will be blank if there were no women reported.

The "Percent Change" columns reflect increases or decreases in employment for "TOTAL" and "WOMEN" from 1966 to 1968. In both cases, the base for comparisons with 1968 is the 1966 data. The percent change is computed by taking the difference between employment in 1966 and that shown in the corresponding column for 1968 and dividing by the 1966 figures. If the employment in 1968 is larger than that shown for 1966, the result will be positive and represent the percent of increase. On the other hand, if the employment in 1968 is less than that shown in the corresponding column for 1966, the result will be negative and represent the percent of decrease. A minus sign will precede the percentage when a decrease is represented. An asterisk (*) is used in either or both columns, as appropriate, when, for a particular grade or occupation there is no employment in 1966, or the number is so minute in comparison to that reported in 1968 so that the "Percent Change" is infinite or immeasurable. All percentages have been rounded to the nearest tenth of a percent.

Tables G and H present a comparison of employment by grade and occupational group in 1966 with that reported in 1968 within agencies. A number of executive branch agencies, each having an especially small total employment, were consolidated and are titled "OTHER AGENCIES" for use in these two tables. For the most part, these are agencies that were terminated prior to October 31, 1968, or newly established since October 31, 1966, or had a total employment in 1966 of 25 or less. These agencies, each with their total employment and the number of women, for both 1966 and 1968 are identified in Table I at the end of this publication.

A total of 1,963,870 full-time employees were reported by 104 agencies in 452 white-collar occupations as of October 31, 1968, of which 667,234 or 34.0 percent were women. This compares with a total of 1,837,062 employees reported as of October 31, 1966, of which 617,220 or 33.6 percent were women. Thus, reflecting a net increase of 126,808 in total full-time white-collar employment, of which 50,014 or 39.4 percent were women. Women were employed in 420 occupations or 92.9 percent of those reported in 1968 and 413 occupations or 91.4 percent of the total (452) reported in 1966.

The white-collar employment presented in detail in the tables that follow *represents* approximately *76 percent of the total full-time Federal workforce and* nearly *93 percent of all full-time women employees.* The following figures show the total Federal workforce, full-time and part-time:

	1968			1966		
	Total	Men	Women	Total	Men	Women
Full-time employment	2,592,057	1,872,518	719,539	2,466,318	1,800,969	665,349
White collar	1,963,870	1,296,636	667,234	1,837,062	1,219,842	617,220
Blue-collar	628,187	575,882	52,305	629,256	581,127	48,129
Total full time and part time	2,941,262			2,818,618		

Mr. REID. Mr. Chairman, I have just one other question. I think the point that seems to be before the committee is twofold: One, whether the Civil Service Commission has done what it should in terms of minority promotion opportunity, as well as dealing with discrimination.

The second question is whether part of the functions of your office, as Director of Federal Equal Employment Opportunity, as regards the complaint phase, should be moved over to the Equal Employment Opportunity Commission with the necessary statutory authority, and, I feel very strongly, with cease-and-desist powers as well and whether this would in any way vitiate the affirmative efforts you are talking about.

I am distinguishing the complaint procedures as opposed to what might be called affirmative policy guidance or the kind of question we were talking about earlier, the promotion on ability and merit in the supergrades.

Mr. KATOR. We thought it would. We think the language that is now in S. 2453 which, if I understand it, has been under consideration, would put the EEOC right in the middle of the affirmative action job that the Commission is trying to do.

Mr. REID. If I understand your testimony correctly, you think that we would have to amend the statute to give the EEOC the authority to deal with a Federal employee in the first instance?

Mr. KATOR. Yes.

Mr. REID. Second would be the actual transfer of some of the complaint responsibility now shouldered by your office?

Mr. KATOR. That is right. S. 2453 would provide for that. It would give authority to the EEOC to really act in lieu of the Commission both in terms, as we read it, not only complaints but also affirmative action.

Mr. HAWKINS. Would the gentleman yield?

Mr. REID. I yield.

Mr. HAWKINS. Mr. Kator, referring to a section of S. 2453, in answer to the question that Mr. Reid just asked you, is it not true that section 718 provides: "Nothing contained in this act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination of employment as required by the Constitution, statutes, and Executive orders"?

Now, do you interpret that as relieving the Civil Service Commission of its responsibility in terms of affirmative action programs, or

would what is contained in that section in any way take away from you any responsibility in the affirmative action field, if you preferred to pursue it?

Mr. KATOR. Yes. Mr. Chairman, section 717(b) of S. 2453 gives the Equal Employment Opportunity Commission not only authority to enforce discrimination but to issue rules, regulations and orders and instructions, as it deems, on all personnel actions affecting employees or applicants for Federal employment.

Now, what we are saying is, under the civil service and other laws codified in title V of the United States Civil Code, the Civil Service Commission has been vested with the primary responsibility for the administration of personnel programs for the executive branch.

These areas include recruitment, examination, terminations, appointment of eligible personnel—I could go on with all of the rest, but there is leave, adverse action, retirement, insurance.

It seems to us that the authority proposed for the Equal Employment Opportunity Commission by section 717(b) is in basic conflict with the provisions of title V, placing these responsibilities in the Civil Service Commission. So, in effect, you would be taking them away from us and giving them to the Equal Employment Opportunity Commission.

Mr. HAWKINS. It would be equal responsibility.

Mr. KATOR. Of course, the Civil Service Commission, under the merit system, is responsible for assuring equal employment opportunity.

Mr. HAWKINS. I think that section 718 is very clear. It is certainly not to relieve any Government agency or official of its or his primary responsibility. I think that if you have it now, certainly that would not relieve you of it.

Mr. KATOR. Well, the way we see this, Mr. Chairman, we recognize that each agency head is responsible for equal employment opportunity in his establishment, but we think that section 718 could be susceptible to two different interpretations.

Various provisions of the bill take away certain responsibility from different agencies, including the Civil Service Commission, but then in this section 718 it is stated: "Nothing contained in this act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination of employment as required by the Constitution, statutes, and Executive orders."

Now, we feel there is a basic conflict, if this is to be an act, that we think should be straightened out.

Mr. HAWKINS. Thank you, Mr. Reid.

Mr. REID. Thank you, Mr. Chairman, I have just one final question.

I would like to ask you what your opinion is, to the extent you care to express it, about the EEOC having cease-and-desist powers, a power that it lacks and you lack at the present time.

Mr. KATOR. I am really not in a position to comment on whether EEOC should have the cease and desist powers. From the standpoint of the Civil Service Commission, we don't object to that provision. We have not met it head on because it is not a problem since we never needed cease and desist powers.

Mr. REID. What I am trying to get at, I feel very strongly and I think the record is plain, that the Government has been derelict, and

the Congress as well, in not giving the Commission the basic cease and desist authority which is enjoyed by some 30 or 40 States in America. I think it is an essential to any kind of enforcement.

But reaching beyond that question to the power that you enjoy, is there not an area where you do not have ample power, where you can't go into court, where you cannot overrule, for example, an agency that digs its heels in?

Your powers essentially are conference and conciliation, but if you get a vested interest in a particular department, if I understand your testimony correctly, you have the power of going up through the Examiner and the overall Commission at the top, but you don't have any power to really enforce in another agency, the Department of Defense, we will say, or some other agency, who will say that it is a matter of national security and we won't do it.

Mr. KATOR. Well, let me say we have not reached the situation where an agency has refused to accept an order from the Commission's Board of Appeals and Review.

Should that occur, we would have no hesitancy, I am sure, in going directly to the President, since we are the action agency for the President in carrying out equal employment opportunity.

Mr. REID. But perhaps this is a matter that should be resolved in the courts. I don't think the Eecutive can take primary responsibility for being its own watchdog. I think that is part of the reason for having the courts. It equally is a better procedure.

I can visualize moments where you would have a President who would be very strong in this area and moments where this might not be the case, or where you would have White House staffers who might look more south than north, and in that event, I don't think you are going to be upheld.

Just to understand it, just to say the technical question, you haven't any more power other than that granted to you by the President, do you?

Mr. KATOR. No, strictly under the Executive Order.

Mr. REID. What I am getting at is, if you ran into a situation and it in a major way affected mobility where you thought there had been a pattern and practice of discrimination—and I think you could find this in the Department of Defense, incidentally—then you are up against a stone wall, as I understand it.

Mr. KATOR. Well, if you say that an agency simply digs its heels in and refuses to move in the direction we wanted it to and urged it to do—and it is true, we do work closely with an agency. Chairman Hampton will meet with the Secretary of Defense and other agency heads.

When our statistics come out, we will go over the areas and indicate to the agencies where we think action should be taken.

But I sort of feel we miss the point when we talk about the cease and desist power that we either have or don't have and our reliance on the Executive, because what we are trying to do is within an employing institution assure equal employment opportunity for all persons. And it always seems to us that it is wider than simply the one issue or one individual case.

Mr. REID. Well, I think an agency can take as much initiative within the statute as it possibly can, some do more and some do less. But what

I am saying is that where the Government has shown an historic intransigence, which our Government has shown from time to time, that, basically, as I understand your power, you have no remedy.

What I am saying is that if we are really going to change the structure of the Government and open it up in certain areas where it should be opened then we are going to have to have remedies that reach beyond the Executive's capacity not to act.

Mr. KATOR. I certainly haven't found the situation where I personally feel we need to go beyond the powers of the Executive to get action.

Mr. REID. I appreciate that very much. Thank you.

Mr. HAWKINS. Mr. Kator, in December at the hearing of this committee, there were several witnesses who testified who were Federal employees. One in particular, Mr. Richard L. Williams, had been a Federal employee for 25 years. He filed a complaint on March 6, 1968, and he testified before this committee, along with Mr. Albert Hendersen, and several other employees.

Since that time the committee has received numerous communications indicating that Mr. Williams has been subjected to harassment by his agency as a result of his testimony before this committee.

I drafted a letter to the Civil Service Commission. I think Mr. Dent has also taken some action in writing to the agency as well as several others. As a matter of fact, this is a file I have built up of those cases.

Both cases are still pending and both Mr. Williams and Mr. Hendersen, and some of the other employees who testified before this committee, indicate their displeasure over the course of action that has been taken.

I certainly agree with them that a matter which has been pending this long without any satisfaction would subject them to severe embarrassment, to say the least, in connection with their employment.

This seems to be typical of many cases we get, and I am wondering why it is that an employee of 25 years, who, three years after his complaint has been filed, has still not received any satisfaction whatsoever, and how it is that employees testifying before a Congressional Committee should be subjected to this type of embarrassment and harassment.

Mr. KATOR. Let me say, in connection with Mr. Williams and other similar cases, that we would not, under any circumstances, tolerate any type of action against an employee for testifying before this committee or filing a complaint or anything else.

In Mr. Williams' case, there has been, in my judgment, an unconscionable delay in clearing up the matter of his initial complaint. It is not all, incidentally, the fault of the Army. In a number of cases, Mrs. Juanita Mitchell, who represents Mr. Williams, has asked for delays because she had more relevant information to present. I understand that Mrs. Mitchell was hospitalized recently and the investigator was unable to obtain information from her until just last week.

But in that particular case, the latest data that I have is that an Army investigator has completed his investigation and is now preparing a report. We are awaiting this report, which will bear on the specific allegations of reprisal and harassment.

If we don't get that report within a time which is satisfactory to us, which is in the immediate future, you can be assured that we our-

selves will move in. We have the authority to move in, and we will do so.

But I am confident we will get that report from the Army.

Mr. Williams' case, the one he filed in 1968, is being reviewed now in the Army for final review. They are going to make a decision on that case.

Mr. HAWKINS. Do you mean the Army is reviewing a case that was filed in 1968?

Mr. KATOR. Yes, sir; I am sorry to say that is the case.

Now, I don't know—I don't have it at my finger tips—the chronology of that case to know how much of the time was due to, say, Mr. Williams asking for delays and how much time has been due to the Army on the case.

But from our standpoint, we hold an agency that has held the case 60 days to be delinquent on that case; 90 days if a hearing is held. In other words, those are our time limits and agencies are heeding this.

This is an unusual case—and while it is not the only one—at the same time this does not form the pattern for most cases. It is an unconscionable delay, as I indicated before.

Now, we want to get a decision on this case from the Army, and they want to get this report from the investigator on the specific allegations made by Mr. Williams concerning reprisal and harassment because he came before this committee.

Mr. HAWKINS. It would seem if you delay 90 days—and certainly it has been longer than that—and with a request of a committee that a full investigation be made because of testimony before it of a witness, that if you are insensitive to a Congressional investigation, you would certainly be a lot more insensitive to a poor employee in any one of the agencies or departments of the Federal Government. It seems to me that that itself proves a lack of sensitivity.

Mr. KATOR. Let me clarify that statement. We were immediately in touch, upon receipt of the memorandum from Mr. Dent and other members of this committee, with the Army, and that is where this investigator has gone in immediately. This is not 90 days.

I was saying that this case filed in 1968 is unconscionably delayed. How much of that delay is due to Mr. Williams and how much due to Army, I don't know at this time. All I am saying is that we consider our standard for a fair, quick hearing to be 60 days without a hearing and 90 days with a hearing. That is the only context in which I use the 90 days. We moved immediately when we heard from the Committee because we think it would be intolerable to have people before this committee and have an agency take reprisal.

Mr. HAWKINS. This is why some of us have become dissatisfied with the present procedure. If this happens to an employee, it may happen that any other potential complainant is not going to complain, will not appear before the committee and will not file a complaint with the agency and undergo this type of harassment and reprisal, assuming there is any element of truth in it. I believe that there must be some anyway.

Mr. KATOR. In all fairness to the Army and to the people who have been working with Mr. Williams, what we have now are allegations from Mr. Williams of reprisal. We don't know what has happened, and this is what we need to find out, and I am sure you want us to find out.

Mr. HAWKINS. Yes, but your sympathy will be with the agency and that is illustrative of the problem.

Mr. KATOR. Why?

Mr. HAWKINS. The Commission is going to be sympathetic to every agency and every department. They will never assume that the employee may have some legitimate complaint, and by the time he processes all of this, maybe a year or two later, he has become discouraged and anyone else is discouraged from even filing a complaint. Certainly these individuals have discouraged others from testifying before this committee because the word is out: "The last thing you do, don't go to a politician; don't go to a hearing. See what happened to us?"

Mr. KATOR. No, that is not so. We will deal with each case on its merits and decide it fairly on the basis of the facts. We will tell this committee exactly what we have found with Mr. Williams' case.

Mr. HAWKINS. You are going to tell this committee what you have found within 2 weeks?

Mr. KATOR. I will be happy to make the pledge to the committee that we will get you something in 2 weeks on the question which you raised with us, which was of reprisal and harassment because Mr. Williams' coming before this committee.

Mr. HAWKINS. Good.

The committee stands adjourned.

The next committee meeting will be on April 8, 1970, at 10 a.m.

Thank you, Mr. Kator, for your testimony before the committee.

(Whereupon, at 12:05 p.m. the subcommittee adjourned, to reconvene at 10 a.m., Wednesday, April 8, 1970.)

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

WEDNESDAY, APRIL 8, 1970

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

The subcommittee met at 10:35 a.m., pursuant to recess, in room 2257, Rayburn House Office Building, Hon. Augustus F. Hawkins (acting chairman of the subcommittee) presiding.

Present: Representatives Hawkins, Mink, Erlenborn, and Bell.

Staff members present: S. G. Lippman, special counsel; and Michael Bernstein, minority counsel.

Mr. HAWKINS. The General Subcommittee on Labor of the House Education and Labor Committee will now come to order.

We are continuing hearings on H.R. 6228, H.R. 6229, and H.R. 13517.

The first witness this morning is Dr. John Lumley, Assistant Executive Secretary for Legislation and Federal Relations of the National Education Association.

Just preceding Dr. Lumley's testimony, I would like to have placed in the record a letter from the U.S. Commission on Civil Rights addressed to me, indicating their desire or their recommendation to have State and local employees covered. This was really the thrust of my statement that I was offering an amendment in order to do this, and in order to assure the origin of the amendment, I would like to have this inserted in the record.

It is a two-page statement.

Without objection, so ordered.

(The document referred to follows:)

UNITED STATES COMMISSION ON CIVIL RIGHTS,
Washington, D.C., August 6, 1969.

Hon. AUGUSTUS F. HAWKINS,
House of Representatives,
Washington, D.C.

DEAR MR. HAWKINS: The U.S. Commission on Civil Rights has recently completed a study of employment by State and local governments, which concludes that these governments have failed to assure equal job opportunities to members of minority groups.

The study, conducted in seven major metropolitan areas, found that State and local government employment opportunities were restricted by overt discrimination in hiring and promotion decisions, by discriminatory treatment on the job, and by governments' lack of action in redressing the consequences of past discrimination. Barriers to equal employment were shown to be greatest in police and fire departments.

The Federal Government itself, according to the study, has failed to establish any effective requirements for equal opportunity in State and local government employment or to establish effective standards and guidelines for affirmative action to correct past discriminatory practices.

In its report on the study, entitled "For ALL The People . . . By ALL The People," the Commission recommends that Congress amend Title VII of the Civil Rights Act of 1964 to eliminate the exemption of State and local governments from the coverage of that title and to confer on the Equal Employment Opportunity Commission the power to issue cease and desist orders to correct violations of Title VII. The report also recommends that Congress enact legislation authorizing the withholding of federal funds from any State or local public agency which discriminates against an employee or applicant who is or would be compensated by, or involved in administering a program assisted by, federal funds.

Since the San Francisco-Oakland area was one of the seven metropolitan areas specifically studied for the report, we feel it will be of particular interest to you.

We are sending you, therefore, a copy of the report (with passages pertaining to your metropolitan area highlighted), a summary of the report, and a specially prepared press release dealing only with your area.

Because we believe this report will be of unusual concern to you, we are sending these materials to you in advance of their general release date of August 12, 1969. It is important that the information in the report not be released to the news media before then.

I am available to you or members of your staff.

Sincerely yours,

HOWARD A. GLICKSTEIN,
Staff Director-Designate.

Mr. HAWKINS. Dr. Lumley, would you care to approach the witness seat there, and may I say in behalf of the committee that we are very pleased to have you before the committee today. We have called on you on many, many occasions, and you have always responded.

I am sure that members will be most delighted to hear your testimony.

Mr. Erlenborn, would you care to comment on anything at this point?

Mr. ERLENBORN. I don't think so, Mr. Chairman, except to welcome Dr. Lumley before our subcommittee. We look forward to hearing your statement.

Mr. LUMLEY. Thank you.

Mr. HAWKINS. Thank you, Doctor. I understand you have a prepared statement.

STATEMENT OF DR. JOHN LUMLEY, ASSISTANT EXECUTIVE SECRETARY FOR LEGISLATION AND FEDERAL RELATIONS, NATIONAL EDUCATION ASSOCIATION

Mr. LUMLEY. The statement is before you. Even though it is a short statement, I would ask permission to have it filed, and then just pick out the items that are applicable, instead of reading the whole statement.

Mr. HAWKINS. Without objection, so ordered.

(The document referred to follows:)

STATEMENT BY JOHN M. LUMLEY, ASSISTANT SECRETARY FOR LEGISLATION AND FEDERAL RELATIONS, NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and Members of the Subcommittee. I am John M. Lumley, Assistant Executive Secretary for Legislation and Federal Relations of the National Education Association, which represents more than two million profes-

sional educators in 9,000 local and state affiliated organizations. I am pleased to present the views of the teaching profession on H.R. 6228 and related bills to amend Title VII of the Civil Rights Act of 1964 to establish enforcement procedures for the Equal Employment Opportunity Commission.

The policy base of the National Education Association view on these bills is contained in the following resolutions adopted by the NEA Representative Assembly at its Philadelphia Convention in July, 1969:

C–30. Nondiscriminatory Personnel Policies: The National Education Association believes that the criteria for evaluating educators for employment, retention, payment, or promotion are professional competence, successful experience, and ethical practice. Local affiliates must secure and enforce personnel policies and practices that guarantee that no person will be employed, retained, paid, or dismissed because of his race, national origin, religious affiliation, or sex.

C–32. Equality of Opportunity for Women: The National Education Association insists that all educators, regardless of sex, who are qualified be given equal consideration for any assignment by boards of education. Local affiliates are urged to launch a program to remove existing discriminatory practices against women.

C–40. Civil Rights: The National Education Association calls upon Americans to eliminate by statute and practice barriers of race, national origin, religion, sex, and economic status that prevent some citizens from exercising rights that are enjoyed by others, including liberties defined in common law and the Constitution and statutes of the United States. All individuals must have access to public education, to the voting booth, and to all services provided at public expense.

On the basis of these resolutions, NEA believes that the provisions of S. 2453 represent the strongest approach to the problems related to equal employment opportunity for minority groups. The rationale of our support of the Senate bill follows.

According to testimony developed by the U.S. Commission on Civil Rights, there is a considerable pattern of racial exclusion in public employment. One of the defects of the existing Title VII is the fact that the EEOC is authorized by the 1964 Act to use informal methods—conference, conciliation, and persuasion—for resolving charges of job discrimination. It has no power to refer cases to the Attorney General for action or assist complainants in their conduct of private lawsuits. S. 2453 would authorize EEOC to issue cease and desist orders after an administrative decision that an unfair employment practice exists. Our information indicates that of the 38 states (together with the District of Columbia and Puerto Rico) which have fair employment practice statutes, 34 enforce their laws through administrative agencies which have cease and desist power.

It has been pointed out that proceedings in Federal District court are subject to fixed rules, governing such matters as pleading and motion practice, which afford opportunities for dilatory practices often not present in administrative proceedings. Also, administrative proceedings are less constrained than Federal District court proceedings by formal rules of evidence. Accordingly, administrative proceedings often may be less subject to delay, and less burdensome for the parties, than suit in Federal court.

We are also disturbed that Title VII exempts state and local employees from its coverage. In exempting public employees from coverage, the Act withholds the protection of the Fourteenth Amendment, which is made available to private employees, to whom the government owes no comparable constitutional duty.

We agree with the argument of the Civil Rights Commission. A public employee can of course assert his right under the Constitution to bring a suit in court for discrimination in public employment. However, experience has shown that it is unrealistic to expect individuals to bear this burden. Employment litigation is expensive and time-consuming. Further, it is not normally undertaken by individuals who may be afraid of the courts, who cannot afford time off from work, or who are afraid of losing their jobs. As a practical matter, such enforcement is no enforcement at all.

We therefore urge that public employees be afforded the safeguards of Title VII, as provided in S. 2453.

Mr. LUMLEY. In the first paragraph, of course, we identify the National Education Association, and the fact that it represents teachers through State and local associations, and we cite our interest in this particular kind of legislation.

Then we go on to show our policy base, which is the resolutions adopted by the Representative Assembly. The Representative Assembly meets annually. They met in Philadelphia last year and adopted these resolutions: Nondiscriminatory personnel policies, equality of opportunity for women, and civil rights.

Here the NEA calls upon Americans to eliminate by statute and practice all barriers of race, national original, religion, sex, or economic status that prevent citizens from exercising the rights that are enjoyed by others, including the liberties defined in common law and the Constitution and the statutes of the United States.

On the basis of these resolutions, NEA believes that the provisions of S. 2453, the Senate bill before you, represent the stronger approach to the problems related to equal employment opportunity for minority groups. The rationale of our support of the Senate bill follows.

Now I realize you are considering a number of bills. Also, it is my understanding that you, Mr. Chairman, were offering or are going to offer an amendment that would do some of the things that we are asking.

Mr. HAWKINS. Yes. For your information, Dr. Lumley, there are several bills, one of which is authored by me, which would extend the coverage to State and local employees, and those of educational institutions, and I also stated, as has Congressman Reid, coauthor of the other bill, that we would offer amendments at the proper time to accomplish what S. 2453 seeks to accomplish, as a matter of fact, going a little beyond the provision of S. 2453.

Mr. LUMLEY. Yes, sir.

Mr. HAWKINS. So that is why we are conducting this hearing.

Mr. LUMLEY. This was our understanding. We feel that S. 2453 has the provisions that are absolutely necessary, but we did understand that you were going to introduce similar language in your amendment.

Mr. HAWKINS. Yes.

Mr. LUMLEY. I wanted to make it clear that we understood that, because it is not in the prepared testimony.

In our opinion, one of the defects of existing title VII is the fact that the EEOC is authorized by the 1964 act to use only informal methods—conference, conciliation, and persuasion—for resolving charges of job discrimination. It has no power to refer cases to the Attorney General for action, or assist complainants in their conduct of private lawsuits.

This legislation would authorize the issuance of cease-and-desist orders. We believe that this is absolutely imperative.

Our testimony points out that there are 38 States, the District of Columbia, and Puerto Rico, which have fair employment practice statutes, and 34 of them enforce their laws through administrative agencies which have cease-and-desist orders.

In following court procedures in those States that have had dual school systems we have found that the people who claim discrimination are simply out of work. As a result of people being idled by court delays the National Education Association has had to set up an emergency fund to help these teachers.

We have two emergency operations, really. One is to try to find employment for these people elsewhere while they are going through this lawsuit procedure to try to eliminate the discrimination in their

employment. The other operation is to either give or loan them money to live during that period.

So this brings us to the point that we are disturbed that title VII exempts States and local employees from its coverage. Local employees do not have the right to nondiscriminatory personnel practices. They must go as individuals into court to get this right.

We agree with the position of the Civil Rights Commission. The public employee can, of course, assert his right under the Constitution to bring a suit in court, but experience shows that this is a long-drawn-out procedure. Normally, without an organization behind him that can assist in doing this, an individual may be afraid of the courts. He can't afford the time; he just has to take what is coming. As a practical matter, such enforcement is no enforcement at all.

Based on the experience of the National Education Association with the integration of schools and the resulting discrimination against black teachers, we believe that the most important thing that can happen is the elimination of the exemption. State and local employees should be put under the coverage of title VII of the Civil Rights Act. We urge the committee to move the legislation as expeditiously as possible.

I noticed in this morning's paper that Secretary Finch says that by next year 80 percent of the schools will be integrated. Well, if this is true, our past experience teaches us that there will be a large percentage of black teachers for whom we will have to find positions in other areas, with whom we will have to go to court to see that they get their lawful rights.

Mr. HAWKINS. Thank you, Dr. Lumley.

I presume that you are speaking for the association in these views this morning before the committee?

Mr. LUMLEY. Yes, sir; this is the official policy of the National Education Association. I regret that our NEA president is spending some time in Europe and could not be here to present the views.

Mr. HAWKINS. Yes.

On page 3, I was quite interested in the statements that you made on page 3, in which in the first paragraph, you brought in a thing which is not ordinarily recognized. That is that these public employees actually are protected by the 14th amendment. I assume from that that we don't have the problem in this instance of the distinction between de facto and de jure segregation, because this happens to be discrimination by a public agency as such, and consequently, is considered under de jure segregation, so there would probably be the usual problem that we had in terms of the schools in which persons have tried to make the distinction between the North and the South or de jure and de facto segregation.

Mr. LUMLEY. Yes.

Mr. HAWKINS. Then I was also quite interested in your second paragraph, in which you point out something which I think is greatly overlooked, and that is that a large number of individuals go on bearing the effects of discrimination, rather than complaining, because of the expense involved and the personal sacrifice involved in trying to do something about a particular case, so that actually, the cases that we see are not a true indication of the extent of the problem; they probably are the few that surface, and the most courageous individuals,

rather than individuals who, let us say, for family reasons, because of economic, social reasons, and so fourth, are not in a position to even complain.

Would that be the true statement?

Mr. LUMLEY. That would be correct, sir, in our experience. I would say that the larger percentage of teachers displaced by integration have been the black teachers. We have sometimes been able to find employment for them in other States, but this isn't always possible. It depends upon the mobility of the individual. I mean, he has an investment in a home, his family is there, and to pick up his roots and move from one State to another State is a pretty tough thing to do.

But a large number have been placed in employment in other areas in preference to starting any legal action. But as you can see, the whole thing is unfair to begin with, forcing people to move this way. If this exemption were taken away, the local school boards would then be forced to look at the situation realistically and legally, and discrimination could be eliminated.

In spite of what the National Education Association may be able to provide its members in subsistence or in legal assistance, this problem becomes greater than any organization can carry.

Our State and local associations have run into the limit of what they can do.

Mr. HAWKINS. Dr. Lumley, in the President's recent desegregation message, I noticed that he did refer to this problem of teachers being displaced, and did indicate that he thought that the law was very clear that it applied to employment in the schools quite as much as the court case, the 1954 decision, applied to children.

I thought that this was the stronger part of his message—actually one of the few parts of it that I agreed with—but I think that it did indicate that the support, or at least, some reconciliation of the problem does bear support from his office.

Did you get the same reaction to this part of his message that I did?

Mr. LUMLEY. Yes. The message at least recognized that the problem was there. I was not convinced that there is any particular plan to try to eliminate the problem.

Mr. HAWKINS. Well, at least he gave moral support.

Mr. LUMLEY. That is right. The moral support was there.

Mr. HAWKINS. Which I think is very desirable.

Mr. LUMLEY. That is right.

Mr. HAWKINS. Did you not also point out that there was no problem of busing involved, in this particular instance, that teachers, I suppose, go to work in Cadillacs, and——

Mr. BELL. That sounds like your district. [Laughter.]

Mr. LUMLEY. He is talking about California teachers.

Mr. HAWKINS. I am thinking of those who ride in Mr. Bell's district, perhaps, to my district, in order to teach. [Laughter.]

Mr. Erlenborn.

Mr. ERLENBORN. Thank you, Mr. Chairman.

Dr. Lumley, I want to thank you for appearing here today, and for your fine statement. I think that there seems to be general agreement that the present method of resolving these problems of discrimination in employment, as the EEOC now does, through conciliation and formal hearings, is not sufficient, and that some change is necessary.

The question is which new method of enforcement would be the best. I see that you endorse the provisions of S. 2453. This would provide for hearings, the issuance of cease and desist orders; and then, as you are probably aware, before final enforcement, it would require that the commission go into court to enforce the cease and desist order.

Some of the evidence before this committee indicates that this would entail a much longer period of time than the immediate resort to the court, the temporary restraining order, preliminary injunction, hearing, and final injunction. Our experience with the NLRB and some of the other agencies bears this out; that is, if they immediately go to court, there is relief available, and final orders can be obtained much quicker.

Mr. LUMLEY. Our statement is based on the belief that if the Government accepts responsibility for protecting the rights of public employees to the same degree as it accepts responsibility for protecting the rights of those people in private employment, this will a good psychological move.

I grant you that a government agency can get tied up in court, that there can be delays there, also. I can agree with this.

But if the Civil Service Commission issued an order to a school district concerning the fair employment of teachers and the rights of teachers, it would have at least a psychological effect on the school board. It is our experience that people on the whole respond. Now, there will be those extreme cases that will have to go to court to get the orders issued. Here again, the NEA will have to move in to protect its people, I assume any other organization of public employees would do the same thing.

We would help by entering as a friend of the court, or by supporting the people either through grants or loans. Usually, our financial assistance takes the form of low interest loans to the extent that people can afford it. People do this, they want to do this for their own self-respect. Once they are back on their feet, they pay this loan off, realizing that when thtey do this fund then goes on to be used for someone else.

Mr. ERLENBORN. Thank you very much.

Mr. LUMLEY. But this is the basis of our thought: the Government has the responsibility for public employees. Actually, Congressman Erlenborn, as we stop to think about it, the public sector employs more people than any other employer. It would seem only fair to give them this protection.

Mr. ERLENBORN. As a matter of fact, in the testimony before this subcommittee, I have come to the conclusion, tentative, at least, that maybe we ought to transfer the jurisdiction for Federal employees from the Civil Service Commission to the Equal Employment Opportunity Commission, because I don't think that we have done in the Civil Service Commission the kind of job for Federal employees that probably should have been done.

Mr. LUMLEY. I think I could agree with that.

Mr. ERLENBORN. Thank you very much.

Mr. HAWKINS. I believe the Commission on Civil Rights did indicate something like 8 million employees under the State and local governments, and I think, of that number, 4.4 million were in areas outside of education.

Mr. LUMLEY. That is right.

Mr. HAWKINS. So this would be a very substantial coverage that we are speaking of.

Mr. LUMLEY. Yes. You see, what I was presenting to you here was only involving the employees of school districts.

Mr. HAWKINS. Certainly.

Mrs. Mink?

Mrs. MINK. Thank you, Mr. Chairman.

I welcome Dr. Lumley to the committee. The Federal Government, I think, has been most derelict and negligent with respect to recognizing its moral responsibility in the area of equal employment opportunity, and I speak with particular reference to discrimination against women.

I know that in Federal employment concerning teachers overseas, that we have had enormous difficulty in seeking remedies under the civil rights legislation, and have had to resort to an Executive order by the President, in order to try to resolve some of the inequities affecting women employees who are teaching overseas.

I wondered if you would care to make any comment, Dr. Lumley, about this problem, as you see it.

Mr. LUMLEY. I can agree with you wholeheartedly. You will find that one of the resolutions that was adopted by the NEA at its Philadelphia convention was on equal opportunity for women, because of the very problems that you are citing. We know we don't have enough protection for women in employment practices.

I suppose, being in Washington, we know more about the Federal Government, and we can see that women don't rise to the top of the ladder. I think this discrimination is also prevalent in school districts.

Mrs. MINK. Aside from the problems with reference to promotions and recognitions of the abilities and capabilities of women who are teaching—and again, I address myself to the area that I am most familiar with, and this is the overseas education under the Department of Defense—one of the principal difficulties that I have become aware of is the unequal distribution of perquisites that accompany employment overseas.

The problems arise with respect to difference between single women and married women; the fact that the woman is married automatically eliminates her from a number of benefits which others enjoy, where no such distinctions are made with respect to married men. And this is a tremendous problem, and I think I have a drawer full of communications with the Defense Department; here again, as my colleague has just indicated, Civil Service Commission is not particularly effective in helping to remedy some of these problems, nor has the Civil Rights Commission, under the title VII provisions.

I wondered if you would have any comment with reference to providing a special amendment under the civil rights legislation that is before the committee specific authorization with respect to enforcement of equal employment opportunities with respect to all Federal agencies.

Mr. LUMLEY. Well, here I have to speak personally, and there is no doubt in my mind that there should be legislation that would eliminate all discrimination.

Let me say that I think I could also speak for the association, because we have been following the problem that you have raised about overseas teachers. We have been trying to intercede with the Department of Defense in its education division, trying to intercede with the Civil Service Commission, to get some of these things corrected. But we have made no headway. Oh, maybe small matters, but not the big ones that you are talking about.

There certainly should be some way of dealing with sex discrimination without any question. If you are going to eliminate discrimination, discrimination all along the line should be eliminated, and the law should be strengthened for that purpose.

Mrs. MINK. Thank you.

Mr. HAWKINS. Thank you.

Mr. Bell.

Mr. BELL. Dr. Lumley, thank you for your statement. We welcome you to the committee.

I am a little bit confused as to your position on this. Do you feel that the Civil Service Commission should be somewhat under the direction of the EEOC on such matters as discrimination, and so forth?

Mr. LUMLEY. I was asked whether I felt that there would be stronger enforcement if it were put in the EEOC instead of in civil service.

Mr. BELL. Yes.

Mr. LUMLEY. And I think the answer would be yes.

Mr. BELL. That there should be stronger enforcement.

Mr. LUMLEY. Yes, I think there should be stronger enforcement.

Mr. BELL. You don't think the Civil Service today has strong enough teeth in it for cases of discrimination?

Mr. LUMLEY. That is right.

Mr. BELL. You don't think that the employees can raise their cases of discrimination and have their hearings, just like they could under EEOC?

Mr. LUMLEY. You are speaking now of Federal employees. Yes, they can do this.

Mr. BELL. But you don't think it does in State and local cases.

Mr. LUMLEY. No, I don't think so. What we are talking about here is this exemption of State and local employees, and this is what I want to eliminate. I don't want them exempt. I want them in here. And of course, under the legislative proposal, the exemption would put them under Civil Service, unless you amended that. And this was how the question as to whether I thought it might be better to move it all came up. That is the reason I said yes.

Mr. BELL. I see.

Thank you.

That is all, Mr. Chairman.

Mr. LUMLEY. Is that clear at all?

Mr. BELL. Yes, that is clear.

Mr. HAWKINS. Again, Dr. Lumley, I want to express the appreciation of the committee for your appearance here today, and as usual, you have contributed substantially to the progress of this committee, and at this point, we will dismiss you, if there are no more questions.

Mr. LUMLEY. Thank you very much. And keep at it.

Mr. HAWKINS. Thank you.

Is Mr. Robert Hansen present?

May I suggest it is my understanding that Mr. Hansen had planned to be here about 11:30. Obviously, we are not going to be in session. May I request that the record be kept open a reasonable amount of time for Mr. Hansen to submit his statement. If that is agreeable, and without objection, it is so ordered.

I have several letters and statements which I submit for inclusion in the record at this point.

(Documents follow:)

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH,
Washington, D.C., December 18, 1969.

Hon. JOHN DENT,
Chairman, General Subcommittee on Labor,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Anti-Defamation League of B'nai B'rith welcomes this opportunity to express its support for and to urge early passage by the Congress of H.R. 6228, the "Equal Employment Opportunity Enforcement Act," designed to strengthen and expand the authority of the Equal Employment Opportunity Commission.

The Anti-Defamation League is the educational arm of B'nai B'rith which was founded over 125 years ago in 1843 and is America's oldest and largest Jewish service organization. It seeks to improve relations among the diverse groups in our nation and to translate into greater effectiveness the principles of freedom, equality and democracy. It is dedicated to securing fair treatment and equal opportunity for all Americans regardless of race, religion, color or national origin. Removal of barriers to equal employment opportunity has long been among the Anti-Defamation League's top priorities.

The main thrust of H.R. 6228 is to give the Equal Employment Opportunity Commission authority to issue cease and desist orders after a hearing and finding that an employer or union is engaged in a discriminatory employment practice. Its enactment is essential if the Commission is to have the ability which it now lacks to deal effectively with the problem of job discrimination, which despite the progress made since Congress approved Title VII of the 1964 Civil Rights Act is still a pervasive and persistent one.

The conclusion is inescapable that if we are to achieve the objectives of Title VII the Commission must be given adequate enforcement authority. All the Commission can do under existing law is to investigate and try to conciliate complaints of discrimination. Where persuasion and conciliation prove unsuccessful, the Commission is powerless to act; the victim is left to his own resources. He must seek relief in the courts on his own, unless the Attorney General finds a "pattern or practice" of discrimination and brings suit to enjoin such discrimination. To date, as the Deputy Attorney General noted in his testimony before this Subcommittee, only 48 such "pattern or practice" law suits have been brought, and the limited resources of the Civil Rights Division preclude the bringing of such law suits on a volume basis.

It is clear that if the Commission is to be in a position to carry out the responsibilities delegated to it by Congress in Title VII and be a truly effective agency, it must be given cease and desist authority. In conferring such authority on the Commission, Congress would be doing no more than giving the Commission the same power long enjoyed by other Federal regulatory agencies and by nearly all state fair employment practice agencies. The experience of the state agencies shows that such enforcement powers are necessary to make the conciliation process effective. Where enforcement authority exists to back up conciliation, relatively few cases go to an administrative hearing—they are settled or otherwise disposed of—and even fewer are appealed to the courts. The mere existence of cease and desist powers helps to bring about voluntary compliance.

As a recent study "Jobs & Civil Rights" prepared for the Commission on Civil Rights by Richard P. Nathan, then with the Brookings Institution and now Assistant Director of the Bureau of the Budget, emphasizes: (pp. 66, 67)

"Cease and desist authority for the EEOC is essential no matter what else is done. The point is not so much that cease and desist authority would be widely

used, as that its availability would make it easier to secure compliance and cooperation in every phase of EEOC operations. In these terms, it is regrettable that at a time when civil rights unrest has been increasing, Congress has allowed the relatively uncontroversial EEOC cease and desist bill to languish. Were this measure picked up and successfully pressed by either or both the President and Congress, it could have considerable impact, both as a force for advancing the cause of civil rights and as a symbol of the willingness of the Federal Government to pursue every available avenue for genuine progress in this field."

The Administration bill, H.R. 13517, while acknowledging the deficiency in existing law, would not give the Commission cease and desist authority. Instead it would require the Commission to go to court against the recalcitrant employer or union.

In our view, authority to issue cease and desist orders after an administrative hearing would be more effective in bringing about compliance with the law than would the court enforcement approach called for in the Administration bill. It is only through the administrative hearing procedure that regulatory agencies are able to handle expeditiously, and dispose of, the multitude of cases coming before them. The administrative agency is better suited and more adequately equipped than the courts for carrying out the public policy and enforcing the public rights which Congress has enacted into law. As the late Justice Frankfurter stated in his dissenting opinion in Federal Communications Commission v. National Broadcasting Co., Inc., 319 U.S. 239, 248 (1943) :

> Unlike courts, which are concerned primarily with the enforcement of private rights although public interests may thereby be implicated, administrative agencies are predominantly concerned with enforcing public rights although private interests may thereby be affected. To no small degree administrative agencies for the enforcement of public rights were established by Congress because more flexible and less traditional procedures were called for than those evolved by the courts. It is therefore essential to the vitality of the administrative process that the procedural powers given to these administrative agencies not be confined within the conventional modes by which business is done in courts.

To deny the EEOC cease and desist powers and to require it to go the court route would severely restrict the Commission's effectiveness. As Professor Joseph P. Witherspoon of the University of Texas School of Law in a recently published comprehensive treatise on the work of human rights commissions, "Administrative Implementation of Civil Rights" (1968) states: (pp. 139–140)

> The *sine qua non* to dealing effectively with individual instances of discrimination is the existence of some form of civil-rights law prohibiting discrimination against minority and other disadvantaged groups and the availability of a human-relations commission with ample authority to enforce that law *administratively* against officials and private persons and institutions who violate it. (emphasis added)

For these reasons we believe that the cease and desist approach embodied in H.R. 6228 is plainly to be preferred to the court suit alternative provided for in H.R. 13517.

Before concluding this brief statement, we would like to suggest several amendments to H.R. 6228. State and local government employees now exempt from the coverage of the existing law should be brought within its protection. We would also urge that the contract compliance functions of the Office of Federal Contract Compliance and the functions of the Civil Service Commission with respect to equal employment opportunity for federal employees be transferred to the Commission. These amendments would not only extend the protection of the law to a significant number of employees now denied its benefits but would also make possible the development of a uniform national policy of non-discrimination in employment by centralizing responsibility for all equal employment opportunity activities in one agency.

We respectfully request that this statement be included in the printed record of the hearings.

Sincerely,

DAVID A. BRODY, *Director.*

47-445—70——17

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION,
Charleston, W. Va., December 9, 1969.

Hon. JOHN H. DENT,
Chairman, General Labor Subcommittee,
Education and Labor Committee,
Washington, D.C.

DEAR CHAIRMAN DENT: The West Virginia Human Rights Commission has learned that your Committee is presently holding hearings and discussion on proposed legislation relative to the Equal Employment Opportunity Commission. Our Commission would appreciate that you give consideration to the following points of view which we already have supplied to Senator Harrison A. Williams, Chairman, Labor Subcommittee, Labor and Public Welfare Committee, U.S. Senate.

At its regular meeting on August 14, 1969, the West Virginia Human Rights Commission authorized support of legislation amending Title VII, U.S. Civil Rights Act of 1964, to provide enforcement powers for the U.S. Equal Employment Opportunity Commission through use of administrative hearings and cease and desist orders.

The history of the West Virginia Human Rights Commission provides a good example for comparing effectiveness of an antidiscrimination agency before and after it has been granted enforcement powers. From 1961 through June 30, 1967, the West Virginia Human Rights Commission administered the West Virginia Human Rights Act (copy enclosed) which provided for investigation of formal complaints and remedial efforts limited to conference and conciliation. The 1966–67 Annual Report of the West Virginia Human Rights Commission (copy enclosed) on page 4, depicted the sparse number of complaints (21) filed with the Commission and the almost 50 percent (10 complaints) of cases in which the respondent employer refused to cooperate with the Commission—a "toothless tiger" agency administering a "toothless tiger" law.

The Commission's 1967–68 Annual Report (copy enclosed) on Page 7 tells a different story. Fifty formal complaints were filed with not a single respondent employer refusing to cooperate with the Commission during the investigation and conciliation process.

The 1968–69 Annual Report of the West Virginia Human Rights Commission is now in preparation. Of approximately seventy (70) formal complaints of employment discrimination not a single respondent employer refused to cooperate with the Commission during investigation or during the process of conference and conciliation to reach a mutually satisfactory adjustment of the issues raised in the complaints.

We believe the relationship between this Commission, employers, labor unions, and other persons or organizations covered by the West Virginia Human Rights Act has been friendly and cooperative. The public response and acceptance has been wholesome. Concomitantly, the Commission's education program has been expanding as schools, colleges, church groups, labor unions, personnel management associations, and civic organizations have requested speakers and other programs because of greater respect for the Commission's role as a law enforcement agency.

The Commission does not have specific information to warrant endorsing one bill over other bills that might be suggested to your committee. Therefore, the Commission urges that any legislation amending Title VII, U.S. Civil Rights Act of 1964, would embrace the following:

1. Enforcement powers for the Equal Employment Opportunity Commission.
2. Adequate budget to administer these increased powers.
3. Retention of the requirement for deferral of formal complaints by EEOC to state antidiscrimination agencies having equal enforcement powers.
4. Retention of the principle of cession, wherein for certain cases for which a state antidiscrimination agency has a need for retention of jurisdiction, the EEOC will cede jurisdiction to that state agency.
5. Provision of enforcement powers to EEOC through a procedure for administrative hearings and the issuance of ceases and desist orders.

We consider Item #5 to be most important because it is through the administrative hearing and cease and desist procedures that state (and local) antidiscrimination agencies since 1945 have compiled a rather creditable record of

effectiveness. The record shows that because of the power of public hearing and the possibility of a cease and desist order to follow, respondents have been more cooperative at the level of conference and conciliation to eliminate discriminatory practices. The record will show relatively few public hearings and a high percentage of success at the level of conference and concilitation. We feel the U.S. Equal Employment Opportunity Commission should be provided with this effective tool for combating employment discrimination.

Sincerely,

Rabbi SAMUEL COOPER, *Chairman.*

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

On behalf of the membership of the National Association of Manufacturers, we would like to submit these views of H.R. 6228, the Equal Employment Opportunities Enforcement Act. NAM member companies—large, medium and small in size—account for a substantial portion of the nation's production of manufactured goods, and employ millions of people in manufacturing industries.

INTRODUCTION

NAM believes that the freedom of opportunity for every individual to work at an available job for which he is qualified is an objective of the American way of life. Employment of individuals and their assignment to jobs should be determined only by matching the individuals' skills and qualifications with the requirements of an available position without regard to race, color, religion, sex, age or national origin.

While we support the objective of promoting equal employment opportunities, we do not agree that legislation of the scope encompassed by this bill is necessary. Title VII of the Civil Rights Act of 1964 has now been on the statute books for more than five years. In our view, difficulties experienced in eliminating discrimination in employment are not due to insufficient legislation or to any unwillingness or bad faith on the part of employers in general. Experience has demonstrated that a reasonable presentation of grievances, well grounded in fact, usually produces an agreeable result.

Turning now to the specific proposals contained in the proposed Equal Employment Opportunities Enforcement Act, stated in briefest form, the major provisions of H.R. 6228 would:

1. grant cease and desist powers to the EEOC with enforcement in the Court of Appeals;
2. authorize the EEOC to seek temporary or preliminary relief in U.S. District Court;
3. grant subpoena power to the Commission;
4. authorize EEOC to engage in and partially fund in advance research and other projects of "mutual interest" undertaken by state and local fair employment practice agencies.
5. expand coverage to employers with eight or more employees;
6. require that ability tests be "directly related" to the "particular position concerned."

CEASE AND DESIST

We emphatically question the necessity for granting cease and desist powers to the EEOC for a number of reasons. First, no convincing case has been made for the argument that by giving the agency this power it will be any more able to carry out its legislatively intended purpose. Currently forty states have enacted Fair Employment Practice Acts, thirty-three of which include cease and desist authority. In spite of this, EEOC Chairman Brown testified that it is these latter states, the ones with cease and desist authority, which present the Commission with the largest number of complaints. On its face, this fact alone should demonstrate that cease and desist authority is not the panacea as sponsors claim.

Other valid reasons present themselves; the administrative restructuring of EEOC to enable it to exercise the quasi-judicial functions which necessarily accompany cease and desist authority would combine within one agency the power to effectuate the purposes and policies of Title VII and, at the same time, to act as a decisional agency on questions of fact and law. Long experience has

amply demonstrated the impossibility of a single agency serving both as an advocate and an impartial judge. The former function inevitably spills over, coloring the latter, thwarting the purpose of Congress and producing institutionalized inequity.

Also an important objection is the fact that administrative restructuring would be very costly—the addition of substantial numbers of lawyers and hearing examiners, together with a large supportive staff, would be necessary at a time when the Administration is making sincere efforts to reduce the size of the federal bureaucracy.

Sometimes the obvious escapes attention even when reviewing statistics related to any issue. It is interesting to note, according to the published records of EEOC, that nearly 45,000 charges of employment discrimination have been filed with the Commission since its inception. Nearly 40,000 have thus far been conciliated or dismissed by the Commission as invalid. In other words, about 90% of the charges have been disposed of in accordance with the true intent of the law. Of the approximately 10% that remain unconciliated, it is unreasonable to assume that this is totally a result of employer intransigency or a hiding behind the intent of the act. Rather it is reasonable to assume that many employers will not agree to conciliate because the employer believes that the EEOC decision was wrong in the first place, based upon the Commission review of the facts combined with its interpretation of the law.

Therefore if it is felt by Congress and the Administration that an additional mechanism should be provided by law to handle this small percentage of unconciliated matters, then clearly these disputes should be decided by the impartial judicial method of our federal court system.

In summary, considering the already clear evidence that the law is working as intended, the granting of cease and desist powers to the EEOC is not only unwise but uncalled for.

Furthermore, in not recommending the grant of cease and desist power for the EEOC we are joined by the Secretary of Labor, the Deputy Attorney General, the Assistant Attorney General in charge of the Civil Rights Division, and the Chairman of the Equal Employment Opportunity Commission.

FUNDING STATE PROJECTS

We are aware that EEOC has an established grant program through which significant amounts of money—$700,000 during the current fiscal year—are made available to state and local agencies to promote non-discrimination at their respective levels. H.R. 6228 would add new language to Section 709(b) of the Civil Rights Act specifically authorizing EEOC to join with these agencies in "research and other projects of mutual interest" by contributing funds in advance or by reimbursement. We feel any such arrangement should be safeguarded to prevent EEOC from gathering indirectly information which it presently is not authorized to gather directly. To be precise, under the Federal Reports Act of 1942 (44 U.S.C. 3501) the Commission must first secure approval from the Bureau of the Budget before it may collect information upon identical items from ten or more persons. Before such approval is given, interested parties are given opportunity to be heard and frequently there is a hearing during which objections may be raised. Should EEOC be authorized to receive and make use of information from state and local agencies, information which these agencies could collect under laws applicable to them but which the Commission could not collect through lack of Bureau of the Budget approval, then Federal law will have been circumvented. Certainly such a result would be contrary to the will of Congress and possibly detrimental to the cause of civil rights.

The question of confidentiality needs also to be touched upon. Congress, in enacting Title VII, specifically provided criminal sanctions making it "unlawful for any officer or employee of the Commission," either through its own efforts or through cooperation with state and local agencies (Section 709(e)). The obvious intention was to allow employers and aggrieved parties sufficient time to resolve any differences through "conference, conciliation and persuasion," before making the matter public. Disclosures which are made during the course of litigation are governed by the procedural rules of the court and therefore guarantee that the parties will be afforded due process. Any publication of statistics or fact situations by one party, without adequate opportunity for explanation by the other, may easily give rise to "sensational" headlines and thereby create an emotional situation rendering impossible any fair and expeditious solution. The concern of Congress in protecting the confidentiality of information gathered

under authority of Title VII is manifest. Provisions such as those contained in H.R. 6228 would seem to provide, whether intentionally or not, a means by which this confidentiality almost inevitably would be comprised.

In view of the foregoing, and in light of the fact that state and local employees are not covered by federal prohibitions, we are concerned about the handling of information developed through "mutual research projects" and would be even more doubtful of the outcome if proposed Section 709(d) of H.R. 6228 were to become law. This latter provision would authorize EEOC to make available to state and local agencies any of the information furnished the federal agency under the record keeping requirements of Title VII. It is true that states would be admonished not to make such information public prior to the institution of proceedings under state or local law but the weakness of this prohibition is made obvious by the fact that if it is violated the only recourse provided EEOC is to refuse to honor subsequent request for such information. Accordingly, we oppose the broadening language suggested by H.R. 6228 at Sections 709(b) and (d).

TESTING

We feel that the provisions within H.R. 6228 requiring that ability tests be "directly related" to the "particular position concerned" do not add to the existing law in any supportive way, and as stated create rather than eliminate avenues of subtle discrimination.

Our opinion on testing is shared by most reasonable spokesmen in the civil rights arena. Furthermore, it is interesting that, while industry is being asked as part of its affirmative action efforts to restructure employment practices to provide career opportunities beyond the entry level, this type of provision would clearly inhibit innovation on the part of the private sector with respect to career development. We believe the language of the existing law is adequate and should be retained.

Perhaps it is not inappropriate to make the following observation concerning the role of the private sector with respect to minority employment. It is an established fact that most employers over the past five years have considerably altered and improved their employment practices with regard to minorities. To deny this would be both unrealistic and unfair. In fact, these changes in the private sector process of recruiting, testing, training and upgrading of its personnel could well be examined by the federal establishment with a view to improving its posture in the field of employment practices.

H.R. 13517

We note that H.R. 13517 is also before the Subcommittee. This legislation proposes to expand the enforcement authority of EEOC by empowering the Commission, through its own attorneys, to bring suit in federal district court where violation of Title VII is charged. If Congress feels that some further authority is necessary, H.R. 13517 offers an alternative solution worthy of consideration. By its terms it would provide for a separation of administrative and judicial functions and thereby extend to all parties the protection inherent in due process. We would point out, however, that without close cooperation between the various governmental agencies charged with responsibility in the civil rights area considerable harassment could develop. The same employer might find that despite the fact he was under obligation to answer a formal complaint filed in U.S. District Court he was also being called upon to answer simultaneous inquiries and to supply information to the Office of Federal Contract Compliance, perhaps the Civil Rights Division of the Justice Department, and conceivably one or more state and local agencies.

H.R. 14632

We note further that H.R. 14632 is pending before the Subcommittee. This bill is similar in major respects to Representative Hawkins' bill, H.R. 6228, commented upon herein at length. We do desire, however, to treat one provision of H.R. 14632 which is unique. Section 715 would eliminate the Office of Federal Contract Compliance by transferring its "authority, duties and responsibilities" to EEOC. We agree with moves designed to reduce duplication of effort within the federal government and, if the transfer of OFCC would result in such a reduction, then we would favor consolidation. We oppose, however, the grant of authority either by the Congress or by the Executive whereby an agency of

the federal government is empowered to suspend, cancel, terminate and/or blacklist a government contractor. We see no reason why such additional sanctions should be attached to doing business with the government.

CONCLUSION

NAM believes that the Civil Rights Act of 1964 provides a climate within which equal employment opportunity can develop and grow and that industry is making a continuing effort to implement that law. One indication is that a recent broad-based survey [1] revealed that eighty-six percent of the companies replying to the survey are currently making special efforts to recruit the disadvantaged. Seventy-five percent note the United States Employment Service as the single most widely used recruiting source while sixty-six percent conduct their recruiting with the help of NAACP, CORE or the Urban League.

Over seventy-five percent of the companies responding do not require a high school diploma for entry level jobs. An interesting note is that one company reported they were asked by local school officials to retain the diploma requirement as a deterrent to drop-outs. Ninety percent of the companies counsel their disadvantaged employees on problems encountered on the job.

The many and varied government programs designed to educate and upgrade the disadvantaged in this country suggest that qualification for job placement frequently may be as great a problem in the employment of minority group members as the matter of discrimination. To quote Labor Secretary Shultz, "One of our primary goals is the expansion and re-direction of our manpower programs to balance the employers' urgent need for workers with the job needs of men and women who lack the education and training to assume these jobs." In our view where such a circumstance pertains broader enforcement authority as proposed in H.R. 6228, H.R. 13517 and H.R. 14632 would hinder rather than aid efforts directed towards helping these individuals.

WOMEN'S EQUITY ACTION LEAGUE,
December 10, 1969.

HOUSE GENERAL SUBCOMMITTEE ON LABOR,
House Office Building,
Washington, D.C.

GENTLEMEN: It has just come to our attention that hearings were held before your Committee on H.R. 6228, a bill "to further promote employment opportunities of American Workers."

As the enclosed folder containing our purpose clause will disclose, our organization, WEAL, has been incorporated to promote this very purpose. Had we heard of the hearings, which were not publicized here, we would have sent a representative.

In lieu of this, I am sending this letter to urge your support for the granting of cease and desist powers to the Equal Employment Opportunity Commission, and the including of educational institutions and their employees, including professional employees, under Title VII of the Civil Rights Act of 1964.

We have evidenced our support for Senate Bill 2453, which would grant cease and desist powers to the Commission. Every head of the Commission has publicly stated that the Commission must have cease and desist powers, since the hard-core cases which confront it are not subject to persuasion, as it was earlier hoped they might be.

The Senate Bill 2806, the administration bill, would be, in our opinion, a weak and cumbersome enforcement means as compared with cease and desist power. Confusion seems to have developed in the Senate between these two bills, so, apparently, the House will have to lead the way!

As to the extension of Title VII to cover staff and professionals in educational institutions, there is a crying need for this protection. Approximately half the letters we have received, from women all over the country, are concerned with discriminations in the *education* field.

Many of these institutions are spending our tax money, and at the same time discriminating against us—a clearly inequitable situation.

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[1] American Society for Personnel Administration—Bureau of National Affairs, Inc., Survey dated August 14, 1969.

We therefore hope that your Committee will support better funding for EEOC, greater empowerments, in the form of cease and desist rights, and coverage extended to educational area workers, both staff and professional.

Very truly yours,

NANCY E. DOWDING, *President.*

SOLOMON G. LIPPMAN, Esq.
Special Counsel, General Labor Subcommittee,
Washington, D.C.

DEAR MR. LIPPMAN: Enclosed is a statement we have prepared in support of including in the pending legislation on equal employment opportunity the clause making clear that reasonable differentiation in pension and retirement plans, as between male and female employees, is not unlawful. As you will see, it is based largely on material developed in the statement submitted to the OFCC by our Assistant Vice President, Stanley L. King, Jr.

I would appreciate your comments as to whether this is suitable for inclusion in the record being developed by the Subcommittee. We can enlarge upon any of the points mentioned if you think that such emphasis would be useful.

The language which the Senate included by amendment in its 1968 passage of H.R. 2707 (referred to on page 7 of our statement) is attached on a separate page. We feel that it was a cumbersome clause, not appropriate to set forth in the statement, but is of interest in demonstrating the position of the Senate on this matter.

Sincerely,

CURRAN C. TIFFANY,
Executive Assistant and Attorney.

STATEMENT SUPPORTING AN AMENDMENT TO THE CIVIL RIGHTS ACT OF 1964 PERMITTING REASONABLE DIFFERENTIATION IN PENSION AND RETIREMENT PLANS AS BETWEEN MALE AND FEMALE EMPLOYEES

PERMITTING WOMEN TO RETIRE AT AN EARLIER AGE THAN MEN RECOGNIZES BONA FIDE DIFFERENCES IN WOMEN'S EMPLOYMENT NEEDS, INTERESTS, AND DESIRES

Since their inception in 1913, the "Plans for Employees' Pensions, Disability Benefits and Death Benefits" of Bell System Companies[1] have permitted, but have not required, women to retire on an undiscounted immediate pension at earlier ages than men. For example, women with 20 years of service may retire at their own request at age 55 but men must be at least 60 years old.

Four-fifths of all women employees retire before reaching age 65; the average retirement age for women in the Bell System is 60. However, almost half of our men employees work to age 65 and the average male retirement age is 63.[2]

The economic role and the needs, interests and personal preferences of men and women employees nearing retirement age are often different, supporting an earlier optional retirement age for women. Married women frequently retire at

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[1] These plans, which are identical in all relevant respects, presently apply to some 950,000 active employees and more than 100,000 pensioners. Since 1930, the mandatory retirement age in all Bell Companies has been 65, regardless of sex. A vesting provision which gives to any employee who has attained the age of 40 with 15 years' service a deferred service pension at age 65, also applies on the same basis to both male and female employees.

[2] The following table (from the latest study available) compares the percentages of Bell System men and women employees retiring from ages 55 to 65:

Ages at which men and women retire when eligible to do so at their own request	Percent women retiring of total number of women eligible to retire[1]	Percent men retiring of total number of men eligible to retire[1]
55 to 59	43.0	(2)
60 to 64	31.6	50.0
65	19.9	42.7

[1] Do not add to 100 percent because remainder retired with company approval.
[2] Not applicable.

an age earlier than their husbands since women generally are younger and want to retire at the same time as their husbands. In addition, women are often supported by their husbands and have fewer obligations to support others. Many women work to provide supplementary income. The purposes for which they are working may be fulfilled at an earlier age.

Another factor to consider in evaluating retirement plan differences is that when women retire, they generally leave the labor market. However, if men were permitted to retire early at their own request with a full immediate pension, experience indicates that many would do so in order to take other employment and enjoy both the pension and a salary from another job.

These factors have nothing to do with discrimination in employment hiring, placement, retention or promotion. Permitting early retirement for women certainly is not a barrier to continued employment. Allowing—but not requiring—women to retire early recognizes that they have legitimate retirement needs and desires which are different from men.

Certain other features of the Bell System plans treat men and women differently. For example, death benefits are mandatory for the widow living with her husband at the time of his death as an active or retired employee. A widower receives such a benefit on a mandatory basis only if he was incapable of self-support and actually supported in whole or in part by his wife. This provision avoids the administrative necessity of investigation and a finding of need in the case of widows. In cases of need, widowers are entitled to similar death benefit treatment on a discretionary basis and in appropriate cases benefits are paid.

Similarly widows of employees who die before retirement, but at a time when the husband could have retired as of right, receive survivors' pensions. The same provision for widowers is not included because the need for such annuity treatment is rarely present.

Provisions such as these are by no means unusual and are sanctioned by other federal legislation in other areas as is shown below. They are favorable to widows and should be permissible as a matter of public policy.

THE CIVIL RIGHTS ACT INTERPRETATION REFLECTED IN THE EEOC GUIDELINE AGAINST VOLUNTARY EARLY RETIREMENT FOR WOMEN, IS CONTRARY TO THE INTENT OF THE ACT AND INCONSISTENT WITH OTHER FEDERAL LEGISLATION

The EEOC's interpretation of Title VII is actually legislative in nature and an unwarranted extension of the statute beyond the point that Congress has legislated in related fields. It intrudes in an area which the legislative branch has indicated an intent to exclude.

The central purpose of the Civil Rights Act was to open and further employment opportunities for placement, promotiton and upgrading regardless of such factors as race, religion, national origin or sex. It cannot serve that purpose to prohibit women from retiring early at their own option.

Pension and retirement plans have primary effect at the end of one's employment career. Variations in voluntary retirement ages have no effect on the opportunity to earn a livelihood. They should be left to develop in an atmosphere of flexibility and reasonable differences should not be prohibited.

In this matter of age discrimination, Executive Order 11141 (pertaining to Federal employees and contractors under Federal contracts) and the Age Discrimination in Employment Act of 1967 specifically confirm the lawfulness of age differentiations in bona fide retirement plans.

Section 4(f) (2) of the Act provides in part:

> It shall not be unlawful for an employer, employment agency or labor organization—
>
> (1) * * *
>
> (2) to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual."

The differences as between men and women in the early retirement features of the Bell System pension plans are a function of age. Age differences are clearly permitted by the Age Discrimination in Employment Act of 1967. Arguably, therefore, that statute enacted later than the Civil Rights Act of 1964 should require an interpretation of the Civil Rights Act which permits continued observance of the early retirement privileges under the Bell System plans in spite of the EEOC's contrary view.

HISTORY OF THE CIVIL RIGHTS ACT AND LEGISLATIVE DEVELOPMENTS SINCE

During Senate debate on Title VII of the Civil Rights Act of 1964, the then Senator Humphrey, floor manager of the Bill, was asked by Senator Randolph whether "differences of treatment in industrial benefit plans, including earlier retirement options for women, may continue in operation under this bill, if it becomes law?" (Cong. Rec. p. 13185, June 12, 1964.)

Senator Humphrey answered affirmatively. He reiterated his position in a letter dated June 26, 1964, to a representative of one of the Bell System companies (a copy of the letter is attached). Senator Humphrey stated categorically that:

> The objective of adding the category of sex to Title VII was to improve the employment status of women and there is nothing in the hearings or floor debate on the Civil Rights Bill to suggest that these provisions should be used to take away special privileges or benefits which now exist.
>
> * * * I want to re-emphasize the fact that, in my opinion, it would be a gross distortion of the provisions of Title VII to apply this language in a manner which impaired existing pension, retirement, or benefit programs.

Legislative developments in 1968 indicated complete dissatisfaction by the Senate with any attempt to prevent retirement age differences under any Executive Order or statute. Under Title VII, the EEOC adopted guidelines on different treatment of retirement of men and women. However, thereafter, on May 8, 1968, the Senate Committee on Labor and Public Welfare reported S. 1308 with an amendment designed to permit retirement age differences under Title VII (S. Rept. No. 1111). The Senate subsequently passed H.R. 2767 with an amendment to confirm the lawfulness of such differences not only under Title VII but Executive Orders as well (see the Senate Finance Committee, S. Rept. No. 1497, August 1, 1968). The amendment adopted by the Senate went even further than we are urging, in that it would have sanctioned reasonable differentiation not only in optional but also in compulsory retirement ages.

The 90th Congress came to a close shortly after Senate action on H.R. 2767 with the result that there was not time for a conference with the House. The fact remains, however, that the position of the Senate against the interpretation adopted by EEOC and proposed by OFCC was made very clear.

At least one bill (H.R. 10113, introduced by Representative Diggs) is currently pending in the 91st Congress, which would amend Title VII to give the EEOC enforcement powers but reverse the EEOC's sex guidelines in the pension area.

Differences based on sex have been adopted repeatedly, both before and after passage of the Civil Rights Act of 1964, in Federal legislation.

The Social Security System.—Although men and women were treated alike under the original Social Security Act of 1935, Congress, beginning with the first amendments in 1939, has provided favorable treatment for women in a number of respects.

Thus, at the time that the Civil Rights Act of 1964 was passed, the following differences between the treatment of men and women existed in the Social Security Act:

> A wife (or widow) with a child in her care whom she is supporting is entitled to a mother's retirement (or insurance) benefit, but a husband (or widower) supporting children does not qualify for a comparable benefit.
>
> The wife of a retired employee entitled to Social Security receives a wife's benefit at age 62 whether or not she is dependent upon her husband, but the husband qualifies for a husband's benefit only if he is at least last supported by his wife.
>
> A widow qualifies for a widow's benefit, regardless of whether she was supported by her husband, whereas a widower qualifies only if he is at least half supported by his wife or is disabled.
>
> The formula for computing the old age benefit is more liberal for women than for men.

After the Civil Rights Act was passed, Congress enacted the Social Security amendments of 1965, and made the following changes in the Social Security Act providing improved treatment for women:

> Different periods were established for determining the quarters of coverage required for certain people aged 72 or over.
>
> New provisions were added to provide wives' and widows' benefits for divorced women with no provision for divorced men.

Provision was made for the continuation of insurance benefits upon remarriage after attaining age 60 in the case of widows, and age 62 in the case of widowers.

The Social Security amendments of 1967 proposed by the Johnson administration in H.R. 5710 contained provisions for benefits for disabled widows under age 62; nothing was proposed for widowers. In addition, the new law would have extended hosptial insurance protection to 100,000 disabled widows but not to widowers. The national policy in this area obviously does not require uniformity of treatment between men and women regardless of the circumstances. On the contrary, it has espoused reasonable differentiation.

Other Federal statutes.—Many other statutes establish different retirement rights for men and women employees. For instance, the Railroad Retirement Act covering about 750,000 employees provides that women who attain the age of 60 and who have completed 30 years of service are entitled to annuities without any deduction, while males who have attained age 60 and completed 30 years of service receive annuities reduced for each calendar month they are under age 65. Similarly, a widow, but not a widower, who has in her care a child is entitled to receive an annuity.

The Federal Civil Service Act covering nearly all Federal government employees distinguishes between men and women by providing that where an employee dies after completing at least 5 years of service, the "widow or dependent widower" is to be paid a specified annuity. Interestingly enough, this particular section of the law was amended in 1966, at which time the Congress could have provided equal treatment for men and women if it had so desired.

The statutes on retirement of Federal judges provide for annuities to widows, but no provision is made for a surviving husband. Various statutes traditionally have provided for payments to wives and widows of veterans, yet only when a husband or widower is incapable of selfsupport is he entitled to veterans' benefits. The pertinent section of these statutes was amended in 1966, again at a time when Congress would have provided for absolutely equal treatment of men and women if such were the national policy.

These differences of treatment of men and women in the Social Security System and other Federal statutes have remained despite repeated congressional re-examination. Therefore, they represent congressional determination, both before and after enactment of the Civil Rights Act of 1964, that it is the national policy to allow differences on the basis of sex in determining eligibility to, and the computation of benefits in, retirement programs.

THE CIVIL RIGHTS ACT AS INTERPRETED BY EEOC WOULD HAVE A DISRUPTIVE EFFECT ON EMPLOYERS AND ON ESTABLISHED AND FUNDED PENSION PLANS

One proposal to resolve the difference in the treatment of men and women, if the EEOC guideline were to be complied with, would be to permit men to retire as early as women. In this case, we currently estimate that Bell System annual pension accruals would have to be increased by nearly $50 million.

In addition, we would expect to lose prematurely many valuable, highly trained male employees who might leave our employment to secure a pension while continuing in the labor market in other employment. The inducement to enhance total income by finding other employment while drawing a pension is obviously greater at ages 50 or 55 than at age 60.

While some other methods of complying with the proposed guidelines might not be as costly, they would diminish the benefits now enjoyed by women and therefore would upset established pension plans which have been adopted for good business reasons and in recognition of the different needs of men and women in society. If there had been a requirement of absolute uniformity between the sexes when these plans were first established, the more liberal provisions desirable for women probably would not have been made, because of the substantial cost of extending them to men where the same need did not exist.

For the foregoing reasons, following amendment to Title VII of the Civil Rights Act is proposed:

(d) Amend section 703 (78 Stat. 255; 42 U.S.C. 2000e—2) by adding the following new subsection:

(k) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice to observe a pension or retirement plan, the terms or conditions of which *permit but do not require female employees to retire at earlier ages than male employees, or* provide for *other* reasonable differentiation between male and female employees provided that such pen-

sion or retirement plan is not merely a subterfuge to evade the purpose of this title."

NOTE.—The above amendment to Title VII of the Civil Rights Act was approved by the Senate Committee on Labor and Public Welfare (see S. Rept. 1111, May 8, 1968) and appears in H.R. 10113 introduced by Mr. Diggs, a bill which would give EEOC cease and desist powers. The underlined portion is added so that some more definite meaning will be given to the words "reasonable differentiation".

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
June 26, 1964.

Mr. H. C. NICHOLLS,
Northwestern Bell Telephone Co.
Minneapolis, Minn.

DEAR MR. NICHOLLS: My legislative assistant, John Stewart, has told me of his dsicussions with you and your concerns that the pension or retirement programs giving special privileges to your women employees would be adversely affected by provisions of Title VII of the Civil Rights Act.

This letter is just to reassure you that the Congress, in my opinion, would be most outraged if the provisions in Title VII were used in this fashion. The objectives of adding the category of sex to Title VII was to improve the employment status of women and there is nothing in the hearings or floor debate on the Civil Rights Bill to suggest that these provisions should be used to take away special privileges or benefits which now exist.

I regret that my position as floor manager prevented me from offering the amendment which you suggested. Even though this amendment was not included in the bill as it passed the Senate, I want to re-emphasize the fact that, in my opinion, it would be a gross distortion of the provisions of Title VII to apply this language in a manner which impaired existing pension, retirement, or benefit programs.

Best wishes.

Sincerely yours,

(S) Hubert H. Humphrey
HUBERT H. HUMPHREY.

"(d) Amend section 703 (78 Stat. 255; 42 U.S.C. 2000e—2) by adding the following new subsection:

'(k) Notwithstanding any other provision of this title it shall not be an unlawful employment practice to observe a pension or retirement plan, the terms or conditions of which *permit but do not require female employees to retire at earlier ages than male employees, or* provide for *other* reasonable differentiation between male and female employees provided that such pension or retirement plan is not merely a subterfuge to evade the purposes of this title.'"

NOTE.—The above amendment to Title VII of the Civil Rights Act appears in H.R. 10113 introduced by Mr. Diggs, a bill which would give EEOC cease and desist powers. The underlined portion is added so that some meaning will be given to the words "reasonable differentiation" and to make clear that early retirement for women on a voluntary basis is an example of a reasonable differentiation.

H.R. 2767 as passed by Senate Oct. 11, 1968 contained the following Senate amendment:

(6) SEC. 2—The terms or conditions of a pension or retirement plan qualified under section 401 of the Internal Revenue Code of 1954, or of a retirement practice, which provide for reasonable differentiation in retirement ages between male and female employees, or which provide for or require retirement at reasonable ages, shall not be construed to violate title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1964, the Age Discrimination in Employment Act of 1967, any executive order, or any rules or regulations issued under any of the foregoing, except that such terms, and conditions shall not excuse the failure or refusal to hire individuals, or the discharging of individuals prior to retirement age, on account of their sex or age. The preceding sentence shall not apply if such terms and conditions are merely a subterfuge to evade the basic purposes of title VII of the Civil Rights Act of 1964 or the Age Discrimination in employment Act of 1967."

Mr. HAWKINS. With that, the subcommittee stands adjourned.

(Whereupon, at 11:05 a.m. the subcommittee adjourned to reconvene subject to call of the Chair.)

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

THURSDAY, APRIL 9, 1970

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR,
COMMITTEE ON EDUCATION AND LABOR,
Compton, Calif.

The subcommittee met, pursuant to notice, at 9:30 a.m. in the city council chambers, city hall, Compton, Calif., the Honorable Augustus F. Hawkins, acting chairman, presiding.

Present: Representatives Louis Stokes, William Clay, and Orval Hansen.

Staff members present: Robert E. Vagley, subcommittee director; S. G. Lippman, subcommittee special counsel; Adrienne Fields, subcommittee administrative assistant and clerk; Michael Bernstein, minority counsel; and Crawford Heerlein, minority clerk.

Mr. HAWKINS. The General Subcommittee on Labor will now come to order.

Mr. Dent, the chairman of the committee, is going to be late this morning and he has asked me to act as chairman prior to his arrival.

The committee is honored to have been invited by the mayor of the city of Compton to hold this hearing today in Compton.

This is the third hearing this week. On Tuesday and Wednesday the subcommittee met in Washington and heard witnesses on the question of the extension of coverage.

May I, first of all, introduce those who are present. To my far right is Congressman Clay of St. Louis and to his immediate left is Congressman Stokes of Cleveland and to my left—second to my left is Mr. Hansen from Idaho.

And we have the staff present here today. On my far right is Mr. Bob Vagley, representing the majority counsel, and to my immediate left is Mr. Sol Lippman, who is also representing the majority counsel. To my far left is Mr. Mike Bernstein, minority counsel of the committee, and Mr. Chick Heerlein is seated over here in the far corner. Miss Adrienne Fields is seated out in the audience and is also a part of the committee.

This committee, since 1963, has been in the forefront of the Federal efforts to achieve employment opportunities for all of our citizens. The committee has been concerned with the existence in this country of ours of jobs which are referred to as "Negro jobs" or jobs which are sometimes considered to be for whites only or other groups.

We have seen jobs which are supposed to be for women but not for men, and some jobs for men but not for women.

This committee in its earlier efforts was responsible for the inclusion in the Civil Rights Act of 1964 of title VII, but at that time due to the fact that the pending civil rights bill was facing a filibuster we did not perfect title VII as the committee wanted to do so—that is, we did not give to the Commission cease-and-desist powers or any other powers that we thought would give it teeth.

We also limited the coverage. At that time we did not include, for example, Federal employees or the employees of States and local governments. It is known that there are in one area of government, employees in the State and local governments, more than 8 million such employees. This is in addition to the Federal employees.

So, since that time, the committee has continued its efforts to perfect title VII by enacting a stronger law and we have, in addition to that, been monitoring those programs that are similar in their objectives, including Executive Order 11246 out of which the Philadelphia plan arose.

The committee has noted that the Philadelphia plan is limited to only one industry thus far, and the committee is interested in what is happening in other phases of the private sector as well as public employment.

The efforts, then, of this committee have been continued and we have come out to the city of Compton in order to get a feel of the pulse of the people at the community level.

Generally speaking, there are three approaches before the committee. One of those who have indicated that no legislation was needed but that the problem could be solved by education. The second approach which has been suggested is one that represents the administration bill which is pending before the committee. This bill differs from the bill sponsored by the members—several members of this committee, including Mr. Clay, Mr. Stokes, Mr. Burton, and myself, as well as Mr. Ogden Reid, who is not with us today but who is a coauthor of the bill.

This bill differs from the administration bill which relies primarily on reports, in that this bill of the committee members would give to the Commission cease-and-desist powers and would continue Commission enforcement. Also, this latter approach, that is, the approach of the committee bill, would also extend the coverage to Federal, State, and local employees.

With that as a background, I would like now to call on my colleagues who are present for any remarks which they would like to make at this point.

Mr. Clay?

Mr. CLAY. No remarks.

Mr. HAWKINS. Mr. Stokes?

Mr. STOKES. I have no remarks.

Mr. HAWKINS. Mr. Hansen?

Mr. HANSEN. Mr. Chairman——

Mr. HAWKINS. May I interrupt to say that Mr. Hansen is the ranking minority member present and we're very pleased to have you. I don't know whether or not you've had the opportunity to come to my congressional district before, but certainly we are pleased that you did decide to come.

I think Mr. Clay and Mr. Stokes both have been here to the area before, but we wish to welcome you and certainly to express our appreciation for your having made this great sacrifice to come across the country.

Mr. HANSEN. Thank you very much, Mr. Chairman. I would like to thank the mayor for granting this subcommittee the opportunity to come here, and I want to acknowledge my own personal appreciation to the chairman for making it possible for me to visit your district.

I would also acknowledge the leadership that our chairman has furnished in this very important area.

Thank you.

Mr. HAWKINS. Thank you, Mr. Hansen.

The first witness is Mayor Douglas Dollarhide, mayor of the city of Compton.

Mayor Dollarhide, it's a pleasure certainly for me on behalf of the committee to welcome you as the first witness before this committee and at the same time to express the appreciation of the committee for the hospitality which you have extended to us.

As a personal friend, I would like to commend you for the very splendid record that you have made since you assumed your duties a few months ago, and I certainly look upon Compton as one of the thriving young cities, may I say—young in the sense of a new posture, a new image, which I think certainly is due greatly to your efforts.

It's a pleasure to welcome you to the committee.

Mayor DOLLARHIDE. Thank you, Congressman Hawkins, and all the members of the committee. It is indeed an honor to welcome you here to our city this morning. We are quite honored that you have chosen this site to hold the hearing.

Mr. HAWKINS. Mayor, I wonder, if it better—is that microphone working? It doesn't seem to be.

Jack, can you hear back there?

A VOICE. Very well. No problem.

Mr. HAWKINS. All right.

STATEMENT OF HON. DOUGLAS F. DOLLARHIDE, MAYOR, COMPTON, CALIF.

Mayor DOLLARHIDE. As I was saying, we're very honored that you have chosen our city to hold a hearing and particularly our city hall. Our city hall probably is an indication of what our city lacks. We need a lot of improvements here. This city hall was built sometime before the 1933 earthquake and it was restored shortly after the earthquake. And we're in the process now of building a new civic center and had this committee meeting been held 2 years from now, we'd probably be sitting in our new city hall, but unfortunately we're a little late getting started on these things, and we certainly hope you gentlemen will journey back to this area and stop in to see us again and we will have a little bit better accommodations for you should you choose to hold another hearing here.

I would also like to congratulate the members of this committee that were recently elected to their positions. I read about them. And I was

very glad to hear of your victory, and we're very honored to have you here.

Congressman Hawkins, distinguished members of this labor hearing committee, and guests, I, Douglas Dollarhide, mayor of the city of Compton, do indeed welcome this opportunity to address you.

As a veteran of the NAACP's struggle for equal employment opportunities, I can look back at the employment situation in Compton, as well as the Nation as a whole. Specifically, I can remember when I first arrived in Compton in 1956. A very few employment opportunities for minorities existed at that time—mainly they consisted of jobs of a menial caliber. Opportunities first saw fruit by 1961 when blacks and browns became visible in other than entry-level occupations.

Employment conditions in Compton, as well as our surrounding cities, have somewhat improved since this period. However, the employment situation in Compton has improved somewhat—very little but somewhat, but the level of employing minorities in Compton, I feel, is largely attributed to the NAACP and other active organizations which began the fight here some 15 years ago.

Insofar as employment opportunities are concerned, Compton is not a model city. Our data, although imprecise and incomplete, indicates that unemployment and underemployment is a severe problem in Compton—not unlike many areas of our urban centers.

In February 1969 visible unemployment was 5.4 percent of the labor market as compared to 4.1 for the Los Angeles/Long Beach Standard Metropolitan Statistical Area. In our model neighborhood area, however, unemployment was 7.2 for men and 10 percent for women. Unemployment for our youth, a particularly critical problem for a community where the median age is 20, is estimated to range at least three times the overall unemployment rate.

You must realize, of course, that this data is based on estimates and cannot possibly measure either underemployment or the numbers of unemployed who have dropped out of the labor market. This problem does not cease with unemployment. Recent surveys indicate that the largest portion of the unemployed are blue collar, semiskilled, and unskilled workers.

Less than 20 percent of employed persons in the city are in white-collar jobs. Only 15 percent of model neighborhood area employed persons are so characterized. Less than 10 percent of our model neighborhood area residents are in the foreman and skilled craftsman category, as compared to 15 percent for the remainder of the city. Similar tales can be told with regard to professional, technical, and kindered workers. Of Los Angeles County workers over 14 percent are in that category. Compton, 6 percent, and the model neighborhood area, 4 percent, are considerably less well represented.

Monthly reports of the State department of employment consistently identify a surplus of unskilled and semiskilled production workers and service workers in the Compton labor force. Principal causes for underuse of our work force include discrimination and lack of jobs, lack of necessary skills or education. A growing problem is the fact that local industry recruits from other locales, especially home plants where few Compton residents can be recruited, and thus an effective discrimination device is created. In job-scarce times, we

must have effective enforcement capabilities to determine and correct such practices.

Compton has never been a city with much local employment. In 1960 approximately 5 percent of the employed residents were employed within the city. By 1969 that figure had improved to 10 percent. With transportation inadequacies and a small local tax base, the city has had to attract industry to locate in Compton. Our success in attracting Cabot, Cabot & Forbes to purchase and develop a 540-acre industrial park is evidence of our efforts in this area.

The manpower problem does not end there, however. The 15 companies which have already located in the Cabot, Cabot & Forbes Los Angeles Industrial Center have brought demands for a small number of semiskilled employees and somewhat larger number of skilled and clerical employees. To a great extent, however, the park will add more to the tax base than it will to the local employment market.

Legislative action on all levels is necessary now and in the near future to rectify many of the inequities in employment. The city of Compton has recently enacted an affirmative action ordinance which requires contractors and suppliers to the city to demonstrate their good faith by hiring and training minority employes, at least for jobs they undertake for the city. This kind of action is the most basic step which governments can take to end discrimination in employment.

The Equal Employment Opportunity Enforcement Act is another such basic step. The lack of basic entry-level qualifications is a major cause of unemployment. These qualifications, however, have been denied minority workers through discrimination and only the ending of discrimination can allow opportunities to be available to all. Enforcement of equal employment opportunity provisions is the necessary prerequisite to equal opportunity.

We in Compton feel the time has come for all levels of government to begin to demand that within their jurisdiction equal opportunity be provided. This act will demonstrate that the Federal Government is acting to provide full opportunity, but only if the teeth of the act are sharp. We feel that if fines and jail terms are appropriate for the polluters of our Nation's streams and rivers, such penalties are not inappropriate for those who violate democracy's highest precepts—that of liberty and justice for all. This bill should be a statement that "all deliberate speed" does not mean 15 years, as it has for school integration—it means now.

We would also hope that further study by this committee would produce bills which would go further to eliminate unemployment and underemployment so that full opportunity is not available only to the educated and the skilled.

The success of capitalism has been based upon participation by the majority of citizens as producers and consumers. One's citizenship is in reality defined by the extent of his participation in the free enterprise system. To deny an individual his right to participate in the free enterprise system is to deny, for him, the success of capitalism. Let us provide access into the system for him. Only in that way can he become a full participant and citizen of the society which is truly his. And only in that way can the society have a believer in him.

Mr. Chairman, that concludes my remarks, except that I might mention that due to the fact that so many of our residents work outside of

the city that it would be hard to make a report just on the Compton area because what affects the labor market in the particular Greater Metropolitan Los Angeles Area will affect Compton, because many of our workers are looking for jobs outside of the city and if there's discrimination in any of the outlying areas, if employment is hard to obtain there, then it would affect the residents of the city of Compton because the majority of us do work outside of the city limits of the city of Compton. So, certainly, by this bill being a Federal bill, it would certainly enhance us as a municipal government and all of our residents.

Mr. HAWKINS. Thank you, Mayor Dollarhide, for a very excellent statement.

I'm sure I have only one question and that is: In the efforts of this committee to extend the coverage to Government employees, do you see any conflict or any insurmountable conflicts with the rules and regulations of civil service? In other words, do you believe that there has been any utilization of civil service rules and regulations to sometimes discriminate rather than to select the best qualified applicants for the positions?

Mayor DOLLARHIDE. I can think of no specific rule or regulation presently, but I had, I might say, the unfortunate situation of having worked for the Federal Government for 18 years and I found that there was about as much discrimination in civil service as there is in any private industry, and I think certainly this is one of the areas that the committee should look into and I think they should be included—civil service workers should be included in any bill that is to enhance the welfare of those who are working for private industry as well.

Mr. HAWKINS. Let me rephrase the question. Although civil service rules and regulations do prevail, do you think that the Commission, with strong powers, would be in a good position in order to ferret out practices of discrimination in the operation of civil service?

Mayor DOLLARHIDE. Defintely, yes. I think that the ——

Mr. HAWKINS. Well, could you also perhaps give your views with respect to the school system where the pending bill would cover school districts, but also the schools are now covered under the 1954 desegregation decision as well? To your knowledge, has there been any widespread discrimination in the school system with respect to those persons who are employed, both professional and nonprofessional?

Mayor DOLLARHIDE. Definitely there has. As the president of the NAACP here for many years in Compton, I tried very hard to get blacks appointed to positions as principals and get more blacks employed as schoolteachers, and it was only when we began to elect more blacks to the school board were we able to break through that barrier. They had numerous ways of subterfuge to prevent blacks from being hired as principals in school districts.

Recently I was visiting another city, and I don't want to call the name—I wouldn't want to get too involved in their business—but I was making this visit and many of the people of the black community came to me and they mentioned to me what a difficult time they were having employing blacks in the school system.

Mr. HAWKINS. Thank you.

Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

I would certainly like to say to Mayor Dollarhide that we're certainly appreciative of his attendance here, and it's a very nice welcome he has extended to our committee. We're certainly honored to be here in your city and have this privilege of having the actual testimony which you have afforded us this morning.

You mention in your testimony your affirmative action ordinance, Mayor. I wonder, how recently has this ordinance been enacted?

Mayor DOLLARHIDE. It was quite recent. I think it was perhaps 2 or 3 months ago. It's quite a recent ordinance.

Mr. STOKES. I suppose, then, it would be rather difficult for you to measure for us any degree of relief you have received as a result of the enactment of this ordinance. It's a little too early to be able——

Mayor DOLLARHIDE. It is. Since we've enacted the ordinance I think we've only signed three contracts and only one of those contracts is being executed at this time, and the other two have not even begun work on the projects.

We hope to—well, our feeling is we don't have enough teeth in it, really. So perhaps there should be more enforcement laws added to the ordinance. There's very little that we can enforce.

Mr. STOKES. Is it a more voluntary provision in there?

Mayor DOLLARHIDE. Unfortunately, yes.

Mr. STOKES. I see. Well, perhaps later on when you're able to measure what effect it does have, perhaps you'll be able to get further legislation and amend it.

Mayor DOLLARHIDE. When we get it off the ground, then we'll work with it and we can always amend it, put more teeth in it and sharpen them up.

Mr. STOKES. Well, at least it's a step in the right direction, I think.

Then, based upon your testimony with reference to H.R. 6228, which as you know, is Congressman Hawkins' bill, would it be your opinion that this bill is a step in the right direction in trying to alleviate some of the discriminatory problems now occurring with reference to employment of minorities?

Mayor DOLLARHIDE. Definitely. It's very much needed. I've worked with civil rights for many years and I thought by 1970 we would have most of these problems worked out, and then I began wondering—it seems like we've only scratched the surface. It is sometimes very disgusting that we haven't made any more progress than we have, but we certainly need this bill, and I can assure you that all the people in this community would be 100 percent behind the bill and very appreciative to those who support it.

Mr. STOKES. Thank you very much, Mayor. I have no further questions.

Mr. HAWKINS. Mr. Mayor, I am reminded of the presidential candidate, whose party affiliation I will not indicate, who back in, I think it was, 1960 promised that by 1963, I believe it was, that equal opportunities—full equal opportunities would be achieved; that if elected he would work toward that end. And I recall that we almost tarred and feathered him and ran him out of the city for being a moderate. So when you express the thought that by 1970 you had thought that something would be achieved, it looks like another decade has gone by.

Mr. Hansen?

Mr. HANSEN. Thank you, Mr. Chairman.

Let me join my colleague in expressing our appreciation to you, Mayor Dollarhide, for your helpful testimony. I think the fact that you and others could appear here, those of you who are close to where the action is, illustrates the wisdom of the chairman's decision to bring these hearings to Compton.

Let me ask about your experience in hiring within the city of Compton. To what extent have you encountered problems of discriminatory practices in hiring employees to work for the city and what has been your experience in working to eliminate any discriminatory practices that you have found to exist?

Mayor DOLLARHIDE. Well, you know, being the mayor of the city and having a very congenial council to work with, we hired the city manager, who is the chief personnel officer of the city, and we're quite aware of all of the processes used in our hiring practices, and we've determined that we don't want any discrimination, so we don't have any problems there. In fact, we've had a little bit of another problem, integrating our fire department, and we've had to recruit blacks to go into the fire department. A few years ago the fire department was entirely white, and, so, we were quite concerned about it and we started a recruiting program and we got more blacks in our fire department.

But as far as our municipal government is concerned, we have no problems in our immediate area, municipal government, of discrimination.

Our problem is with industry. We've had a problem recently where some of the industrial plants located in Compton will have an employment agency over in Torrance recruiting workers, and we're concerned about the employment here, about these industries using the Compton employment agencies. But municipally we have no problems.

Mr. HANSEN. You have effectively eliminated the discriminatory practices in hiring for the city?

Mayor DOLLARHIDE. For the city.

Mr. HANSEN. And I gather that this has really been the result more of the political leadership than it has of any law or ordinance.

Mayor DOLLARHIDE. This is true, Mr. Hansen, but this is only because on our city council we have three black city councilmen and one white city councilman. Back in 1958, 1959, and 1960, along in that time, it was very difficult to get blacks employed in the city of Compton. It was one of my reasons for getting politically active, because the council at that time would not even appoint a black man to the parks and recreation commission, the planning commission or anything else, and when young ladies would come down and take the examination to work as clerks, if they passed the examination, someone in the personnel department would sit down and talk to them and tell them where they could get a better job and encourage them to go somewhere else looking for a job.

Perhaps I wouldn't be here as mayor of the city today if we hadn't had discrimination in the city, and I just wanted to do something about it, so I got involved in politics.

Mr. HANSEN. To what extent is the limitation of employment opportunities for members of minority groups attributable to discriminatory practices in making training opportunities available to equip them with the skills for the jobs that might be available?

Mayor DOLLARHIDE. Well, I don't have any facts on that. It's very difficult to say to what extent, because within our city limits we have,

you know, so few industrial plants we're just now beginning to get some because of the annexation where we annexed this 540 acres that I mentioned in my testimony. We're getting some large industrial plants into the city and we're working with the industrialists there to see what we can do about getting some more in here. But the city has always been a bedroom community and that is why I mentioned that we're quite concerned about the entire Metropolitan Los Angeles area because people have to leave our city to go out into the more industrial areas to seek employment and, naturally, that problem with our residents going into the area, they have had the problem of being employed and getting proper training and so forth.

Mr. HANSEN. It has occurred to me that this problem will become more common across the country with the increasing mobility of the labor force and it may very well be that we will be looking to this community so that we may draw on your experience as a guide elsewhere.

Thank you again for your helpful testimony.

Mayor DOLLARHIDE. We like to think of ourselves as a model city in the sense of trying to explore new avenues of accomplishing some of these things and we are trying to work very closely with our new industrial plants and see if we can't do something to rectify these existing inequities that we've found, like I say, in the outlying areas.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. Yes. Mr. Mayor, in your statement you mention the affirmative action ordinance that was just recently passed. Now, does this only apply to contractors and suppliers that are doing business with the city of Compton?

Mayor DOLLARHIDE. That's right.

Mr. CLAY. The city government.

Mayor DOLLARHIDE. That's right.

Mr. CLAY. What type of recourse is available for contractors and suppliers who perhaps may be discriminating who are located in Compton? What type of recourse for redressing grievances is available to citizens who have been discriminated against by those?

Mayor DOLLARHIDE. You mean who are seeking employment?

Mr. CLAY. I mean does the county have laws that would make the contractors give equal employment opportunities?

Mayor DOLLARHIDE. Well, we have the California Fair Employment Practices Commission, which, as far as employment is concerned they can use that as a recourse.

Mr. CLAY. Do they have effective machinery for grievance redress?

Mayor DOLLARHIDE. It's fairly effective.

Mr. CLAY. And in the county and Federal Government area of employment, to your knowledge are there jobs that are traditionally reserved for blacks or for Mexican-Americans?

Mayor DOLLARHIDE. Yes, this is true. However, it's pretty hard to pinpoint. They have the means of—a great degree of flexibility whereby they can get by.

Mr. CLAY. But there are areas that end up with either all blacks or all Mexican Americans?

Mayor DOLLARHIDE. Yes.

Mr. CLAY. Can you give us some specific examples?

Mayor DOLLARHIDE. Well, since I've been involved in our local government, it's really hard for me to pinpoint in the county area——

Mr. CLAY. Well, would the sanitation department, for instance, be reserved for certain——

Mayor DOLLARHIDE. I'm not too familiar with that.

Let me give you an example: the Los Angeles Post Office. I worked there for many years and I left about the same time that Wes Shaw was appointed postmaster and I don't know what has happened since then. I left there in 1963. But it was like—the terminal annex was where all the blacks worked, and through some means or another a lot of the window jobs at central station—it was a long time before they started employing blacks there and in some of the substations. They would always use some means or another to keep the blacks in terminal annex.

I can't say that still exists. I think there was some kind of concession made that they would just give the post office to the blacks and I think they finally took it over, the whole Post Office.

I don't know what is happening in the other departments, but a few years ago you could safely say that most of the blacks working for Federal civil service worked in the Post Office Department and there were other departments where we were barely making some headway. I've had no——

Mr. HAWKINS. Is it not true, Mayor, since you brought that point up, that for a long time most of the blacks who worked for the Federal Government were college graduates and had professional degrees and that it was common knowledge that it would literally be possible to constitute a couple of good faculties for universities if you were to go to the Post Office?

Mayor DOLLARHIDE. That's very true. I can remember when I worked in the Post Office, anything I wanted to know, why, there was always someone sitting around who I could go to for advice, anything from building a house and painting it up to legal advice.

Mr. HAWKINS. You had lawyers and persons with other professional degrees who were confined to the Post Office.

Mayor DOLLARHEAD. I knew at least—I could perhaps by name, name you six men who had degrees in law who worked in the Post Office and a couple of pharmacists and several accountants and various professions—journalists.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. How long have you been a resident of the State of California?

Mayor DOLLARHIDE. Thirty years.

Mr. CLAY. And you've been active most of this time in the civil rights movement?

Mayor DOLLARHIDE. Yes.

Mr. CLAY. Do you by any chance know how many State highway patrolmen are in the State of California—I mean, the total number.

Mayor DOLLARHIDE. I don't know the total number, but I'm reminded of something that Clarence Mitchell said about it would be like—I can't remember exactly how he said it. but if you put all of the highway patrolmen in a group, the blacks and the whites, they would certainly get lost.

Mr. CLAY. So we're talking about several thousand, at least?

Mayor DOLLARHIDE. You know, I'm on the highways and freeways quite a bit, and in the last 5 years I've probably seen five black highway patrolmen.

Mr. CLAY. Well, of course, I know the exact number of blacks. There are only 10 in the State. And my question is: Can you tell us, in your opinion, why there are so few black members of the State highway patrol?

Mayor DOLLARHIDE. I couldn't specifically tell you because I'm so immune to the fact that there is discrimination. It has existed so long. Just the fact that we know discrimination exists in these agencies and it has existed so long that when the doors are opened, it takes a little while to catch up, and I don't know if they've opened any doors in the highway department or not.

Mr. CLAY. Apparently they haven't.

Mayor DOLLARHIDE. It's a little embarrassing, but I think you can understand that we've been discriminated against in so many areas for so long, we just know that this discrimination exists, and while you're working in one area, if you don't know exactly what's happening in another area, you know discrimination is existing.

Mr. CLAY. Is the situation comparable in the Metropolitan Los Angeles Police force? Do you know the percentage of blacks who are policemen in the metropolitan area, or is that what they refer to as Metropolitan Los Angeles Police?

Mayor DOLLARHIDE. Well, I'm not familiar with the Los Angeles City Police Department. I would say we here in Compton—we probably have about—somewhere about 15 to 18 percent blacks in the police department and most of the new recruits are blacks. It has been increased. However, percentagewise in Los Angeles I really don't know.

Mr. CLAY. In your opinion, is it fair percentage or do you think they have a substantial number of blacks in the police department?

Mayor DOLLARHIDE. Congressman, it's hard to say. You know, when you start talking about percentages—like in Compton here we have 65 percent black, but yet we don't have 65 percent black policemen. The reason for that being that there were no blacks and then a few blacks and then you start recruiting blacks. You already have some whites there. And it takes a while, you know, for the percentages to catch up, like water reaching its level. And I'm certain in our community we'll eventually reach this level.

But when you start recruiting blacks, when you've had whites that have been on the police force for several years and it's been solid white for the first 90 years out of a hundred years, then, in 10 years, to try to make the percentage equal, it's pretty difficult even though you may give the examination every day and there may be openings. It's still hard to reach the percentage that would be equitable to the population.

Mr. CLAY. In your affirmative action ordinance, you mentioned that the contractors and suppliers have to demonstrate their good faith by hiring. Is this faith demonstrated prior to awarding the contracts or is it just an agreement they sign that if they get the contract they will——

Mayor DOLLARHIDE. It's just an agreement that they sign when we let the contracts and depending on their good faith because they're desirous of coming back for another contract, well, certainly they will live up to the agreement.

Mr. CLAY. Are there any provisions for cancellation of the contract if they don't live up to the good faith clause?

Mayor DOLLARHIDE. I'm not sure, but I believe there is. I don't really remember.

Mr. CLAY. No further questions.

Mr. HAWKINS. Again, thank you, Mayor Dollarhide, for your very interesting testimony and thanks for the hospitality of the city of Compton.

Mayor DOLLARHIDE. Thank you very much.

Mr. HAWKINS. The next witness is Mr. Al Lugo, Neighborhood Adult Participation.

Do you have a prepared statement?

Mr. LUGO. Yes, I do.

Mr. HAWKINS. Can you distribute it to the committee?

Mr. LUGO. I didn't bring that many.

Mr. HAWKINS. How many do you have?

Since the statement is short, I would suggest you read the statement in its entirety, and would you care to proceed?

Mr. LUGO. Yes, I will.

STATEMENT OF ALBERT LUGO, NEIGHBORHOOD ADULT PARTICIPATION

Mr. LUGO. Gentlemen, my name is Albert Lugo. I want to thank Congressman Augustus F. Hawkins for his invitation to testify before this committee.

On behalf of my director, Mr. Ed Bonilla, and fellow job developer, Mr. Mario Valles, without whose help—inquiring and research in the failure of the special impact program slated for the Lincoln Heights area is a probable cause for these hearings and investigations.

We would like to be able to report that job opportunities for minorities have been increased substantially due to subsidies provided for Federal manpower programs. But, in fact, it hasn't because of limiting factors such as contracts too loosely written, local businessmen not involved as suggested in section 2765–A–3 of special impact programs, and definitely no entrepreneurship ever developed out of it. No community involvement.

Other factors that hinder or limit such programs are the programs designers that are insensitive to the community needs.

Factors to enhance such programs are considerations of community action programs—who can participate and give substantial input to help create relevant and properly administered manpower programs, such as TFLACU, LUCHA, MAOF, NAPP, et cetera.

It is still undetermined who is responsible for the Lincoln Heights jail fiasco. The city blames the industrialists, the industrialists blame the city, the Department of Labor claims to have been unaware of guidelines. No matter who is to blame, the taxpayer has suffered, the community has suffered, and especially the hopeful recipients of these jobs have suffered another setback.

We have again been used by the opportunistic maneuvers of the business and civic leaders.

Now I am ready for any questions you feel like you would like to ask. I have Mario Valles with the statistics who came with me.

Mr. HAWKINS. Mr. Lugo, as I see it, the third paragraph refers to Federal manpower programs and the fact that job opportunities are not being opened to minorities in these programs. Are you in a sense saying—or are you specifically saying that federally granted aid programs which are providing Federal assistance in various fields, manpower, housing, transportation, et cetera, adult education, and so forth, that these funds are somehow being used to promote discrimination against minorities and that minorities are not receiving equal employment opportunities in these programs despite the fact that they are federally funded?

Mr. LUGO. The discrimination is this. The question is it hasn't been implemented and it hasn't been followed right. So the question is the discrimination factor is still there.

Mr. HAWKINS. What do you mean it hasn't been implemented?

Mr. LUGO. It hasn't been implemented for the fact that it never got off the ground. If you'll watch the statistics more closely, there were 22 special impact programs—that's national. They never got off the ground. I think A & E Plastics was about the only one that was outstanding, in comparison to the other ones.

And we believe the Department of Labor wants to get their money back, and I don't blame them.

Mr. HAWKINS. Who was responsible for this, the ones who received the grants on the assumption that they would develop jobs for minorities?

Mr. LUGO. Right. This was—well, this was the hopes of it, anyway. It was a good idea. It still is. Somewhere along the line it channeled off into the wrong places.

Mr. HAWKINS. What was the local administration? Who administered these programs locally?

Mr. LUGO. Locally—well, getting down to the local area of it, there were 10 for Los Angeles—10 for Los Angeles—and out of those 10 for Los Angeles four of those industrialists were supposed to go into the Lincoln Heights jail. The controversy lies there.

Mr. HAWKINS. You'd better clarify for the committee members who are not familiar with the statement that you made that they were supposed to go to the Lincoln Heights jail. They may think that you're talking about a jail that is still being operated as a jail. This is being operated, presumably, as a job development program and it had been taken over by a private enterprise group; is that so?

Mr. LUGO. Let me get more specific. Some of these gentlemen here haven't been aware of this area that I'm specifically talking about. The Lincoln Heights jail area is empty. It still is empty. That's the theme, "The jail is still empty," and 1,500 people have been placed there, supposedly.

Mr. HAWKINS. Somebody may think that's a good thing, the jail is empty. What you're saying is the jail has been abandoned as a jail; is that not true?

Mr. LUGO. Right.

Mr. HAWKINS. And it was supposed to be operated then as a special impact program.

Mr. LUGO. Training facility.

Mr. HAWKINS. Presumably to train minorities for jobs.

Mr. LUGO. Right.

Mr. HAWKINS. And what you're saying is that this grant, this Federal grant, has not been used to do that?

Mr. LUGO. Right. This is correct.

Mr. HAWKINS. In what way do you think discrimination is involved?

Mr. LUGO. Well, discrimination on behalf of the small businessmen, and the discrimination is the fact that there are a lot of agencies, community action agencies, that have guidelines and know how to deal with hard core unemployed Mexican-Americans and blacks as well. This is what it's all about and that's all about, is to really get out there and give delivery to the community, and the community action groups, this is what you develop by it. This is what came out of it, community action. They were concerned how come, you know, the jail is still empty and nothing has been implemented.

Mr. HAWKINS. In another section of your statement I see that you refer to the input of relevant and properly administered manpower programs, and then you mention quite a few, including NAPP, TALUCA, LUCHA, and several others. If I recall—and this may not be completely relevant, but since you have mentioned these groups—have you had any reaction at all from your recent testimony before another committee of the Congress that certain organizations that were relevant in this particular field were somehow too militant or subversive and, therefore, implied that their funds should not be continued?

Mr. LUGO. Oh, yes. Any time that a community action group is getting too hot and nosey in certain areas that shouldn't be touched, naturally they are classified as subversive, but I don't find that subversiveness at all. I think you've got to stand up for your own rights. As a taxpayer you want to know where your money's going to. So what would you call that other group that's called these groups subversive?

Mr. HAWKINS. For the benefit of the members of the committee who may not be familiar with my reference to this, recently before the Senate Committee on Internal Security a hearing was held by one Senator, Senator Dodd, and testimony was presented to that committee by an Inspector Thoms, T-h-o-m-s, of the Los Angeles Police Department which listed about 50 or 60—I think that was about the number, was it?—organizations, not a single one of which was a white organization, and he listed these organizations as being antiestablishment and in a sense implied some extent of subversion. And I noticed that many of these organizations were listed in this statement before this committee, and that was the reason for my asking this question.

Mr. STOKES. Mr. Chairman, what Senator did you say conducted this hearing?

Mr. HAWKINS. Senator Dodd.

Mr. STOKES. Of Connecticut?

Mr. HAWKINS. Yes.

Mr. LUGO. He lives in Connecticut and we live out here.

Mr. HAWKINS. Mr. Stokes happens to be a member—a counterpart in the Internal Security Committee on the House side, and since he is also a member of this committee, I thought that it might be well to clarify the point that you had made in connection with some of the organizations.

In your opinion, were these organizations guilty of subversion or were they guilty of being too active or were they guilty of trying to help disadvantaged people? Just what was the main reason why they would be attacked by someone in the law enforcement field?

Mr. LUGO. OK. I'll answer that question as best as I can. I work for NAPP, Neighborhood Adult Participation. It's an OEO, Government-funded program. Some of the guidelines stipulated in there are to create social and psychological changes, participants in the neighborhood to achieve institutional change through community action groups. Now, if they feel that these groups are subversive, we feel that we are doing our job out there the best we know how. If you howl long enough, they're going to say, "Well, this is what we need and this is why we're here."

So if they think that is subversiveness—if you look at your Mexican-American community, there hasn't been any burning or any looting. We're trying to tell you something with sophistication, the best way we know how. Jobs are hard to get. There's a language barrier that's very difficult there. There's a lot of Mexicans that do not have good credentials that come in from Mexico and become citizens and because of the language barrier, they have to take a menial job. The job developer will encourage them, "Get yourself a job now and go to school at night and use what you study. You're being hampered by not having the English language." These are some of the problems we have out there.

Then the high school dropouts or the ones that even graduate and still can't read that dipolma. That's very sickening. That is very sickening.

Mr. HAWKINS. Mr. Stokes?

Mr. LUGO. So what we're trying to tell some of these people, how to go about to get themselves organized and how to train themselves, upgrade themselves into a better job. This is all we're trying to do.

Mr. HAWKINS. Was the neighborhood adult participation program active in, let's say, averting some disorders in recent years since you've been organized? Is that one of your objectives?

Mr. LUGO. No—I've been with the Neighborhood Adult Participation project exactly 1 year. Before that I was a dump truck driver driving around. In 1 year I've learned quite a bit, and through NAPP.

Mr. HAWKINS. Thank you.

Mr. Stokes?

Mr. STOKES. Mr. Lugo, what kind of funding has the neighborhood adult program received from the Federal Government?

Mr. LUGO. Well, I'm not in the capacity of our executive director, Opal C. Jones. She could be more specific. But to the best of my ability I will tell you it's an OEO-funded program—I don't know how that breaks down—and EYOA is more or less the mother hen. She makes sure that it goes out according to whatever Opal Jones indicates are the program needs, whatever, and this is how we get funded.

And in the area we are in, the Lincoln Heights area, it's a problem pocket. It's a povertystricken area. And, like I mentioned before, there's a lot of monolingual—Spanish monolingual only in the area and bilinguals are needed in almost every department out there, DPSS, the Department of Employment—you name it. Just about every Government organization or organization that's out there needs a

bilingual. These are some of the areas that we've been trying to create out there—even at the general hospital. It's a shame, a person is sick or a person that needs to go there doesn't need to be standing 3 or 4 hours trying to look for a Latin face to say, "Look, talk to me. I don't know what to say."

These are some of the areas that are affecting us out there.

Mr. STOKES. In the 1-year period that you've worked with this particular neighborhood organization, how would you measure the success of the program that you have here in terms of the sociological and psychological goals that are set forth for community action programs?

Mr. LUGO. There has been plenty of success stories with the workers as well as centers concerning programs. They also help recipients who are on welfare. There's a five-program emphasis. We have consumer education; we have job development, neighborhood improvement, welfare, and education. Those are the five fields that we work in to help people.

Mr. STOKES. Well, as you know and as has already been made reference to by Congressman Hawkins, at the national level there is a great deal of criticism of these kinds of programs by persons who primarily represent the establishment. Any time the establishment is challenged, this, of course, amounts to subversion to them.

You see, just a few days ago a committee which Mr. Hawkins made reference to which is the House Internal Security Committee which I served on in the House, had before it a police officer, an undercover police officer, from Chicago, Ill., and the sum and substance of his testimony was that he had infiltrated certain groups that work in the peace movement area in Chicago. Of course, he brought us no evidence of any kind of illegality or any kind of criminality. And when I posed questions to him with reference to what these people were actually doing, he said they were primarily engaged in antiestablishment activities, which, to police officers—of the Chicago Police Department represents subversive activity because they are against the establishment, and because those of you who are working in the area that you're working in, in the community where you're trying to overcome some of the problems that have been imposed upon people by virtue of the establishment, you, of course, encounter this kind of charge of being engaged in subversive activities. It's just unfortunate that you have this kind of a burden placed on you in addition to the laborious work which you have to do in this area.

Mr. LUGO. Now, that being released in the papers, how does it grab the average individual out there that's not involved, that doesn't know what's actually going on? How does that grab him? So, if he needed any help from our organization—whatever—legal aid, welfare, you know, whatever—that would shut him off.

Mr. STOKES. That's right.

Mr. LUGO. I find it very unfair on that issue. They should really elaborate and get it defined out. Don't just get it out of context and say, "Here it is."

Mr. STOKES. Just one final question, I think. I'm sure you've had a chance to review Mr. Hawkins' bill here, H.R. 6228. Do you feel that this would be a meaningful effort in trying to eliminate some kinds of discrimination that exist with reference to minority group people?

Mr. LUGO. Yes, it would help alleviate some of the problems.

And another thing, I can compliment Mario and myself is, these programs, you actually have to talk to a lot of these people and actually experience them on your own, and here we find a lot of areas that sure need correcting. The other day I found out, you know, that you couldn't set a complaint against the city, State, or sheriff's department or whatever if they turn down your application for some reason or another. In other words, you can't go to Equal Employment Opportunity or the Commission. I find that ridiculous. It should go to them, too, because a lot of it is coming from them, too.

Mr. STOKES. The Commission itself?

Mr. LUGO. No, not the Commission itself.

Mr. STOKES. The State agencies?

Mr. LUGO. In other words, that's one area that they cannot pursue. Private industry and whatever, but when it comes to the State, they can't touch it, and I think it's hurt quite a few people. You know, some guys want to be a truck driver or a gardener—they're not asking for something fantastic.

Mr. STOKES. That's part of the purpose of this bill, to try to cover this area which is presently uncovered.

Thank you very much, Mr. Lugo.

Mr. HAWKINS. Mr. Hansen?

Mr. HANSEN. Thank you, Mr. Chairman.

I'd like to join my colleagues in welcoming you to the committee and express our appreciation for your help.

I was interested in your reference to what you described as, I believe, the Lincoln Heights fiasco, and I would like to probe that just a little bit to try to determine what the reason for failure was. Was this an OEO training project or what agency or department had the responsibility?

Mr. LUGO. It wasn't OEO, no. It came down through the manpower programs, special impact programs. It was designed when——

Mr. HANSEN. The Department of Labor?

Mr. LUGO. The Secretary of Labor at that time was—I can't think of his name offhand, but he was the one that was in that position at the time.

Mr. CLAY. Willard Wirtz?

Mr. LUGO. Ruttenburg (phonetic) at the time. He was the man at the time, and it came—I don't know what developed over there. That I do not know. But the question was that our area, the Lincoln Heights area, was supposed—well, anyway northeast and east area was supposed to get 10, 10 of the special impact programs, and they were supposed to muster up 10 industrialists. Now, here's where the boo-boos come in and the goofups. These people weren't screened properly; these people weren't questioned—Lady Fair Kitchens was out of Salt Lake City, and so forth and so on, and Monarch (phonetic) got $250,000 and didn't even employ one person. As a matter of fact, he's disappeared. They don't know where Mr. Bud Price is at.

You see, these are the things that really irritate the community and as a job developer in the area—I mean, this hurts me, too, because here we had high hopes of placing some of those disadvantaged people in these training programs and it never came about.

Mr. HANSEN. Now, the training programs never got off the ground?

Mr. LUGO. No. The last conference we had at the time at the Boy's Club was November the 12th. We had all of the industrialists down there, the Department of Labor, and Snyder was down there. We invited him to come down there. And we figured on getting them all together to find out whose fault or what are they going to do about it.

We discovered right there that to our findings nothing was ever going to come out of it.

Mr. HANSEN. Now, was the reason a primary one of discrimination or one of——

Mr. LUGO. Neglect.

Mr. HANSEN. Was it red tape and administrative——

Mr. LUGO. Administrative red tape. And I'll give you another idea. Some of the people from the Department of Labor got their—whatever guidelines they were supposed to go by, you know, and how it was being implemented and a followup for them, they got it 6 months after. In other words, they got it in June of 1969—July of 1969, something like that. They should have gotten it way further than that. You know, they didn't even have an office out here. They had a regional office in San Francisco.

So, you see, these were all the areas we were researching. Where's the link? And we're still looking for it. Because the community at large doesn't feel that they've been answered. Their cry hasn't been answered.

Mr. HANSEN. But there were and are people that could utilize the training that was supposed to be provided to equip themselves for better jobs or for employment and they were not unemployed; is that correct?

Mr. LUGO. Well, you have a crew of about 90 that was with Lady Fair Kitchens and we made a followup on that, too, and they went to the Labor Commisison to see if they could get their money and the checks they got bounced on them, and that's 90 people.

Mr. HANSEN. Would it be correct to say, then, from what you describe as the background that it wasn't so much the causes of the failure as the effects of the failure being discriminatory; that is, discrimination didn't cause the failure, but the fact that it never got off the ground did effectively deny to minority groups the opportunities for training that were the purpose of the program?

Mr. LUGO. Well, it was discriminatory to a certain degree and it also was negligence—the combination. It was a twofold thing. Because, if you notice here, "Local businessmen not involved as suggested in section 2765–A–3 of special impact programs * * *" In other words, they were supposed to develop things within the community, develop the economy of the community; small businessmen being able to put people on employment.

Mr. HANSEN. Could you conclude from this that in our effort to create equal employment opportunities that a very important part of the program must be creating the training opportunity, particularly for minority groups, so that they have the skills and they can go into the job market and be effective to perform a job?

Mr. LUGO. Actually, the majority of the training doesn't take too long, not unless it's complex—something more technical. For the majority of jobs, most guys within a week know what they're doing. It depends on the job, but as a rule they can adapt to it pretty quickly,

unless you're going into something really complex like welding, upholstery—which they don't even want that any more. They don't want that. We don't want that. That's not where it's at. We want something more technical, something more that we can lean on.

You know, the furniture business, you can be making furniture like mad one day, and the next day you're out of business, and it's so competitive. So they really want to get into the technical aspect because they feel that it's not there.

Mr. HANSEN. But if there is a language barrier, if there is someone who doesn't read or write the English language, for a job that requires it, then this does take a little more training.

Mr. LUGO. Okay. I'll give you a simple illustration. A while back civil service put out in La Opinion, the Spanish newspaper, millwright machinists wanted—in Spanish, mind you. The place was flocked by about 200 people. So that goes to show you how many people are employed within that area and would like to go into something like that. So they even made another mistake. They put 5 a.m. A bunch of guys show up out there at 5 a.m. Well, naturally, they had some security guards there. They came out, and that almost became a ruckus over there, but it was clarified and the guys left. About 12 of them showed up at our center mad as hell. So we followed it up and went through it.

Mr. CLAY. Would the gentleman yield?

Mr. HANSEN. Yes.

Mr. CLAY. Would you say that the language barrier here is just a subterfuge to discriminate against Mexican Americans?

Mr. LUGO. Sure.

Mr. CLAY. Because we brought hundreds or thousands of Hungarian refugees into this country who definitely had more of a language barrier than Mexican-Americans and we found employment for them in industry throughout this country in all sectors and in all positions, and their language barrier was not a detriment to them getting employment. So what you're saying is if they can do it in one case with the Hungarian refugees, then they certainly ought to be able to do it with American citizens who perhaps don't speak the English language.

Mr. LUGO. But they take them by the hand and say, "You're a refugee, so you have preference over this fellow who lives here."

So that's another thing.

Mr. CLAY. Thank you. I wanted to touch on that.

Mr. LUGO. The question is that they came over to our place. We tried to handle them, tried to really pursue it properly. We did. They gave an apology and they ran another fact sheet again and they accepted applications, but this time they gave them an application in English and a guy looks at it, "I can't fill this out."

And, yet, this guy that I was talking about, he is from Bolivia, and he's a psychologist—that's what I'm trying to get at—he says, "All I need is something to get by and once I get on my feet . . . " He says, "I've got to go back to school." He knew this himself. He definitely knew he had to go back to school.

But these are some of the problems, and that's discriminatory, and I think there should be some applications in Spanish for guidelines for them, because the man is just looking at your application. He doesn't know who you are or what you are or what you can do. Only on paper

he knows what you can do. So, the guy might—you know, it might be rewarding to the employer to know what this guy's problem is. Maybe he could use a man like that in his plant. He might have some exposure to some type of job description that he's been searching for and the dummies he's got on board can't do it—pardon the expression about dummies.

Mr. HANSEN. I just took it from one of your earlier comments that lack of knowledge of the English language was a barrier to some employment opportunities, so I'd like to ask this question: Doesn't the knowledge and facility with more than one language open up wider employment opportunities?

Mr. LUGO. It could, but it doesn't. If you check the telephone company, I believe—I haven't got the statistics with me, so I'd better back off from that, but I know the ratio is very low. And I think they should have a full crew at all times to answer the phone in Spanish for grandmas who cannot talk any English, you know. And they don't even practice that there. You know, it would be to the benefit of the telephone company to have bilinguals on board. Not only that, but in other areas as well.

Mr. HANSEN. I certainly wouldn't dispute that. But it seems to me that out of all this it is quite clear, at least to me, that the development of more training opportunities is one of the most promising and productive ways to break down the barriers to employment opportunities and to the extent that there is discrimination in—that effectively bars members of minority groups from training opportunities, that's where we should also focus our attention.

Mr. LUGO. You should definitely focus on that, please, because on these training programs a lot of these people have to almost go to remedial English, and it's a hangup, you know, knowing that you want to fix a TV set and you know you can't fix it because all the contents in front of you are in English. The English will come to them naturally after a while.

Mr. HANSEN. Let me ask one final question. We have in my own State of Idaho a number of Mexican-Americans for which we have developed special programs for training, special school programs, and I think I'm probably more familiar with those, so I would only ask you whether you have the same or any different problems that confront a Mexican-American community as against the black community in terms of discrimination in employment opportunities.

Mr. LUGO. You mean you're trying to emphasize both areas?

Mr. HANSEN. Are they about the same or do you have a different set of problems that face the Mexican-American than those that face the black community?

Mr. LUGO. Yeah. Definitely there is, but—at the end of the road, they're the same thing, but they are different. There are differences in problems.

Mr. HANSEN. So that the programs that we design, for example, to try to deal with those problems would have to be specially designed to fit the needs of the Mexican-American community.

Mr. LUGO. Right; they would have to.

Mr. HANSEN. Thank you very much.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. Yes. In your statement you mention the fact that you've created a certain amount of hostility among the establishment because you were trying to effect institutional changes. Can you elaborate a little bit on what kinds of institutional changes you were trying to effect?

Mr. LUGO. Well, the institutional changes we were trying to project to certain people in the community, and they were aware of that as well, was the fact that through a united front together, concerted effort, it might be heard that these programs that they were implementing were really not being meaningful, not unless they involved us as well. To have—just like I mentioned before, to get a Hungarian and getting him by the hand and bringing him in. Well, they could listen to us for a change. That's an institutional change.

Mr. CLAY. You wanted to be involved in the planning?

Mr. LUGO. Right; at the planning structure of it. And, you know, even though they feel—this credential system that we live in, it really hampers a lot of people because there are a lot of people that are capable of doing things even though they've never done it before. You know, people aren't stupid any more. And I think this is part of what the establishment doesn't want to accept, that people aren't stupid any more.

All these things that are erupting now, you know, they study it. People are discontented, and this is what has created it.

Mr. CLAY. It was mentioned earlier in the testimony that there was a senatorial hearing out here and it listed a number of organizations as being antiestablishment and perhaps subversive. Can you give us some of the organizations that they named as subversive?

Mr. LUGO. Well, subversive, in the groups that they classify as subversive, I couldn't name them all because there was quite a few of them that they had listed and they included NAPP, and that hurt me because I feel—I didn't feel that what I was doing was subversive. I thought I was doing my job. Any job that is handed to me. I try to do it well, to the best of my ability, and this was the first time that I really had a chance to get into some community action and unity and I felt that once you got your hand on the pulse of it you see so many wrongs that are really going on that shouldn't be there and could be corrected, and this is the reason why I felt that if this is what they're going to say when we're finding out what they're not doing right, they're calling us names—don't look here, look over here. You know, what kind of * * * What I'm doing is wrong, then? I tell them, "Look, this is wrong."

Mr. CLAY. Did Senator Dodd accuse any of these subversive organizations of possible income tax evasion?

Mr. LUGO. I wouldn't know about that.

Mr. CLAY. But you know he has been accused of it.

In your opinion, have any of the existing Federal laws on equal employment opportunity actually become a reality in assisting Mexican-Americans or blacks to achieve equal employment opportunities?

Mr. LUGO. Yes, it's helpful, like I said before, to a certain degree, and then when it gets to a certain area, you know, then comes the complexities of your unions, you know—the Teamsters. There's fault

there, too. So, you know, you just can't actually blame one segment of it. The Teamsters, they've got something to do with it because they're supposed to be the change agents, let's put it that way, but I guess they're too busy now. They've grown quite a bit. They're too busy to get involved in politics, getting involved in other areas not relevant to their members.

Mr. CLAY. How many Mexican-Americans live in the Los Angeles area?

Mr. LUGO. Oh, it's quite a bit. The Greater East Los Angeles, I would venture to say, is well over a million.

Mr. CLAY. Well over a million?

Mr. LUGO. Yes, well over a million.

Mr. CLAY. Are there any special Federal funding programs set up in the Los Angeles area specifically for Mexican-Americans?

Mr. LUGO. There are some.

Mr. CLAY. Are you familiar with any of them?

Mr. LUGO. Yes. You have your AOF, which is the American Opportunities Foundation; then you have the East Los Angeles Community League; and then you have LUCHA that's—I don't know their name completely when it's spelled out, but they're supposed to be helping ex-addicts and ex-cons who are coming out who are also having problems in employment and are trying to clean up—you know, "Have you ever been convicted?" and that shuts them off, and there they go to running again.

Mr. HAWKINS. Would you yield?

Mr. CLAY. Yes.

Mr. HAWKINS. Was that one of the organizations listed in the Dodd committee?

Mr. LUGO. I wouldn't know, sir. I really wouldn't know.

Mr. HAWKINS. All right.

Mr. CLAY. Were these OEO funded programs?

Mr. LUGO. ELA League is not an OEO funded program. That comes under the Ford Foundation and—what is that union?—UAW. They come from that.

LUCHA is self-sustaining. I believe AOF has had some tie in with OEO, but what stipulations, I do not know.

Mr. CLAY. Are there any programs that give direct financial assistance to Mexican-Americans? I don't mean job training. Do they actually give any money to Mexican-Americans?

Mr. LUGO. There is one of them and it's not a whole lot of money. There's the State service center and they have an area there with this lady—I met her personally myself and she's doing a very good job. She has raised her money almost out of nothing and when a guy comes through and he needs a couple of dollars and they screen him out and see how badly he needs it and they give it to him. Now, the State service center itself does that.

Mr. CLAY. But the Federal Government is not giving millions of dollars to the Mexican-Americans?

Mr. LUGO. No.

Mr. CLAY. In other words, they're not treating them the same as they do the Cuban refugees who come in from Cuba and settle in the southeastern part of this country.

Mr. LUGO. No, they're not getting that same kind of treatment. I would say no. Even though I do have a very wide gamut as far as Latin Americans are concerned and I know their problems, too. They also want to progress, and also at the same time Johnny Jones has been here and he wants to progress, too, so here they go. They're pitting—fighting against one another.

Mr. CLAY. Did you ever think about asking our Government to do the same thing for Mexican Americans that they're doing for the Cuban refugess? And, to be specific, I'll give you a little background on what they're doing for them. This year we're asking $112 million for Cuban refugees who are coming to this country at the rate of 1,000 per week. Our President is spending $1 million a year just to transport them from Cuba here free of cost. Anybody in Cuba who wants to leave Cuba is being brought to this country at the expense of the President of the United States and the Congress has provided in the budget for this year $112 million to take care of Cuban refugees and at this point, 11 years after the revolution, people who are coming here are not anti-Castro politically; they're people that Cuba does not want. They're the old, the blind, the lame, the unemployed. So what we've really developed here is a welfare system for the Cubans that Castro does not want to take care of. We have imported in the last 4 years over 300,000 Cubans into this country, and if we can't find work for them they go on a special relief program that our Government pays them money directly each month, and if they find work and work for a year or so and then they lose that job, they don't go on unemployment, they go back on the welfare program, which is much better than unemployment.

Today we're spending $17 million in Dade County, Fla., on impact school aid for Cuban refugees. And I think that if we can treat the Cubans like that, we ought to be able to treat some of the other minorities in this country to the same extent.

Mr. LUGO. Definitely.

Mr. CLAY. And I would say that not only Mexican Americans but the other minorities in this country, including the blacks, ought to start raising some questions and ought to start asking this Government to set up the same kinds of programs for us that they did for the Hungarians and for the Cubans, because it has become quite apparent that they're not going to integrate us into the mainstream of the economics in this country.

Mr. LUGO. Oh, no.

Mr. CLAY. And when we start talking about these special training programs for blacks and Mexican Americans, I think it's really euphemism for discrimination, because white people who come in here without education and without job training and job abilities and skills are not put in the special training programs. They're hired for specific jobs and trained in those jobs. And I think we're wasting a lot of Government money when we start setting up special training programs for jobs that don't exist anyhow. So I think that—you know, I agree with you about institutional change and I think you ought to make it pretty hot for the Government and the elected officials in this area. This is the same thing I encourage the people in my district, "Make it just as hot as you can and get organized politically and make some

drastic changes in the elected officials in this town if you don't get some improvement."

Mr. LUGO. I want to tailgate to that. I think you better go see—if you haven't already seen the movie, go see "POPI." It gives it to you right there. What a man has to do to try to get some aid for himself living in this country, and the sacrifice of his children.

A VOICE. Would you repeat that name again?

Mr. LUGO. The movie "POPI."

Mr. HAWKINS. Mr. Lugo, again I would like to thank you for your testimony. It has been most helpful and certainly to the point. And I think that the number of questions that you were asked indicates the great interest we have in what you said. You've made a wonderful contribution. Thank you again.

The next witness is Mr. Jerry Lamothe.

Would you identify the group that you are specifically representing? You're identified with so many—I assume you're speaking for the UAW today.

STATEMENT OF JEROME LAMOTHE, DIRECTOR, PUBLIC RELATIONS, LOCAL 887, UNITED AUTOMOBILE & AEROSPACE WORKERS

Mr. LAMOTHE. UAW, Local 887.

Mr. HAWKINS. Mr. Lamothe, may I personally welcome you before the committee. We're very delighted to have you. We know you've been very active in civic life and union affairs for a number of years and I'm quite sure that your statement will be most valuable to the objectives of this committee.

Would you proceed to either read or summarize your statement? Just whichever way you wish.

Mr. LAMOTHE. Mr. Chairman, members of the committee, my name is Jerome Lamothe. I appear before you as a rank and file union member who is privileged to serve on the staff of Local 887, UAW. Our members work at all divisions of North American Rockwell Corp. in Los Angeles and Orange Counties.

Minority employment has particular meaning in this State which, in fiscal 1967, had nearly 20 percent of the Defense Department's military prime contract awards of $10,000 or more.

Those serving on our union's executive board, though not present here today, join me in commending you for providing an official public forum—long needed in California—on the pervasive issue of discrimination in employment in the aerospace industry.

The most serious immediate problem confronting black and brown workers in our communities is employment—securing and holding a job that provides an opportunity for livelihood, a chance to earn the means to support oneself and our families, a dignity, and a reason to feel a vital part of our communities in a true and very real sense.

The aerospace companies, beneficiaries of the Public Treasury, most definitely have an obligation to join with organized labor and government at all levels in the struggle to eliminate discrimination in employment, upgrade, and promotional opportunities. It is pointless for men of industry and labor and those in public life to proclaim on the Fourth of July or at a veterans' affair that devotion to and love of country are the mark of a red-blooded patriot if they lack the willing-

ness to jointly act in common purpose to remove the ugly vestiges of discrimination in employment. Yet, here in this industry, in 1970, discrimination is pervasive in our plants, in our hiring centers, in upgrade and promotonal opportunities, and I speak from 13 years' experience in the aerospace industry.

Besides entry-level discrimination in the aerospace industry, there is also a vertical or skill-level aspect of job inequality for nonwhites. In the aerospace industry and at North American Rockwell plants, the jobs held by nonwhites are less desirable, requiring less skill and paying lower wages, than the jobs held by whites. At North American Rockwell plants in southern California nonwhites are underrepresented in all the white collar and skilled labor categories and overrepresented in all the semiskilled, unskilled, and service classifications except for protective workers.

Statistics of the Equal Employment Opportunity Commission have documented this statement.

As long ago as 1941, President Roosevelt signed an Executive order forbidding discrimination by defense contractors; the 1964 Civil Rights Act forbade discrimination in most jobs. Yet, despite frequent violations, no supplier in the aerospace industry has ever lost a Government contract as a result of minority discrimination.

The labor picture is brightest for minority workers in the big industrial unions. My union, the UAW, has been in the forefront of the struggle for the elimination of employment discrimination and continues its battles. Yet, at North American Rockwell, and in the aerospace industry, minority employees are hired simply for their statistical value in winning Government contract awards, despite our efforts to the contrary.

Management often proclaims a no-discrimination policy but neglects to get the message across to middle management—the men and women who actually hire, fire, and promote. That is, in spite of orders from the top, middle management resists and undercuts the policy of equal employment and opportunity in their zeal to maintain the status quo, failing to initiate the extra effort to provide mobility for minority employees, many of whom start with their skin color weighing heavily against them.

Recognizing this, we must push away side issues and diversionary debate and get to the heart of the real issue. What is the deep-seated issue? In our view the root issue can be stated by a simple question with complex life and death implications: "Where are we going and how do we get there?"

The question is not new. It is as old as modern man. Down through the ages it has been man's courageous question. The open-ended challenge comes in finding courageous answers.

It is startling to realize that the ingenuity that placed man on the moon, a landmark in the history of mankind and a cause for national pride, is not being applied to the elimination of America's oldest enemy, discrimination.

Good economic sense dictates our opening up new job-producing programs which benefit the pocketbooks of workers, all workers, and alleviate the pressing demands to house, clothe, feed, and educate each person, thereby giving credibility to our proclaimed belief that everyone is entitled to "life, liberty, and the pursuit of happiness," and to our constitutional mandate to provide for the "general welfare."

We are convinced that the aerospace industry can make a meaningful, long-range contribution in the struggle to eliminate discrimination in employment, upgrade, and promotional opportunities. The means are at our disposal, only the will to change is lacking.

Present employment procedures should be reexamined. Testing procedures should be revalidated or replaced by work sample or actual job tryouts. Applicants who are rejected for immediate employment or training should be evaluated and counseled by company personnel officers and referred to company or public remedial programs.

Special sensitivity training is needed for supervisory personnel. A program of training entry-level supervisors should be established by management to insure the elimination of discrimination and artificial barriers to employment and promotion.

Equal opportunity for employment by Federal contractors under Executive Order 11246 should be enforced vigorously. The withholding of Federal contracts should be made a meaningful sanction.

Long overdue is the need to acknowledge openly the myth that companies such as North American Rockwell, Lockheed, McDonnell-Douglas, et cetera, are "private corporations" in the traditional capitalistic meaning of that term. That just isn't so. No one has better stated the proposition than Harvard economist John Kenneth Galbraith, who said in testimony last year before a Joint Senate-House Economic Subcommittee, and we quote:

> We must, as a grownup people, abandon now the myth that the big defense contractors are something separate from the public bureaucracy. They must be recognized for what they are . . . a part of the public establishment.

The facts support this view. In 1968 large defense contractors were using an estimated $13.3 billion of public working capital in the form of progress payments on contracts, the payments depending, broadly speaking, on the need for capital, not the progress toward completion of the contract.

To state the matter in another way:

> Typically, aerospace companies do not spend their own money to build plants; they lease factories constructed by the government. . . . Much of the elaborate equipment in aerospace factories is also government financed. . . . Defense contracts . . . provide liberal allowances if the cost of a weapons system exceeds the estimated price—and it usually does—by a substantial margin. . . . Finally, the government finances the production line itself.

These are not our words but those of Washington Post reporter Bernard D. Nossiter, taken from his two award-winning reports last December.

Once we, including the corporations, become grown up enough to admit this national condition of economic life, then it logically follows that these corporations—and even smaller companies that have benefited from public spending in space and defense—have a public responsibility to perform in behalf of the elimination of discrimination in employment.

While we see some movements in the right direction, to date the net result is shallow when compared with the total problem.

We cannot drift into equal employment opportunity. We must have a delivery system that will meet the discrimination crisis, that will meet our 1946 national policy goal of full employment.

We laymen and elected officials should not be intimidated by our electronic age. We should not be intimidated by our technology. We should not be intimidated into thinking that electronic and technological advances can best be applied to tools of war or to conquer outer space. A professor of history has said that, "It is recognition that technology and science are, and always have been, integral to the human adventure, and not things curiously alien from the concerns of our race."

When Ralph Nader was here in Los Angeles, under the sponsorship of our union, he spoke to this point when he said we have an "aristocratic" application of our technology, and that it is high time we applied it to the needs of our citizens.

Now bringing the issue closer to home, that of the elimination of discrimination in employment, what we are attempting to say is that we must view a healthy employment picture in terms of building a democratic culture.

We are convinced that the aerospace industry can make a meaningful long-range contribution to the field of human rights, especially in the elimination of discrimination in employment, upgrade and promotional opportunities. Aerospace management and workers who can build 30 engines for Apollo 11 most certainly have the knowledge and skill required for providing equal treatment for its workers. And certainly a team that can house astronauts can come up with a vehicle to provide equality in the plants, especially for those who have been denied employment and job opportunities.

Perhaps President Johnson said it all when he observed:

> The only genuine long-range solution for what has happened lies in an attack—mounted at every level—upon the conditions that breed despair and violence. All of us know what these conditions are: ignorance, discrimination, slums, poverty, not enough jobs. We should attack these conditions—not because we are frightened by conflict, but because we are fired by conscience. We should attack them because there is simply no other way to achieve a decent and orderly society in America. . .

Mr. Chairman and members of the committee, we appreciate your kind attention to our remarks and again wish to commend you for holding hearings on the most vital issue of the day.

Thank you.

Mr. HAWKINS. Thank you very much, Mr. Lamothe, for a very forceful and brilliant statement. I think that you have done an excellent job in calling the issues to our attention.

North American Rockwell was one of the companies that testified in a hearing before the Equal Employment Opportunity Commission here in Los Angeles 1969—I think it was in the month of April—and at that time the thoughts brought out indicated that in the positions that paid $10,000 and over about 1.1 percent were Spanish-speaking employees and less than 1 percent were Negroes. In other words, less than 2 percent altogether of these two groups, despite the fact that in one group, the Negro group alone, Negroes constituted between 11 and 12 percent of the local work force.

At that time the Equal Employment Opportunity Commission members did cite North American as having a real problem and about a year ago. This was not something new, this was definitely documented and brought to the attention of this company, and I say that because at the present time North American Rockwell is competing

for a B–1 bomber contract along with Boeing of the State of Washington and General Dynamics in the State of Texas, and certainly as one member of this committee—perhaps this may stand alone—I obviously would like to see this contract go to this State, to southern California. Now, perhaps Mr. Clay would rather have it go to St. Louis, and I'm sure that there are other Members of Congress who would be delighted if the contract went other places. But it seems to me that what was said a year ago and what is now said about North American places them in conflict with Executive Order 11246 and that instead of those of us who are critical of the affirmative action program of North American in any way trying to take the contract away from them, it would appear that those of us who are calling attention to the poor record at North American, as you have done in this statement of yours, I'm quite sure that as a representative of the employees at North American you are also very desirous of North American having this contract. So you do have a special interest in doing this.

But would you agree that efforts to get them to live up to the Executive order are actually, in effect, efforts to get the contract for them rather than to deprive them of the contract; that if there is anything—one thing which may prevent them from getting the contract is the record which they have been able to compile?

Mr. LAMOTHE. I would agree with you that our efforts in spite of the criticism is to bring that contract to California. However, I don't think that we can allow the award of that contract to stand in the way of making some meaningful change in the discriminatory pattern which has prevailed over the years within our plants.

Mr. HAWKINS. Now, with respect to the affirmative action program within this particular company, can you elaborate on how many persons may be involved in such a program and how many of these persons involved in such a program are minorities?

Mr. LAMOTHE. To my knowledge, at this point in time there is one officer of the corporation involved in affirmative action and to my knowledge no other.

Mr. HAWKINS. Then to your knowledge you know of only one——

Mr. LAMOTHE. Yes, sir.

Mr. HAWKINS (continuing). Person. That person is a black person or a Spanish-American?

Mr. LAMOTHE. That person is of the Jewish faith.

Mr. HAWKINS. Of the Jewish faith?

Mr. LAMOTHE. [Nods head affirmatively.] Yes.

Mr. HAWKINS. Is there any black person involved, to your knowledge, in affirmative action programs as a director or whatever title they're given?

Mr. LAMOTHE. Not at the present time, no.

Mr. HAWKINS. Do you know of a Spanish-American person who is involved at this level in the affirmative action program?

Mr. LAMOTHE. No, sir.

Mr. HAWKINS. Approximately how many persons would you say are involved in the affirmative action program?

Mr. LAMOTHE. Well, let me state that over the past 4 months we have experienced a heavy reduction in our work force, both within the bargaining unit and outside the bargaining unit, and as a result of that reduction the company has almost scuttled its affirmative action program and is no longer pushing in that direction.

Mr. HAWKINS. Well, out side of the affirmative action program itself, what has been the experience in, I would assume you would say, not the recent hiring but the recent layoffs? To what extent have the recent layoffs perhaps made the problem at North American even worse than what it was a year ago?

Mr. LAMOTHE. Well, in any company that has a long history of discriminatory patterns—and this is not limited to North American, but is pervasive throughout the industry, I think—when we reach an area where we require reductions in our work force, then the old standby that the last hired are the first fired begins anew, and in this instance actually minorities are bearing the heaviest load.

Mr. HAWKINS. Would you say that there is discrimination or there is a lack of discrimination in the training program, assuming that you do have specific training programs at North American?

Mr. LAMOTHE. In those training programs that the company has had over the past nine and a half years, to my knowledge there has been both overt and covert discrimination.

Mr. HAWKINS. Do you know what is the highest position occupied by a Negro at North American?

Mr. LAMOTHE. I'm not at the corporate level. I don't think——

Mr. HAWKINS. So you don't know?

Mr. LAMOTHE. I don't know of a Negro or other minority person at the corporate level.

Mr. HAWKINS. You don't have knowledge, or do you have knowledge but you don't know of any?

Mr. LAMOTHE. I don't have knowledge of any at the corporate level.

Mr. HAWKINS. By that you mean board of directors, officials, managers?

Mr. LAMOTHE. In the top policymaking jobs of the corporation, no.

Mr. HAWKINS. In the top policymaking positions.

Well, for the sake of the record, may I indicate that my remarks with respect to North American Rockwell would apply equally with respect to Boeing or General Dynamics or any other companies competing with North American. I would not, certainly, want to say that North American has this record and the other companies—the other companies that have equally poor records should not be treated alike. Certainly, what you have said about them should be, I think, seriously considered on the face of the record.

And, certainly, if we're going to enforce Executive Order 11246 against the building trades, it would seem to me that it should be enforced against all Federal contractors equally.

To your knowledge, have any complaints—either EEOC or State fair employment practice complaints or complaints before any other governmental agency been brought?

Mr. LAMOTHE. Yes, sir. To our knowledge, there is a considerable number of complaints before both the EEOC and the State FEPC. Those complaints have not been finally settled or resolved and we have one staff member assigned at the local union level who does nothing but prepare the union's position and document its activities on behalf of those charging discrimination.

Mr. HAWKINS. If I recall, was not an official of North American also a member of the State fair employment practice commission for a while?

Mr. LAMOTHE. Yes, sir. Mr. Dwight Zook.

Mr. HAWKINS. Served both as an official of North American and also was a member of the State fair employment practice agency that was charged with attempting to eliminate discrimination?

Mr. LAMOTHE. Yes, sir.

Mr. HAWKINS. That's all I have.

Mr. Stokes?

Mr. STOKES. Thank you, Mr. Chairman.

Mr. Lamothe, almost a year ago Mr. Hawkins, Mr. Clay, and myself were in Los Angeles to attend the equal employment opportunity hearing with reference to the aerospace industry in Los Angeles and, we all listened to the deplorable status with reference to the discriminatory practices existing within this entire industry in this area.

Now, obviously, from North American's perspective, since that hearing things have not improved, they've gotten worse.

Mr. LAMOTHE. I would agree with that statement, yes.

Mr. STOKES. Do you have with you any statistics which could tell us how many blacks, Mexican-Americans and Spanish-speaking people are actually employed in the upper echelons of North American?

Mr. LAMOTHE. No current figures, only the figures that were supplied by the company during the EEOC hearing.

Mr. STOKES. And you would say that those figures have not changed?

Mr. LAMOTHE. And those figures have changed drastically.

Mr. STOKES. They have changed drastically?

Mr. LAMOTHE. Since that time.

Mr, STOKES. Downward?

Mr. LAMOTHE. Downward, yes.

Mr. STOKES. Has the UAW brought any of these matters to the attention of the Labor Department, Federal Contract Compliance Division, in Washington?

Mr. LAMOTHE. I don't know whether our national office has brought this to the attention of the Federal Government or not. I know that internally we have been over the past 4 months dealing with our upper level management trying to resolve these kinds of problems, but whether or not the national union has done so, I don't know.

Mr. STOKES. When you're dealing with your upper management level with reference to trying to have them alleviate these problems, what is their attitude and what is the result.

Mr. LAMOTHE. Well, their attitude is that they have a problem and that they acknowledge that changes have to come about, but it's our experience that in spite of the upper level management's concern in this area, it never gets down to that middle man, and that's where our problems are.

Mr. STOKES. I see. What do you think will eventually happen to this situation?

Mr. LAMOTHE. Well, I think, unless the Federal Government is willing to implement the Executive Order 11246 and the 1964 Civil Rights Act and apply the kind of sanctions such as contract cancellations, we're going to be spinning our wheels. We'll never get an answer to this particular problem, because unless you hit management in the pocketbook where it hurts, they don't feel the need to move, and we think that's where they ought to be hit.

Mr. STOKES. Thank you very much for your very excellent testimony.

Mr. CLAY. Congressman Hansen?

Mr. HANSEN. Thank you, Mr. Chairman.

Let me also express my appreciation for your presence here and for your statement.

I'm particularly interested in your focusing on middle management as the place where the discriminatory practices are most in evidence despite the fact, as you point out, that top management has proclaimed a nondiscrimination policy. I'm wondering to what extent middle management is reflecting the attitudes of the rank and file employees, the members of the union in the plant, in these discriminatory practices.

Mr. LAMOTHE. Well, I don't know to what extent they might be attempting to reflect the attitudes of our rank and file members. However, I'd like to point out that in local 887 of the approximately 300 in-plant representatives, almost half of those representatives elected by the members are in fact members of minority groups, either black or Mexican-American. And I would tend to think that under those circumstances that is not a reflection of the feeling of the rank and file.

Mr. HANSEN. Do you think that the rank and file union members acting through their union leadership could do more than has been done in the collective bargaining process or other pressures that can be brought to bear on management to eliminate discriminatory practices in hiring?

Mr. LAMOTHE. Well, we've attempted through collective bargaining to bring this kind of pressure. We've been since 1957, I believe, pushing during our bargaining sessions to implement what under our contract is article IX which deals with the area of discrimination.

In the past we attempted to bring direct pressure to bear in this area by having all complaints of this nature which were not settled on the floor in the area in which they came about given directly to the president, and he and the Director of Labor Relations were compelled to attempt to work out a solution thereto. But we found that during some 6 years, I think, of experience that we did not get any movement upon these grievances in this area and we did not have access to an impartial arbitrator.

So in our negotiations of 1968 we changed the contract language to provide for the same access on discriminatory grievances to the arbitrator as any other problem that cropped up in the plant would have.

Mr. HANSEN. You think that more can be done by the union itself in the plant to insist on the elimination of discrimination in hiring practices by this so-called middle management?

Mr. LAMOTHE. Not really, because if you don't have the power to hire and fire, you can't really bring that kind of pressure.

Now, remember, we're largely dealing, especially at North American, with men and women who have some 25 to 35 years of service within this corporation and it's rather hard to bring that kind of influence to bear.

Mr. HANSEN. But you would have the support of top management in that effort.

Mr. LAMOTHE. We've had the support of top management in this effort for the past 10 years and it still hasn't changed.

Mr. HANSEN. That's why I'm trying to determine why the middle management group is guilty of discrimination. It seems to me that maybe there is some reflection of attitudes at the lower echelons.

Mr. LAMOTHE. Well, it's our feeling that top management has the responsibility not only to proclaim a policy against discrimination but to draft programs to implement it, and it's our experience that top management has not done this. That's the reason I alluded to the sensitivity in my statement. And I think these kinds of things have to be brought to bear by top management on middle management to bring about the changes that we suggest are needed.

Mr. HANSEN. I think you also mentioned that the way to reach top management is through the pocketbook, by cancellation of contracts, in circumstances where there is discrimination in violation of the law or the Executive order.

Has your local, for example, taken any action to request the support of the UAW to insist on cancellation of a contract at North American because of discrimination?

Mr. LAMOTHE. My union will meet in convention later this month at Atlantic City and before that body is a resolution to bring about this exact result.

Mr. HANSEN. This is an avenue that really probably can and should be used more; that is, through the top union leadership in bringing pressure on the Federal Government to cancel a contract where you believe the requirements of the law and the Executive order are not being met.

Mr. LAMOTHE. We just feel that if the Federal Government can refuse to support school districts that might be discriminating that it ought to also insist that its money that is utilized to provide work—ought to be withheld if all Americans do not have access to equal opportunity.

Mr. HANSEN. I think that's a very defensible proposition.

You mean out of all of this because of the difficulty of eliminating these very obvious areas of discrimination in employment that it has to be fought on every front; that is, government; that is, legislative, to the awarding of contracts, and also through the efforts of the workers themselves acting through their union leadership to bring such pressure as they can bring to bear on Government to effect a genuine fairness in hiring practices.

I am afraid I've used more than my allotted time, and I do appreciate your testimony.

Thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. Yes. I'd like to rebut the opening statement of the chairman, if I might, when he said that perhaps I might want this B-1 bomber contract for St. Louis. My position coincides with yours and I think my action of the past several months proves that my position coincides with yours.

I'm of the opinion that no company in this country should be awarded a Government contract unless they are extending equal opportunities to all people, and in December of last year the McDonnell-Douglas Corp. in St. Louis was awarded the largest Government contract ever awarded by this Government, a contract for almost $9

billion to build the F–15 fighter plane, and I raised so much hell and documented so well the case of discrimination against black people in McDonnell-Douglas that the Government threatened to cancel that contract.

They called the Secretary of the Air Force from Puerto Rico where he was on vacation and told him to get out to McDonnell and either straighten out that problem or cancel that contract, and as a result of the crisis that was created and as a result of McDonnell being threatened with losing a $9 billion contract, we got the kind of affirmative action program commitment from McDonnell that even made me commend them for their affirmative action program.

And included in the program were a number of things that I think ought to be forced on all companies in this country. The problem as I see it is not with the union. The union plays a specific role in discrimination against black people, but basically the one that does the hiring ought to be able to whip those unions into line, and this is what they did at McDonnell-Douglas Corp. Included in that affirmative action program is the insistence—and the Government didn't talk to the unions—but the insistence that McDonnell-Douglas Corp. renegotiate every union contract and every clause that has built-in possibilities of discriminating against people because of race and the seniority rule, for one, has been thrown out the window at McDonnell-Douglas Corp. in St. Louis, and this seniority rule has served to discriminate against black people.

But, in addition to that, in the affirmative action program McDonnell agreed to hire a Negro employment opportunities officer who would be black at a salary of $40,000 a year and agreed to hire him by May 1 so that he would implement this several hundred page affirmative action program that they agreed to.

In addition to that, they agreed to promote 80 percent of the blacks who were working in the unskilled and semiskilled positions within a 3-year period, a certain percentage of them per month until the 3 years expire and until 80 percent of them have been promoted to either one or two steps above.

In addition to that, they agreed to hire on a timetable over 6,000 additional black people and they put the dates in there. "By April 1, we'll hire this many; by May 1, by June 1."

And, in addition to that, they agreed to hire on a timetable a percentage of blacks commensurate with the percentage of black people living in that area in all categories, technical, professional, clerical—in every phase of operation at McDonnell-Douglas.

They also agreed to spend $922,000—almost a million dollars—to train people who were already working at that plant so that they can move up, not go out and start training people for jobs that don't exist.

Now, this is the kind of pressure that is going to have to be brought on industry if we're going to get any meaningful results. I've seen too many of these affirmative action programs which the management says, you know, "This is our policy," but it never filters down to low management.

And in the affirmative action program that McDonnell-Douglas signed they specified that in the event that people beneath the top levels do not carry out this program that they will be severely dealt with and disciplined or fired, and they are now in the process of having the sensitivity training program that you're talking about. They have

immediately promoted a number of blacks who they claimed last year and year before last weren't qualified for supervisory positions and they are promoting others.

And I think that if we are going to be successful in breaking the patterns of discrimination that exist in this country it's going to have to start with the Government who is giving this money, as you say in your statement, to these large contractors and I think that perhaps wha we need to do in the instance here is to create the same kind of crisis and we need to start talking about not giving the contract to North American Rockwell or any company until they come up to standards, until they start obeying the law, because I, for one, feel that we could eliminate all contracts that the Government is giving unless the people want to obey the law, and this was the position I took in St. Louis where McDonnell-Douglas employs some 40,000 people.

But if we're not going to benefit from a Government contract, then I say nobody should benefit.

And I wish to commend you on the brilliant statement that you have presented to us and I wish to say that I agree with you 100 percent that if a company is not going to employ on the basis of equality, then they shouldn't get the contract.

I'd like to ask you one or two questions. When we were here last year the testimony was that there were somewhere in the neighborhood of 7,000 blacks, I think, working at North American and that only about 65 of them were making $10,000 or better. Do you know the exact number of blacks that are working there now?

Mr. LAMOTHE. No, because we've undergone—there have been reductions in the past few months that don't allow us to have those kind of figures. I would imagine that we've lost about half of that figure since that date.

Mr. CLAY. And the number who are making over ten thousand; would you estimate the same percentage?

Mr. LAMOTHE. Yes.

Mr. CLAY. So, actually, North American should be talking about specifically how many blacks and Mexican-Americans they're going to employ and in what capacity and at what time if they wish to get the bomber contract.

Mr. LAMOTHE. I would think, if I may, that North American ought to be required to do the exact same thing that McDonnell-Douglas in St. Louis has done and that is to plan just as it does for production—plan for the elimination of discrimination and if it is not going to do so, then I don't think that company deserves the contract award.

However, I am sure that if it is put to them on that basis, they will find the method to bring about the changes required.

Mr. CLAY. I agree with you wholeheartedly.

I have no other questions, Mr. Chairman.

Mr. HAWKINS. Thank you again, Mr. Lamothe, for a very excellent statement and the frankness with which you answered the questions.

The Chair made one mistake, I think, this morning in implying that we were meeting in my own district. I didn't stop to think that we were just one block out of it. And we are actually meeting in the district of my colleague—our colleague, the Honorable Glenn Anderson.

Mr. Robert Andrew is present here this morning, a representative of Mr. Anderson, and, really, it is through their generosity that we are meeting in this congressional district.

Mr. Andrew, would you stand up so we can recognize you?

Mr. ANDREW. I just welcome you all, and for today we'll eliminate the boundary line.

Mr. HAWKINS. That's the fastest reapportioning I've ever seen.

Mr. ANDREW. One day's reapportioning.

Mr. HAWKINS. We'll get it straight on election day.

Mrs. Smith, are you going to be with us this afternoon?

Mrs. SMITH. I think I'm supposed to. I don't know.

Mr. HAWKINS. Do you think you will be back?

Mrs. SMITH. I don't know.

Mr. HAWKINS. We hope so. We're supposed to break at 12, and if you'd like to come back this afternoon——

Mrs. SMITH. I'd like to take a couple of minutes now.

Mr. HAWKINS. Would you come to the witness table and identify yourself?

Mrs. Smith was at a recent hearing of ours on manpower and she proved to be so refreshing because she was not invited specifically, she was not on the agenda, but she got on the agenda before the end of the hearing.

So, rather than wait until the end and have you disturbed about sitting out in the audience, I thought that this would be a good opportunity, Mrs. Smith, to hear from you.

Would you identify yourself for the record, please?

STATEMENT OF MRS. DANIEL W. SMITH

Mrs. SMITH. Yes, sir, Congressman. I thank you for this opportunity, and my name is Mrs. Daniel W. Smith and I'm happy to have this opportunity before all of you gentlemen and ladies.

I am a very concerned citizen, as all of you are. I heard one of the gentlemen in the audience had a card saying that, "I am an honorary Negro in case of a riot." That was quite cute. But I would like to say that I am an honorary woman and an honorary citizen and an heir of salvation, and I don't know where I stand in the case of a riot or anything else because I stand for justice.

I noticed—something was mentioned, something about compensatory organizations, somebody that was condemning some of these organizations. I happened to be hired through NAPP. Now, they may be all Red or whatever you call it, and I was hired in the new career program. I am working for the board of education as an education aide and we are in a training program which you can continue your education or take a brush-up course, or whatever. I happen to be continuing mine.

I did have a few college credits before, but—so I'm working on my B.A. There are some people that are finishing high school; there are some that is taking some other training or profession if they want, and some is brushing up.

I can speak for this slot if someone should drop out or get promoted out or whatever, is terminated out or whatever, the slots are closed, which is unfair, the community because there are other people who would like to get involved and get trained.

And if the top—I may not be saying the exact words because I'm not as familiar with this as you are, but if the top people that's over

these programs or the middle people like this gentleman who just left here—if they were really concerned and had a conviction about the people, then they wouldn't have never set up that type of program in the first place.

But it seems to me that they only want to spend a certain amount of dollars, which is very few, but yet there's millions of dollars being spent and when they get through, the people that's getting the program together, which is already top paid people by the Federal Government or the State or the city or somebody, and they eat up the money and that they don't eat up, the middle management eats up, and what little they put in the community, by the time they hire three or four people to run whatever program this is, it's about gone.

I realize that all of you gentlemen is very informed and very good at all this type of thing, but we must consider this: When we move into a certain educational bracket—education bracket and financial bracket, then you also move away from the people and you really don't know, you don't understand quite what it is because all of your involvement is with a certain financial group of people and whenever you do have a chance to communicate or get involved with a lot of people, because of this capital system it's separating and keeping people apart, they will direct you away from certain people and you will allow yourself to be directed away from these people that you're supposed to be over to help. So, consequently, you do not really have—you know, even though you know, you read about it, and all of you know of this, but the humanity feeling you don't have.

A lot of people is just walking around dead, absolutely dead. They're just bodies speaking. And when they breathe the last breath, they go right on to hell because they've already said there's nothing else. So whenever you don't know there's nothing else, there won't be nothing else for you.

It has been mentioned somewhere about scrapping programs in the community, which would be a terrible failure because these programs is not supposed to be benefiting the people the way they should, which they aren't because of the certain stigmas. Just like this Mexican-American—this gentleman that was sitting here that was talking about Mexican-Americans. The people that actually need these programs, they're just used for guinea pigs, and when they get through—for the other man just to spend his money—sometimes I think about the Rockefeller Foundation and the Ford Foundation and every time they throw a few dollars in the black community, the black leadership claps its hands and gives them a lot of praise, when his tax deductible—this man is a multimillionaire and he does not pay any taxes and this money goes back into the white community.

Yes; there is a few educated, middle-class black people that benefit by this money, but the people in the community that benefits by it is maybe one or two or none in some instances.

Say, for instance, there is a program now—and I think it is federally funded, partly, and part of it is through these foundations such as Rockefeller and so on. And it is supposed to be tutoring youngsters how to read in colleges that have finished high school and don't read up to sixth grade level.

Now, naturally, if a person has finished high school, you want them to go on, and they do have to learn how to read in order to be edu-

cated, but wouldn't you think—wouldn't you be concerned with them being educated before they finish high school?

Now, right now the board of education is fixing to strike in Los Angeles and it is because the board claims it does not have enough money to function. Yet the State of California law says that the State is supposed to provide at least 50 percent of the moneys for the board of education of the children, and they provide less than 20 percent.

So the board of education is paying lawyers—they have lawyers that's hired on the State, and I would like to know, and I'm sure a lot of citizens would like to know, why haven't these lawyers already gotten this money, why do the teachers and concerned people have to get out and walk around and carry on and do whatever they have to do in order to see that they get the money? Why? Because they have a dead Governor. All he wants—you know, he's for the rich folks. He don't care, but yet this man was hungry and poor and he climbed up because people supported him in the movies and he's one of the so-called upstarts that's got to please everybody but the people that put him up there.

So, in order for us to really break down discrimination, we're going to have to break it down in ourselves individually.

I love my people and I guess I'm supposed to be black——

Mr. HAWKINS. Mrs. Smith, could you summarize in about 1 minute, because the committee is about 15 minutes overdue?

Mrs. SMITH. Okay. But I would like to say this: I am for black people taking their place and there must be more opting to take their place than have already, but until the black—there is already enough black people in key positions to have already solved the black folks' problem if they had all been sincere.

Now, the thing is, this capitalist system is a means to control black people and this jive, "Black capitalism," that Nixon put out—in the first place, he already took all the capital away from the black people. All that he didn't steal one way, he stole another—and when I say "he," I mean everybody that's not black. And what they didn't steal, they, through so-called integrated marriage—they get these black men and hypnotize them and then they run off, and the women hate black people, don't even want a black child in a Boy Scout meeting. She hates black people.

And if the blacks integrated—if they had women instead of witches, they would have already solved the black problem because they would have cared enough to come down and see about the people, that they are drinking up and sucking up and whatever else up that they are doing the money, because these men have gotten their start from the black community. He has been raised by a black woman or a black man and supported in the black community, educated and seen about by black people.

Because I know myself, I have four boys and these people discriminate against you every time you turn around, and by the time he gets through pushing, you've done everything against the white man's will and after he become in a riot they pretend to love him so and they grab him and suck him and do all those things—and I am a Christian, I know what I'm talking about.

If you people can do all these things and talk about it, it's time for you to think. You're destroying the black community and they're tired of it, and I'm tired of it, too, and so is God.

A VOICE. Me, too.

MRS. SMITH. The black community, the capitalism, all they do is keep black people separated and sift out every dime out of the black community.

There is the father of my child that live in Compton that the probation officer is working crooked under him—dealings right here. So this probation department, which is black, I guess—I haven't seen him but I've talked to him—needs to be investigated right here in Compton.

The probation officer is Bernstein, Mr. Bernstein, the supervisor of this man is Dunn, and the assistant supervisor is Hayes, and they need to be investigated.

Mr. HAWKINS. Are you referring to the county probation department?

MRS. SMITH. I am referring to the Compton County Probation Office which they have stole child support, and he's been on probation three times and he hasn't paid any money. The child will be eight this year and he hasn't even paid one year, and yet he's been on probation all this time and the court has brought him in for failing to provide and they put him on probation, and he pays his money to the probation officers or somebody.

The means of probation is to keep you in line and when you've broke the probation, then you've broke the law, and yet this man gets off probation after another year or so and decides to do something else, and, so, he never supports the child.

So I want to know what is wrong with the probation officer.

Mr. HAWKINS. Mrs. Smith, we don't have too much more time. We're running about 20 minutes overtime now. I don't like to cut you off, but we do have a lot of other witnesses this afternoon and we've got to get back for them.

Can you possibly briefly summarize the rest of your notes there? What you're saying is most important and certainly the record will be kept open and you can file with the committee, as well as other members of the audience, any statements that you wish.

MRS. SMITH. Yes, I will.

As I say, the job is in the black man's hands now and if he haven't got too white to take care of his black business, then erase the word "black." Just stop saying it. So, in other words, put your deeds where your mouth is, because your deeds has been one place and your mouth has been some place else.

When I was coming up, the white man used this tactic that, "I will pass the antilynch bill," and every time he said—he made a promise, everybody ran down there and voted.

The black people put Roosevelt in office the first time; they put him in the second time and kept him in there more than 12 years because he promised them so much, and yet he was such a racist that he didn't want black people to work in defense, and the only reason they got in there was because they were killing off so many without supplies and they couldn't bring in enough Mexicans, so they finally hired a few blacks.

I happen to know this. I was here at the time. And I know some people that was involved. And yet black people kept him over there because of his "brownwash."

Now, the black politicians—and I know there are some exceptions. So, if the shoe don't fit, you don't have to put it on; but if it fits me, I have to put it on, so you do the same thing.

The black politicians, if they weren't so afraid—what are you afraid of? You're men, you're women, you're grown. You were man enough to jive the people enough to get your vote. Black people put you in this position and are keeping you in there.

But yet you cannot stand to hear the truth from a real person because it might hurt somebody's feelings. You may not be invited to a party; you may not be this—they are not doing nothing but wining and dining you so they can control you, and when you get through, you're going to hell and everything you've owned is going to be out in Beverly Hills or Bel Air somewhere.

And these people are destroying your children just like they're destroying the children in the ghetto.

Look at Ralph Bunche. He couldn't even go to a church club, couldn't join. His daughter couldn't marry a white man, but his son can marry a white woman.

It's time for you people to look at this mess and all this meetings and all this carrying on—what are you going to do about discrimination?

You, what are you going to do about it? What am I going to do about it?

Stop lying to yourself because you're not fooling nobody but you now. There's a whole lot of people that are not saying anything, but they can see through you, and it's time for us to realize it now.

Another thing about this Martin Luther King Hospital. It has been stated if things don't change, it'll wind up to be another general hospital, because they're not training the people to work in the community like they claim, but yet it's a handful of Federal money, a handful over here, a handful over there.

The black men, some of them will lie, pretending that they are doing it, because he might be over a Federal program. But the main money is somewhere else in the white community.

So we need to investigate this.

And I would like to say something about our Post Office, As I say——

Mr. HAWKINS. Mrs. Smith, I'm sorry, but you've just about covered every group already. I'm not trying to cut you off, but we've given you longer than any of the other witnesses already.

Mrs. SMITH. Yes; I realize that, Mr. Hawkins, and I appreciate it, but this is good for you to hear it.

Mr. HAWKINS. Could you give us a written statement to the committee?

Mrs. SMITH. I only have notes here.

Mr. HAWKINS. I would appreciate it if you would give us a written statement and we'll keep the record open and you can file it with the committee, because we've really got to go because we've got to be back for 2 o'clock.

Mrs. SMITH. All right. Thank you.

Mr. HAWKINS. Thank you again, Mrs. Smith.

The meeting is adjourned until 2 o'clock.

(Whereupon, at 12:25 p.m., the hearing was adjourned until 2 p.m., of the same day.)

AFTERNOON SESSION

Mr. HAWKINS. The meeting will come to order.

The first witness this afternoon is Mr. Charles Greene, president of Trans-Oceanic Productions, Inc.

Mr. Greene, I understand you have a prepared statement here that can be filed with the committee. Perhaps you would like to summarize the highlights of the presentation that you would like to present to the committee.

STATEMENT OF CHARLES GREENE, PRESIDENT, TRANS-OCEANIC PRODUCTIONS, INC.

Mr. GREENE. The highlight of my presentation is my concern about the qualifications of people who are qualified to be hired within the communications media, per se the motion picture industry, which is above-the-line employment on the creative level, as directors or assistants to producers, unit managers, stunt directors, and production coordinators.

There is no hiring above this line, above the level of the crafts, but for two people. One that is hired is the photographer and the second one is a director who came from France after he left this country.

We are automatically, although qualified, excluded from employment as producers or production assistants or directors. This is one of the things that has never been looked at within the communications media on every level.

There are within this country, at least in our association, 200 qualified Negroes above the age of 31 who cannot enter a training program to get into a field they've been putting their life into, so this is another thing we want you to look into, is the unequal employment within the communications media in the above-the-line professions above the crafts; that is, above-the-line professional levels where directors and creative artists are employed.

I think this will cover the whole thing, and from the qualifications listed in both the green pamphlet and the white one, you'll see that they are qualified people.

Mr. HAWKINS. Thank you, Mr. Greene. May I indicate to you that one of the reasons why we're not going more deeply into this phase of the investigation at this time is that the Department of Justice has under investigation both the communications industry and the motion picture industry.

It is our understanding that negotiations are now going on by the Department of Justice and we do not wish to inject ourselves into those negotiations, so that at this time the committee has not gone more deeply into that, pending the outcome of those negotiations, which we should get some report on within a matter of several weeks.

After that time, we do expect to come back to Los Angeles and to develop the investigation in that particular field after the Department of Justice has had an opportunity to complete negotiations.

Mr. GREENE. May I make you cognizant of this fact, sir: That these negotiations are going on, because it began with some of our—we instituted most of these investigations through our complaints throughout the years. The investigation does not cover and will not

open the road for those above the crafts. This is the one thing you must be cognizant of when you do review their report.

Thank you.

Mr. HAWKINS. May I, before you leave, ask you whether or not your organization is eligible for—or, has it applied for funds or has it received any assistance from the Foundation of the Arts and Humanities?

Mr. GREENE. We have received nothing. We're not a nonprofit organization. We're in business to make a profit, to make employment.

They did start the American Film Society which is headed by George Stevens, Jr. We were one of the first to apply because we're the only blacks who belong to the Independent Motion Picture Association or the Independent Producers Association. And we were told at that time that we were not qualified because we had not been a major feature within the industry.

Mr. HAWKINS. Thank you, Mr. Greene.

(The statement referred to follows:)

STATEMENT OF CHARLES GREENE, PRESIDENT, TRANS-OCEANIC PRODUCTIONS, INC.

HISTORY OF TRANS-OCEANIC PRODUCTIONS, INC.

Trans-Oceanic Inc. is an outgrowth of Empire Enterprises Unlimited, which began as a proprietorship in 1954.

Mr. Charles Greene was the founder and chief administrator. In 1965 Empire Enterprises Unlimited became a corporation. During this period, Empire Enterprises Inc. produced "Paris A-Go-Go" at the Lindy Opera House. In August 1965, during the Watts civil diturbance, Empire shot a large portion of the footage of film used by local TV stations.

Other film productions included "Portraits of Unity" and "The Robert Small Story." In January 1968, Empire Enterprises Inc. evolved into Trans-Oceanic Productions and has to its credit the following productions:

Films: "Rachel and the Voice of Doom"; "The Robert Small Story"; "The Roomer"; "Little City"; and "Shall Never Die."

Stage Productions: "Blues for Mr. Charlie," by James Baldwin, at Troupers Theatre.

Commercials: General Foods; Clothing Store; and Pontiac.

Future Productions: "Undertaker Wind." "Wainwright's Daughter," "King of Hill," and "Gun Money".

Trans-Oceanic Productions, Inc., is a member of the Independent Motion Picture Producers Association.

Bert Kendal, Controller, Board of Directors: Bert Kendal, born in New York, New York. Graduate of Pratt Institute, Brooklyn, N.Y., Product Design; Designed for several companies in New York. Operated Kendal Studio in Brooklyn, N.Y.

Bert Kendal came to California in 1962. Since then he has designed and made models for companies on the West Coast, and is well versed in business procedure. Kendal joined Trans-Oceanic as Controller in early 1969.

OFFICERS

Charles Greene, President and Chairman of the Board of Directors: Charles Greene has literally devoted almost his entire life to the arts; performing and business aspect of "Show Business." He started at the tender age of five (5) in "Red Shoes", "Tom Thumb", "Pinnochio" in Philadelphia, Penn. where he was born. Has several years as a Rodeo performer and stuntman. Made several Westerns such as "Harlem of the Prairie." He has worked in productions of Suntan Studios under Fritz Pollard Productions.

The famous people with whom he has worked include Buster Crabbe, Ken Maynard, Roy Rogers, Gene Autry and Johnny Mack Brown.

Charles Greene has written, produced and directed productions too numerous to list. Some are: "The Legend of Toby Kingdom", "Dark Agent", and "Alimona."

Charles Greene came to California in 1954; is a member of Men of Tomorrow. Commander of United Supreme Council 33rd Degree, Chairman of Skill-Training-Employment Project, (S.T.E.P.) Charles Redus, Vice President in charge of Public Relations and Publications; member of Board of Directors; Charles Redus was born in Arkansas; has lived, studied and worked in Chicago, Detroit, New Orleans and Los Angeles. Redus came to Los Angeles in December 1957 from Chicago. Since that time has worked with civil rights groups, such as International Artists founded by Maggie N. Hathaway, a group dedicated to integration of black people in "Hollywood". Has worked with the N.A.A.C.P. in Los Angeles and Hollywood, Beverly Hills. Has performed with Francois Andre's Showcase Arts group since 1959, where he is business manager and co-producer.

Charles Redus studied at Columbia College; speech, acting, directing audio, announcing, film production, camera, lighting and other courses.

He also studied business law, drama and journalism at Metropolitan College, which is now Los Angeles Trade Tech. Was assistant on the "Roomer", directed by Richard Johnson and produced by Luther Redus. He has organized and operated his own business.

Redus was performing with Showcase Arts when he met Charles Greene and soon became a part of Empire Enterprises in 1965. He is a world traveler who has often been to Viet Nam, Japan, Thailand and the Philippines, where he studied the languages, customs and history of its people.

Redus is currently preparing to venture to South America, Europe, Africa and other parts of the world. Has written for local newspapers and is Editor-co-publisher of Talent Spotlight Magazine. Has created stage and screenplays as well as stories ideas for television.

Richard Johnson, Member Board of Directors: Richard Johnson who was born in Louisville, Kentucky, started his career in the city of his birth. As a youth he worked for the Louisville Defender Newspaper, movie photographer for the National Youth Administration in Kentucky. Johnson later moved to Chicago where he studied at the Art Institute.

Later, Johnson worked for the United States government Chicago Quartermaster Depot. He traveled throughout the U.S. making films which included "The Corn is Ripe" and "The K Ration Production".

Johnson has made commercial films such as: "Burts For Christmas"; "The Shopping Spree"; "Al Abrams Pontiac"; and "Burt's Clothes".

Richard Johnson formed a motion picture workshop under his name while in Chicago, where a group of 40 people studied the technical aspects of film production. Upon conclusion, the group had completed a film and were inspired through this effort.

Johnson has written screenplays and made several films which include:

Films: "Who Killed Madame Fashion?"; "The Perfect Pattern"; "The Roomer"; and "Rachel and The Voice Doom".

Screenplay: "The Second Judgement" is one of the most unusual stories ever written.

FUNCTIONAL OPERATIONS

Our films: Films made in 16mm—super 8mm—8mm and 35mm, color or black and white—sound or silent.

Training, orientation: These films can effectively reduce time required for training or orienting new employees. Train employees how to operate new equipment or plant and office procedure.

Sales: Sales can be improved, new techniques introduced, new products demonstrated and overall efficiency attained through films made especially for your business.

Industrial: Made in plants or factories showing details of product creation. Such films can be used to acquaint personnel, management related industries and the general public with your industry.

Commercials: Designed primarily for consumer products. Made to specification from script presented by agencies or producers.

Educational: Ideally used for educational supplement in business, industry, as well as educational institutions. Practically any subject can be taught and illustrated through this media.

Documentary: Keep an accurate account of your business, industry or organization through films.

Special interest: A combination of, or a film which does not fall into any of the other categories. Events shot and recorded to fulfill a personalized need.

Public relations: This type of film is used primarily to tell a representative story of an organization, institution or person to the public-at-large. Such films, of course, are designed to create a favorable image before the public.

Animation: Animations, of course, are drawings, photographed in various positions to create the illusion of movement. The animation has a broad function. It helps to illustrate that which cannot be photographed from reality. . . . such as movable parts of a machine or an idea, into planning stage.

Film strips: Stock shots—Film strips are footage of film, usually several hundred feet of a scene or sequence. These differ from short films because there is no complete story involved. Such films are used by professional performers to show how they look on film. Also used by business and industry to show buildings, people or products briefly.

Stock shots: These films consist of footage kept in the film library to supplement other films . . . such as street scenes in large cities as Paris, Bangkok, Tokyo, London, Chicago, Los Angeles or New York. There are hundreds of scenes of famous landmarks, used to establish a setting.

Travelogue: Our travelogues are shot around the world and usually show "off the beaten path type" scenes, as well as familiar sights.

Features: Trans-Oceanic's feature films are shot in 35mm and consist of many subjects. These are distributed internationally.

Trans-Oceanic is capable of any type production at a moments notice.

They use the same crews that the major studio's hire under the usual film industry method of operations.

Coupled with the companies own creative personnel team cooperation is always in high gear and meshing smoothly.

On Crenshaw Boulevard at 5445 in the city of Los Angeles a small fifty (54) seat theatre is the viewing place for all films that are produced by Trans-Oceanic.

Housed within this same building is the executive offices where all the preproduction planning takes place, not only for films but stage productions and training of people to fill positions in all areas and levels of the motion picture industry.

The training program functions within the framework of a creative arts workshop under the sponsorship of the United Supreme Council Thirty-third Degree A.A.S.R. and the Grand Lodge of America A.F. and A.M.

If you need film services of any nature contact us by mail or phone we are at your service in any production crisis.

Mr. HAWKINS. The next witness is Mr. John Mack, director of the Los Angeles Urban League.

Mr. Mack, I must apologize to you for having delayed you so long, but we had two witnesses who were unscheduled who appeared this morning, and for this reason they delayed us. And we did have some other field trips to complete this afternoon—some have had to go out on these. So this accounts for some of the attendance, but I'm quite sure that before you get too far, the rest of the congressional group, at least, will be here.

For that reason, I do feel that I should apologize to you because we do know that you've done an excellent job as the executive director of the Los Angeles Urban League, and we are very pleased that you have seen fit to come before this committee and present your views. I know they're going to be very valuable to this committee, and you may proceed, as you wish, either to read the entire statement or to summarize it or—proceed as you please.

STATEMENT OF JOHN W. MACK, EXECUTIVE DIRECTOR, LOS ANGELES URBAN LEAGUE

Mr. MACK. Thank you, Mr. Chairman.

There are additional copies there for other members of the congressional subcommittee.

I will perhaps, in order to make the most of the points that I wish to make, choose to read the statement and maybe add a few additional comments.

Mr. HAWKINS. Thank you.

Mr. MACK. Honorable Chairman and other distinguished members of this General Subcommittee on Labor, I am John W. Mack, executive director of the Los Angeles Urban League. I wish to thank you for inviting me to testify before your subcommittee concerning one of the Urban League's major areas of interest and an area where we have served black and other minority communities in Los Angeles for 27 years.

The Los Angeles Urban League operates various programs designed to help alleviate the problems of poverty and racism confronting our brothers and sisters in the Greater Los Angeles area. Our headquarters is located at 2107 West Washington Boulevard and provides job counseling and referral services to many. We also have various outreach programs and offices in a variety of locations throughout the south central Los Angeles, Pasadena, Long Beach, and Pacoima areas.

During the past year, the various offices of the Urban League provided direct services to nearly 35,000 poverty stricken minority citizens in our community. Approximately 30,000 of these individuals were counseled, trained, and referred to various jobs throughout the Los Angeles area. Over 5,300 individuals were actually trained and placed in meaningful jobs during the past year by our various manpower programs. A number of them, federally funded, included the Neighborhood Employment Counseling Center and Project Uplift—Project Uplift is located in Pasadena—and they are both OEO funded programs. We also operate an on-the-job training project and a labor education advancement program, both of which are funded by the Department of Labor.

In addition, the Los Angeles Urban League referred and placed a substantial portion of these better than 5,300 through our ongoing economic development department. Our nationally recognized data training center, which is a private partnership involving Bank of American Foundation, IBM Corp., and the Los Angeles Urban League, trained and successfully placed more than 165 individuals in various areas of the computer industry during the past 12 months.

I share this information with you not merely to brag or boast, but solely to underscore the evidence of our involvement in this area of manpower programs, which you can see have helped many of the minority group citizens in our community and we consider economic development crucial, that it is one of the most important areas of power which is strongly desired and highly necessary for historically powerless people to overcome the doubts of those confronted.

Despite these efforts, our efforts and those of others, the problems of unemployment have worsened, rather than improved, for minorities since the 1965 Watts rebellion. Despite the anger and frustration which were articulated loud and clear to those who possess the power, it appears that our total community is doing too little too late. The meager resources which have been committed in relation to the magnitude of the problem indicate a parallel involving combatants—one being given a BB gun, on the one hand, and expected to conquer someone with a tank, on the other. The problem of distorted priorities of our Nation

and community is similar to that of arming a person with a fly swatter as a weapon and expecting him to defeat a lion.

The gravity of the problem is further underscored by the temptation of many politicians catering to the whims of the now famous silent and what I would choose to call selfish and racist majority these days, as many of them are supporting air pollution and water pollution in preference to the human pollution which results or has resulted from the poverty imposed by a basically racist society. While it is commendatory for all of us to be concerned about the serious problem of our polluted air and water, if black, brown, and white citizens of Los Angeles fail to come to grips with the problems of hunger and our sophisticated racial bigotry, few will be left to worry about breathing dirty air and drinking dirty water.

The most current figures indicate the population of Los Angeles County is 7,199,041. The ethnic composition is as follows: 780,000 blacks, 910,000 Spanish surname, 190,000 oriental and other nonwhites.

As previously indicated, unemployment in south central Los Angeles, where over 40 percent of the Los Angeles County black population is concentrated, has increased since August 1965. The overall unemployment figures for the County of Los Angeles in January 1970 ranged from 4 to 4.7 percent. The total unemployment rate in east Los Angeles, primarily brown, and south central Los Angeles, primarily black, averaged 10.3 percent. In June of 1969, according to the Pacific region of the Bureau of Labor statistics, the unemployment rate for blacks was an alarmingly high 16.2 percent, and 31.8 percent for all 16 to 19-year-olds. These unemployment rates in east and south central Los Angeles represented an astounding two and one-half higher level of unemployment in our community than that of the national unemployment rate for other blacks and browns.

These statistics which came from the U.S. Labor Department itself provided the most damaging evidence to support the lack of real commitment by those who possess the power to eliminate this severe problem and others. It must also be recognized that these statistics may not reflect the total depth of the problem because it is a well-established fact that many do not even become an official statistic.

Another area of serious concern to the Urban League is that of Government subsidy to already rich corporations who cheat poor people in an illegal manner. The U.S. Labor Department has granted $5,049,125 to nine Los Angeles County industries to create "instant jobs" for "disadvantaged" people primarily in east Los Angeles. As of October 31, 1969, the nine companies had received the $5,049,125 from the Government; $7,918,100 had been pledged.

However, these companies, nine of the 10 companies that received this money, had provided only 199 jobs. Of the jobs which had been provided, the hourly wages were as low as $70 per week, averaging approximately $1.75 per hour according to an article that appeared in the Los Angeles Times. This is an example of exploitation in its worst form. It revealed again how poor people in the Los Angeles area are being denied the opportunity to earn a decent living by some employers in conjunction with an agency of the Government. It lends credence to the adage that, "The rich get richer and the poor get poorer," in our town.

These same dollars may well have been turned over to the minority communities themselves and would have probably resulted in more responsible action.

The Los Angeles community has two additional unique problems which compound employment difficulties for poverty stricken minorities. As you are no doubt aware, our city is large and very spread out, You are probably mindful of the very serious transportation problem. Urban League staff have been unable to place many persons due to the absence of a convenient, reasonable, and efficient public transportation system.

In addition to the popularly known problems involving Watts and other parts of south central Los Angeles, the San Fernando Valley, and Pacoima offer particular difficulties. There are a number of businesses and industries located in the San Fernando Valley and Pacoima; however, the lack of transportation and the great distance between the prospective employer and the employee prevent the two from ever getting together.

Another serious problem which has been strongly felt in the minority community is that of widespread layoffs in the aerospace industry. We're all aware that recently the aerospace industry in Los Angeles and southern California has been particularly hard hit by the cutbacks in various Federal contracts.

As is usually the case, blacks are commonly the last hired and the first fired. This has been particularly true as it relates to job entry programs designed to facilitate the inclusion of the so-called "hard-core" unemployed. However, the problem has extended beyond the job entry program to include the already trained and more skilled employee. Our offices have felt a sharp increase within recent months of people looking for jobs and at the same time a substantial decrease in available jobs.

Any congressional action, including legislation, which requires an acceleration of affirmative action in the field of greater employment opportunities for minorities is urged by your subcommittee. Such legislation should affect the institutions who have either initiated or conspired in exclusionary practices. All employers, no matter how large or small, should be subject to all equal employment legislation.

The employment service itself should be policed much more vigorously.

I might just digress and suggest that it has been historically a part of these racist and exclusionary practices which so frequently affect our people.

All training programs must guarantee a job at the end of the line for the individual being trained following satisfactory completion of such training so that there will be no more of this business of perpetuating frustration where people have their hopes built up and they go through a series of training programs and then find nothing happening at the end except they've gone through an exercise that is meaningless.

The on-the-job training concept should be expanded and extended in our community. The poverty stricken minority communities themselves must have greater control over the training and employment programs in their communities on all levels.

We must be accorded wider opportunities for the operation of various governmentally funded programs through our agencies and organizations, old and new, so long as they possess reasonable competence.

Legislation such as House bill 6228 being considered by your subcommittee represents a positive step in the direction of strengthening and expending equal employment opportunities for minority group citizens in Los Angeles and throughout the Nation.

Mr. HAWKINS. Thank you, Mr. Mack, for a very excellent statement. I am sure there are many points in it that we would like to explore with you. Several questions at once come to my mind.

On the last page there are two statements that seem to stand out on that particular page. You indicate that all employers, no matter how large or small, should be subject to all equal employment legislation. Are you aware that one of the provisions of the pending bill is one to extend the coverage to Federal, State, and local government employees? Would you also favor that extension?

Mr. MACK. Very definitely, yes. I think that would represent another important step.

Mr. HAWKINS. In the work of the Urban League, have you had any occasion to experience any difficulties with the public agencies in terms of their employment policies?

Mr. MACK. Just recently we've had a couple of complaints initiated with us and I must hasten to add that we have not completed—or at least the process in terms of pursuing the facts in the matter have not been completed.

But in one instance we received a call from a veterinarian who is an employee of the U.S. Agriculture Department, and this problem—or this gentleman complains that he and others of his colleagues have found that they are victimized in terms of the upward mobility factor as it relates to employment. Many of them are being hired initially—these are people with high level skills, professions in some cases, as this gentleman—and they find themselves locked in without the opportunity for promotion.

Another example of a similar kind of problem was just brought to our attention by a physician, a black physician who is presently assuming a very important responsibility heading a major institution, a health institution, which is in the process of being completed, and this institution not only will have a tremendous amount of symbolic significance for our community, but a real significance in that it will serve large numbers of the poverty stricken minority citizens, particularly in the Compton-Willowbrook area and other parts of Los Angeles.

In any event, it seems as though there is a pattern here where this physician—and he pointed out the fact that he had had others with similar experiences who were being asked to voluntarily, in a sense, demote themselves. He was placed in a temporary position of leadership where he was heading this program and now is being asked to move into another role which will carry less responsibility and will remove him from this very meaningful area of responsibility. And it seems like the old squeeze play, a fast shuffle.

And, so, I would say yes, Mr. Hawkins, there's no question about it. The public sector has a lot of room for improvement. In many ways it's extremely guilty and in many ways perhaps equally as guilty as the private sector.

Mr. HAWKINS. Mr. Mack, I recall that through the Urban League the Regional Office of the Equal Employment Opportunity Commission has had funded a project as part of its program whereby they have been given a certain number of training slots so that when the regional office, let's say, sits down to talk to an employer who may be discriminating and this employer says, "Well, I'd hire anyone, black, brown, anyone else, if I had someone trained," the regional office is then in a position to say, "Well, that's no problem, my friend, because we will be able to make available to you a trainee slot so that you can upgrade or train someone for the position."

I assume that that contract is still in effect, is it not?

Mr. MACK. Regrettably not. Here again, due to recent—I suppose the squeeze that is being felt nationally—we have been unable on the national level to continue funding that program. That was an on-the-job training program——

Mr. HAWKINS. Right.

Mr. MACK (continuing). And you're correct that the Urban League in L.A. had a rather unique if not peculiar arrangement in that we were operating the OJT program ourselves, serving approximately—several thousand people in other parts of the community, and then the one to which you just referred involving training slots.

And we are a subcontractor with the National Urban League, as you are perhaps aware. The Labor Department has a prime contract with the National Urban League to fund all of our on-the-job training projects throughout the country in some 35 or so cities.

And, as we are attempting to make it through the fiscal year, the budgetary year, it was decided on the national level that we were unable to continue the funding of that program. This obviously reduces one service that the community needs and, as the evidence which I have attempted to submit would suggest, rather than to cut back on any program, it needs to be expanded, if anything.

Mr. HAWKINS. Would you say that that type of a service is both desirable and essential to the operation of a real affirmative action program to eliminate discrimination?

Mr. MACK. I think that kind of relationship makes a whole lot of sense. We—it's possible that the on-the-job training experience which we do continue to sustain at a reduced level here—well, I think two things have happened.

It seems to me that we have an increasing responsibility here at this point to tighten our relationship with EEOC and other such investigatory bodies who are in ap osition to help employees do what they ought to be doing—and they are also in a position to know who is playing games. And in the absence of their conducting such a program in their own right—and as you are well aware, one of the technical problems, too, is that EEOC is one arm of the Government that cannot receive direct funds from the Labor Department.

I suspect that perhaps one of the things that we need to do is to expand the EEOC concept. I think that's a crucial thing in this community. We need more slots available and even if we're not able to continue under the previous arrangement, I think there should be an expansion rather than a reduction, and certainly there should be the maintenance of a very close working relationship between our agency or whatever agency would be involved in the implementation of the program.

Mr. HAWKINS. Mr. Clay?

Mr. CLAY. Yes. I would like to commend Mr. Mack on his very enlightening statement and ask permission, if he will grant it, that I be able to insert this in the Congressional Record so that our other colleagues might become aware of what the situation is here in Los Angeles and the people across the country might become aware of some of the things that are going on. So, if I have your permission, I'd like to insert it in the record.

Mr. MACK. You certainly do, Congressman Clay.

(The statement referred to follows:)

STATEMENT OF JOHN W. MACK, EXECUTIVE DIRECTOR, LOS ANGELES URBAN LEAGUE

Honorable Chairman and other distinguished members of this General Subcommittee on Labor, I am John W. Mack, Executive Director of the Los Angeles Urban League. I wish to thank you for inviting me to testify before your subcommittee concerning one of the Urban League's major areas of interest and an area where we have served black and other minority communities in Los Angeles for 27 years. The Los Angeles Urban League operates various programs designed to help alleviate the problems of poverty and racism confronting our brothers and sisters in the greater Los Angeles area. Our headquarters is located at 2107 West Washington Boulevard and provides job counseling and referral services to many. We also have various outreach programs and offices in a variety of locations throughout the South Central Los Angeles, Pasadena, Long Beach and Pacoima areas. During the past year, the various offices of the Urban League provided direct services to nearly 35,000 poverty stricken minority citizens in our community. Approximately 30,000 of these individuals were counseled, trained and referred to various jobs throughout the L.A. area.

Over 5,300 individuals were actually trained and placed in meaningful jobs during the past year by our various manpower programs. A number of them, federally funded, include the Neighborhood Employment Counseling Center and Project Uplift in Pasadena, which are OEO funded programs. We also operate an On-The-Job Training Project and a Labor Education Advancement Program, both of which are funded by the Department of Labor. In addition, the Los Angeles Urban League referred and placed a substantial portion of these 5,300 through our ongoing Economic Development Department. Our nationally recognized Data Training Center (which is a private partnership involving Bank of America Foundation, IBM Corporation and the Los Angeles Urban League) trained and successfully placed more than 165 in various areas of computer industry during the past 12 months.

I share this information with you solely for the purpose of documenting the Urban League's deep and effective involvement in the area of manpower programs which have helped thousands of poverty stricken minorities (primarily black) develop economic self sufficiency, which is one of the important areas of power strongly desired by our historically powerless people.

Despite our efforts and those of others, the problems of unemployment have worsened, rather than improved, for minorities since the 1965 Watts rebellion. Despite the anger and frustration which were articulated loud and clear to those who possess the power, it appears that our total community is doing too little too late. The meager resources which have been committed in relation to the magnitude of the problem indicate a parallel involving combatants—one being given a beebee gun and expected to conquer someone with a tank. The problem of distorted priorities of our nation and community is similar to that of arming a person with a fly swatter as a weapon and expecting him to defeat a lion.

The gravity of the problem is further underscored by the temptation of many politicians catering to the whims of the now famous silent, selfish and racist majority these days, as many of them support air pollution and water pollution in preference to the human pollution resulting from poverty imposed by a racist society. While it is commendatory for all of us to be concerned about the serious problem of our polluted air and water, if black, brown and white citizens of Los Angeles fail to come to grips with the problems of hunger, and our sophisticated racial bigotry, few will be left to worry about breathing dirty air and drinking dirty water.

The most current figures indicate the population of Los Angeles County is 7,199,041. The ethnic composition is as follows: 780,000 blacks; 910,000 Spanish (surname); 190,000 Oriental and other non-whites. As previously indicated unemployment in South Central Los Angeles (where over 40% of the Los Angeles County black population is concentrated) has increased since August 1965. The overall unemployment figures for the county of Los Angeles in January 1970 ranged from 4 to 4.7 percent. The total unemployment rate in East Los Angeles (primarily brown) and South Central Los Angeles (primarily black) averaged 10.3 percent; in June of 1969 according to the Pacific region Bureau of Labor statistics, the unemployment rate for blacks was an alarmingly high *16.2 percent*, and 31.8 percent for *all* 16 to 19-year-olds. These unemployment rates in East and South Central Los Angeles represented an astounding two and one half higher level of unemployment in our community than the national unemployment rate for other blacks and browns.

These statistics which came from the United States Labor Department, itself, provided the most damaging evidence to support the lack of real commitment by those who possess the power to eliminate this severe problem and others. It must also be recognized that these statistics may not reflect the total depth of the problem because it is a well established fact that many do not even become an official statistic.

Another area of serious concern to the Urban League is that of government subsidy to already rich corporations who cheat poor people in an illegal manner. The United States Labor Department had granted $5,049,125 to nine Los Angeles County industries to create "instant jobs" for "disadvantaged" people primarily in East Los Angeles. As of October 31, 1969, the nine companies had received the $5,049,125 from the government; $7,918,100 had been pledged. However, they had provided only 199 jobs. Of the jobs which had been provided, the hourly wages were as low as $70.00 per week, averaging approximately $1.76 per hour, according to the article. This is an example of exploitation in its worst form. It revealed again how poor people in the Los Angeles area are being denied the opportunity to earn a decent living by some employers in conjunction with an agency of the government. It lends credence to the adage that "The rich get richer and the poor get poorer" in our town. These same dollars may well have been turned over to the minority communities themselves and would have probably resulted in more responsible action.

The Los Angeles community has two additional unique problems which compound employment difficulties for poverty stricken minorities. As you are no doubt aware, our city is large and spread out. You are probably mindful of the very serious transportation problem.

Urban League staff have been unable to place many persons due to the absence of a convenient, reasonable and efficient public transportation system. In addition to the popularly known problems involving Watts and other parts of South Central Los Angeles, the San Fernando Valley and Pacoima offer particular difficulties. There are a number of businesses and industries located in the San Fernando Valley and Pacoima; however, the lack of transportation and the great distance between the prospective employer and employee prevent the two from ever getting together.

Another serious problem which has been strongly felt in the minority community is that of widespread layoffs in the areospace industry. As is usually the case, blacks are commonly the last hired and the first fired. This has been particularly true as it relates to job entry programs designed to facilitate the inclusion of the so-called "hard core" unemployed. However, the problem has extended beyond the job entry program to include the already trained and more skilled employee. Our offices have felt a sharp increase within recent months of people looking for jobs and at the same time a substantial decrease in available jobs.

Any Congressional action, including legislation, which requires an acceleration of affirmative action in the field of greater employment opportunities for minorities is urged by your Subcommittee. Such legislation should affect the institutions who have either initiated or conspired in exclusionary practices. All employers, no matter how large or small, should be subject to all equal employment legislation. The employment service, itself, should be policed much more vigorously. All training programs guarantee a job at the end of the line for the individual being trained following satisfactory completion of such training. The On The Job Training concept should be expanded and extended in our community. The poverty stricken minority communities themselves must have greater control

over the training and employment programs in their communities on all levels. We must be accorded wider opportunities for the operation of various governmentally funded programs through our agencies and organizations, old and new, so long as they possess reasonable competence.

Legislation, such as House Bill 6228 being considered by your Subcommittee, represents a positive step in the direction of strengthening and expanding equal employment opportunities for minority group citizens in Los Angeles and throughout the nation.

Mr. CLAY. I would also like to ask you about the statement that you made here on page 5 regarding the over $5 million that the Labor Department gave to nine companies here in the Los Angeles area to create instant jobs, and you stated that only 199 people received such jobs, which means that the total cost per job was somewhere in the neighborhood of $25,000 each. Was this a recent program?

Mr. MACK. Yes. Actually, the program was funded in fact in 1967 and there was a commitment to provide better than 3,000 jobs—I forget the exact number. But these 10 companies, really, entered into this contractual arrangement with the U.S. Labor Department with the commitment that they would provide these instant jobs, as was indicated, for the so-called hard core over a period of a few years—I don't know the exact number of years.

And there was an article—I don't want to go into great detail, but the story was initially surfaced by the Los Angeles Times in December of 1969 which pointed up how far short they had fallen of the mark, and the article went on to indicate that apparently quite a number of these dollars went into the improvement of facilities and other kinds of operations within the corporations themselves, rather than putting the money into the people or putting the money in terms of really making meaningful training and employment experience available.

And it was a very serious indictment, as I suggested, and it was a very recent thing, yes. And I don't know at this stage of the game where the situation stands. I don't know whether they are still receiving the funds at that level, but they were at least as late as December of 1969, which, as you are obviously aware, was just a very few months ago.

Mr. CLAY. Apparently there has been misappropriation and perhaps fraud involved in this situation.

I was wondering if you could supply this committee with the 10 companies that are involved, and I think we'll be able to get the exact amounts of money that the Government gave them, because I, for one, would be willing to attempt to initiate some type of Government investigation to find out if somebody actually stole the taxpayers' money.

I am of the opinion that all the crime is not in the streets; some of it is in high places in this community and other communities.

Mr. MACK. That's exactly why I cited this, Congressman.

Mr. CLAY. I would appreciate——

Mr. MACK. I don't have the information readily available, but I can, I think, obtain it without too much difficulty.

Mr. CLAY. I would appreciate your forwarding it to the chairman of the committee and a copy to me.

Mr. MACK. It's another form—you know, we—in this country, it's very fashionable, when you talk about poor people, to talk about wel-

fare in negative terms of giveaway and handouts, and then when a major company such as this receives large sums of dollars, we talk about subsidies and support——

Mr. CLAY. Yes.

Mr. MACK (continuing). And it seems to me that you can call it anything you want to, but that boils down to the worse kind of—an immoral kind of activity when there are people starving to death.

Because I haven't seen anybody yet who is very happy—I haven't run across anybody yet who is pleased to go without a meal or a place to stay while others who have more means sit around and intellectualize as to why people are immoral and trying to cheat the taxpayers out of money.

So we'll be very happy to share that—as much information as we can possibly get regarding this matter.

Mr. CLAY. Fine.

I have no further questions.

Mr. HAWKINS. Mr. Stokes?

Mr. STOKES. I have no questions, Mr. Chairman.

I'd just like to commend Mr. Mack upon the excellent testimony that he has given here this afternoon, and certainly the high quality of his testimony has been attested to by the fact that Mr. Clay has requested his permission to enter his statement into the Congressional Record. So, certainly, this is evidence of the very high quality of your statement, and we certainly appreciate it.

Mr. MACK. Thank you.

Mr. HAWKINS. Thank you, Mr. Mack, and I again wish to commend you on a very fine presentation.

The next witness is Mr. Hilliard Hamm, the publisher of the Metropolitan Gazette.

Mr. Hamm, it's a pleasure to have you before this committee. I wish to certainly commend you upon being the publisher of one of the outstanding publications in our south central area. You've done an excellent job at the community level, and I'm sure that the committee will be very interested in your views, the views that you may present to this committee.

You may, as you desire, either read the statement in its entirety or summarize it or proceed as you so desire.

STATEMENT OF HILLIARD HAMM, PUBLISHER, METROPOLITAN GAZETTE

Mr. HAMM. Thank you, Mr. Chairman.

I would like to read it in its entirety, but, first of all, I would like to thank you for inviting me here today.

At the beginning of the statement I use the phrase, "ladies and gentlemen," and I certainly hope it isn't an affront to any one of you gentlemen sitting here.

Mr. HAWKINS. That may be a little controversial.

Mr. HAMM. But I am very pleased to be here today to address this very distinguished panel.

I would like to begin the reading of my statement at this time and, after I finish it, I would like to make some remarks in reference to what I've said.

Ladies and gentlemen, before I move into the contents of my speech, I would like to express my gratitude to you for inviting me to address this distinguished committee. I consider it a great honor and I sincerely hope that what I have to say will prove to be both interesting and educational.

First of all, let me begin by stating that I am not, nor do I intend to be, concerned with statistics or percentages in relation to unemployment. We all know that the unemployment rate in minority areas is far too high for a nation of such paramount wealth as that of the United States. I am concerned, however, with what I feel should be done to ease the unemployment situation in South Los Angeles, Watts, and Compton.

Unfortunately, the Federal Government has for the past 100 years focused its attack against minority unemployment on a superficial basis. It has always believed that by training the unskilled laborer all problems will be solved. But this theory falls short in the black and Mexican-American communities.

The Government must cease to focus all of its efforts on preparing minorities for work in white-owned industrial firms wherein they are not really wanted and are not given an equal opportunity to advance themselves. It is senseless to expect minority people, especially the youth, to accept, let alone remain on jobs which do not supply some incentive and hope for advancement.

This is not to say that the Nixon administration is to blame for the present rate of unemployment among minorities, nor is the Johnson administration solely to blame. On the contrary, the blame can be placed on every administration that has existed in the past 100 years.

It is time now for the Federal Government to wake up and realize that more positive steps against minority unemployment must be taken at once if this Nation is to function as a successfully united democracy.

It is my opinion that, in spite of what has been said, this Nation can afford to initiate a kind of Marshall plan in South Los Angeles, Watts, and Compton. This plan, though under a different name, would do the same thing for the black communities that was done for Europe. Rather than merely training minority people for jobs, I believe that the Government should provide a program through which minority people can meet their own needs.

Under this pseudo-Marshall plan of which I spoke, the Government should provide funds for black businessmen. These funds should be extended not only to the small businessman but to black manufacturing firms interested in export and import trade.

In the South Los Angeles, Watts, and Compton areas at least six more factories should be operating with assistance from the Government in obtaining Government contracts and trade with other nations, especially African nations. Perhaps it is news to you here today to learn that contract bids are rarely posted in minority communities.

By now you are all probably saying to yourselves that there are Federal agencies already functioning for the purpose of assisting minority businessmen, but these agencies have, in many instances, done more harm than good.

I personally know of many black businessmen who have been forced to fold their businesses because of redtape and unnecessary Government pressures that were placed upon them.

I ask you here to ask yourselves why the minority businessman, himself a taxpayer, must tread through miles of government redtape and financial trickery before he can secure Federal funds? I ask you here to ask yourselves how Europe and the Near East can acquire Federal aid with the greatest of ease, but the black American and the Mexican American does not have this same privilege?

I ask you to ask yourselves why the United States still sends money to Portugal knowing that its ex-dictator-ruler, Salazar, used most of this money to build a bridge in his honor. Something to think about, is it not?

Federal lending agencies, especially the Small Business Administration, have made their greatest mistake in their determination of who qualifies for aid.

I sincerely believe that the Government should review and repudiate its policy of refusing loans to newspapers and magazines. In my opinion, there is a great need for black newspapers and magazines with an audited circulation of, say, 15,000 circulation and funds should be made available to such enterprises for the purpose of expansion.

Allow me to give an example of what Federal funds could do for a black-owned newspaper serving the black community: My newspaper, the Metropolitan Gazette, maintains a weekly readership of 180,000 covering the South Los Angeles, Watts, Compton, and Carson areas. If we could obtain a $90,000 loan at a repayment rate of $1,000 per month, we could not only expand our coverage of the black communities, but we could expand our staff.

We could definitely afford to do all of the following things, and I list them 1, 2, 3:

We could hire a full-time city editor, society editor, two reporters, and three more clerical workers.

We could establish a circulation department which could employ at least 20 youths in the community, a photography department using two full-time photographers, and an advertising department manned by experienced minority advertising salesmen, copy writers, and pasteup artists.

And we could establish a full-scale training program drawing young people from the surrounding minority communities.

All of these things could be accomplished not only by our publication but by others as well if the Federal Government would help minorities to solve their own unemployment problems. A program such as that which I have outlined would employ the young, the middle-aged, and our senior citizens.

The Federal Government has fallen short on still another aspect of minority employment. It does not thoroughly follow up on federally assisted firms which operate in black areas but use discriminatory hiring practices. In my opinion, the Government should use its power to see it to that any major firm situated in black areas supplies jobs both part time and full time for members of that community.

I believe also that the Government should investigate all college and university work-study programs whether the institution be public or private.

I will admit that there is a limit to what the Federal Government can do, but I believe that there should be no limitations on this limit. This Nation was built on black power, Mexican power, and original power. Now we would appreciate the opportunity to enjoy what we have all had a share in building.

Once again I wish to thank you for inviting me here and for your gracious attention, and I hope that together we can share in ridding this Nation of its 30 million poor people.

Thank you again.

Now, I would like to state my present capacity, not only that of an editor and publisher and owner of a black-owned newspaper. I also serve as a member of the California Job Development Law Executive Board which is set up primarily to help minority businessmen. This is on a State level. That is, to help develop black and brown entrepreneurship.

And on this board I have gotten a very good insight into the banking system that exists in our country. There are several bankers who serve on the board and we listen to them talk about financial interests, long-term loans, and so forth, and so on. But this country has a serious problem of racism in banking. I think it's time for the House Banking Committee to leave Washington, D.C., and come to the ghetto and talk to some of the black businessmen. It seems that the black businessman is forgotten by the banking department of the Federal Government.

We have SBA, but SBA cannot necessarily solve all of our problems.

I would like to mention another point that I did not mention in my earlier remarks, and that is Federal employment for the Compton community.

As I recall, I think I can walk into our local post office here and there is a sign that says, "If you desire any information in regard to employment, you have to go down to Long Beach."

Here we are a city. We're considered to be a hub city. We have Willowbrook to the north, we have Compton to the south, and we have South L. A. to the northwest and southwest. Within this area there are no facilities available for a minority student, a youngster, to file for Federal employment. There is no place where Federal exams are held in this area.

This is a tragedy upon this country—we talk about employment in private industry, but the Federal Government isn't doing its part in the area, either.

I would like to relate one story that struck me very deeply. It involved a black GI who had fought in Vietnam.

I attended a showing of a film that was filmed under actual combat conditions in Vietnam and it showed a picture of a young black GI who lives here in Compton on Willowbrook just south of Alameda, and it showed this young man being wounded and it showed many other highlights of the activity and fighting that went on.

And after the film was over, I had an opportunity to talk with this young man—in fact, I brought him back to Compton with me—and I asked him how he was doing as far as employment was concerned. He indicated he wanted to get into printing.

I asked him had he made any contacts, had he gone to any of the local newspapers, and he indicated that he had gone to the Los Angeles Time and the Times told him that they did not have any positions

for apprentice printers, but they could give him a job as a janitor—but he is still trying.

So, with my help, we were able to get him into the parent printing organization here and today he is in training to become a printer.

These are some of the tragedies that we are faced with in our area.

I look at my community. I find it very hard sometimes to be what some people would say is a conservative publisher. I see all this misery around me. I see our Kiwanis Club, I see our Rotary Club having fun every Wednesday and Tuesday, and we have citizens right here in our community who need their help.

I think that's all I want to say at this time.

Mr. HAWKINS. Thank you very much, Mr. Hamm, for an inspiring presentation.

Mr. Stokes, do you have any questions?

Mr. STOKES. Mr. Chairman, I would just like to commend Mr. Hamm upon his very articulate presentation here this afternoon.

I will say to him that I concur with just about everything he said here this afternoon. If I have any addendum to what he has said, it is that when you mentioned to us in your statement that there is racism in banking. I would just add to that that there is racism in every phase of American life, in every nook and in every cranny of this American life, and it is impossible for us to realize the extent to which racism in this country has caused the loss to this Nation of human talent, human ability, and human potential.

I just hope that somewhere along the line this Nation is going to wake up and realize the tremendous loss that has occurred by virtue of the discrimination which does exist and which has denied black people, brown people, yellow people the opportunity to fully develop to their full potential within the society in which we live.

This is about all I have to say.

Mr. HAWKINS. Thank you.

Mr. Clay?

Mr. CLAY. No questions, Mr. Chairman.

Mr. HAWKINS. Mr. Hamm, again I wish to thank you for appearing before the committee and presenting this statement. I think there is much in it that we can certainly see that needs to be implemented.

I certainly agree with you on the views that you have expressed, particularly concerning the difficulties of minority businessmen. That subject just doesn't happen to be within the purview of this committee or its investigations, but it does fall within the scope of the Congress itself.

I was also interested in your references to how the Federal Government itself fails many times to provide the leadership, and I am certain that if there is anyone or any agency that should do it, it should be

the Federal Government. That is one of the reasons why this committee has not only in Washington but has seen fit to conduct these hearings in other parts of this country so that persons such as yourself and others who have testified before this committee today and who will testify before this committee tomorrow may have an opportunity to present their views.

We know that most of you cannot possibly make the trip to Washington, and for that reason this committee is in the field, and we have been able to persuade some of our colleagues to join us—Mr. Clay from St. Louis and Mr. Stokes from Cleveland. We also had Mr. Hansen this morning who had to leave this afternoon—Mr. Hansen from Idaho.

Tomorrow we hope to have the chairman of the subcommittee—the Subcommittee on General Labor with us, Mr. Dent of Pennsylvania.

And certainly it is the work of individuals such as yourself in the field who make, I think, these trips across the country interesting and also, I think, highly constructive in terms of what we can report to the Congress.

I wish to thank you very much for having been with us today.

Mr. HAMM. Thank you.

Mr. HAWKINS. May I, in concluding the hearing for the day, take the liberty of introducing a friend of mine I see in the audience, one of the members of the loyal opposition, I would like to say, who happens to be a candidate for Congress from the 21st Congressional District, Mr. Southey Johnson.

Southey, would you stand up so we can recognize you? Would you like to make a statement before the committee?

Mr. JOHNSON. Well, I'm glad I was able to come out and hear some of the testimony today. I am quite sure there will be some action taken as a result of it.

Mr. HAWKINS. If you keep after us, I'm sure that we will see a lot of action.

May I, for the sake of those who are present, indicate that the official record of this committee will be kept open for any of you who wish to file a statement. If there is anyone who has a complaint or a suggestion or recommendation or position on any of the pending bills before this committee, if you wish to file a statement, we will be very glad to incorporate that statement into the official record of this particular hearing.

With that, the committee stands adjourned until 9:30 tomorrow morning in the same place.

(Whereupon, at 3:55 p.m., the hearing in the above-entitled matter was adjourned until 9:30 a.m., Friday, April 10, 1970.)

EQUAL EMPLOYMENT OPPORTUNITY ENFORCEMENT PROCEDURES

FRIDAY, APRIL 10, 1970

HOUSE OF REPRESENTATIVES,
GENERAL SUBCOMMITTEE ON LABOR,
Compton, Calif.

The subcommittee convened at 9:30 a.m., pursuant to recess, in the city council chambers, city hall, Compton, Calif., the Honorable John H. Dent (chairman) presiding.

Present: Representatives Dent, Hawkins, Stokes, Clay, and Burton.

Chairman DENT. The meeting of the General Subcommittee on Labor will come to order.

I am John H. Dent, the chairman. We are here to consider H.R. 6228, H.R. 6229, H.R. 13517, and related bills. On my right I have Mr. Hawkins, the outstanding proponent of this legislation on the subject of equal opportunities. On Mr. Hawkins' right is Louis Stokes, who has devoted a great deal of time to this area of activity.

Those of us on the committee are very proud of the work done by Congressman Hawkins and his associates on this committee. We believe there is a great deal of change needed in the Equal Opportunities Act and its administration as it is now. We believe that this legislation is very, very imperative and important and is one of the needs that has long been apparent in the employment scene of this country. I am personally very grateful to Congressman Hawkins for taking over my duties when I have been tied up with so many other areas of employment itself; namely, the minimum wage bill and fringe benefits and impact of imports. Otherwise, we would not have been able to have brought this particular piece of legislation to the point that it is now and hopefully have the opportunity to have it passed in this session.

So, with that, I would like to call the first witness this morning, who is Mr. Lloyd Napier, of North American Black Workers.

Mr. Napier, would you take the stand?

STATEMENT OF LLOYD NAPIER, NORTH AMERICAN BLACK WORKERS

Mr. DENT. Mr. Napier, you may proceed in any fashion that will give the committee the benefit of your testimony.

Mr. NAPIER. Thank you, Mr. Dent.

Let me initially say that I am extremely happy to be given this opportunity to come before this committee, primarily because it was not but about 6 months ago—not that it was just required—but 6 months

ago that many of the black employees at the North American Rockwell Corp. decided to get together to deal with the discriminatory practices at the corporation.

Now, we are aware that there are certain kinds of problems in other industries, but the fact is that we feel, particularly since North American Rockwell has a considerable amount of contracts, totaling a billion dollars, that they themselves should be made or required to conform to the basic requirements of equal opportunity; and we found for quite some time that the equal opportunity requirements, which the corporation is aware of, is never fulfilled.

What they generally do is that they implement the requirements as they so see fit, which means that the minority employees are generally left without any kind of resources or any kind of assistance.

Although there are the local agencies and the State agencies and also the Federal agencies, we have found for the most part that these agencies are virtually powerless to get the company to respond to any of their directions if they so, in fact, find that discriminatory practices exist.

I know personally of many reports that have been written by the local and the Federal agencies to the corporation, and the corporation can, if they so desire, disregard those reports or disregard those directions or disregard the findings; and you find in the statement that I present to you that we have taken some of the statistics from those reports, and in many instances you will find that there is a tremendous problem in terms of hiring practices as well as the general treatment of black employees and other minorities at a company.

Let me go into the area of hiring practices and indicate to you what are some of the great problems. For the most part, although North American Rockwell is not now doing very much hiring, it is a fact that when they were hiring—and as they are hiring right now, as a matter of fact, in limited numbers—most of the black employees are generally channelized into the lower level classifications.

For example, if there are two people that come up to the corporation to be employed, one being a white or a Mexican-American or black—in other words, one is minority and one is nonminority—you generally find that, if they have a high school education or a little above, the minority will be sent into one of the lower level classifications that I speak of here.

As a matter of fact, we, the black workers, have conducted some scanned surveys of a lot of the black employees there. We have found, as a matter of fact, in the past there have been blacks with even master's degrees and restricted to above high school education, 2 years of college and everything else, while other nonminority employees are not, in fact, restricted in this manner.

Now, this is just at the initial stage. The major reason why this happens is because, generally speaking, the guy who conducts a general interview of the applicant has basically the prerogative of channelizing that guy into many given areas; which means that after they call the supervisor in to interview him and he makes his assessment of what the man's qualifications are, in all probability that guy will not have any basic awareness of all of the available jobs in the corporation.

As a matter of fact, one of the things we would find desirable is that all jobs available at defense or aerospace industries be posted, and that will be similar, I believe, to the practice of Federal agencies. Because that would to a great extent eliminate the tendency on the part of the corporation to only give you those jobs that they want you to have; and I think that, inasmuch as their records are kept very secretly and it is impossible to obtain information from them, it seems imperative that there be some way of at least being able to expose some of the so-called practices of an industry like this in the aerospace industry.

So we would find it extremely advantageous that some system be devised for making known all of the classifications and job openings that are available in the defense industry. That seems like a very fair requirement, particularly since such an industry such as North American Rockwell exists primarily off of the Government funds and from Government contracts.

In terms of promotional opportunities, we found to a great extent that most minorities are relegated to lower job classifications; not only to lower job classifications, but they very seldom have the opportunity for advancement within the corporation.

You know, in the statement I present here that a recent investigation was conducted by the EEOC, and they found that even on a corporate structure per se there were very limited management positions. The chart shows the wage categories and everything else of all of these various job classifications of high level positions. There were very few. As a matter of fact, none in the general executive offices were occupied by minority employees—that means the Mexican-American or black, whatever.

They had one, and that one that was there happened to have been a supervisor in the janitorial department; and of all the many other classifications, it is interesting that the company claims that it is difficult to find qualified employees; and that is not, in fact, the truth. Because if the records were checked, you will find that there have been many qualified people that have left the company, and that what generally happens is that the corporation, by indulging in bureaucracy, generally allows a supervisory personnel, management personnel, almost at their discretion in getting rid of a person; in other words, his comments or his directions are very seldom chastised.

Recently there was somewhat of a check on that. There are a few improvements in that area, but they are short-lived, I am sure. And the reason for this is that it seems that they are moving primarily, in part, and probably at a very slow pace, because of their desire to get the B–1 contract.

But there is no assurance whatsoever that they will, in fact, comply with or, in fact, deal fairly with minorities subsequently if they got the B–1 or any other contract.

So it seems to me important that there be established at least an agency or that the existing agencies be given the power to, in fact, be able to compel the company, once they have found out of the discriminatory problems that exist, to conform with those findings or to conform with their directions or instructions.

Another interesting thing is that not only in the general executive offices were there not any minority employees, but you will find that in almost each one of the divisions of the corporation there are relatively no minority managers. Now, what happens is that most of the corporations are required to report on EOC forms how many officials and managers are at the corporation. The interesting thing about that particular classification is that officials and managers in terms of the internal definition generally has a different connotation than most of you think.

For example, the average supervisor, there are no managers, say, in terms of black managers at North American Rockwell, in terms of the internal definition; which you have a group of supervisors—I know of one right now—we did have one and he recently left the company.

He was responsible, as a matter of fact, for doing a great job in the Apollo program. But he has recently left the program. And as of this point in time, I don't think he has made a statement as to why he left, but it is fairly obvious if you were to review the circumstances that it was primarily because of the failure of the company to recognize his tremendous ability that helped them make the Apollo program a successful one.

The fact of the matter is he did leave the company some few weeks ago, and I think the company is trying to negotiate him back into the company because of the embarrassing nature of that one manager, out of the total corporation, leaving.

So you will see figures on officials and managers. What generally happens is the company—particularly the Space Division—have a group of supervisors or assistant supervisors, and they lump those under officials and managers. This is not the traditional definition.

As a matter of fact, at the Space Division alone, most of the supervisors—there are about seventeen out of several hundred officials and managers, but this 17 happen to represent 16 supervisors and one manager, and that one manager is now gone; and of that 16, I think about eight of them are from the plant services or janitorial function, and they are supervisors; which means, again, that the bulk of employment of most blacks and—minorities, rather, are in lower level job classifications.

As to the general employment conditions, most black employees, and other minorities, have found it very difficult to exist in an atmosphere where they are basically rejected and excluded from the mainstream of the corporation. This is generally reflected in terms of their personnel evaluation or personnel evaluation in terms of the failure of the company to give most black or other minorities a basic exposure to job responsibilities, and it is also reflected in terms of the basic underemployment, the underemployment of most minorities; no matter what kind of qualification the average black or other minority has, you will find that on the most part they possess double the qualification of his average counterpart; and, yet, that very same black or minority employee is not allowed to move up into management status.

That is the reason why now I feel safe in saying that there are absolutely no managers in any of the categories at North American Rockwell in the traditional definition, no managers and absolutely no vice presidents.

They do have a president of Nortran, which happens to be a black guy, and it is, in fact, a subsidiary of North American; but that is not in the mainstream; that is a guy they put out there for purposes—and he is doing a good job—but he is put out there for purposes of trying to evade effectuating equal opportunity in terms of all minorities within the mainstream of that company.

So our contention is that it is fine to have black employees in that kind of a capacity, but at the same time what we want most minorities to be available to is the opportunity to work in a competitive manner within the rank and file areas of a corporation.

The interesting thing about the equal opportunity program of the company is that all equal opportunity programs are virtually run by nonminority people. In other words, the equal opportunity top management at the company consists entirely of white people, and that in and of itself is basically inconsistent; because what they do is they do not seek the counsel or the advice of those people who are basically affected; and most top management never know what the basic problems are, by their five- or six-level-tier supervision below them.

Therefore, one of the things we are asking for presently is that all of those equal opportunity committees in fact include minorities on them. At least it will give them a basic exposure and also acquaint them with some of the basic problems. I am not too sure I am going too long here, but I wish you would stop me at any given point in time.

But our great concern is that the company in showing its lack of good faith in this manner has, in fact, established all of its committees which consisted solely of white personnel and which has no minorities on them; and that in and of itself seems to me to be a basic inconsistency.

I won't spend very much time on salary problems, except that it is obvious that if you don't have the position, you obviously aren't going to have the salary.

What is also an additional fact is that most minorities—or at least particularly black employees—are generally burdened with the additional problem of having to travel long distances, even with small salaries, to where these aerospace facilities are located.

Like, for example, with North American Rockwell, the Autonetics facility is located in Anaheim. The average black employee that goes out there, with the exception of those few who manage to live close by, and there are very few of them, have to travel some 30 or 40 miles to get to work. Those who work at the Space Division have to travel some 20-odd miles each way; and this is without choice.

You will find constantly people who say to you, "Well, what is the difference between black or another minority versus white having to travel those long distances?" I think the obvious answer is that ours happens to be involuntary, because we do not have—and apparently companies make little effort; they have made some, but little, effort to obtain housing facilities within the general vicinity of where they are located for minorities.

I know that in the Downey area per se. I don't know of any blacks that are living there; so that is also an additional problem. The little salary plus that problem makes it very difficult for a black, particularly in this instance, to have any kind of a take-home pay.

The present situation in the aerospace industry is one which allows the company to really fit its needs upon any minority who tends to

differ with that or to exercise the right to complain about the discriminatory practices; and in this instance I am talking about the layoff policy.

Now, inasmuch as most black employees were relatively late being hired into the company in any given area, it is fair to say that there is a relatively small percentage of black people or other minorities in any given classification.

As a result, when the time for layoff occurs, the minority employees are generally hit first. As a result of being hit first, they generally go out on the street while other employees are retained, and this is relatively unfair, particularly since an industry like North American exists primarily off of Government funds; and it seems to me that this is a problem that should be looked into.

Now, one of the things that the Black Workers Association is, in fact, insisting upon right now is that there be a total cessation placed on the layoff of minority employees, and particularly black employees; and the reason for that is that their seniorities are very low.

If you will note back on page 3, you saw the percentage of the black employees in those various categories. Of the total population, it is something like 4.5 percent, and that is rather basically inconsistent with the basic population of the country; not only of that, but of the general area.

Now, that percentage is even much lower right now. So what I am saying is that the company right now, particularly since the atmosphere is one which tends to allow them to reject the movement of black employees within these many given areas; they tend to, in fact, now vent their spleen upon most minorities, but particularly if they seek to voice their grievances.

So, in concluding, I would like to suggest that this committee and that this bill that is, in fact, presently pending be passed for the very reason that we need an agency to check corporations like North American Rockwell to insure that they respect the right of each citizen to be afforded job opportunities and to be treated without regard to color in terms of their employment life in the corporation. Otherwise, you will find that if you allow it to be left up to the discretion of the corporation, they will continue to pursue the same practices as they have before.

One of the interesting problems that we are having in the corporation right now is that a lot of the executives of that corporation are in fact saturated with bigoted philosophies and, as a result of that, they fail in any fundamental way to correct the mistreatment of minorities, particularly blacks, and it seems to me important that we get a piece of legislation that will either cause a corporation like North American Rockwell to suffer certain kinds of penalties if they disregard equal opportunity or that the contract, in fact, be withdrawn.

Now, it is interesting to note that the St. Louis Douglas situation presented an interesting picture, but that alone is not sufficient. It seems to me that we need to make some examples that some of these corporations should follow, because they are taking our tax dollars, and they are doing what they so desire with those tax dollars and disregarding the right of minority people to become an integral part of mainstream of this company and particularly in sharing with its wealth.

Mr. DENT. Thank you, Mr. Napier. We appreciate your very frank, positive statement in support of this legislation.

I won't take too much time to ask questions, because my colleagues here have been closer to the picture than I have. However, a couple do come to my mind.

Is this an organized plant by one of the international unions?

Mr. NAPIER. Yes, there are unions there.

As a matter of fact, we have not per se attacked the unions, but we find them equally as bad as the company, for the reason that the seniority rules generally require that most of those employees who have been there for a long period of time be dismissed last and, therefore, the black employees will be dismissed first.

This will happen because the company did not allow black employees. They were generally not allowed, and were not allowed in the corporation prior to 1960 in any classification other than the lower level ones.

Right now the average white employee has much more seniority than the avereage black boy; so, therefore, the seniority rule generally results in their termination; and we think that there should be some kind of a balancing between that particular rule, and that is where you have the seniority rule coming in conflict.

As I mentioned, in some of these demands we have been making, we have a seniority rule come in conflict with equal opportunity, then equal opportunity must prevail. Because the concept of equal opportunity, in my estimation, it has a constitutional aura, and as a result of seniority per se it should be subservient to the equal opportunity rule.

Mr. DENT. In the reemployment of the laid-off employees, do they take them back according to their seniority, do you know?

Mr. NAPIER. Yes, they generally do, I understand.

However, you will find that there are so many loopholes within their so-called rules until it is difficult to pin them down in this regard.

Now, I have been acquainted with several people that have not been called back, even though there have been people in the same classification who have been called back. And the point is that it is very difficult to pin them down unless there is an investigating agency that could go in there; receive a complaint and go directly in there and get a certain kind of basic facts.

But since everything is secret, the only way you can do that is to either know a friend who knew another guy that happened to, or you are able to get some kind of information from soneone internally, and that is very difficult.

Mr. DENT. Inasmuch as we really haven't started to get off the ground in this area of equal opportunity in employment until 1960, I can understand the previously contracted positions on seniority prevailing until something is done, drastically, about it.

However, do they or do they not, for seniority purposes, continue to carry a laid-off employee on the rolls? Do they still continue to carry him as an employee who is temporarily severed from the payroll? What I am trying to say is suppose you are laid off for 6 months to a year, do they only count the service while you were working and then put you back on again when you come back into employment

and then count that service added to your seniority; or do they give you the benefit of the laid-off period so that your seniority does build up?

Mr. NAPIER. I am not sure about that. I am not sure about that, and I would not even give a conjecture. I'm not even sure.

Mr. DENT. Would that not be a proper function of the union to try to establish some type of a rule that would at least insure an employee over a period of time of having a longer seniority record?

Mr. NAPIER. Yes, that would be a proper function of the union.

It should be noted that a substantial number, although most of the black and other minority employees are in the bargaining unit at our company, at North American Rockwell Corp., there are many minorities outside the bargaining unit and the union would have little to do with them; and whatever agreement is reached with the company, it generally affects all employees.

Mr. DENT. Well, that of course, is law. They have to pay the same.

Mr. NAPIER. Yes.

Mr. DENT. However, it is surprising to me that if you have a union there that it would not encompass all of the employees, regardless of the status for minority or majority groups.

Mr. NAPIER. Well, it does encompass all of those who are in the bargaining unit, but to define what kind of a classification was in the bargaining unit—what I am simply saying is that despite the fact that they encompass all of these employees, there has been a basic distrust on the part of a lot of black employees that the interests of the company and that of the union are virtually similar in some respects; and, therefore, black employees, particularly since they don't have a great deal of employees, are generally swept out the door.

Mr. DENT. You gave us a tabulation on better positions running from $1,500 to $3,200 a month. Now, there apparently are seven classifications and 159 positions and only one is from a minority group and he is the supervisor of the maintenance department.

Mr. NAPIER. Right.

Mr. DENT. However, have you at the same time tried to get or have you been able to get a tabulation of the number of minority group applicants that applied for these jobs? You see, if there were no applicants for these jobs, we would have very thin ice to stand on to try to make a case. However, if there were applicants for the job, as you stated in your testimony, in many instances they had equal or even better qualifications for the job, do you know how many, or if all of these jobs were applied for by persons from minority groups?

Mr. NAPIER. In the first place, the information as to these classifications, these types of jobs, is not available per se. They may tell you it is available, but the average person who walks into a personnel office does not know whether they are available or that they are available; and that is the problem.

I would have filed for several of these positions had I known they were available. It would not have made any difference, but I would obviously have filed, and I think I could get many minority employees to file for these positions.

But as I indicated before, one of the things we need is for a lot of these job openings to be published, because that would put people

on notice, and they could, in fact, file for them, and then you can get some kind of statistics.

Mr. DENT. Don't feel bad; it's the same in the Federal Government; some cousin gets a job that you don't know about.

Mr. NAPIER. The point is that if we had that, that would at least be a step, because you are still farther along than we are.

Mr. DENT. Yes, we have a couple hundred years on you.

Mr. NAPIER. And I am interested in getting that far, because the situation as it now exists generally allows them to give the job to their cousin or to any single remote white man, and that's what bothers me.

Mr. DENT. I am also very much disturbed over your percentage figures here. I notice that the total population there, you only have four and a half percent employment in the total area; and the executive positions are very much in the minority out of the group?

Mr. NAPIER. It's even lower than that. That was back a while.

Mr. DENT. Now, do you have any idea of what was the percentage of minority group employees in each one of the classifications as compared to total employment before the Equal Opportunities Act came into effect?

What we are trying to do is measure whether or not we are successful in getting some breakdown in these areas or whether they are just giving us lipservice or whether there are in some areas advancements made by the minorities.

Now, do you have any idea what the employment percentage was before this?

Mr. NAPIER. No, I don't; but there is no question but what there was some advancement, but considerably less than what there should be.

I think what would be a good idea in terms of this report is to, in fact, have the category of officials and managers broken down to subcategories; because it is extremely misleading. Because when you are talking about an official, you are talking about an officer of the company. OK. That would be the vice president.

So the next best thing you would be talking about would be a manager. Now, management-type personnel generally fall in certain kind of ranks of the company. There are not any of those that are minority or at least black that I know of.

For example, they used to have classification ranks, such as 1, 2, 3, 4, 5, 6, 7, 8, 9. Those are the various management level classifications. OK. Now, the assistant supervisor was not even a 1. The supervisor was management level 1, and then you had, first, the manager was management level 4, and the president of the division was a management level 8.

OK. In terms of this kind of breakdown here, they tend to indicate they have got a lot of black employees there—and those few you have fall in that category.

The fact is that a lot of the so-called black employees who fall within this statistical breakdown are assistant supervisors, which means that they are not even on the management rank; and that is the kind of game they are allowed to play.

Now, when they give their statistical data—however, I will admit that the agencies have a way of finding out how that exists. It is a given report, but they are just playing a game, I guess, within the bounds of their discretion.

Mr. DENT. Well, the reason that most of us are supporting the Hawkins bill is simply because it would extend coverage to all civil servants and local and State and municipal workers and also would create an administrative agency that shall have the power to issue cease-and-desist orders.

Mr. NAPIER. Oh, beautiful.

Mr. DENT. Then, you still have judicial review; but, in the meantime, the Commission could put a stop to out and out discrimination. But the other bills are for going directly to court action. Well, those of us that know the courts, being as they are and the load being what it is, that this type of case would be put so far back on the calendar that by the time they adjudicated the situation, I think the complainant would be old enough to get retirement.

Mr. NAPIER. That is quite true.

Mr. DENT. So I think that the Hawkins bill does attempt to move into the most serious area in this entire picture of equal opportunity, and that is direct action by a board which its whole purpose in being is to place emphasis upon the right of the Government to say to an employer, "We find that you are discriminating, and, therefore, you must cease and desist." I think Mr. Hawkins has certainly put his finger on what may turn out to be the real meat of this legislation.

I want to thank you personally for appearing here today. I will yield to the gentleman from California, Mr. Hawkins. At the same time I want to welcome our colleague from Missouri, Bill Clay. Happy to have you here this morning.

Mr. CLAY. Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, Mr. Chairman.

Mr. Napier, I would like to commend you on a very excellent statement, just in case it might have been omitted.

Mr. NAPIER. Thank you.

Mr. HAWKINS. Mr. Chairman, I would move that the statement be printed in its entirety into the record at this point.

Mr. DENT. Without objection, the motion is so granted.

(The statement referred to follows:)

STATEMENT BY LLOYD NAPIER

The North American Rockwell Corporation (NR), being a giant member of the aerospace industry, has captured a considerable number of government contracts over the past several years. Among these were the Apollo, Saturn S-II, the GAM 77 missiles and the Minuteman programs. These contracts have provided the basis for the corporation's profitable existence and made available innumerable job opportunities. Since the existence of this corporation is primarily dependent upon the availability of government funds, which are derived in part from the indiscriminate tax burden on minorities, it is ironic that NR has consistently disregarded federal regulations requiring equal opportunity to be provided for its minority employees. This attitude of defiance has significantly contributed to the minimizing of job opportunities for minorities.

As dramatized during the EEOC hearings in Los Angeles in March, 1969, NR had the distinction of having more discriminatory complaints filed against it than any other aerospace industry in the Southern California area. Despite the shocking nature of this development and the continuing magnitude of the discriminatory problems at NR, this pattern has not ceased. While complaints have been continuously filed with the company, with the California FEPC, with the OFCC and the EEOC, the efforts of these agencies have been to no avail in compelling NR to conform with the requirements of equal opportunity. Even though these agencies have conducted thorough investigations and have developed findings which have unquestionably established the blatant discrimina-

tory practices by the corporation, the absence of any enforcement powers within these agencies has virtually given NR license to disregard direction from these agencies without fear of punishment.

As a member of the minority community, particularly the black community which has been traditionally forsaken by the large private businesses supported with public funds, the existence of this type of defiance causes me grave concern about job opportunities for minorities in the future. Since appeals to the good faith of companies like NR has yielded no appreciable progress in the areas of equal opportunity, it would seem important that fundamental action must be taken to assure that the public interest is securely protected. This can be particularly done by providing Federal agencies with the essential power to correct discriminatory practices where they are found to exist.

As evidence of the magnitude of this problem in the aerospace industry, the ensuing discussion points out some of the major areas where discriminatory practices are found to exist.

HIRING

NR, as well as other industries, has traditionally viewed minorities as ineligible and unqualified for the many job classifications available within the aerospace industry. Even though minority employees are the last to be hired and generally the first to be fired, the tendency of most companies is to employ minorities in the lowest job classifications of the company. These classifications are usually within the janitorial and manufacturing areas and are where most minority employees are heavily concentrated. Once minorities are channelled to these areas, it is difficult to extricate themselves despite their experiences or academic background. Recent evidence has shown that individuals with considerable college background were unable to remove themselves from a janitorial function where they had been assigned. In addition, at NR, approximately 38% of the total black work-force was concentrated in the lower job classifications as cited above.

PROMOTIONAL OPPORTUNITIES

In view of the restricted classifications to which minorities are assigned and the practices which exclude them from advancement into the major job classifications, the promotional potential existing for minorities is limited at NR. This is particularly evidenced by the absence of minorities in any of the major high level job classifications at the company.

A recent investigation by the EEOC into the General and Executive offices of NR revealed the following:

In September, 1969, the Executive and General Offices had 20 Vice-President positions with a salary range from $2,279 through $6,563 per month; none were filled with minorities. Of the 18 Executive Directors with a salary range of $2,016 through $4,373 per month, none were minorities. The same pattern existed with the other top management positions listed below:

Position	Salary	Number of employees	Minorities
Director	$1,533 to $3,234	14	0
Group director	$1,449 to $2,979	4	0
Manager	$1,124 to $2,979	27	0
Supervisors	$714 to $1,785	22	1
Executive advisers	$1,276 to $1,854	16	0
Executive assistants	$1,051 to $1,526	12	0
Confidential secretaries	$4.03 per hour	26	0

Of the above 159 positions, only one is minority and he is the supervisor of the Maintenance Department.

Although the above figures represent the dismal status of minority utilization at the corporation, it should be of particular note to see that each of the divisions of NR are equally without minority employees in any major position or job classification. It is further interesting to note that of the four major NR divisions in the Southern California area that none of them have employed any black persons in any management position. Although there are black individuals in supervisory capacities these positions are limited in number and are generally of the type with little or no supervisory responsibilities. Internally, supervisors are not categorized as management.

The figures below show the utilization of black employees in the Aerospace and Systems Office at NR for the period ending 1969:

AEROSPACE AND SYSTEMS OFFICE

	Total number of employees	Number of blacks	Percent
Total population	67,321	3,059	4.5
Officials and managers	5,925	63	1.1
Professionals	22,212	293	1.3

SALARY STAGNATION

In addition to the atmosphere of rejection which constantly plagues the minority employee, the most crucifying experience is when such an employee must suffer continuous salary stagnation within the periphery of the classification in which he is confined. Many minority employees, despite their tenure or length of service with the company, are frequently denied raises which are customarily given to their white counterparts with regularity. Of those limited minority employess who are fortunate enough to receive raises at periodic intervals, it is interesting to note that such raises are generally restricted to a percentage from 3-5% while other non-minority employees may receive raises up to 15%.

Coupled with the low salaries of minorities, it should be noted that most of the corporation facilities are located in areas far removed from black communities. Since most black employees are unable to locate housing within close proximity to the corporate facilities, this situation creates an additional expense to them.

GENERAL EMPLOYMENT CONDITIONS

As a general rule, minority employees are confronted with many factors which inhibit their involvement in the mainstream functions of the company. The following are factors which have had notable effect upon minority employees in their advancement potential within the corporation.

1. Exclusion from vital activities of the corporation.
2. Differences in the application of standards.
3. Lack of exposure to developmental experience.
4. Attitudes of supervisors toward minorities.
5. Under-employment.

Despite the educational background, experience, training, manifested ability or individual potential of the average minority employee, it is a tendency on the part of the corporation to paralyze the advancement or make inappropriate placement of these employees.

LAY OFF OF MINORITY EMPLOYEES--EQUAL OPPORTUNITY

Minority employees, as indicated before, are usually the last to get hired and the first to be fired. As a consequence, the layoff of minority employees is considered to be an automatic reaction to any crisis situation at the corporation. It is therefore difficult for minority employees to remain with the company for any appreciable period of time in an effort to enhance their promotional potential.

In many situations, the seniority rule is used to affect the layoff of minority employees. This rule has a particularly adverse effect upon the minority employees as their ratio of seniority is appreciably less than other non-minority employees—inasmuch as there were relatively few minority members at the company prior to 1960. Therefore, the application of this rule is considered to be unfair as it results in the elimination of minorities without the full benefit of equal opportunity. It is imperative that a decision be made so that in instances where the seniority rule conflicts with the equal opportunity requirements the equal opportunity rule must prevail by virtue of its constitutional origin. If and when this principle is firmly established it can then be inserted by the company in its union contracts in order to insure the full implementation of equal opportunity.

CONCLUSION

Because the foregoing information shows a considerable under-utilization of minority employees and a virtual absence of equal opportunity in the corpora-

tion, it should be noted that this situation has caused minority groups, particularly black employees, to assert themselves as a collective group in attempting to correct the magnitude of the discriminatory problems affecting their employment life. Until an agency can be found which can render substantive assertive assistance in our plight for equality, the black employees at NR shall insist upon the following demands as set forth by the Black Workers Association (BWA).

A cessation should be immediately placed on the lay-off of all black employees at NR.

NR must recognize the BWA in its role as a civil and human rights organization, dedicated to the purpose of collectively representing black employees in their plight for equality in their employment at NR.

Present and future government contracts captured by NR should contain an eleven percent (11%) minimum representation of black employees in each and every job classification at the company.

The Seniority Rule, as it is presently applied to black employees in bargaining and non-bargaining unit classifications, should be modified and suspended to the extent that it conflicts with the requirements of Equal Opportunity.

All black employees at the company should presently be evaluated by a special review committee to ensure their proper classification and assignment, and to effect their promotion to higher level classifications.

Black employees should be given greater exposure, more fruitful job assignments and responsibilities, as well as extensive training and involvement in company affairs, to enable their immediate advancement to management positions.

The company must institute and implement an effective affirmative action program that is the subject of complete awareness by all employees, particularly non-minorities.

A cumulative updated listing of NR job classifications, including job titles, associated duties, and corresponding rates of pay, must be made available to all black employees.

BWA must participate in the selection of representatives to serve on any company committee purporting to deal with racial problems at the company.

Company officials, management or supervisory personnel found guilty of discriminatory practices against minorities, or condoning such discrimination by personnel under their, control, must be immediately discharged.

BWA must be permitted to select black representatives to serve on all apprenticeship training, promotion, scholarship, and educational committees.

Black employees laid off or terminated from job classifications at the company, having less than 11% black representation, must be recalled.

The company's Equal Opportunity Committees, particularly the EOC at corporate office, which are presently all white, must be changed to include a majority of minority employees.

The company must maintain the NARTRAN facility and expand its operations to provide more jobs to blacks and other minorities residing in the ghettos.

(Prepared by: Lloyd Napier.)

Mr. HAWKINS. I think your statement very well summarizes the position of the black workers at North American. In terms of that general classification, when you say black workers of North American, of whom are you speaking? Let's say how many of the black workers are you representing?

Mr. NAPIER. We are representing several hundred, and the reason why I say several hundred is because we have a tremendous number of the black employees on a mailing list, and we do get a fair attendance at meetings sometimes.

In many divisions, like the space division there are something like 800 black employees. At Autometics there is a similar number. At Rocketdyne I think there are about 200 or 300, perhaps. And the LAD, that's slowly going down, and it is going to be worse if they don't get one certain program.

The point is we are speaking for several thousand black employees.

Mr. HAWKINS. Are they on all tiers of employment and not confined to certain departments?

Mr. NAPIER. Right. As a matter of fact, an interesting thing happened recently and that is that those relatively few black employees who were within the so-called higher echelon of the corporation did, in fact, recognize the basic problems, and, as a matter of fact, they submitted a letter to the corporation management; and we have, in fact, respected their desires. We have been working with them. We know all of them; so we are, in fact, involved in representing all black employees, and we invite them to, in fact, share with us any problem that they may, in fact, encounter.

Mr. HAWKINS. Do you represent them merely in the activity in the area of discrimination, charges of discrimination; or do you represent them also in other activities?

Mr. NAPIER. No, just in charges of discrimination. We are concerned with bringing to public awareness those discriminatory practices by the corporation. We are not involved in any other area.

The sole purpose of our existence is to eliminate discriminatory practices in that corporation as it affects black employees particularly.

Mr. HAWKINS. I assume that you are also actively involved in the particular UAW local at that company?

Mr. NAPIER. There are black employees that are, in fact, part of our organization that are actively involved in the UAW.

Mr. DENT. Will the gentleman yield?

Mr. HAWKINS. Yes.

Mr. DENT. Then, this is not an organization that could be said to be operating in contract negotiations in opposition to the regular bona fide labor organization?

Mr. NAPIER. No. I might note that the corporation has taken that kind of position, but we disregarded that, primarily because I don't think any corporation can, in fact, write away our constitutional right.

Mr. DENT. I want to get the record clear on that.

Mr. HAWKINS. You indicated there was one manager at one time in the corporation; that this manager left North American Rockwell?

Mr. NAPIER. Yes. His name, for the record, was Norm Cassen. (Phonetic.)

Mr. HAWKINS. Norm Cassen?

Mr. NAPIER. Norm Cassen.

Mr. HAWKINS. Was he the individual whose picture appeared in Life magazine and several other magazines indicating the fair employment practice policy of the company?

Mr. NAPIER. I believe so. I did not see that article, but Norm Cassen has been in many national magazines, and I would not doubt that. I don't recall seeing it in that magazine but he is the one guy that they love to make what you might call—what is the general expression?—a showcase.

Mr. HAWKINS. I see. And did he go to another company when he left North American?

Mr. NAPIER. I believe he is going to another company.

On the other hand, I have heard word that they are trying to get him back because they are embarrassed with that one leaving out of the many thousands of employees.

Mr. HAWKINS. Well, that represented a 100-percent progress.

The Executive Order 11426 does require an affirmative action program and policy of companies that are doing business with the Federal Government. Does North American have anything that has any semblance of affirmative equal employment opportunity program and, if so, what is it?

Mr. NAPIER. Well, they have one that they call an affirmative action program. Interestingly enough, no one knew about that program, basically, until the Black Workers Association came into existence.

As of the past 3 months, there have been all kinds of policies published regarding the existence of that program. None of us knew anything about it prior to that. That means that the average employee, being white, black, or otherwise, did not know that there was such a policy, and, yet, North American had this particular requirement imposed upon them for 8 years of the Apollo project that I know of, and, yet, no one knew anything about it.

Now, the program is one which occupies a relatively low status at the corporation in terms of this enforcement power. What really happens is that the affirmative action program is really generated by or is really sparked by what you might call the equal opportunity committee, and the equal opportunity committee exists simply of top management personnel; that means all VP's. They have as part of their function the affirmative action program. They have administrative people and they have affirmative action representatives and they also have several other people working with them.

Generally speaking, the personnel director and the staff people of the personnel director are for the affirmative action program; but the affirmative action program per se is really an offshoot of the equal opportunity committee.

The unfortunate thing is that the equal opportunity committee sets the direction. Now, this particular program has little or no power to do anything. What they really end up doing is trying to say the employees want something. If it were truly an affirmative action program, what they would do is they would implement the policy within the functional rank of the company, in other words, make it work within a company and then you wouldn't have to worry about saving people once some problem has occurred.

What they generally do now is react to a problem rather than take an affirmative action and see that the policy is carried out in terms of the letter and spirit of the law in terms of equal opportunity.

Mr. HAWKINS. At the present time, how are the complaints charging discrimination by the company handled?

Mr. NAPIER. They are generally processed through the labor relations function, and I believe that the reason has been that as of the past month or so, I believe, they have started having the affirmative action representative to look at any kind of problem involving equal opportunity.

Now, the best they can do is review it; go out and investigate it and come out and make recommendations, I suppose, to the personnel director. But the labor relations function is generally the agency where complaints are filed; although, at the same time people are in the practice of calling an affirmative action representative at the various space divisions; but they occupy such a lower echelon position that there is little or nothing that they can do to remedy the situation.

Mr. HAWKINS. How many such representatives are there actually in North American? Do you have one in every department or section?

Mr. NAPIER. No; we have the following existing in the space industry: generally you will find there is one affirmative action representative at each division.

Now, recently they have started, as of recent months, a couple of months, they have included, I believe, two additional ones at other divisions.

Mr. HAWKINS. All together, how many would you say?

Mr. NAPIER. The affirmative action representatives all together, I would say there are about seven.

Now, they do have what you might call advisory committees that have recently been set up within the function of the departments at each division, and that is simply a committee that starts out by discussing the problem, and the term of office lies for a term of 6 months, and, then, by that time they have decided to make the recommendation; but what generally happens is that most of the people get on that committee at some time have to be acquainted with the basic problem, that there is a problem; then, by the time their office is up, they probably have decided that they will make a recommendation. But that is the best thing they have or the closest thing they have to an affirmative action representative in each department.

Mr. HAWKINS. They make recommendations to whom?

Mr. NAPIER. They have not defined that, incidentally, and that is one of the major problems. Although, there is a VP for each major organization that has an evaluating committee, they have not yet defined exactly how the recommendation will be made to the division, each of the VP's, nor what will happen. They don't have a turnaround period for implementation of any recommendation or anything else at the Space Division.

I am not sure precisely what happens at any of the other divisions, but they simply say they are to discuss the problem and to throw around ideas and make a recommendation. But as of this moment, I don't believe that they have set up the mechanics for how the recommendation, if made, is implemented by the so-called VP.

Mr. HAWKINS. How many such representatives of minorities—Mexican Americans or Negroes—are there?

Mr. NAPIER. Affirmative action representatives?

Mr. HAWKINS. Total number of affirmative action representatives; of those, how many would be minority?

Mr. NAPIER. I would say—I think I used the figure seven. I would say most of them—let me straighten this out. If you are talking about affirmative action representatives, I think at Autonetics there is one; at Space Division there is a guy who is not affirmative action, he is just an assistant. That's two.

I think there are at least four at North American; four or five, I would say. And that is as of a recent change. Before that they all were white.

Mr. HAWKINS. I see.

Mr. NAPIER. That is a recent change.

Mr. HAWKINS. How recent?

Mr. NAPIER. I would say within a period of the past month.

Mr. HAWKINS. Since the B-1 bomber consideration?

Mr. NAPIER. Yes.

Mr. HAWKINS. Do you know how many complaints have been filed with the State on FEPC by employees of North American?

Mr. NAPIER. I believe during the EEOC hearings there were 60-some-odd.

Mr. HAWKINS. Did you say 60-some-odd?

Mr. NAPIER. Yes, 60-some-odd complaints against North American Rockwell. Since that time there have been several more.

Mr. HAWKINS. What is the status of them, do you know?

Mr. NAPIER. No, I don't. That information, I think, specifically has to be gotten from EEOC, I believe. But I do know there have been several others since then. And, as a matter of fact, there have been many of our members that have filed complaints; and, interestingly enough, a lot of those members who have filed complaints have, in fact, been discharged. It is almost as if to file a complaint means automatic discharge.

Mr. HAWKINS. For the record, Mr. Chairman, let's put it on the record and have the staff determine the number of complaints filed and the status of them and what action has grown out of the complaints.

Mr. DENT. Mr. Lippman will meet privately with Mr. Napier to get all the information he has, and, if necessary, Mr. Lippman will stay out here, I hope, and try to get the information that is necessary for the committee to proceed on.

Mr. HAWKINS. Mr. Chairman, I have further questions, but I know other members of the committee would like to ask questions.

I again would like to thank Mr. Napier for his testimony. I think that he is doing a rather courageous thing at North American, he and some of his associates who are still employed by the company, who openly appear before committees and hold meetings for purposes of discussing these things; and I personally wish to commend him for his efforts.

Mr. DENT. Thank you, Mr. Hawkins.

Mr. Stokes, would you like to take over.

Mr. STOKES. Thank you, Mr. Chairman.

Mr. Napier, may I ask what is your present position there at North American Rockwell?

Mr. NAPIER. I am a contracts analyst.

Mr. STOKES. What does that entail?

Mr. NAPIER. Well, it simply entails analyzing contract provisions and possible negotiation of contracts, although I have not as yet negotiated a contract. I have been with the company for 8 years. As a matter of fact, I just recently got into contracts. I was, in fact, restricted to an area that was not even related to contracts before.

For example, I happen to have my attorney's license in Texas. When I came out here from the Army, my wife was pregnant. The fact of the matter is my wife was pregnant at the time I got out of the Army, and I had to get a job, and I ended up at North American Rockwell, and we started having kids.

The point is that when I first went to North American Rockwell, I asked whether or not there was an opening in contract administration. I figured that that was closely related to my background, and since I had to have a job immediately, they told me at that time—and that was

in 1962 at the time they were hiring for both the Apollo program and the Saturn II program; and they told me that there were no openings. And if you were to check the records of the hiring practices at that time, you will probably find many people who came to the contracts department with much less academic qualifications or anything else, I suppose.

But, anyway, I went into the company and I stayed in an oddball department for a period of 6 years until I wrote a letter to the president of the company, and I was put into contracts after 6 years. By that time I had been in the same job classification and no basic improvements in salary or anything else; as a matter of fact, very tokenistic salary increases from 2 to 3 percent, while everyone else was getting substantial salary increases.

Mr. STOKES. And you are a practicing attorney?

Mr. NAPIER. No. I was not a practicing attorney, because as soon as I got out of law school, I was drafted into the Army.

Mr. STOKES. I see.

Mr. NAPIER. As a matter of fact, I was drafted 4 days after I passed the bar.

Mr. STOKES. I see. Now, I believe in your testimony you mentioned some layoff or something that they had out at North American. Can you tell us what that has amounted to and what the reason for it is, if you know.

Mr. NAPIER. Well, the layoff picture at North American is fairly substantial, primarily, I would say, because of a down period in the so-called major contracts. They have had the contracts in the space division for a period of 8 years, and they are now in a so-called passive, you know, late stage of production, and most spacecraft has been produced; and now they just need merely a sustaining type personnel.

Interestingly enough, since there are relatively few black employees, they are getting hurt even more severely. That is the real problem we are concerned with; is that since you had relatively few at the outset, for the most part none of those black employees should be touched, because they are in lower level classifications and at the same time there are relatively few in those classifications where you can find them.

Mr. STOKES. This is why you are taking the position that the seniority rule operates in an unfair manner against the black employee?

Mr. NAPIER. That's true.

Mr. STOKES. I quite agree with the rationale which is in your statement relative to that. It would seem to me this might provide a good basis for a test case in a court of law on the Constitutional provision to which you refer to test if it actually operates in an unfair manner which deprives the black employee of due process with reference to his right to fair employment.

Mr. NAPIER. Yes, sir.

Mr. STOKES. I notice in your statement on page 2 here where you set forth 159 positions, only one of which is at the management level, one minority person employed in a supervisory capacity. What nationality group is that one employee?

Mr. NAPIER. A black, and that is in the maintenance department, head of the maintenance department, where there are 31 employees and 29 of them are black.

Mr. STOKES. When we were out here last year to attend equal employment opportunity commission hearings, North American Rockwell was involved in those particular hearings, and, of course, the crux of what so many of these company representatives said to the Commission at that time was that they had been stymied in upgrading black persons or putting black, Mexican-American surname people, into upper management for the reason that it was so hard to find qualified persons in this area; and, yet, from the testimony which you have given us today, it is obvious to us that right within the plant, without even going any furher, there are plenty of qualified personnel who could be upgraded.

Mr. NAPIER. That is unquestionably true. As a matter of fact, what you find basically is that, for the most part, a lot of the management supervision, I think, are given almost complete discretion to determine what is and what is not, in fact, a qualification.

For example, for most of those jobs out there, any person can do them, you know, except the highly technical job, because I am not trying to estimate highly technical jobs or this sort of thing; but most of the jobs, all you need is a bit of training, like, at the most three months, you know what the level of the man's ability is; and, as a result, the average supervisor, if he does not want you in there, can define for you some qualifications that really are not required for a particular job; and therefore, he can use that as a basis for exclusion.

I think you will also find that for the most part all of the job descriptions that exist are the so-called job descriptions of the company and are very seldom directly applicable to the work being performed by the average guy. So that really means that the average supervisor has a great deal of discretion in saying you do not fulfill the following qualifications that I want; and it may not be what is required to perform what you might call an ordinary task within the so-called functional area.

This is the kind of thing that allows a lot of black people to be excluded by management from the general area. They have almost uncontrolled discretion. It is that kind of control, I think, that we need to have within the corporations like North American Rockwell.

Mr. STOKES. I would just like to, in conclusion, commend this gentleman for the excellent and very articulate testimony he has given us this morning.

Mr. DENT. Thank you, Mr. Stokes.

Mr. Clay.

Mr. CLAY. Mr. Napier, last March when we were out here observing the EEOC hearings, you testified at those hearings and made some very critical and some very damaging indictments against North American Rockwell at that time.

I would just like to know if since that testimony you personally have been subjected to any type of reprisals or intimidation, being either subtle or otherwise.

Mr. NAPIER. I can answer that question in this manner: I think if it were not for the fact I have been so vocalistic about the problem and if I were not black, I would probably have moved up to the president of the company.

Mr. CLAY. I only have a couple of other questions here. It is quite amazing to me and I think it really points out, I think, quite a few things. When you sit before this committee and tell us that North American Rockwell employs 67,321 persons and of that number only 3,059 are black, in a community that has almost 1 million black people, and then I look around and find out that Los Angeles General Hospital, which only employs approximately 7,500 persons, employs more black people in that one hospital than all of North American Rockwell; my question to you is: Since you are a member of the law field, would that indicate to you that that is prima facie evidence of discrimination at North American?

Mr. NAPIER. Oh, yes; in addition to the fact that you can just scan the board in terms of any higher classification and find the total absence of black employees. As a matter of fact, really impressive prima facie evidence is the fact that those that are there are primarily concentrated in lower job classifications, in the culinary area and the janitorial area, and there is almost a total absence of minorities in the higher job classifications, as a matter of fact, in the total higher hierarchy.

Mr. CLAY. To your knowledge, has any supervisor or administrator at the company ever been disciplined for discriminating against any minority?

Mr. NAPIER. No. As a matter of fact, one of the vice presidents of the company talked about the fact that one had been disciplined; but what we found out was that this particular guy was at L.A.D. division, and they got rid of him, and they simply sent him over to the Space Division; and they somehow brought him back into the company and he was hidden in the company until recently. That same person who filed a complaint found him again, and they have not gotten rid of him yet. But they were bragging about the fact that they did discipline one guy in that big mammouth corporation, and, yet, he was hidden.

He submitted his termination papers, but somehow they brought him back into the corporation, because it is evident these people don't want to get rid of him or any other people, and it shows a basic lack of good faith; and I think there is a need for an agency to, in fact, hold their hands over their head. Because they are not responding in good faith. They could have gone ahead and had a considerable amount of improvement in the equal opportunity area without the necessity of government agency. I am all for the absence of so-called hands over people's heads; but I think the fact that North American dramatized the fact they were not exercising good faith in this matter, I think, has an absolute necessity for agencies to in fact issue cease and desist orders so as to assure that black people who are citizens like other people are in fact assured of a basic opportunity to enjoy life like they are.

Mr. CLAY. One final question. You stated the purpose of the Black Workers Association was to make the public aware of the difficulties the black people have in getting employed and getting promoted at the company.

Would you tell this committee what effect it would have on the operations of that company if all of the members of the Black Workers Association got sick and laid off a couple of weeks?

Mr. NAPIER. There would not be very many black people there; that's for sure.

Mr. CLAY. Would they be producing any Minutemen?

Mr. NAPIER. It will have some effect. The unfortunate thing, though, is that if all of the black employees were to get sick or, in fact, exercise some kind of strike technique, since they are concentrated in the lower classifications the best of what would happen is that the floors would not get swept, and that is the unfortunate thing.

Mr. CLAY. Of course, in that maintenance department where there are 29, it would happen.

Mr. NAPIER. Yes, I am sure that the executives would be extremely sensitive to that, of the floors not being swept.

I might mention for the record here, and I think it should be put into the record, that the Black Workers Association recently discovered a confidential report prepared by the North American Rockwell Corp., which intended to, in fact, indict all of the Black Workers Association. They got all kinds of information from police departments and everything else, and tried to associate them with all sorts of activities; and I will make this report available. I would certainly like to put it into the hands of Congressman Hawkins and have him at least see how the corporation has been operating in some instances. I think there is absolutely no reason for this report, and I don't particularly care what you do; the point is that I am convinced that this corporation has, in fact, breached its good faith by this report.

The report carries innuendos about the relationship of most, that they were Socialists, SDS members, and everything else. They also destroyed our presentation and everything. This report was to me a basic violation of our constitutional rights, both individually and collectively; and I would like to have that report at least mentioned in the record but not necessarily the contents included, until we can hear what the corporation is going to do about the report. And if at that time they do not do anything about it, I think the whole public should know about the contents of the report.

Mr. DENT. It does violate known existing laws. It also violates the Labor Relations Act in making a concerted effort on the part of the employees; and I am sure Mr. Hawkins will accept the report, and I am also sure he will let me see it.

Mr. HAWKINS. Mr. Chairman, also for the sake of the record I hope it is not too hot; this police department has been making so many reports recently that I have been looking for my name and Brother Clay's name. He has been in the city for 2 days.

In connection with this matter, which was called to my attention by the Black Workers Association, I have carried on correspondence with the Secretary of Defense, with the Los Angeles Chamber of Commerce, and with the president of North American, requesting detailed information on some of the statements that have been made, many of which have been repeated here this morning by Mr. Napier.

I would like to have this correspondence of mine inserted into the record and have the record kept open for any replies that any of these groups would like to have available to them to answer some of the charges; because I think that if North American has a defense, that it should be able to answer some of the statements that have been made. I think the Secretary of Defense certainly should be able to defend North American or at least to get the information.

If it is acceptable, Mr. Chairman, I would like to have my correspondence inserted in the record at this point.

Mr. DENT. Without objection, your correspondence will be inserted in the record, and the record will be kept open until the last moment for filing of the report and for filing the answers to your inquiries. They will be made a part of the record; and, also, the lack of any answer to your inquiry will also be noted.

Mr. HAWKINS. Thank you.

Mr. DENT. At this point I would also like to note for the record that North American Rockwell has its head in California and the tail out in Pittsburgh. I come from Pittsburgh, and I have known Colonel Rockwell over many, many years. I will instruct the staff at this point to let me have the testimony of this morning so that I can turn it over to Colonel Rockwell. Many times the top men in these organizations never get to know exactly what is going on. Having known him for a long time, I can say at least he always gave a very attentive ear and has assisted in affirmative legislation which has taken place over the last several decades. I think he would be interested in these statements which you have so clearly tabulated for this committee this morning.

Mr. NAPIER. Sir, I certainly hope he will lend an ear.

Mr. DENT. On behalf of this committee, then, if there are no further questions, I would like to thank Mr. Napier for his attendance here this morning, and we certainly appreciate your coming here.

Mr. NAPIER. You are certainly welcome.

Mr. DENT. The next witness is Mr. Earl Raines, the executive secretary of the NAACP.

Mr. Raines, welcome to the committee. Do you have a prepared statement that you want to give us?

Mr. RAINES. Yes.

Mr. DENT. Mr. Raines, for the purpose of conserving time in giving your viewpoints and your understanding to us, I will propose that the entire statement as it is presented be made a part of the record at this time, and you may proceed as you want by analyzing it and summarizing it as you go along.

Mr. RAINES. Yes, sir.

STATEMENT OF EARL RAINES, EXECUTIVE SECRETARY, NAACP

Mr. RAINES. My name is Earl E. Raines, Sr. I am executive secretary of the local Los Angeles Branch of the NAACP.

We are concerned primarily with the discrimination in the entertainment industry, although discrimination is not limited to that particular industry. I have a particular interest in the entertainment industry in addition to my duties with the NAACP, I am a professional musician. I am a member of Musicians Union Local 47. I have been a member of the Washington, D.C., Local No. 161, and New York Local No. 802. I have been trained privately at Fisk University, New York College of Music, U.S. Army Band training unit, Fort Dix, N.J.

My experience has been that of an arranger, performer, band leader, church and choral music director, and a freelance musician. Presently I am on the music staff of one of the largest churches in Los Angeles and I am the music director/conductor of the Angel City Symphony Orchestra.

The history of discrimination in the entertainment industry has not been painted as bleak as it should have been, because traditionally black performers have been noted to perform and particularly for the amusement of white Americans, and, as a result, traditionally we have been foreclosed from the high-paying jobs in the music industry.

It is true that we know of Cab Calloway, Duke Ellington, Lionel Hampton, and such people. But these people worked within the framework of a segregated society, and they were limited as far as making good money is concerned.

I address myself to the jobs in the entertainment industry, and I concern myself with the jobs in the radio, television, movie industries, and industries such as that. In the history of the music industry, I note here the discrepancies between the music which is created by the black man and the money which is made by the white performers utilizing the same songs and the same creations.

I address myself to the fact that it has been 31 years since Marion Anderson was barred from singing in Constitution Hall in Washington, D.C., by the Daughters of the American Revolution because she was black.

We have come far, but not far enough. Miss Anderson was the first black to sing with the Metropolitan Opera, but we are not too happy about that, because by that time she had passed the peak of her performing ability. She was hired after too long and much too late.

We find that the black artists such as Roland Hayes and Marion Anderson and Dorothy Maynard and many of the others found it necessary to earn a living giving recitals in the local colleges and schools and churches.

Because of the racism that existed in America at that time the world could not share the beauty of this music by quality recordings of those performances with reputable orchestras.

With conditions as they existed at that time, parents were wise to persuade their children against pursuing serious music as a profession. My parents did also. Many of my peers chose an instrument which could be used in jazz rather than in serious music. Black string players, if there were any, had to teach or get their experience with other black players, if they could find them. In the South this was not too prevalent. During this time no black people conducted symphony orchestras nor did any black people play in symphony orchestras.

Now, that pretty much sets the theme for what I want to talk about today. We cannot detect a pattern which indicates that racism does not continue to permeate the entertainment industry.

In Los Angeles we have a situation which is appalling. Approximately 1,100 blacks belong to Musicians Union Local 47. This is a directory of this local. The names are printed very small, because out of a total there are about 14,000 or 15,000 members in this book.

Now, some will say this is a very small number, and I agree. Because if there has been a pattern of discrimination existing in a profession, there is not much ambition to join a profession if there is not much hope that the doors will be open to you.

Going back to 1953 or prior to 1953, there were two locals in Los Angeles, and all over the United States, as a matter of fact. There

was a white local and a black local. The white local was local 47. It was segregated. The black local was local 767. It, too, was segregated.

During the years of the early 1950's, you are aware that Hollywood was the film capital of the world. More movies were made here than anyplace in the world. But, of course, that has passed to some extent, because they have begun making movies overseas.

Traditionally, all of the movie industry and the entertainment industry had their dealings with local No. 47, which was a white local. Then, later, the unions were merged, and the black locals all over the United States were phased out. The last black local that I recall was in Washington, D.C., around 1962. It, too, was phased out into local No. 161. But since the industry had always dealt with local No. 47, it had not hired any black players. It continues to do so today on a very limited basis.

Now, every time you turn your radio on or walk down the street, you can hear the sounds of music emanating all around from the stupid singing commercials that we hear on television and radio to the ding, ding, dong of NBC chimes, music is involved; and in this music, the blacks are systematically excluded in the mainstream of American music.

Thousands of recordings are made daily. Hundreds of movies and television shows are made daily. Tens of thousands of these commercials are made daily. And blacks are excluded as players, conductors, music directors, arrangers, and so on. They speak of qualification. They speak that one must be qualified. Well, we know the qualification of whites is gained by experience.

If the doors of experience have always been closed to one because of color, how does one become qualified; no matter how much study he does.

In the case of black people, they must be overly qualified. This is as a result of consistent racism that has existed in America. I indicated that I am the conductor of an orchestra, the Angel City Symphony Orchestra. In this orchestra I have 13 of the most talented black nonunion musicians in Los Angeles. These black kids range in age from 12 to 17, and they have won every award from local high schools that local high schools can offer.

White professional musicians come and rehearse for performances with our orchestra as regular members, and they insist these performers master their instruments. But when I approach the parents of these youngsters about the possibility of getting these kids into the union, they say they see no point in paying the high initiation fees and the high dues when there is no guarantee that their children will be hired on the basis of skill rather than being denied on the basis of color.

I have to agree with these parents. But I look forward to the day when this condition may not exist any more.

Now, here is the problem. The Musicians Union Local No. 47 was confronted with the problem of an imbalance on March 23 when 114 of us stormed a regular meeting and demanded the union do something about it.

The union maintains it is not a hiring hall and refers no musicians to jobs. In practice, however, this is what happens. Film studios, radio, and so on needs a musician. It contacts the union. The union will, in turn, contact a contractor or a hiring agent or refer the studio to a contractor who is in another union. The contractor, so says the union,

acts as an agent for the studio. The union requires a contractor to secure players when more than 12 players perform for any occasion.

The contractors are and have been traditionally accustomed to dealing with people they know. Now, since all of the contractors for the studios, for radio-TV industry are white, blacks are rarely ever hired for any of these higher-paying jobs.

The union claims no control over the contractors. The employers and orchestra leaders say they have no control over the contractors. They, the contractors, do the hiring, and they can and do hire whom they wish.

The contractors say they are just doing the job for the leaders with no concern for color or race. Meanwhile, the beat goes on, and the beat falls on the head of the underemployed and nonemployed black musician.

On April 9, approximately 150 black musicians were joined by officials of the NAACP, Urban League, Southern Christian Leadership Conference, in a picket line outside of the Music Center. The protest was against the Academy Awards orchestra. The orchestra was composed of nearly 50 players—three of whom were black.

Prior to 1964, when Sidney Poitier won the Oscar award, there were none. After 1965 there was one. The Academy proudly points to a 300-percent increase in the hiring of black musicians in 1970. This is the first time we have picketed, and we promise it will not be the last.

The NAACP, as part of its never-ceasing fight to rid this Nation of bias in all areas, makes the following observations and recommendations:

The Federal Government should examine the hiring practices of the entertainment industry in the same manner as it did with the recent EEOC hearings directed against the craft unions. The hearings did not include any discussion or concern toward musicians. Our office was not contacted when the hearings took place; therefore, we had no opportunity to present testimony as we have been able to do this time.

Regarding the movie industry, there is concern by the NAACP that the motion picture industry employment practices in Los Angeles violates title VII of the Civil Rights Act of 1964 in the hiring of musicians.

Secondly, little difficulty could be found linking the movie industry with interstate commerce. Movies made in Hollywood certainly will be shown in New York, and in this light the Federal Government would have a significant interest to see that no discrimination exists in hiring.

Regarding the radio and TV industry, there is no question but that renewal of licenses are predicated on FCC approval. The FCC should examine the hiring practices of this industry and refuse to grant renewal of a license if substantial evidence is not present to reflect nondiscriminatory practices in hiring musicians in all categories and classes, including black union contractors.

Musicians Union Local No. 47 should be approached by the EEOC by negotiations, and by persuasion of other means to encourage the union to institute a policy or relationship with the industry which would assure a more meaningful participation in the mainstream of higher-paying jobs for blacks.

The union has the power to refuse to permit any musician to work for any organization at any time. The union has a most effective tool: the "Do Not Perform With" list. It is part of the union newspaper which comes out. There is a list which for one reason or another the union will say to its members, "Do not perform with this organization."

Organizations have been known to go out of business because of this, pressure. This device should be used by the union to insure fair employment practices for all of its 14,000 members.

I hope that the General Subcommittee on Labor will concur with these observations and recommendations and will use your influence to seek implementation of fair employment practices in this entertainment industry. As the present administration has promised us: All we want is a piece of the action. There is enough of it for everybody.

Thank you very much.

Chairman DENT. Thank you very much, Mr. Raines.

As time goes on and we get deeper and deeper into these serious problems in this day and age, sometimes I wonder if we are not overlooking something in placing so much emphasis upon definition of discrimination, which sometimes exists too strongly, maybe, on the definition of de jure and de facto. Maybe we ought to forget both Latin terms and come up with a very plain simple term and say "in facto" segregation or discrimination.

You spoke of the early story of the two Locals—767 being a black local and 47 being a white local. I remember distinctly one of the largest labor organizations in the country, situated in New York City, with similar discrimination; but its discrimination was placed more on ethnic background. Until the turn of the century when a great number of Italians came to America and were very proficient in that particular trade craft, they just could not keep them from following that particular line of activity, and they started taking them into their union.

They created a separate and distinct—and it is still in existence today—a large union made up only of Italian members. And that is as there is today what you might call token interchange of membership as far as that is concerned. There is little change in the procedure, because it happens to be in a State where there is no de jure discrimination; but, certainly, there is de facto.

Mr. Hawkins has made great contributions in this area as a member of my committee from his first day in Congress and in my mind one of the outstanding and little-heralded members of the fraternity having unabiding interest in this subject. He has been joined by our friends Mr. Stokes and Mr. Clay. It might interest the others to know that my committee is not segregated either de jure or de facto or "in facto," because of the four black members on the full committee all are on my subcommittee. I don't know whether that is a compliment to me or they are trying to tell me something. But when it comes to emphasis of welfare in this great country of ours and the problems of bread and butter, which is the area that our committee operates in, then I can always count on at least the four members and there is no question or doubt that they are doing these things for the people and I mean the little people of this country. Regarding the area that you speak of, it is a peculiar thing, isn't it, that since we have passed the

act in 1964, that we have gotten into little area of desegregating in the entertainment industry, and that all of a sudden from out of somewhere have come the greatest number of new and talented entertainers in TV, radio, movies, of the black race.

Mr. RAINES. That's true.

Mr. DENT. Out of almost nonexisting public image we now find ourselves, each of us, admitting that the greatest entertainers today come from those who just a few years ago were not recognized as entertainers. Therefore, this is an area that can be very deeply investigated and can effect a very profound, in my opinion, a very profound impression upon the rest of America and its people; because they are daily exposed. And Rockwell and the other industrial segregational problems are little known by people because they do not come to the front, they do not come into a position of being seen and heard.

But if we can in any way influence in this particular area, we will open up, I believe, a great new horizon for all of the black people and all of the segregated industries and other activities in the country, because by proving that they can take their place on an equal basis and status, that will, in my opinion, engender a new type of understanding amongst the people. I find little people are much the same whether they come from ethnic backgrounds such as mine or whether they come from other backgrounds that are racially different in color or a background of any kind; that little people can work pretty well shoulder to shoulder and do the job; and now we have got to reach into this secondary stage. And to do that in this particular area, this might be one of the most important areas for us to make an effort in.

Mr. RAINES. Mr. Chairman, in conjunction with that, I have in my hand what is called a price schedule issued by local 47 of the American Federation of Musicians. To examine this price schedule, it is a scale describing what is the minimum a professional musician may make at any particular time. And it defines how many hours, days, and things of that nature; and you would be amazed to see the higher scales that are involved here. This is probably one of the things that has contributed to the decline of big bands. But at the same time, it is the thing that we are concerned with getting our people into.

And since I have been a professional musician, I know the situation very well in the back of my mind. I know very well what is involved in it. This is why I brought the testimony to you today, with the hope that something will be done.

I suspect that if pressure is brought on local 47 and the other locals around the United States, I suspect they will do it on a voluntary basis; but, you see, no one has ever bothered to do that. This is the first time we have ever picketed the Academy Awards, and, of course, it will not be the last time, if it is necessary.

Mr. DENT. I want to thank you very, very kindly for coming here this morning and giving us your statement.

Mr. Hawkins.

Mr. HAWKINS. Mr. Raines has done such an excellent job, I don't think there is really too much left unsaid. I notice, however, Mr. Chairman, that among his recommendations there seems to me that one in particular very specifically is not now being implemented and that is the No. 1 recommendation made on page 7 in which Mr. Raines says that the Federal Government should examine the hiring practices of the entertainment industry.

I think I can agree with him on that, and, for that reason, I will offer the motion that this committee request the Equal Employment Opportunity Commission to investigate the entertainment industry, starting in the Los Angeles area, and, of course, keeping in mind that in the event that they fail to initiate such an investigation, this committee still has the authority to do so.

Mr. DENT. I want the record to show that the suggestion made by the gentleman from California will be carried out by the staff of this committee as soon as we get back to Washington.

Mr. HAWKINS. Thank you.

Mr. RAINES. Thank you very much.

Mr. DENT. Mr. Stokes.

Mr. STOKES. Mr. Chairman, I don't have any questions, but I certainly appreciate the very fine testimony Mr. Raines has given us and his enlightenment with the reference to the problems that do confront black musicians, and I certainly thank him for his testimony.

Mr. DENT. Mr. Clay.

Mr. CLAY. I only have one question. With reference to the contractor as hiring agency for the local, has a suit ever been filed with the NLRB to establish the fact that this might be a violation or an unfair labor practice?

Mr. RAINES. There was a problem several years ago at which time the union was in control of contractors. The union told the contractors what to do and what not to do; and in a relationship that had nothing to do with race, I think there was some action brought with the NLRB to sever the control over the contractors; and now the contractors operate independently from the local, so the local says. But, in practice, it is not really that way, because the union can put its finger on the contractor at any time and tell him, "You should concern yourself with hiring more minorities; otherwise, you are not a contractor." The union has never done this, and, to be candid, when we brought the problem to the administration, to the union officials, they said, "Oh, my goodness, the entertainment industry is bad for the white people, too. It's bad for everybody."

Mr. CLAY. Well, has any attempt been made with the NLRB to also knock this out?

Mr. RAINES. No. We are searching for ways to move within this area.

Mr. CLAY. Who decides who the contractor will be? The union?

Mr. RAINES. The union has to approve of every contractor. The employer, the movie or film studio, if it does not have a contractor working for him who is also a union musician, it will contact the union to get one. The union has to approve of the contractor. In order to be a contractor, you have to fulfill certain qualifications. So they do have control over the contractor.

Mr. CLAY. They do not have a connection between the union or the contractor.

Mr. RAINES. Of course not; the contractor has to be a union musician. He has to follow the established patterns put out by the union and he has a requirement that before a certain number of players may be engaged, a contractor has to be hired. The union requires a contractor to do the hiring of the musicians, and the musicians are under the jurisdiction and control of the contractor while they are so engaged.

Mr. CLAY. Well, with my limited knowledge, I would think that you might win such a suit, and you might also force the union to give back all of the union dues to all black members over a certain period of time; and such a threat might make them change the existing practices.

Mr. RAINES. I think that might be true.

Mr. CLAY. No further questions.

Mr. DENT. Again, thank you very much, Mr. Raines.

Mr. RAINES. Thank you.

(Mr. Raines prepared testimony follows:)

TESTIMONY OF EARL E. RAINES, SR., EXECUTIVE SECRETARY, LOS ANGELES BRANCH, NAACP

Mr. Chairman and members of the committee, my name is Earl E. Raines, Sr. and I am Executive Secretary of Los Angeles Branch NAACP. I wish to thank the Committee for this opportunity to present testimony on the patterns of racial discrimination in the area of job opportunities for minorities, and also to make recommendations for the elimination of such practices especially in areas where the federal government has an interest.

Since 1909 the NAACP has been in the forefront of equal opportunities for black people in this nation. We have instituted law suits, direct action (picketing) negotiation and moral persuasion to eliminate every aspect of discrimination in America.

We have seen many gains and many set backs in many areas. While there are a significant number of areas in which discrimination exists. My testimony will deal with one significant aspect in which too little attention has been focused. This is the entertainment industry. In this connection, a definition should be made with reference to the use of the word "minorities." The word "minority" has a connotation to indicate all persons who are not White Americans. I do not use this connotation—I refer specifically to Black People, Negroes, Afro-American, Colored. This distinction is necessary because traditionally many of the other minorities have been classified as white.

I am a professional musician, a member of Musicians Union Local #47. I have been trained privately, at Fisk University; New York College of Music; U.S. Army Band Training Unit; Fort Dix, N.J. My experience has been that of an arranger, performer, band leader with the U.S. Army; Church and Choral Music Director, free lance musician. Presently I am on the music staff of one of the largest churches in Los Angeles and Music Director-Conductor of the Angel City Symphony Orchestra. A community Orchestra based in Los Angeles.

HISTORY

Traditionally the black musician has been relegated to the status in the entertainment industry as a creator of a certain type of music—initially, it was jazz. Later it was the blues. Later came rock and roll. It was this latter type of music that caught the eye and ear of an eager public. Record companies which were white owned, classified this music as "ethnic," "race" and later as "rhythm and blues." It ceased being "ethnic and race" music when white performers began to use it. Performers such as Elvis Presley came out with "Hound Dog" and Bill Haley came out with "Shake-Rattle and Roll." Both of these tunes had been recorded years earlier by black artists and enjoyed by the black community. Because of the prevailing conditions of discrimination and racism in America in the late forties and early fifties black people were not able to project their creations outside their own communities. Black people did not own any record companies, publishing houses, movies, radio stations, nor T.V. stations. In the area of performance blacks were relegated to the typical one-night-stand all over the south.

White performers, playing our tunes played to plush houses, sold all the records and made all the money.

In the area of jazz, we created sounds in which we excelled. We developed fine bandleaders, composers, arrangers and performers. We find that a black bandleader Jimmy Forrest wrote and recorded "Night Train." We played it

and loved it. Jimmy could never get his tune pushed on the white dominated airways or pushed by the white record companies. However, when white bandleader Buddy Morrow recorded the tune, Buddy was an overnight success because of it.

It is appalling when we think of the black talent wasted by the discrimination existing in America which has kept this talent from the mainstream of the entertainment industry.

It has been 31 years since Marion Anderson was barred from singing in Constitution Hall in Washington, D.C., by the DAR because she was black. Since that time we have not come far enough for rejoicing. While it is true, Miss Anderson was the first black to sing with the Metropolitan Opera Company we find little to rejoice. She was hired after too long and much too late. Black artists such as Roland Hayes found it necessary to earn a living giving recitals in black churches and colleges. The world could not share this talent through the airways and equality recordings because of America's racism.

With conditions existing as they did parents were wise to persuade their children against pursuing serious music as a profession. Many of my peers chose an instrument which could be used in jazz rather than the serious music. Black string players were relegated to teaching jobs—the only experience to be obtained was in string quartets. No black people conducted any symphony orchestras. No black people played with symphony orchestras.

The foregoing conditions have set the theme for my discussion today.

TODAY

Today, we have advanced far in the area of jazz and classical music, but we have done so as individuals and the number of individuals are so small we cannot detect a pattern which indicates that racism does not continue to permeate the entertainment industry.

In Los Angeles we have a situation which is appalling. Approximately 1100 blacks belong to Musicians Union Local 47. This number is probaly ⅓ the number of players who are qualified to join and who would join if they were able to find work. The Recording Industry, Films, Radio and T.V. always secured its musicians from Local 47 in Hollywood, which until 1953 was a white segregated local. Blacks were members of another segregated local #767. The locals were merged in 1953 yet the industry having never employed black musicians did not begin in 1953 and today does so on a very limited basis.

THE PROBLEM

The Musicians Union Local 47, when confronted with the problems of an imbalance in employment takes no blame. The union maintains it is not a hiring hall and refers no musicians to jobs. In practice however if a studio needs musicians it will contact the union, the union will in turn contact a "contractor" (hiring agent) or refer the studio to a contractor. The contractor (so says the union) acts as agent for the studio. The union requires a contractor to secure players when more than 12 players are to perform. The contractors are and have been traditionally accustomed to dealing with people they know. Since all of the contractors for the studios, movie companies, radio-t.v. have always been white, blacks are rarely hired for the high paying jobs in these industries. The union claims no control over the contractors. The employers and leaders say they have no control over the contractors. They, the contractors do the hiring, and they can and do hire whom they wish. The contractors say they are just doing a job for the leaders with no concern for color or race. Meanwhile the beat goes on and the beat falls on the head of the under-employed and non-employed black musician.

On April 9, 1970 approximately 150 black musicians were joined by officials of NAACP Urban League Southern Christian Leadership Conference, in a picket line outside the Music Center. The protest was against the Academy Awards Orchestra. This orchestra was composed of nearly 50 players—3 of whom were black.

Prior to 1964 there were none. After 1965 there was one. The Academy points to a 300 percent increase in the hiring of black musicians in 1970. This is the first time we have picketed. It promises not to be the last.

RECOMMENDATIONS

The NAACP as part of its never ceasing fight to rid this nation of bias in all areas, makes the following observations and recommendations:

(1) The Federal Government should examine the hiring practices of the entertainment industry in the same manner as it did with the recent EEOC Hearings directed towards the craft unions. The hearings did not include any discussion or concern towards musicians.

(2) Regarding the Movie Industry: There is concern by NAACP that the Motion Picture Industry employment practices in Los Angeles violates Title VII of the Civil Rights Act of 1964 in the hiring of musicians. Secondly, little difficulty could be found linking the Movie Industry with interstate commerce. A movie made in Hollywood, certainly will be shown in New York. In this light the Federal Government would have a significant interest to see that no discrimination exists in hiring.

(3) Regarding the Radio and T.V. Industry: There is no question but that renewal of licenses are predicated on Federal Communication Commission approval. The F.C.C. should examine the hiring practices of this industry and refuse to grant a renewal of a license if substantial evidence is not present to reflect non-discriminationatory practices in hiring musicians in all categories and classes including black union contractors.

(4) The Musicians Union Local 47 should be approached by the EEOC and by negotiation and persuasion or other means, encourage the union to institute a policy or relationship with the industry which would assure a more meaningful participation in the mainstream of high paying jobs by blacks. The union has the power to refuse to permit any musician to work for any organization at any time. The union has a most effective tool: The "do not perform with" list. With this edict no union musician may perform with that employer until the union says so. Employers have been known to bow to the pressure of the musicians union. These devices should be used to assure fair employment practices for all its members.

We hope that the General Subcommittee on Labor will concur with these observations and will use all its influence to seek the implementation of the recommendations I have made here today.

As the present administration promised us: All we want is a piece of the action, there is enough for everybody. Thank you very much.

STATEMENT OF ALEX NORMAN, DIRECTOR OF URBAN AFFAIRS AT UCLA

Mr. DENT. The next witness is Alex Norman, Director of Urban Affairs at UCLA. Mr. Norman, welcome to the committee.

Mr. NORMAN. Thank you.

Mr. DENT. I might announce the committee is going to work straight through. Some of the members want to get back to Washington. The witness that is scheduled for this afternoon, Mr. Morales, will be on immediately following your presentation.

Mr. NORMAN. Thank you, Mr. Chairman, members of the committee.

I do not have an opening statement. In the interest of time, what I would like to do is simply qualify myself. For those of you who did not get the introduction, I am Alex Norman and I am the director of the department of urban affairs at UCLA. That department has the main responsibility of relating the university's resources to the community particularly in those areas that represent urban crisis so we deal a great deal with race and poverty and employment and recently with pollution and other environmental conditions. I formerly was an investigation supervisor for the Equal Employment Opportunity Commission and it was within that context that my knowledge of some of the discrimination problems in this area was enhanced.

During the 2-year period with the Commission, I have found that employment discrimination did exist mainly in the large manufacturer or the large industries of which the aerospace business, insurance, and banking were the major functions, as well as the movie industry. We found at that time that even though there were cases of discrimination based on race, sex, national origin, religion, that by far the more crippling cases of discrimination were against blacks and the Spanish-speaking Americans. This was consistent in both the recruiting, upgrading, hiring, transfers, and terminations. I think the only areas in which we found that there had not been any discrimination was in recalls and that was mainly because nobody was on recall to the various industries.

During that time, I became very familiar with both the investigation and the conciliation procedures and also the court filings under 706 of the 1964 Civil Rights Act. Since that time, I have been with the university, which is a different employment sector, but I found the problems are no different, that the same problems of discrimination that existed when I was investigating private industry are very similar when we deal with the universities that are exempt under the title. That, I think, is the only opening statement that I would like to make and then, I would be happy to respond to any questions that the members of the committee may direct, at this point.

Mr. DENT. I might note that the Hawkins bill has as one of its prime objectives the elimination of the separation of authority. If the bill succeeds in passing the Congress, the areas that you are talking about now will be covered by the act in all its provisions, education, and everything else, education, public employees, National, State and local employees. Unless something is done in that area, we will always have a situation that is out of balance because you cannot attack a serious problem in the private sector without doing the same in the public sector, in my humble opinion. I think that this legislation is definitely headed and aimed at doing a real job in the next 10 years that we have just started to scratch the surface on the first years. While we have some platform to launch our programs from in the next decade, they are still very weakly structured. That is one of the reasons, as you put your finger on, that we have a separation of administrative authority in the areas of public and private employment. You stated that you find, when you get into the educational field, probably and possibly the same patterns in discrimination as you have found in your former position when you were dealing with the industrial and business sectors of the economy. I think that your testimony will also be very helpful to the committee in making its final decisions and give us some ammunition when it comes to the floor, for defending its position in trying to tie both public and private sectors together under the terms of the law.

I want to thank you for coming here to testify, this morning.

Mr. Hawkins.

Mr. HAWKINS. Mr. Chairman, I think Mr. Norman's statement is most significant because he has worked in the field in connection with the Equal Employment Opportunity Commission activities and occupies a rather strategic position in the field of education, today. In view of the fact that almost 4 million persons are employed in education, obviously the extension of the coverage of the act as contemplated in the pending bill certainly makes it most important.

Mr. Norman, would you say that in dealing with the problem of discrimination, both in the private sector as well as the field of education, that it would be important to give the Commission the power of cease and desist?

Mr. NORMAN. I would say yes.

Mr. HAWKINS. Would you describe, a little bit, some of the inadequacies that you experience in the field and in the Commission, not having such powers?

Mr. NORMAN. Yes, although I think the problem is much more crucial in the public sector because there is no agency that regulates, for instance, hiring on a college campus or on a university campus, high schools or secondary and elementary education. What we have found in the private sector was that the powers of conciliation were purely voluntary and large organizations, large businesses, were taking chances on conciliation, knowing that the process was going to be so time consuming that many of the facts may have been distorted or there might have been cases pending in courts that will allow them a little more stalling time. So the strategy, in effect, was to stall for as long as possible, even where there were facts that would suggest that discrimination had occurred.

There was a lack of power on the part of the Commission which left the Commission without any muscle whatsoever when we found that there were cases where material that we were considering during the investigation was absent from certain files, and so the Commission, having no powers, could not really demand that the respondent produce any of the files or any of the materials. In many of the cases, there was blatant evidence that the Commission's records which included a number of forms or records which would indict the company insofar as discrimination is concerned, were not present in those companies' records even though they were to have kept rather sophisticated records, some to the extent of having cross-files in three areas. The members of the staff, felt that it was necessary to give the investigators much more of a club. Otherwise, it was simply a matter of holding a conversation with the respondent who had a staff available that was larger than the staff of the Commission for investigation simply to handle the charges of discrimination that flowed into the company.

In the case of the public sector, it is even more difficult because the members (the employees) really do not have a recourse. To give you some example of that, we recently, in San Diego (all of the black faculty at the University of California) held a meeting and the one thing that came out of the meeting was that employmentwise, no matter where you were represented in the hierarchy of the university, whether you were a faculty member or administrator or regular nonacademic employee, somewhere along the line, you are going to be faced with some type of discrimination as you begin to view your qualifications with somebody else's, and then compare these with the qualifications that the institution has set up for you.

So that if the Commission had powers to investigate discrimination within the public sector as well as the private sector, I think that that would make a great deal of difference, I would think, in the eyes both of the employers and in the eyes of the staff of the Commission.

Mr. HAWKINS. Mr. Norman, for 17 years, I fought for a State FEPC and in 8 years, as the chairman has so generously indicated, I have been fighting for a stronger Federal Equal Employment Opportunity Commission. Now, during all of this time, the opposition said that we should not legislate, that we should leave it to education. Now, you are indicating that legislators are sometimes racist, too, and if we are going to leave it to educators, in effect, you are saying that we certainly are in trouble.

Mr. NORMAN. I think you are in worse trouble leaving it to the educators.

To give you an example, at USLA——

Mr. HAWKINS. I hope not.

Mr. NORMAN (continuing). There are black faculty and during a crisis in which the black faculty wanted to confront the administration with its employment practices particularly as it related to black people, it was suggested that all the black faculty not teach their courses and what we found was there were only eight black faculty teaching out of 28 assignments and so, many times, the assignment to a faculty position is purely for purposes of show and the person is actually not in a classroom at all; and eight out of 28, we thought, was a rather low figure considering that there were over 3,000 faculty positions at the university.

Mr. DENT. You are making progress. That is the way the Pennsylvania Railroad used to run. You make any cousin a vice president and they never do any work.

Mr. HAWKINS. I know Mr. Norman has to get back to the university. I will forego any more questions.

Mr. DENT. Mr. Stokes.

Mr. STOKES. First, Mr. Hawkins can perhaps clear this up for me. Mr. Hawkins, does your bill eliminate existing exemptions for both the public sector and the educational sector?

Mr. HAWKINS. It strikes the provision that exempts educational institutions.

Mr. STOKES. I see.

Mr. HAWKINS. It is not in this specific bill. It is in a companion bill which we have indicated will be amended into this bill. There has been public notice that the other bill on which we have had some testimony would be included in the pending bill.

Mr. STOKES. That is good. That clarifies that point.

Mr. DENT. You also carry full subpena powers in that bill; do you not?

Mr. HAWKINS. Absolutely.

Mr. DENT. That will take care of the records disappearing.

Mr. NORMAN. Let me say, then, that I do not guess I can emphasize too greatly how important such a bill is because in an informal survey that some members of the minority faculty have taken just on the State colleges alone, we found that out of 10,000 faculty positions within the State, I think there were something like 138 Spanish-speaking and 135 black out of 10,000 positions. We do not know how accurate those figures are but what we feel is an actual head count, a head count of the black people and a head count of the Spanish-speaking people compared to what the State colleges said were the total faculty positions—We do not know what it is on university campuses but I

would guess it is even worse. Outside of Los Angeles and Berkeley, then, the faculty positions among minorities are almost nonexistent.

Mr. STOKES. Let me ask you this, Mr. Norman. As director of the department of urban affairs, exactly what does that entail?

Mr. NORMAN. The director's position is, in the hierarchy of a university, there are deans, and directors, and chairmen, and the director is supposed to be a title that is reserved for an administrator of an institution, research institution or academic institution.

The department is funded by the university's extension, so the State gives no money whatsoever to the department, but through the use of an administrative support grant, the department attempts to involve the university more relevantly in community problems, and so those relevant things we found have more than likely included the minority populations or employment or racism, both racism on the campus as well as racism off the campus.

The other areas are the broad areas of pollution, environmental control, and social welfare education, so it is generally in the area of health, education, and welfare.

Mr. STOKES. Let me ask you this: What kind of receptivity have you had with reference to the allegation by the black faculty that discriminatory practices exist right there within the university?

Mr. NORMAN. Well, we have really not had any receptivity to speak of. What one chancellor is doing at the university is holding an equal employment conference and he is holding this at the suggestion of me and some staff because when I came out to the university, I found that they had a policy of equal employment but it was not operationalized and having come from EEOC, I still represented kind of a cutting edge insofar as employment opportunities were concerned. So, with the personnel training division, we encouraged the chancellor to hold a conference where the people who made the decisions about who got hired were picked so we could, one, expose them to the fact that discrimination did take place on that campus and, secondly, that there were some rather specific things that they could do in order to alleviate those discriminatory practices. So next month, the chancellor will call together all of the members of the departments and will attempt at that point to indoctrinate them as well as himself toward some type of positive action that will bring along some more black and brown and yellow and red faces on the campus and that is the only reception that we have had, so far.

Mr. STOKES. In this capacity do you come into very close contact with the student body itself?

Mr. NORMAN. Yes, with the student body. We have an organization that we call the black caucus. What we have attempted to do is try to include anyone with a black experience in this organization, just to find out what the scope of black problems might be and so we are aware, too, of some of the student problems that are even more crucial than some of the staff problems.

I guess by far the greatest problem is with the lower echelon workers, the hospital workers, the people at the lower grades because there, direct punitive action is taken if they complain, even though there is no one to complain to, so the caucus is kind of representative of a body to which the black employees can complain and, hopefully, get

their problems aired to the administration. So far, that has not really proven successful because most of the people who are attempting to address the administration are hired by the university and there is not too much that employees of the university can do to demand that their employer hire equally.

Mr. STOKES. Thank you very much, sir.

Nothing further, Mr. Chairman.

Mr. DENT. Thank you, Mr. Stokes.

Mr. Clay.

Mr. CLAY No questions, Mr. Chairman.

Mr. DENT. It might interest you to note what would be, in my opinion, the great shift in emphasis and one that would be very helpful in that the NEA has openly endorsed provisions of this act that remove the exemption to educational facilities. I think that that would give us a great boost in trying to pass the bill because in it, it is very worthy to note that there are some changing scenes in the picture of discrimination.

Mr. NORMAN. Good. I am glad to hear that.

Mr. DENT. Any other questions?

[No audible response.]

Thank you very kindly for being with us, Mr. Norman. We appreciate your coming.

Mr. NORMAN. Thank you.

Mr. DENT. The next witness is Dionicio Morales. Did I pronounce it correctly?

Mr. MORALES. That is right.

Mr. DENT. Mr. Morales, we are pleased to have you with us.

Mr. MORALES. Muchas gracias.

Mr. DENT. We appreciate your accommodating the committee in coming down earlier. It gives us the opportunity to get back to Washington.

STATEMENT OF DIONICIO MORALES, EXECUTIVE DIRECTOR, MEXICAN AMERICAN OPPORTUNITY FOUNDATION

Mr. MORALES. I appreciate the opportunity to bring some concerns of the Mexican American community to this honorable committee. I represent the Mexican American Opportunity Foundation which was born out of the need to design manpower programs that would fill the employment opportunity vacuum for the Mexican American. I am here today to reemphasize that the Mexican American has been bypassed and, therefore, cheated as a result of what we think are weakly structured affirmative action programs. You probably know that the Mexican American is the largest minority in this area. It is the largest minority in the State of California, in the County of Los Angeles, in the city of Los Angeles, in the Southwest, but beyond the Mississippi, no one really knows that so, therefore, when things are put together somewhere in the bureaucracy, somehow, the Mexican American does not figure.

Someone asked me the other day, what are the particular characteristics that make our people's problems so different that a whole new approach should be followed. Well, I think some of you in this committee know what a bilingual person is. I think you do, Mr. Dent.

You know what a bilingual, bicultural person is and you know what a monolingual person is, and that is what we are. To a greater degree, we are faced with so many shades of problems, whether it is language or whether it is skin pigmentation. Some Mexican Americans look like Mr. Hawkins and others look like me and some Mexican Americans look like Mr. Stokes and depends how you look, sometimes, so to what degree the color of your skin is sometimes depends on how well accepted you are going to be in a particular employment situation. So in this sense, this committee must be aware of some of the problems that affect the disadvantaged Mexican American community.

We are saying that we are approximately 1 million people of Mexican descent in Greater Los Angeles and that the majority are disadvantaged.

We are also saying that the dilema of those who speak of the problems of employment of the Mexican American is that they often generalize the problem. We have not yet learned from the black community who have kind of nicely pinned down some of the specifics that aggravate their employment situation.

We look at affirmative action programs and say that they get tangled up within the bureaucracy of the various manpower bureaus when we are attempting to put over our plight. Ignoring our efforts to design programs that are meaningful to the Mexican American, there are some uneducated people in Washington, some uneducated manpower representatives who are armed with the Civil Rights Act which, ironically, is frequently used against us and they do all they can to castrate our programs because they say, well, this is for all, this is for all, for every minority, not taking into account those things that affect the Mexican American. So when we write our proposals and submit them through the channels, we are told, "Well, do not use the word, 'Mexican' in your proposals, do not use the word, 'barrio'" which is comparable to "ghetto," because that is forbidden by the Civil Rights Act, so that act sometimes is used against us. This is where the problems lie.

When we get funded in East Los Angeles, we are told, "You are funded to see that some of the manpower problems are resolved within your community," but, on the other hand, we are told, "Do not use the words, 'Mexican' and 'barrio'; do not concentrate exclusively on Mexican Americans. Open your doors to all," which is fine but then we face an ironic situation. So somewhere in this new effort to put teeth in the legislation for employment opportunities for minorities, I would like to see this committee assist the second largest minority in the Nation in bringing home certain facts to the national policymakers.

The situation affecting browns and blacks is often likened to an illness but though both may suffer an illness and suffer hunger, the disease that affects them is different and so must be the nutrition and the treatment.

I bring these points to your committee today because they reflect the inequities by a major employer which is the Federal Government. The Government can hardly continue to justify taking action against major industry, in taking them to task for inequities to minorities in hiring while it sets up the very situations where there is complicated minority involvement in programs which have in a large part contributed to interminority friction and that is what we have in Los Angeles

right now. If the incidence of minority hiring is low in major industry, as we have heard it reported today, it is even lower, in at least as far as the studies are concerned, in city, county, and public service. I will give you a couple of examples, for instance, the Los Angeles Internal Revenue Service and the county of Los Angeles; and yet, if any agency has had contact with Mexican Americans, these agencies of government do.

The county of Los Angeles shows 4 percent of Spanish surnames is the largest Mexican American city in the Nation, second only to Mexico City.

The IRS shows only 2.7, and that is one agency where every Mexican has to account to. So, perhaps the greatest contributing factor to rising hostility—and I want to take this area into account for a moment—between browns and blacks, which is a sensitive situation now in Los Angeles, to a great degree has been the bungling job of the U.S. Government in providing more funds to one minority at the expense of another.

I have conferred with many black leaders on the subject who understand this, who have been very helpful to us in East Los Angeles. I think that this committee should be extremely concerned about this situation. Though I do agree with the black who states that we, the Mexican Americans, have not been as vociferous, therefore, we have received less manpower funding to do what has to be done for our communities, though this is true, the situation has nevertheless brought forth anger from the Mexican American toward the black where at one time, there was a passive or a different relationship, no problem.

Some minority leaders—I was talking to some last Monday night, some people from the black community I was consulting with, talking about resolving this, saying there ought to be 50 percent for the blacks and 50 percent for the Mexican Americans; this might help. This, again, would pose another problem because if a black man represents a population of 720,000 in Los Angelese and the Mexican-American population is 950,000, close to 1 million, there, again, we have another difficult task, I think, for the committee to figure out. But those who read the papers must know that the anger of the Mexican American is compounded by Government inaction and their anger, the Mexican Americans' anger, is just beginning to rise at this time. I hardly need state that the time to correct the situation is now.

Few Mexican Americans, however, would serve notice on those who feel that the answer is to take from one minority to give to another. I think this is no answer because this is disastrous. When I go to Washington, people over there tell me, "Here is the minority pie and it has already been used and there is very little for you." Well, I do not feel that the Mexican American should take from the black community. I think we ought to get the black community and the congressional representatives to help us get more money for the Mexican American. This would get as much reaction on what we are suffering now in East Los Angeles.

We had great hopes, for a while, but then there was the tragedy of the Lincoln Heights situation, the tragedy of the employment program at Lincoln Heights. To the Mexican American, his hope that the emphasis placed on other geographic areas in Los Angeles was now to be placed in the East Los Angeles area, we consider, kind of exited.

I sat in on all of the discussions. I discussed with all of the people from Washington. The U.S. Department of Labor reports $5 million was granted to nine industries to create instant jobs.

We Mexican Americans and those who understand the history of Mexico, those who understand the plight of the Mexican, exploited in California, know that our history is full of deceit, disappointment, and exploitation at the hands of unscrupulous employers. This time, history was replayed, with the Federal Government cast in the role of the producer. You all know that it is a matter of record that that Lincoln Heights situation was a fiasco. Ironically, this was a time that the Federal Government was telling the Mexican American or telling me, a representative of a Mexican American agency, that it could not expand a successful Mexican American on-the-job training program because manpower moneys were now being diverted to such programs as the special impact program and to the JOBS program. "This is tough but we have bigger and better programs."

Of course, what is sadly obvious to almost no one but us is that implementation of new programs should not necessarily mean the disbanding of others. Yet the penchant of Government for doing so is well known especially where I come from. Program guidelines change from one minute to the next. Program refunding is not often granted on the basis of success, only because someone has a new idea. So every time that a new program comes into the picture, we are told, "Here is a new program. Tell us how you think we ought to proceed with it."

For instance, as the JOBS concept has begun to all but completely replace OJT in industry training, we have asked why there were not more Mexican Americans as job trainees in the program and we were told that the employers were dealing with HRD, a State agency which was not in the primary business of recruiting Mexican Americans, and rightly so. They are not, but accept applicants on a first come, first serve basis. The unfortunate fact about this is that few Mexicans patronize HRD centers and the Service Center in East Los Angeles is used as a resource for only a small number of the JOBS contracts.

All of you know that in the history of the Mexican for many years, those who could not speak English had to pay interpreters whenever they wanted to look for a job or were planning to collect an unemployment check, so many of our people shied away from State agencies.

Thus, we Mexican Americans are operating programs that are the proverbial drop in the bucket with respect to our needs, but at least, that drop is kind of wet.

We can show for those for whom we operate. We produce results because of technique and methodology we are using to reach a difficult group.

We often question major industry, for example, about ethnic breakdown within the guidelines of the equal opportunity commitment. They have signs that say, "This is an equal opportunity employer," and we have been told that the information is confidential and must be divulged to Government officials, only. Often in these plants, I do not see visible Mexican Americans, I do not see visible blacks. They will not tell me how many they have. I cannot see them. Yet, industry continues to get a clean slate for compliance in minority employment and they continue to get more money.

Now, recently, we were told that we ought to buy the Philadelphia plan, and when we took a look at it, it did not take into account the needs of the Mexican American but I have got news for you. This time, we are on our toes. We have been able to be heard in time to insure that we are going to have something to say about such a plan for minority employment in the city of Los Angeles, because if a comparable plan to the one used in Philadelphia is introduced to the city of Los Angeles, you had better be sure the Mexican American will have a large input in the planning, administration and participation.

My remarks have made it obvious to the committee that I would respectfully request any congressional action on the following couple of points: One, minority involvement and administration of programs designed for minority members; two, that we make public or we find a way to make public to the general community the fulfillment by employers of their affirmative action commitments by citing ethnic breakdowns periodically, making it known to the community and indicating the revised, if any, recruitment and personnel policies and procedures for minorities.

A third strong recommendation to this committee is that we do not allow continuance of a practice of Government arbitrarily allocating a fixed amount of moneys by area and solving its problems by diverting attention from the blacks and the browns, so pitting one against the other. I want to insist that the needs of each area be met with the guiding philosophy that would involve solution which has not yet reached too many sectors of East Los Angeles.

In conclusion, I would just like to say that much more will be heard from the Mexican American in the 1970's. How much will actually be done about our plight depends on the sensitivity and the empathy of a congressional committee like yours.

Muchas gracias.

Mr. DENT. Thank you, Mr. Morales.

That basic problem is affected by another area of activity that this committee has. We will soon be holding hearings on our minimum wage legislation. You spoke about exploitation. Sometimes in an effort to do what we think or someone thinks is a good thing, we may be creating more damage than the good that we are performing.

I have made a couple trips to the Rio Grande frontier industries. It has come about because of the basic section 807 of the International Trade Agreement. In 1967, the program was initiated along the border by an agreement with the American Government and the Mexican Government and it has within it deeprooted exploitation of the Mexican worker. I find upon this investigation made down there, contrary to the figures given out by other sources, my figures show that 165 industries have moved from the American side of the Rio Grande over to the Mexican side of the Rio Grande. Now, with full knowledge and compliance of the Mexican community, American industry was able to lay off 50,000 workers and transplant that work over to the Mexican side of the Rio Grande where they are paying $3 a day against an average of $3 an hour for the workers that were displaced in this country.

We find that the average wage in Mexico for agricultural workers is about $1.10 a day. We find that in this area, there is an unrestricted migration from the Mexican side into the lower Rio Grande Valley

with Mexican-Americans being discriminated against by the Mexican influx. Under our act, we provide $1.30 an hour for an agricultural employee working in this country. These problems are related to the very subject matter that you are talking about. There is a growing deep-rooted resentment developing in some of the American labor segments because of this type of exploitation.

I talked to the labor leaders and I said, "Why don't you make them pay at least a wage that will allow these people to have more money to put into the economy," which is what the extent of the whole thing is; but as it is, the wages they get are not enough to really add to the total economy. It helps, maybe, the individual worker and his family but by depriving, in many instances, our own Mexican-Americans of a livelihood that is somewhere nearer our wage level.

One question that will be given new consideration in the hearings we are about to start is that maybe we might be increasing the migration of American industry over into both the Canadian side and the Mexican side of our borders. So exploitation sometimes is born of a desire to what some think is a good thing but in the end, it is exploitation. We are exploiting not only the Mexican worker to perform duties and to make goods on our market which do not benefit the consumer because when these goods come back when they have been making $3 a day labor, they are comingled with the American products made by $3 an hour labor and sold to the public at one price.

The whole picture resolves itself down to certain statistics. One of them came out yesterday. That is that the recognized unemployment based upon the actual figures does not take into consideration the attrition by the loss of jobs in the automobile industry, the loss of jobs in the electronics industry of workers who are no longer counted in the employment force although they were working actively until they were severed from the employment force.

They say that unemployment in the United States today is 4.1 and basing the figures on what they are counting, it is the greatest unemployment since the days of the great depression measured against the needs of our country. Unless we do something drastic in this area, the whole fight may be academic because the training programs—and I know this from experience and I know that my colleagues know this from experience, too—often the training programs are not instituted with any definite plan in mind that when that person is trained, there will be a job waiting. We have many persons that have come through training programs that have no more employment than they did when they started the training program and we have spent millions of dollars on the training programs.

So while your fight is one that has to be coordinated between minorities, there are many who do not belong to the minority who are just as seriously affected by those policies that are depriving the minorities of job opportunities, taking jobs away from the so-called majority group.

So the committee has many facets of our whole problem of this industrial complex and our economic growth and economic stability as well as job opportunities and while we know that we must first establish ground rules that when we do and if we ever do come to a position where there is a greater percentage of employment opportuntiy that there will not be discrimination because of racial or ethnic back-

ground. While we have to work on this problem, we are never going to get anywhere until the minorities themselves make up their mind that the minorities have got to work together. They cannot be trying to poach from each other because there is not anything to poach from. They have got to work together so that, in the end, where the opportunity does arise that there is a place to go, there will be an opportunity to do so in a free labor market without the ancient and outmoded discrimination practices. While I am very much disturbed over the whole picture, our interest here today, of course, is trying to wipe out, if we can, those opportunities to discriminate under the law, as it were, or, which is even worse, under precedent.

As I said before and repeat for the record, it should not be too tied down to definitions of "de jure" or "de facto" discrimination, because I find discrimination by precedent sometimes can be even more damaging than that created by law, because there is an opportunity to eliminate that law. But so-called de facto discrimination is caused by the question of individuals' desire to do so rather than anything that we can do by law.

I appreciate the fact that you have the largest minority group of this State and probably over the years, there has been a great deal of misconception as to their position but even so, the discrimination against the black people has been one more of design rather than of habit.

I find from my studies in California that the discrimination is more of habit on the Mexican American while the discrimination on the black has been actually a discrimination by design, by just complete and utter disregard of the rights of human beings. However, this makes no difference when you are looking for a job, whether it comes from one or the other source. The fact that discrimination is there is serious enough for this committee to keep its hearings going and to try to write law that at least will eliminate that discrimination, as far as the committee can see in its wisdom can be eliminated by legal means. In the end, it has to be the society of the whole Nation against segregation and discrimination.

After that observation, I will turn it over to Mr. Hawkins.

Mr. HAWKINS. I certainly agree with the observation.

Mr. Morales, I was quite interested in one phrase that you used and I think possibly it needs a little clarification. You said something about providing more money to one minority group than another. I think that you and I are very familiar with many of the experiences that we have had because we have had to be involved in some struggles together.

Mr. MORALES. True.

Mr. HAWKINS. I think that needs some clarification because there has been a tendency—I think we know this—to believe that the amount of money which is contributed by the Federal Government programs in this area, that the amount of money that was contributed to NAPP and such programs somehow had to be divided between two minority groups and if one minority group got more than the other, then the minority group that did not get as much as the other became hostile sometimes even to the program.

I think it has also been true that in speaking in terms of the number of persons employed in industry, that North American had a cer-

tain number of Spanish-speaking people, a certain number of black people and so on and if one happened to be greater than the other, then the group that had the lesser amount seemed to imply that that company was more friendly to the other group rather than to its group. The same has been true of many of the organizational heads. I know that in fighting for the antipoverty money, it has often been said, Well, the OEO head has to be a Mexican American or a Negro because this other organization has a head that is of the other group.

Do you frankly believe that either one of the groups should be using such percentages, such references, in order to gain any recognition of its own or do you believe that the problem is not one of one minority group against, at the expense of, the other but rather one of obtaining greater recognition more for them as well as for other persons, even other nonminority groups?

I think that if it stands alone that such a phrase like this could be misinterpreted.

Mr. MORALES. It is often misinterpreted and I am glad that you are kind of underlining this dialog. What I have said here today is that the methodology, the technique that we use specifically for the development of an OJT contract for the Mexican American is not the same methodology, not the same technique, motivational technique, that the OJT program uses in the Urban League.

I say that if we are to provide adequate services for minorities, that I do not feel that moneys should be taken away from the Watts agency but that this congressional committee should help the Mexican American community get additional funds because our problems are of a different nature. We are just as hungry as the black but the approach has to be different, so if the approach is going to be different, then the staffing, the inservice training, the guidelines, the procedures, the whole inservice training is different and it has to become administered by a different agency.

When we talk about minorities and we say, this is what Washington is doing to fund minorities in Los Angeles, in all, we found that all the funds were in Watts. That is a bombshell. So in 1965, I went to Washington when there were no agencies serving the Mexican American community providing services for the different types of problems that we face. When I went and asked for OJT funds, they told me, "There is already a program in Los Angeles. It is governed by the Urban League," a black agency. Well, the black agency is over in Watts and East Los Angeles is 12 miles away. This is what I am talking about.

When I asked for a new careers program for Mexican Americans, they said, "You already have one for the community in the OEO." I said, "But that is not the program that is going to fit the tailored needs of the Mexican American," and we had a fight, for a moment, and we won.

When we wanted an apprenticeship program in the worst way for East Los Angeles, we were told, "Never mind. There is a program in Watts. Have your Mexican Americans gone to Watts?" And we protested vehemently and thanks to Congressman Roybal and thanks to you, we were able to get this kind of program to serve the specific needs of Mexican Americans.

This is what I am talking about and I am talking about the things that will prevent pitting one minority against the other. This is my basic concern, that this issue may not be one and I place it before the committee and plead with them to help us do something about this. I hope that I have clarified, it is based on need.

Mr. HAWKINS. Yes; but you would not, let us say in terms of being a little more specific—I think that I understand what you have said—would you use as an argument to get something for the Mexican American community, the fact that the blacks have gotten something for their community or would you, let us say, make application to get funded on the basis of your specific need, apart from this?

Mr. MORALES. It has been that other way around, Congressman. Those in Washington have told me, "You already have a program in Los Angeles."

Mr. HAWKINS. Well now, wait. At that point—I think that is what we are losing a little track of. At that point, would you then, let us say, distinguish that individual then who tells you this as being the main culprit, who would tell you that because there is something in Watts that this should serve the people of the east side of Los Angeles——

Mr. MORALES. My argument was that same argument——

Mr. HAWKINS (continuing). Or would you react by saying, "Well, they have something so we want something, too," or "We want a part of it"? This is my reference.

Mr. MORALES. My argument is the same argument I have given to the committee today. My argument is the argument that justifies the existence of the Mexican American Opportunity Foundation. Its purpose is to design programs that are meaningful and purposeful to the Mexican American with techniques that reach and motivate our people because we can speak in the jargon that they understand. We understand their cultural background and all we are saying is, give us the funds to provide this kind of a tailored program that is meaningful to our people, that will not just be another program, as you said before, that winds up at a dead end.

Mr. DENT. Isn't that exactly what the blacks are trying to do in their program? There should be no controversy as to who gets the money and there should be programs designed to do what would be best for each minority group, regardless of where they are situated.

Mr. MORALES. When one Federal representative tells me, "We have already given some to Watts." This is my answer. This is what you want to hear, I say, "I am not concerned." I say "they need more because they have problems. Give them more money but you find more money somewhere else for us," because, as I said before in my statement, my argument here, it is disastrous and it is explosive when another minority is pitted against another one and it is said, "OK. We have a minority pie that equals so many dollars so if you want some money, we will just slice up the Urban League." That is not the answer. Right.

Mr. HAWKINS. I think you have clarified it. Thank you very much.

Mr. DENT. Mr. Stokes.

Mr. STOKES. Thank you, Mr. Chairman.

There is one area that I would like for you to clarify. Will you tell me if I in any manner misquote you, but I thought that what you said was, due to the bungling job of the United States in providing

more money to one minority than another, that this has caused the anger of Mexican Americans to be turned toward the blacks?

Mr. MORALES. Right.

Mr. STOKES. Is that your statement?

Mr. MORALES. Right. That is right.

Mr. STOKES. Would you concur with my thinking that this would be misdirected anger?

Mr. MORALES. That is right. This is what I have just stated a minute ago.

My mission in East Los Angeles is sitting down with Mr. Mack and Mr. Raines and others with whom we have had a series of meetings. I am on the board of a foundation which is about to develop a program to establish a dialog with the influencemakers in the Mexican-American community and the opinionmakers in the south central because by the time it gets down to the other end of town, there are great distortions and I say these are some of the contributing factors to develop rise of hostility because we do not have any communication between minorities. We do not even have communication with city hall and here we are the largest minority. We are 3 miles away from the city hall of Los Angeles and the only time Mayor Yorty or anybody else comes out to East Los Angeles is the 16th of September and the only time we get down there is to the city hall steps to have a fiesta and that is about the size of it.

My concern here is, when I say "bungling," I mean bungling and I think that it is because the people who appropriate this money do not understand the features that make the problem of the Mexican-American aggravated.

We have not had a chance to speak out. We have not had a chance to say what it is that ails us and we have not been heard by the people who are in the policymaking positions, to understand what we need in order to cope with this unemployment situation that goes as far as the border, as you have said, because no one understands the significance of the border as it relates to the Mexican American.

Mr. STOKES. Well then, I would—from the statement which you have just made, I would think that you would be in concert with or give approval to the statements made by the chairman of our committee that the most effective method whereby the Mexican American, the black American and other Spanish-surnamed groups can best effectuate the total good of all of the minority groups is by virtue of the establishment of some coalition and by working together, we can perhaps alleviate the conditions which are so inimical to each of the groups and so vitally keep all of the respective minority groups out of the mainstream of American life.

Mr. MORALES. As I think that I have said before in my statement, that as the Mexican American population which is 10 million in the Southwest, begins to speak out and begins to establish a dialog with the Congressman Stokes and the rest, I think at that time—we have not spoken out, you see. We have been out here in the shadow, in a way, in the shadow of the black movement. Nobody has heard us out. Most of the time, they have misunderstood what we say and would prefer to pick out the negative instead of the positive. But we have a tremendous amount of capable Mexican-American leaders and we are beginning to make strides but the 1970's will show how effective we shall be.

I want to thank you for letting me talk this much.

Mr. DENT. Mr. Clay may have a question.

Mr. CLAY. I certainly want to commend the gentleman on his statement. I think he has a great deal of knowledge about the structure of this country and I am certain that he knows that in order to either maintain anything or to accomplish anything in this country you either have to have economic power or political power.

When you speak of the great numbers of Mexican Americans living in this area and then you speak of the fact that they live less than 3 miles from city hall and that Mayor Yorty has been unresponsive to the needs of Mexican Americans, that would lead me to question relative to last year's election, did the Mexican Americans support Mayor Yorty for reelection?

Mr. MORALES. Some of us who understood the tremendous meaning of this history-making political development supported a black candidate but here, again, what the black community does not understand and does not know and what the Anglo community does not understand is that the Mexican American is no different than the Anglo. We are topheavy with conservative diehards. We have lilywhites among our group. We have the reactionary. We have the John Birch Mexican American. We have the elite that is still topheavy. But we also—that is why I keep repeating to you—we also have the young, aggressive, vociferous Chicano who is coming up and this is why I say to you that it is the decade of the 1970's when the Mexican American is going to make a showing.

Mr. CLAY. What you are really saying, then, is that you are going to take the advice of some of the black leaders who said that if you want more, you have got to be more vociferous.

Mr. MORALES. I think I made it in my statement very clearly and I am going to give you a copy of it.

Mr. DENT. I would entertain a motion that it be made part of the record.

Mr. HAWKINS. I make a motion that this statement be made part of the record.

Mr. DENT. Without objection, motion granted.

(The statement follows:)

STATEMENT BY DIONICIO MORALES, EXECUTIVE DIRECTOR, MEXICAN AMERICAN OPPORTUNITY FOUNDATION

Distinguished and Honorable members of this subcommittee, the opportunity to place before you these most serious concerns is sincerely appreciated.

My name is Dionicio Morales, I represent the Mexican American Opportunity Foundation which was born out of the need to design manpower programs that would fill the employment opportunity vacuum for the Mexican American.

I am here to re-emphasize that the Mexican American has been by-passed and therefore cheated as a result of weakly structured affirmative action programs.

What are the particular characteristics that make my people's problems so different that a whole now approach must be followed? My people are the bilingual, the bi-cultural and the mono-lingual, all of which comprise various shades of problems whether it is language or the color of their skin.

In this sense this committee must be aware of some of the many problems that affect the disadvantaged Mexican Americans. Mexican Americans total approximately 1,000,000 persons in the greater Los Angeles area. The Majority are disadvantaged.

The dilemma caused by those who speak of the problems of employment of the Mexican American is that they too often generalize about it. Some of us have

not yet learned from the Black who have nationally pinned down the specifics of what aggravates their unemployment situation.

Affirmative action therefor gets tangled up within the bureaucracy of the various manpower bureaus. Ignoring our efforts to design programs that are meaningful to the Mexican American, there are some uneducated manpower representatives armed with the civil rights act, which ironically is frequently used against us, do all they can to castrate the intent of our programs. This to the point that we are not able to state that we intend to recruit and enroll disadvantaged persons from 'barrio' areas in Los Angeles County. Not using specifically the words 'Mexican American', we are forbidden even to use the word 'barrio' which simply designates the areas where our problem exists to its greatest degree.

Somewhere in this new effort to put teeth in the legislation for employment opportunities for minorities, I would like to see this committee assist the second largest minority in the nation in bringing home certain facts to the national policy makers. The situation affecting Brown and Black can be likened to an illness. But though both bodies are ill and both hungry, the disease that affects them is different and so must be the nutrition and the treatment.

I am bringing these points to you today because they reflect the inequities by a major employer which is the Federal Government. Government can hardly continue to justify taking major industry to task for inequities to minorities in hiring while it sets up the very situations that are complicating minority involvement in employment programs and which have in large part contributed to inter-minority friction.

If the incidence of minority hiring is low in major industry, it is even lower, studies prove, in City, County and Government Service. Glaring examples in Los Angeles are the Internal Revenue Service, and the County of Los Angeles. And yet, if any agencies have contact with the Mexican American populace, these agencies of government do. The County shows a 4.7 percentage of Spanish surnamed employees, while the IRS shows only 2.7% and only 1.3½% are in positions to come in contact with the Spanish speaking public.

Perhaps the greatest contributing factor to rising hostility between Browns and Blacks has been the bungling job of the U.S. Government in providing more funds to one minority at the expense of another. This with no attention to the population percentages of minorities in the areas to which programs are assigned.

Though I do agree with those Blacks who state that we, the Mexican Americans have not been as vociferous, therefore, we have received less: though this is true, this situation has nevertheless brought forth anger from the Mexican American toward the Black where at one time there was an indifferent relationship.

Some minority leaders are talking about, thereinafter, 50% for the Blacks and 50% for the Mexican American. This again poses another problem. If the Black Man represents a population of 780,000 in Los Angeles and the Mexican American, 950,000 it is going to be a difficult task to justify an even 50% to the Mexican American. Those who read the papers must know that our anger, compounded by government inaction, has just begun to rise. I hardly need state that the time to correct the situation is now.

We Mexican Americans, however, would serve notice on those who feel that the answer is to take from one minority to give to another; this is no answer, this is disaster.

The tragedy of the employment program in Lincoln Heights is that it falsely gave East Los Angeles its first hope that the emphasis placed in other geographic areas of Los Angeles, primarily Watts, was now to be also placed in the East Los Angeles area.

So the U.S. Department of Labor poured $5,000,000 into nine industries to create instant jobs. We are a people whose history is full of deceit, disappointment, and exploitation at the hands of unscrupulous employers. This time history was replayed with the United States Department of Labor cast in the role of producer. It is a matter of record that it was a fiasco.

This was at the same time that Government told us it would not be able to expand our successful Mexican American On-the-Job Training Project because manpower monies were now being diverted to such programs as this Special Impact Project and to the JOBS programs.

The sadly obvious to almost no one but us is that implementation of new programs should not necessarily mean the disbanding of all of the so-called "old" programs. Yet the penchant of the government for doing so is well known. Program guidelines seem to change without concern for their effectiveness or lack

of it. Regional differences or levels of success do not seem to apply. Program refunding is often not necessarily granted on the basis of program success.

Nor do these program overhauls come as the result of requested suggestion for improvement from grassroots or community administrators as the result of their experiences in these programs.

As the JOBS concept has begun to all but completely replace OJT in industry training, we have asked why there weren't more Mexican American trainees in the JOBS programs. We were told that the employers were doing business with HRD which wasn't in the primary business of recruiting Mexican Americans. And rightly so. They are not, but accept applicants on a first come, first serve basis. The unfortunate fact about this is that few Mexicans patronize HRD centers, and the Service Center in East Los Angeles is used as a resource for only a small number of the JOBS contracts.

We Mexican Americans are operating programs that are the proverbial "drop in the bucket" when compared to our needs. But at least that drop is wet. We can show, for those we do operate, programs which have provided good jobs for our people. Now these are in danger of extinction in favor of other programs prescribed as the answer to minority employment, and yet which must be regarded as, to a greater degree, ineffective as far as the Mexican American Community is concerned.

We have questioned major industry about the ethnic breakdown within the guidelines of their equal opportunity commitment. We have been told that the information is confidential and must be divulged to government officials only. Often in these plants, I don't see visible Mexican Americans or Visible Blacks. They won't tell me how many, and I cannot see them, yet industry continues to get a "clean slate" for compliance in minority employment, and they continue to get more money.

Now we are being told that we ought to buy the Philadelphia Plan which does not take into account the needs of the Mexican American. But this time, we have been able to be heard in time to insure that we are going to have something to say about such a plan for minority employment. If a comparable plan to the one used in Philadelphia is introduced to the City of Los Angeles, the Mexican American will have a large input in the planning, administration, and participation.

My remarks have made it obvious that I would respectfully request any Congressional Action that would:

(1) Necessitate minority involvement and administration of programs designed for minority members;

(2) Make public to the general community the fulfillment by employers of their affirmative action commitments by citing ethnic breakdown periodically and indicating their revised, if any, recruitment and personnel policies and procedures for minorities.

A third strong recommendation to this committee is that we do not allow continuance to the practice of Government arbitrarily allotting a fixed amount of monies by area and solving its problem by diverting the attention to the Blacks and Browns so pitted against each other. We must insist that the needs of each area be met with the guiding philosophy becoming not one of pacification, as it is now, but one of solution.

Much more will be heard from the Mexican American in the '70s. How much will actually be done about our plight depends on the sensitivity and empathy of a Congressional Committee like yours.

Thank you.

Mr. CLAY. I think that that is very encouraging. I think that you ought to use all means at hand, legal or apparently illegal, to get what you consider to be your rights. I certainly do not think that you ought to sit idly by and complain about what blacks are getting because they are doing things legal and illegal and I hope that in the seventies, we can see a lot more activity from you, from your group.

You know, a black slave once said that "power concedes nothing without a demand," and he says that "the degree to which people will be oppressed depends on the willingness of those people to be oppressed," and if you are letting them manipulate the potential political power that you have in this community of some 900,000 people, I think

that we have very few people to blame except you and your leadership and I would hope that these Chicanos, as you call them—I would hope that they would become more vociferous but I hope they will direct their anger and their emotions toward the people who are denying them their rights and not against another minority group that is fighting for its rights.

Mr. MORALES. I certainly have no quarrel with that and I do want for the record to point out that none of my statement was a protest against the blacks or a complaint against what the black community has attained. Under no circumstances do I want that to be interpreted as such and as I said before, our mission is to educate not only the Anglo community, as we call them, but also the black community to understand our plight and once they understand it, I think we have got our feet in the door.

Once again, muchas gracias.

Mr. DENT. Thank you very kindly.

I think we all understand the reactions of the members of the committee where the problem is one that does create emotional reaction; however, we are very hopeful that we can find the legal means of getting that which is justified and that we only resort to those means which would give us a good standing in the community's eyes and gain the support of the whole community wherever we can. I can understand the emotional feelings of persons because I belong to a minority group myself. I know how dangerous it really is to play with emotions but this is an emotional area that we are in. It is an emotional area because a man's life and his livelihood and his family's welfare depends upon it. It is difficult to keep emotions out of it. I do not think that anything we can ever do will ever keep it out. It is up to us to try to do it in the best way we can, guiding, where we can, these great reservoirs of strength into the area where we can make our gains substantial and yet make them in a way that they are not thrown back at us as something gained without moving in the right direction.

Mr. CLAY. Mr. Chairman, I want to make it perfectly clear that I knew what I was saying when I said "legal or illegal means" and I would refer you back to the Declaration of Independence which says that when people have been denied their rights over a long period of time, then it becomes not only their responsibility but their duty to overthrow that Government which denies them that right: and I have been to jail because I have violated court orders and other laws and I spent, the last time in jail, 112 days for contempt of court; so I knew exactly what I was saying when I advised the gentleman to get his rights, regardless.

Mr. DENT. We could go a little bit further, I think that Thomas Jefferson once said, "from tyranny, rebellion grows." That was a man of great thought, one of the early Founding Fathers. He recognized then that injustice can never be justified.

STATEMENT OF JULIO DeLEON

FROM THE FLOOR. Could I be recognized? I don't know whether this would be in accordance or not but I think he was talking about manpower and some of the facilities that we actually do need. But another thing that wasn't actually touched upon was the education and I

would like very much to recommend to this committee whenever it is possible when you do go back to consider Federal fundings under title I and title VII for the bilingual, utilization of a second language, which is of utmost importance to the Chicano community. The communities of the Chicano and Mexican Americans all over the United States do have a problem. It is unique and it is an American problem. I believe the only way it can be resolved is by more funding, more bilingual programs. This is a recommendation from the community to actually look into this and we would appreciate this very much.

Mr. DENT. What is your name, for the record?

VOICE. Julio DeLeon.

Mr. DENT. It might interest you to know that this committee was the sponsoring committee that put the authorization to do exactly that which you are talking about and that we have just served on—Mr. Hawkins and myself—and, were you on the educational conference, Mr. Stokes?

Mr. STOKES. No; not this one.

Mr. DENT (continuing). Mr. Hawkins and myself served on the educational conference. We have made an attempt in that conference report which will get passed the very funding, the very program you are talking about.

Mr. DELEON. Thank you.

Mr. HAWKINS. Mr. Chairman, there are several persons who wanted to make statements or to testify and I indicated the urgency on the part of some of the members to get away so I would request that those presons who wish to file statements with the committee, that they be given that privilege and that the record be kept open for 2 weeks for the filing of any statements by persons who have not had an opportunity to testify.

Mr. DENT. Mr. Hawkins, the committee chairman accepts that as a recommendation. It is accepted without opposition. However, I would add that any witness who has already testified may supplement his testimony any time in the next 2 weeks while the record is open.

Mr. HAWKINS. May I express my appreciation to my colleagues for having devoted some of the time which they could have been devoting to their own districts, to coming out to Los Angeles and particularly to you, Mr. Chairman, for the authorization that you gave to the committee and I certainly appreciate the presence of my distinguished members who have put in such long hours, including Mr. Burton of San Francisco, Mr. Clay and Mr. Stokes, and, certainly, to you for having joined us.

Mr. DENT. Thank you, Mr. Hawkins; and I want you to know that the Chair is everlastingly grateful to the members of the committee who have taken the lead when I was not able to join you.

With that, I want to welcome the gentleman from San Francisco to the committee and thank all of you for attending and for your very fine cooperation this morning.

(The statement of Janice Primmer will be inserted into the record at this point.)

STATEMENT BY JANICE PRIMMER

Congressman Hawkins and Distinguished Members of the Labor Hearing Committee, I Janice Primmer resident of Compton, Taxpayer and employee of Compton-Willowbrook-Enterprise Community Action Agency, Consultant which

is O.E.O. funded would like to thank you for permitting testify and submit statements regarding the state of affairs of the Equal Employment problems facing this area.

According to statistics the City of Compton has approximately 77 (seventy-seven thousand) persons in the City of Compton of which 65% or more are Black. The City of Compton has permitted the discrimination in employment through entering into a contract with the County of Los Angeles. The contract was signed by the former Mayor of Compton, Chester Crain. The Charter of the City specify that the employees of the city are to be residents of the City of Compton. However the residency requirements have been waived in order to allow whites from other cities to move in and take over the positions of employment opened in the City structure.

Examinations are written by whites to eliminate Blacks and many jobs are written to fit the description of persons pre-destined for the jobs. The City School Board positions, for example the Compton City and High Schools, have signed a contract for the State Employment service to by-pass Black and minority people in the community. The Fair Employment Practices Committee have not brought action against any violators to date to my knowledge. I have personally filed a complaint and I have never been informed of any disposition concerning said complaint.

The Compton-Willowbrook-Enterprise Community Action Agency has employed more Blacks and Mexican Americans in the hard core area than any other employee agency in the State of California including the State of California. The Win Program was developed to recruit from the hard core communities including Welfare Mothers and Ex-convicts. The Program Director Harlam Porski, who is a white, does not relate to the community and is ineffective. The need is for someone who can relate to minority people and their aspirations.

The County of Los Angeles has set a Health District calling it Compton Health District. This alleged district includes Paramount, Lynwood, Watts, Willowbrook, Enterprise, Long Beach, Carson and parts of Catalina Island. As most of you gentlemen are not familiar with this area I would suggest you request a map from the Engineering Department or from the County of Los Angeles Regional Planning Department which I have been unable to obtain and was arrested when I accidentally got a hold of said map.

There are many poor whites in the area who are also unemployed of the same economic deprival. The simple truth is the other cities do not wish to address themselves to the problem resulting in the County of Los Angeles, using false statistics to aid the poor whites.

Illegal annexations are in preponderance and School Unification has been used to change Boundary Lines. Industries have been annexed out of the City, for example Robert Shaw Company, which was annexed into Long Beach. There must be a complete investigation into agencies obtaining Federal funds under false representation.

The City of Compton elected officials have not implemented fair employment practices although Black Officials in color. They continue to carry out the conspiracy to deprive people of the fair employment practices law and thereby need to be encouraged to obey the law.

The N.Y.C. Program's In-School Program reflects the lack of attempts to train and employ youth in Industry. The eyes of Black children are not as limited as presented. The crime rate and Narcotics Addictions have increased due to the unemployment and other Ghetto problems that exist in the City of Compton.

I feel the Poverty Program could be a success if the School and the City would cooperate with the Compton-Willowbrook-Enterprise Community Action Agency and allow this agency to control, train, and employ the people who are to be served. Mr. Leroy Hayes has the expertise to reach the people and implement the programs. However, the City of Compton and the schools are writing proposals conflicting with the agency causing much money to be spent and little progress being made. It is difficult to combine Educated people with Non-Educated people. The Chamber of Commerce of Compton is a white racist group who have done absolutely nothing to bring about employment in the community if anything they have acted in the role of deterrents.

I am particularly gratified to have this opportunity to submit before the illustrous Congressman Augustus Hawkins, Congressman Bill Clay from the "Show-Me" state of Missouri and of course Congressman Stokes from Ohio. I am not ignoring the other dignitaries on this Committee, especially the one from Pennsylvania, but I love my people.

Mr. DENT. With that, the hearing is adjourned at this time.
(Whereupon, at the hour of 1:50 p.m., the hearing was adjourned.)

(The following material was submitted for the record:)

STATE OF MICHIGAN,
OFFICE OF THE GOVERNOR,
Lansing, May 18, 1970.

Hon. JOHN H. DENT,
Chairman, General Subcommittee on Labor, House Committee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN DENT: I have been asked by the National Governors' Conference to submit to you my views on the two bills which would extend the coverage of the Equal Employment Opportunity Commission (EEOC) in the area of fair employment legislation.

Amendment of the 1964 Civil Rights Act to increase the effectiveness of the EEOC has my firm endorsement, and I submit that the final bill passed by Congress contain the following provisions in addition to those presently in H.R. 6228:

1. That employers of eight or more employees be covered (S. 2453).
2. That employees of the federal government be included (S. 2453).
3. That EEOC be empowered to file suits in federal district courts (as presently provided) or issue judicially enforceable cease and desist orders.
4. That complaints alleging unfair employment practices be deferred for 120 days to state and local agencies which have enforcement powers.
5. That EEOC reimburse state and local agencies for processing complaints which are deferred.

If additional hearings are scheduled on these bills, or on the final bill, please notify me so that I may send representatives from Michigan to testify.

Kind personal regards.

Sincerely,

WILLIAM G. MILLIKEN, *Governor.*

STATE OF MONTANA,
OFFICE OF THE GOVERNOR,
Helena, April 16, 1970.

Hon. JOHN H. DENT,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN DENT: I feel that S. 2453, the bill which authorizes enforcement powers for the Equal Employment Opportunity Commission and extends the jurisdiction of the 1964 Civil Rights Act to federal, state and municipal employees is desirable legislation.

I extend my support to the inclusion of these provisions in H.R. 6228, which also deals with the E.E.O.C.

Thank you for the opportunity to comment on these two bills.

Sincerely,

FORREST H. ANDERSON, *Governor.*

COMMONWEALTH OF PENNSYLVANIA,
GOVERNOR'S OFFICE,
Harrisburg, Pa., April 23, 1970.

Hon. JOHN H. DENT,
Chairman, General Subcommittee on Labor, House Committee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I greatly appreciate your solicitation of views from members of the National Governors' Conference concerning H.R. 6228, the Equal Employment Opportunities Enforcement Act. You have specifically requested opinions on possible amendments to H.R. 6228 which would make it similar to the Senate version of the Bill, S. 2453.

I concur with the extension of Title VII of the Civil Rights Act of 1964 to cover Federal, State and municipal employees and to transfer the equal em-

ployment opportunity functions of the Civil Service Commission to the Equal Employment Opportunity Commission (EEOC).

On the former point, I believe that government at all levels should take the lead in making available employment opportunities to all persons on an impartial basis. To expect more from the private sector than the public sector in this regard is inconsistent and untenable. As you know, in Pennslyvania State employees now have this protection under our Human Relations Act and the anti-discrimination provisions of the State Civil Service Act. There is no reason why State employees should not also have the protection of a Federal Equal Employment Opportunity Act and it is doubtful that any conflict would be created between Federal and State authorities in the processing of complaints.

On the latter point, there is definite merit in shifting equal employment opportunity functions to the EEOC, especially if the EEOC can be given enforcement powers in carrying out its responsibilities. At present, the procedure to handle complaints is based upon an Executive Order. Lacking Congressional sanction, the Civil Service Commission has had neither the budget nor the staff to perform the duties currently assigned. The Civil Service Commission has never been authorized to enforce equal employment opportunity complaints and, because of this, there is a natural lack of confidence in current procedures and in the Civil Service Commission itself. If it is the will of the Congress to extend coverage and to provide enforcement powers, I believe it would be advisable to transfer all equal employment opportunity functions to the EEOC.

In summary, let me say that government employers should not be excluded from rules pertaining to fair employment practice. It is also necessary that adequate enforcement powers be provided to lend substance to the rhetoric surrounding equal employment opportunity and to provide a recourse for the redress of grievances beyond normal administrative channels. Finally, if such changes are to be made, the functions should be lodged in an organization unfettered by other concerns which will have the confidence of employees.

Thank you for the opportunity to express my views on this important legislation.

Sincerely,

RAYMOND P. SHAFER.

STATE OF NEBRASKA,
Lincoln, April 13, 1970.

Representative JOHN H. DENT,
Chairman, General Subcommittee on Labor, House Committee on Education and Labor, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE DENT: The Office of Federal-State Relations of the National Governors' Conference informs us that you are interested in receiving state views on H.R. 6228 regarding the desirability of extending EEOC's jurisdiction. I have asked Reid E. Devoe, Executive Director of the Nebraska Equal Opportunity Commission, to review this legislation and comment upon it. A copy of his views are enclosed for your consideration regarding this legislation.

Sincerely yours,

RICHARD H. HOCH,
Counsel to the Governor.

STATE OF NEBRASKA EQUAL OPPORTUNITY COMMISSION, APRIL 7, 1970

MEMORANDUM

To: Richard H. Hoch, Counsel to the Governor.
From: Reid E. Devoe, Executive Director, NEOC.
Subject: Proposed Extension of Coverage to State Employment.

As you requested, I have reviewed the enclosed correspondence and will provide you with some observations that have been made by me regarding this proposed legislation.

As I see it, this letter has reference to extended coverage by the Federal Equal Opportunity Commission in four general areas: (1) federal, state and local government coverage, (2) transfer authority for federal employment from the Civil Service Commission to the EEOC, (3) deleting the exemption of educational employees working in educational institutions, and (4) authorizing the EEOC to issue enforceable cease and desist orders. My comments will be given in the order listed above.

(1) Extension of jurisdiction of EEOC to federal, state and local government employment.

It is my sincere belief that Nebraska can handle its own problems and since the Fair Employment Practice Act does give the Nebraska Equal Opportunity Commission jurisdiction over employees of the State of Nebraska and its political subdivisions, I do not believe it is necessary for the Federal EEOC to have the authority to investigate cases of alleged discrimination in our state and local government. I do strongly believe in states' rights and do not feel the federal government should have the authority to investigate and obtain records or question employees in state or local departments. The Nebraska Commission is able to efficiently investigate any complaint and work closely with the Governor to assure that there is no discrimination because of race, color, religion, sex or national origin within the state or its political sub-divisions. We have also noted that in other alleged employment discrimination cases, the Federal EEOC has come investigating within the state without our knowledge and I again reiterate that the Nebraska Equal Opportunity Commission can take care of any charges of alleged discrimination in state or local political sub-divisions.

(2) Transferring equal employment opportunity functions of Civil Service Commission to the EEOC.

I can see no objection to transferring the equal employment opportunity functions to the Federal EEOC, however from past experience, it would seem that faster actions could probably be obtained within the Civil Service Commission. The Federal EEOC is backlogged in cases as much as 18 months and I do not feel they could efficiently handle this additional responsibility unless their present procedures were changed. It should also be clarified to see if a charge was filed by a Civil Service Employee if this would give the EEOC authority to go into various departments and obtain information from a Civil Service Employee and thereby affect the operations of the particular department.

(3) Removing the Exemption of Individuals of Educational Institutions performing work connected with Educational Work.

I do not believe that repealing the above provisions would be of any consequence to this Commission. The Nebraska Equal Opportunity Commission has jurisdiction over schools and school boards and therefore are able to effectively handle cases of alleged discrimination in an educational institution.

(4) Extending the Authority of the EEOC to issue Judicially Enforceable Cease and Desist Orders.

Enforcement powers are badly needed with the Federal EEOC and it is felt that enforcement powers should be allowed to the Federal EEOC to make it more effective.

I have noted that Chairman Dent was particularly interested in reaction to the extension of coverage to federal, state and municipal employees and I do not feel that this is necessary. As stated above, Nebraska law does have coverage over the state and local political sub-divisions and therefore, we can handle any charges of alleged discrimination in employment and do not have to allow the federal government to make investigations for patterns of discrimination in our state and political sub-divisions.

If there should be any further questions regarding this matter, please feel free to contact me.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 15, 1970.

Hon. CARL D. PERKINS,
Chairman, House Education and Labor Committee, 2175 Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Your Committee is now considering bills to amend Title VII of the Civil Rights Act of 1964 which will further promote equal employment opportunities of American workers. As you know, I strongly support such legislation and I urge that your Committee recommend to the House a bill which will firmly state and provide the strongest mechanisms for the enforcement of the national policy against discrimination in employment.

You also know, I have introduced H.R. 10113, a bill incorporating various provisions to accomplish that purpose. My bill was based primarily on the bill reported by the Senate Committee on Labor and Public Welfare in the 90th Congress (S. 3465, 90th Cong.). I have recently had occasion to reread this bill and am convinced that one paragraph ought to be deleted because it would

foster not the policy of nondiscrimination but rather a policy of discrimination that is contrary to the whole purpose of Title VII of the Civil Rights Act of 1964.

I am referring to paragraph (d) of Section 6 which would have added a new subsection (k) to Section 703 of Title VII. That subsection (k) would overturn existing nondiscrimination guidelines of the EEOC and authorize discrimination in the pension or retirement plans as between men and women.

Over 95 per cent of all pension plans under collective bargaining contain no such distinctions nor is any such distinction in the pension and retirement systems for government employees and veterans. I believe that pension and retirement plans can operate effectively and economically without sex discrimination.

For these reasons and furthermore because I do not on principle approve of sex discrimination in employment, I rspectfully request that paragraph (d) of Section 6 of my bill H.R. 10113 be disregarded by your Committee. I do not support that subsection and I would vigorously oppose it if it were proposed by anyone else.

Sincerely,

CHARLES C. DIGGS, JR.,
Member of Congress,
13th District of Michigan.

J. A. JONES CONSTRUCTION CO.,
Charlotte, N.C., June 26, 1970.

Re H.R. 17555.

Hon. L. H. FOUNTAIN,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN FOUNTAIN: Currently, you are considering one major issue and one collateral issue in the area of EEO.

The major issue is whether the EEOC or the courts should have enforcement authority. A collateral issue involves the duplication of both Federal and State agencies working in the area of job discrimination.

The law now provides for enforcement in three distinct stages. The first is voluntary compliance. The second stage involves conciliation, persuasion, and Commission findings of probable cause that discrimination has occurred. The third stage, when necessary, is through judicial proceedings by the aggrieved individual or the Attorney General.

The major provision of the proposed legislation is one that would give the Commission authority to issue "cease-and-desist" orders.

As a businessman, I feel the Administration's (H.R. 13517 and S. 2806) approach which guarantees a day in court before a judge is far better than an administrative hearing before an examiner whose legal expertise may be highly doubtful. Equally distressing to a businessman are the different standards being set by these different agencies. For instance, the OFCC sets constantly changing standards for "affirmative action" which differ from the goals being pushed by the EEOC in its conciliation efforts.

There is almost universal agreement on the need to eliminate the vast overlapping of statutes, regulations, executive orders and agencies involved in the enforcement of equal employment statutes and regulation. It is urgent that the remedies for discrimination under Title VII of the Civil Rights Act be made exclusive, and that the Act be deemed to preempt the entire field to the exclusion of State statutes. It should also be made clear that government contractors are to be held only to that standard of conduct prescribed in Title VII.

In fact, the business community feels strongly that no consideration should be given to enlarging the enforcement authority of the EEOC without making substantive changes in the law itself. In some cases, ambiguities should be clarified; in others, the Congressional intention should be emphatically and unmistakably reaffirmed. For example:

> The use of racial quotas as evidence of discrimination should be eliminated. An absolute ban should be placed on the use of racial quotas in hiring.

These and other areas of present confusion and conflict serve to underscore the importance to me as a businessman of proposals to increase the Agency's enforcement powers as contained in H.R. 17555.

I hope you will see fit to correct these inequities.

Sincerely,

GEORGE HICKMAN,
Equal Employment Opportunity Supervisor.

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