S 5911

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON LABOR

OF THE

COMMITTEE ON LABOR AND PUBLIC WELFARE UNITED STATES SENATE

NINETY-FIRST CONGRESS

FIRST SESSION

ON

S. 2453

TO FURTHER PROMOTE EQUAL EMPLOYMENT OPPORTUNITIES FOR AMERICAN WORKERS

AUGUST 11, 12, SEPTEMBER 10 AND 16, 1969

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

U.S. GOVERNMENT PRINTING OFFICE
34-897 O WASHINGTON : 1969

COMMITTEE ON LABOR AND PUBLIC WELFARE

RALPH YARBOROUGH, Texas, *Chairman*

JENNINGS RANDOLPH, West Virginia
HARRISON A. WILLIAMS, Jr., New Jersey
CLAIBORNE PELL, Rhode Island
EDWARD M. KENNEDY, Massachusetts
GAYLORD NELSON, Wisconsin
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California
HAROLD E. HUGHES, Iowa

JACOB K. JAVITS, New York
WINSTON L. PROUTY, Vermont
PETER H. DOMINICK, Colorado
GEORGE MURPHY, California
RICHARD S. SCHWEIKER, Pennsylvania
HENRY BELLMON, Oklahoma
WILLIAM B. SAXBE, Ohio

ROBERT O. HARRIS, *Staff Director*
JOHN S. FOLSYTHE, *General Counsel*
EUGENE MITTELMAN, *Minority Counsel*

SUBCOMMITTEE ON LABOR

HARRISON A. WILLIAMS, Jr., New Jersey, *Chairman*

JENNINGS RANDOLPH, West Virginia
CLAIBORNE PELL, Rhode Island
GAYLORD NELSON, Wisconsin
WALTER F. MONDALE, Minnesota
THOMAS F. EAGLETON, Missouri
ALAN CRANSTON, California

JACOB K. JAVITS, New York
WINSTON L. PROUTY, Vermont
WILLIAM B. SAXBE, Ohio
HENRY BELLMON, Oklahoma
RICHARD S. SCHWEIKER, Pennsylvania

FREDERICK R. BLACKWELL, *Counsel*
ROBERT E. NAGLE, *Associate Counsel*
PETER C. BENEDICT, *Minority Labor Counsel*

CONTENTS

CHRONOLOGICAL LIST OF WITNESSES

MONDAY, AUGUST 11, 1969

TUESDAY, AUGUST 12, 1969

WEDNESDAY, SEPTEMBER 10, 1969

TUESDAY, SEPTEMBER 16, 1969

STATEMENTS

ADDITIONAL INFORMATION

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

MONDAY, AUGUST 11, 1969

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

The subcommittee met at 10 a.m., pursuant to call, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr., (chairman of the subcommittee) presiding.

Present: Senators Williams, Mondale, Eagleton, Cranston, Javits, and Prouty.

Committee staff members present: Robert E. Nagle, associate counsel; Eugene Mittelman, minority counsel; Peter Benedict, minority labor counsel.

Senator WILLIAMS. The Subcommittee on Labor now will come to order to consider bill S. 2453 designed to strengthen the enforcement powers of the Equal Employment Opportunity Commission.

This is our beginning of hearings on this legislation. The goal of assuring equal employment opportunity to all of our citizens was made a national commitment when Congress enacted title VII of the Civil Rights Act of 1964.

Unfortunately, however, the machinery we created for achieving this goal was not in all respects equal to that commitment. In particular, the 1964 act failed to give the Commission the enforcement power to back up its findings of discrimination based on race, color, religion, sex, or national origin. Its authority in such cases has been limited to conciliation efforts.

Since it began operating, the Commission has time and time again pointed out how this gap between its responsibility and its authority has seriously limited its effectiveness. The Commission has repeatedly requested the Congress to make our national commitment to equal opportunity a credible one by providing it with the power to issue judicially enforceable cease and desist orders when it finds that a discriminatory practice has occurred.

The chief purpose of this bill S. 2453, therefore, which was introduced with broad bipartisan support, is to provide the Commission with just such authority. S. 2453 also aims to make the Commission's jurisdiction more comprehensive, since it provides for consolidating within this Commission other equal employment opportunity programs of the Federal Government as well as broadening its jurisdiction to areas of employment both in the private sector and in State and local governments which are now excluded from the coverage of title VII.

Last Friday, Senator Prouty introduced another bill numbered S. 2806 on behalf of the administration which provides a substantially different approach than that of S. 2453.

While the bill as I understand it was referred to another committee, I am not sure whether it will continue to reside there. I think it would be appropriate and proper for those of our witnesses who have had an opportunity to study this bill to comment on Senator Prouty's bill as well.

I believe in opening these hearings we are turning to unfinished business which must be completed. I am hopeful as a result of our endeavors here we will finally act to make the Commission a truly effective instrument for eliminating discrimination in employment and thereby make our commitment to this goal a reality for all America.

At this point the bills under consideration will be printed in the record, without objection.

(The bill S. 2453 and the amendment in the nature of a substitute subsequently introduced by Senator Prouty as amendment No. 143 follow:)

91st CONGRESS
1st SESSION

S. 2453

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1969

Mr. WILLIAMS of New Jersey (for himself, Mr. BAYH, Mr. BROOKE, Mr. CASE, Mr. DODD, Mr. EAGLETON, Mr. FONG, Mr. GOODELL, Mr. GRAVEL, Mr. HARRIS, Mr. HART, Mr. HARTKE, Mr. HATFIELD, Mr. HUGHES, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MCCARTHY, Mr. MCGOVERN, Mr. MATHIAS, Mr. METCALF, Mr. MONDALE, Mr. MONTOYA, Mr. MUSKIE, Mr. PACKWOOD, Mr. PELL, Mr. PERCY, Mr. PROXMIRE, Mr. RIBICOFF, Mr. SCHWEIKER, Mr. SCOTT, Mr. STEVENS, Mr. TYDINGS, and Mr. YOUNG of Ohio) introduced the following bill; which was read twice and referred to the Committee on Labor and Public Welfare

A BILL

To further promote equal employment opportunities 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 Opportunities Enforcement Act".

SEC. 2. Section 701 of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e) is amended as follows:

(a) Strike "twenty-five" wherever it appears therein and insert in lieu thereof "eight".

(b) In subsection (a) insert "governments, governmental agencies, political subdivisions" after the word "individuals".

(c) In subsection (b) strike out "a state or political subdivision thereof" and insert in lieu thereof "the District of Columbia".

(d) In subsection (c) beginning with the semicolon strike out through the word "assistance".

(e) At the end of subsection (h) insert before the period a comma and the following: "and further includes any governmental industry, business, or activity".

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

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

"(b) Whenever 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 not reasonable cause 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 for 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 ap-

plicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

"(e) 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 under this section shall be filed within one hundred and eighty 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 or on behalf of 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. Respond-

ents 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 person 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 diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not en-

gaged 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 subsections (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 pro-

ceedings 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.

"(l) 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 there-

upon 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 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 proceedings under subsection (k), (l), or (o) of this section.

"(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court 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 general counsel of the Commission.

"(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, after it issues a complaint, 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. 4. (a) Subsections (e) through (k) of section 706 of the Civil Rights Act of 1964 (78 Stat. 259; 42 U.S.C. 2000e–5, e–k) and references thereto are redesignated as subsections (p) through (v), respectively.

(b) In section 706(p), as redesignated by this section, strike out "permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance," and insert in lieu thereof the following: "permit the Commission to intervene in such civil action if the Chairman, with the approval of the Commission, certifies that the case is of general public importance,".

(c) Section 706(u), as redesignated by this section, is amended (1) by striking out "(e)" and inserting in lieu thereof "(p)", and (2) by striking out "(i)" and inserting in lieu thereof "(q)".

SEC. 5. Section 707 of the Civil Rights Act of 1964 (78 Stat. 261; 42 U.S.C. 2000e–6) is amended to read as follows:

"FURNISHING RECORDS

"SEC. 707. 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 Commission or its 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 members of the Commission nor its 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. 6. 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 organiza-

tion, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. 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 information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection."

SEC. 7. 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. 8. (a) Section 703(a)(2) of the Civil Rights Act of 1964 (78 Stat. 255; 42 U.S.C. 2000e-2(a)(2)) is amended by inserting the words "or applicants for employment" after the words "his employees".

(b) Section 703(c)(2) of such Act (78 Stat. 255; 42 U.S.C. 2000e-2(c)(2)) is amended by inserting the words "or applicants for membership" after the word "membership".

(c) Section 703(h) of such Act (78 Stat. 257; 42 U.S.C. 2000e-2(h)) is amended 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."

(d) (1) Section 704(a) of such Act (78 Stat. 256; 42 U.S.C. 2000e–3(a)) is amended by inserting "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) Section 704(b) of such Act is amended by (A) striking out "or employment agency" and inserting in lieu thereof "employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,", and (B) inserting a comma and the words "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 the word "indicating".

(e) (1) The second sentence of section 705(a) (78 Stat. 258; 42 U.S.C. 2000e–4(a)) is amended by inserting before the period at the end thereof a comma and the following: "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".

(2) The fourth sentence of section 705(a) of such Act is amended 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, attorneys, hearing examiners, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code."

(f) Section 705(g)(1) of such Act (78 Stat. 258; 42 U.S.C. 2000e-4(g)(1)) is amended by inserting at the end thereof the following: "and to accept voluntary and uncom-

pensated services, notwithstanding the provisions of section 3679 (b) of the Revised Statutes (31 U.S.C. 665 (b))".

(g) Section 705 (g) (6) of such Act (78 Stat. 259; 42 U.S.C. 2000e–4 (g) (6)) is amended to read as follows:

"(6) to direct its general counsel to intervene in a civil action brought by an aggrieved party under section 706."

(h) Section 706 (g) of such Act (78 Stat. 259; 42 U.S.C. 2000e–4 (g)) is amended by striking out the period at the end of paragraph (6) thereof and inserting a semicolon and by adding at the end thereof the following new paragraph:

"(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."

(i) Section 713 of such Act (78 Stat. 265; 42 U.S.C. 2000e–12) is amended by adding at the end thereof the following new subsections:

"(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."

(j) Section 711 of such Act (78 Stat. 265; 42 U.S.C. 2000e–13) is amended by striking out "section 111" and inserting in lieu thereof "section 111 and 1114".

(k) Section 715 of such Act (78 Stat. 265; 42 U.S.C. 2000e–14) is amended to read as follows:

"SEC. 715. All authority, duties, and responsibilities now vested in the Secretary of Labor relating to nondiscrimination in employment by government contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the Equal Employment Opportunity Commission."

SEC. 9. (a) Section 5314 of title 5 of the United States Code is amended by adding at the end thereof the following new clause:

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

(b) Clause (72) of section 5315 of such title is amended to read as follows:

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

(c) Clause (111) of section 5316 of such title is repealed.

SEC. 10. Sections 706 and 710 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.

SEC. 11. Title VII of the Civil Rights Act of 1964 (78 Stat. 253; 42 U.S.C. 2000e et seq.) is amended by adding at the end thereof the following new sections:

"NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

"SEC. 717. (a) All personnel actions affecting employees or applicants for employment in the competitive service (as defined in section 2102 of title 5 of the United States Code) or employees or applicants for employment in positions with the District of Columbia government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

"(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: *Provided*, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

"(c) Within thirty days of receipt of notice given under subsection (b), the employee or applicant for employment, if aggrieved by the final disposition of his complaint, may file a civil action as provided in section 706(p), as redesignated

by this title, in which civil action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

"(d) The provisions of section 706 (p) through (v), as redesignated by this title, as applicable, shall govern civil actions brought hereunder.

"(e) All functions of the Civil Service Commission which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

"EFFECT UPON OTHER LAW

"SEC. 718. Nothing contained in this Act shall relieve any government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders."

SEC. 12. Section 8(k) and section 11 of this Act shall become effective ninety days after the date of enactment of this Act.

91st CONGRESS
1st SESSION

S. 2453

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 4, 1969

Referred to the Committee on Labor and Public Welfare and ordered to be printed

AMENDMENT

(IN THE NATURE OF A SUBSTITUTE)

Intended to be proposed by Mr. PROUTY to S. 2453, a bill to further promote equal employment opportunities for American workers, viz: Strike out all after the enacting clause and insert in lieu thereof the following:

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. 2000e–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 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 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, or 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 employees, 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)."

Senator PROUTY. Thank you, Mr. Chairman.

Both S. 2453 and S. 2806, the administration bill which I introduced last Friday, grant badly needed enforcement power to the Equal Employment Opportunity Commission, thus enhancing the stature of the agency's expert conciliatory facilities.

It is to be expected that resistance to the policies of title VII will diminish once the Government's guarantee of equal employment opportunity is made credible, and conciliations can proceed more smoothly.

S. 2453 contemplates the traditional process of administrative hearings, followed by cease and desist orders, where unlawful employment practices are found. This approach is satisfactory at first glance, but conceptual difficulties arise when it is realized that the agency would have to be both vigorous advocate and impartial determiner of fact and law.

The problem is avoided by the administration's proposal which preserves the attractions of the expert independent agency approach, while also empowering the Commission to seek redress of unlawful employment practices in the courts. Under S. 2806, existing Commission and judicial machinery can be utilized for redress of title VII grievances with the emphasis being placed on active enforcement rather than mere administration of the law.

In the past, I have supported giving the EEOC decisionmaking and enforcement authority.

I will do so again, if the President's proposal cannot be enacted, as the present lack of enforcement power in the Commission is intolerable.

However, on balance, I believe that the administration's proposal is preferable because it is more workable at the present time, and permits the objectives of title VII to be pursued in a realistic fashion with as little "growing pains" as possible.

In the interests of brevity, Mr. Chairman, I ask unanimously that the explanation of the administration's bill which I gave when I introduced it in the Senate last Friday be printed at this point in the hearing record.

I might add in conclusion, Mr. Chairman, that, for some reason unknown to me, the administration bill was referred to another committee as the chairman stated earlier. I hope very much, however, that the witnesses who appear before this committee will give consideration to the provisions of S. 2806 as well as to those of the bill I introduced. Certainly, as a member of this committee, I shall do my best to see that the provisions of the administration bill may be given serious and, I hope, very serious consideration. Thank you, Mr. Chairman.

Senator WILLIAMS. Thank you, and without objection the explanation of the bill will be included in the record.

(Senator Prouty subsequently introduced the text of S. 2806 as an amendment to S. 2453 and it was given the amendment number 143 and is printed on page 28 of this hearing record.)

(The information referred to follows:)

[From the Congressional Record, Aug. 8, 1960]

S. 2806—INTRODUCTION OF A BILL TO IMPROVE EQUAL EMPLOYMENT OPPORTUNITIES FOR AMERICAN WORKERS

Mr. PROUTY. Mr. President, this is the administration's bill proposed by the President to amend title VII of the Civil Rights Act of 1964 pertaining to dis-

crimination in employment by employers, labor organizations, and employment agencies.

Five years ago title VII of the Civil Rights Act of 1964 ordained a national commitment to eliminate discrimination in all aspects of employment. Unfortunately, as a result of compromise necessitated by political considerations, Congress did not see fit to provide realistic enforcement procedures to support title VII's guarantees.

This bill corrects that deficiency, and does so in a way that breaks new ground in the continuing development of American law. Under the President's proposal, the Equal Employment Opportunity Commission will continue to seek voluntary compliance with title VII but, if conciliatory efforts prove unsuccessful, it may bring lawsuits against recalcitrant violators.

The main thrust of this bill, Mr. President, is to provide for the trial of cases in the U.S. district courts where the Equal Opportunity Commission has found reasonable cause to believe that a violation has occurred.

Traditionally, advocates of fair employment legislation have sought enforcement by regulatory agencies through administrative processes. This proposal preserves the most attractive features of that approach expertise and independence from shifting political winds—while contemplating a vigorous policy of enforcement in the courts, where speedy redress can be obtained through due process. In addition, it has the advantage of being capable of easy accommodation within EEOC's existing structure.

Proceedings under this measure will be able to be commenced shortly after enactment. On the other hand, if we should instead enact legislation providing the EEOC with decisionmaking and enforcement authority through administrative processes, it will require 2 to 3 years of gearing up before results can begin to be realized, a further delay difficult to accept.

Under the administration's bill, Mr. President, charges of unlawful or discriminatory employment practices will continue to be filed with the EEOC. This agency will conduct investigations of these charges and, where the evidence establishes reasonable cause to believe a violation has occurred, the EEOC will attempt to conciliate the dispute as it does at present.

Should conciliation attempts fail, however, the EEOC will have complete freedom to file a complaint in an appropriate Federal district court, which will be the trial tribunal to hear the case on the merits.

Similarly, where the Commission dismisses a charge after investigation, the aggrieved person shall have the right to commence an action in Federal district court as he does under present law.

Decisions of the Federal district courts are appealable to the appropriate U.S. court of appeals and the U.S. Supreme Court in the usual manner, with one modification. This involves the situation where the EEOC loses a case in whole or in part in Federal district court litigation. In such circumstances, the Civil Rights Division of the Justice Department, after receiving recommendations from the Commission, will decide which cases to appeal to the court of appeals.

The alternative proposal to the procedures in the administration's bill, Mr. President, is to provide for administrative litigation in the first instance before a Federal trial examiner subject to the provisions of the Administrative Procedures Act. The trial examiner's findings and recommended order would then be subject to review by the Commission with ultimate judicial review in the U.S. court of appeals either as the result of an enforcement proceeding brought by the EEOC or by a petition for review filed by any party to the proceeding.

I have previously taken the position that the Commission should have the same decision making authority and authority to enforce its orders in the courts of appeals as do other independent Federal agencies such as the Federal Trade Commission and the National Labor Relations Board.

I have taken this position in the past, however, in the context of either granting the EEOC decision making and enforcement powers or leaving the law in its present posture. This latter alternative is completely unacceptable, as both the law and the Commission need to be strengthened and given additional tools with which to accomplish the objectives set by Congress.

The bill which I introduce today, Mr. President, does contain the teeth of enforcement which are so badly needed. Enforcement comes much more quickly here, from the Federal district court initially, than it would under an administrative hearing type of bill.

In this regard, the entire proceeding will probably be substantially shortened by direct appeal to the court of appeals from the trial in Federal district court.

rather than following the more circuitous route of administrative hearing before a trial examiner whose findings and order are appealable to the Commission before access to the courts of appeals may be obtained.

Furthermore, as I reviewed this bill, I find no way in which it will hinder or tie the hands of the EEOC in performing its duties.

Thus, the Commission is free upon its own determination to litigate any or all cases it desires to in Federal district court with no person or agency being given the right to veto or reverse such EEOC action.

Moreover, in the exercise of its own expertise in this particular area, the Commission may urge upon the courts any proposed remedies which it might have ordered in its own right if it retained decisionmaking authority.

The propriety in granting, modifying, or denying such remedies will finally be determined by the court of appeals, and possibly the Supreme Court, under this bill in the same manner as would be the case if the Commission were granted the authority to issue its own orders subject to court review.

There is also the question of whether this bill will result in a backlog of cases awaiting trial in Federal district courts. This is a matter we must study closely, but my present feeling is that it will not approach the backlog which would be faced by the Commission if it were required to review every litigated case in the country before enforcement in the courts or appeals could be sought.

Moreover, as Federal court precedents are established under this bill, I envision a substantial number of respondents complying with court decisions or entering into meaningful conciliation agreements with the Commission, rather than appealing, after they lose cases in Federal district court. Not to mention the increase in pretrial conciliations by respondents who would take their chances in drawn out administrative proceedings before a Federal trial examiner and the Commission, but who would hesitate to go to trial directly in Federal district court when the precedents are clear.

I want to note, however, that I reserve the right to offer amendments in our committee which in my judgment can make this piece of legislation stronger and even more effective in removing the blot of discrimination in hiring and employment practices and to insure true equality of opportunity for all qualified persons in seeking, obtaining and retaining employment in both the public and private sectors of our economy.

Mr. President, laws protecting human rights are as deserving of adequate implementation as any other declaration of national policy, and, indeed, deserve priority. Congress has declared that certain discriminatory acts are unlawful and it is overdue in adding substance to its words. We must act now, to finally demonstrate that the law—all laws—apply to everyone equally, and that the comfortable as well as the disadvantaged are subject to its rule.

(S. 2806 was subsequently introduced as amendment No. 143 to S. 2453.)

Senator CRANSTON. Mr. Chairman, I would like to make a very brief statement concerning the very important bill which you introduced, which is before the subcommittee for consideration this morning. I congratulate you on moving so rapidly to hearings on this measure.

I look forward to these hearings in order that I may benefit from the views of those in the administration and those in the private sector who are most experienced in the civil rights field.

I am very much in sympathy with many of the provisions of S. 2453, especially the granting of cease and desist powers to the Equal Employment Opportunity Commission. For this reason, I was a cosponsor of the omnibus civil rights bill, S. 2029, introduced by Senator Hart on April 29, 1969, which also contained such a provision.

When S. 2453 was introduced, I was, and I continue to be, concerned about the future of effective civil rights enforcement by the Federal Government should all enforcement and compliance responsibilities be centralized in one agency. Because of my concern over whether consolidation would help or hinder actual progress under present circumstances, I did not join in cosponsoring this measure.

My concerns in this regard are only heightened when that one agency is already tied up with a substantial case backlog, and has not been notably successful in the past in obtaining appropriations or personnel ceilings adequate for it to carry out its much more modest workload.

I am hesitant to create within the Federal Government a solitary target upon which all equal employment opponents can concentrate their efforts to stymie and defeat the guarantees of title VII of the Civil Rights Act of 1964. Given the clear vacillation of the present administration in the civil rights field—shown by its initial failure to enforce Federal contract compliance regulations on equal employment opportunity in connection with grants of defense contracts to certain textile firms, by its failure to request or support extension of the Voting Rights Act of 1965, by its unconscionable dilution of the enforcement timetable for school desegregation, and by its conciliatory silence last week when the Whitten amendment squeaked through the House—EEOC consolidation could be a disastrous course at this time.

I plan to follow these hearings closely, Mr. Chairman, in coming to a judgment on this question. Although conflicting sessions of other subcommittees will not permit me to be here throughout, I will carefully review the transcript.

Thank you, Mr. Chairman, for permitting me to make this brief statement.

Senator JAVITS. Mr. Chairman, I have a rather special reason for making this very brief statement because I did not join in the administration's bill notwithstanding the fact that I am the ranking member of this subcommittee.

My reason, which people are entitled to know, is not that I am very critical of the administration in any way or in any way do not appreciate this initiative. It is only that I have been committed to the cease and desist order approach since 1964, when we first had to compromise our position in the Civil Rights Act of 1964, and the following, and accept employment security provisions regarding discrimination which were, in my judgment, simply a price paid for getting the Civil Rights Act of 1964 enacted, which was completely inadequate for the purpose.

Senator Cranston just mentioned Senator Hart, who has been more or less my partner in this legislation. I have stood with my colleagues in the same bipartisan way for a measure to give cease and desist powers to the Commission which was reported out of this committee in the last Congress, but got nowhere in the full Senate.

I still believe that this is the way in which to proceed.

Being rather devoted to honesty in these matters, I just felt I could not, as much as I appreciated the reason the administration took this course, join the administration bill.

As the members of this committee are well aware, as part of the compromise necessary to break the filibuster against the bill which became the Civil Rights Act of 1964, it was necessary to agree that the EEOC would be shorn of any effective power to enforce the provisions of title VII on behalf of employees who had suffered illegal discrimination. This is a glaring defect in the law which we have been attempting to correct ever since 1964. Thus, in the 89th Congress a bill similar to S. 2453, which we are considering today, was passed by

the House of Representatives, only to die in the Senate. In the 90th Congress we were successful in reporting out of this committee S. 3465, also similar to S. 2453, but unfortunately the bill was never taken up by the full Senate.

With the passage of time the need for giving the Commission power to enforce the equal employment guarantees of title VII has in no way diminished. Last year, over 17,000 charges were filed with the Commission and the Commission has been successful in achieving voluntary conciliation in something less than half of the cases in which it has found reasonable cause to believe that violation of title VII has been committed. These facts alone speak eloquently of the need for this legislation.

There is, therefore, no question that the committee should act promptly to give the Commission adequate enforcement power. There is some question, however, as to what form this enforcement power should take. Under S. 2453, the bill which I have cosponsored, the Commission would be given cease and desist order power similar to that enjoyed by the National Labor Relations Board. Under the bill recently sent up by the administration, the Commission would be empowered to institute suits in the Federal district courts against the persons whom it has cause to believe has violated title VII. I recognize that arguments can be made in support of either of these approaches. Certainly either one of these bills would be a vast improvement over existing law. Nevertheless, I do believe that the traditional procedure of administrative hearings, followed by cease and desist orders, would be a superior enforcement tool as compared to the institution of suits in the district courts. There is nothing that can be accomplished through suits in the district court which cannot be better done through the cease and desist order approach.

Although, for the reasons I have stated, I am not inclined to agree with the administration's bill, I do want to take this opportunity to commend the administration for the initiative it has shown in this matter. I would emphasize again that either of these two bills would be a vast improvement over existing law.

The administration's commitment to the cause of equal employment opportunity has also been demonstrated in connection with the revised Philadelphia plan, recently promulgated by Assistant Secretary of Labor Arthur Fletcher. Unfortunately, the Comptroller General, in what I consider to be a complete misconception as to his authority, has issued a ruling to the effect that the revised Philadelphia plan is invalid. I believe that the Comptroller General's ruling undermines the whole equal employment opportunity program under Executive Order 11246 and I fully concur in the decision of the President, Attorney General Mitchell, and Secretary of Labor Shultz, to implement the revised Philadelphia plan notwithstanding the Comptroller General's ruling. This matter should be adjudicated in the courts, which have the authority necessary to decide such fundamental questions.

This committee will also have to consider very carefully the proposal embodied in S. 2453 to transfer the Office of Federal Contract Compliance and the Civil Service Commission's functions with regard to equal employment opportunity for Federal employees to the EEOC. Given the tremendous backlog of cases now pending before the Commission, the additional work which will have to be undertaken by the

Commission if it gets cease and desist order powers, the difficulty of obtaining adequate funding for the Commission, and, finally, the signs that under the leadership of Secretary Shultz and Assistant Secretary Arthur Fletcher the OFCC is serious about implementing Executive Order 11246, I am doubtful as to the desirability of transferring OFCC at this time. I hope that the representatives of the Labor Department and the Civil Service Commission as well as the EEOC will address themselves more specifically to this problem in their testimony before this committee.

Finally, I would also like to take this opportunity to urge prompt action on this legislation by the committee. I know that the chairman and the other members are fully aware of the opposition which still exists to this legislation. I am, therefore, convinced that we must press as hard as we can for a strong bill and that we must do our utmost to see to it that a bill is reported out to give us time to cope with the threat of a filibuster and the other tactics which will undoubtedly be used against it.

Those are my views. Again, I wish to state I think the administration has taken fine initiative to move this forward. Although I do not agree the remedy chosen may be the best remedy or the only one we can get, certainly it may be a very major improvement over what we have.

Senator WILLIAMS. We all support this legislation and we certainly appreciate the consideration the Senator from New York has given this over the years. We will begin our hearings with the Chairman of the Equal Employment Opportunity Commission, Mr. William H. Brown III. Mr. Brown.

Your statements have been distributed to us, Mr. Chairman. You may proceed in any way you desire.

STATEMENT OF WILLIAM H. BROWN III, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. BROWN. Mr. Chairman and members of the subcommittee, I am pleased to appear before you here this morning to comment on Senate bill 2453 and Senate bill 2806, both of which are 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, public and private employment agencies, labor organizations, and joint labor-management apprenticeship and training programs. Employers of 100 or more persons; labor unions with 100 or more members or operating hiring halls; and employment agencies dealing with employers of 100 or more persons were covered in the first year of the law's operation, with the number dropping in each succeeding year to 75, 50, and finally 25.

The stepdown process thus ended with employers and labor unions of 25 or more being covered since July 2, 1968.

The Commission has two major assignments under title VII. The compliance program which would be fundamentally affected by both S. 2453 and S. 2806—amendment No. 143 to S. 2453—provides for the investigation, determination of reasonable cause, and conciliation of complains 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 the Federal grant agency for State and local fair employment practices commissions. In fiscal year 1969, grants 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 40,000 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 24,065 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 possibility 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.

This is a peculiarly anomalous situation. 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 substantially money-oriented society.

To correct 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.

This is not a healthy condition for any society. If the Nation is to be socially as well as economically prosperous, it must take a realistic attitude toward protecting the rights of all of its citizens, regardless of their color or the sensitive nature of the matter involved.

It has been established that the resources of the State should be made available for the protection of individuals asserting collective bargaining rights under the National Labor Relations Act. A fortiori it is even more important to afford similar protection to human rights guaranteed by the Civil Rights Act of 1964, for the matter we are dealing with is one basic to the quality of American life—the decent self respect that goes with a job commensurate with one's abilities, and, until this right is enforceable, the American dream will remain an illusion seeking reality.

The choice of method involves varied factors. The agency responsible for enforcing title VII should have a civil rights orientation that embodies considerable expertise, while being capable of remaining unaffected by changes in the political climate. It is particularly important that the agency's policies not be subject to changes in administrations.

This suggests the regulatory agency model, and in particular the EEOC. Under the provisions of title VII, as it would be revised by S. 2453, the Commission would continue to seek voluntary compliance by informal means of conciliation and persuasion, but, if a point were reached in a particular case when the Commission determined that further conciliation efforts would be unwarranted, the following steps would take place:

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

A full hearing on the merits would then be held before the EEOC or its members or agents.

After the hearing, if the Commission found that the respondent had engaged in an unlawful employment practice, it would state its findings of fact and issue a cease-and-desist order. The order could include appropriate affirmative relief, such as reinstatement and payment of back wages, and could also require the respondent to make reports from time to time on the extent of his compliance.

If the Commission found that no unlawful employment practice occurred, the complaint would of course be dismissed.

Once a cease-and-desist order was issued, the EEOC could petition the appropriate court of appeals for enforcement of its order. Any respondent or person aggrieved by a Commission order could likewise obtain review of the order in the court of appeals.

This has been the traditional approach to strengthening fair employment statutes, and I have gone on record several times as being favorable toward the enactment of such legislation.

An alternative has been proposed by the President, however, which I now regard as preferable since it embodies a mechanism more conducive to enforcing the law rather than merely administering it. The cease-and-desist approach would inhibit such an attitude, for it carries with it a presumption of quasi-judicial neutrality toward the problem title VII seeks to correct. An active enforcement stance, which I think absolutely necessary, would thus be at odds with the Commission's own machinery.

The administration proposal, if enacted into law, would allow the Commission to go into court should conciliation fail, and seek redress of unlawful employment practices through the familiar process of litigation. The conceptual problems that I have indicated would result from the cease-and-desist approach would be avoided, while the best features of the independent agency concept would be saved.

In addition—and I think this is determinative—the administration's proposed enforcement system could be easily accommodated within the Commission's existing structure, while cease-and-desist machinery would require at least 2 years of tooling up before the first administrative hearings could be held. We would be able to enforce title VII in the courts with the comparatively less difficult adjustment of adding 50 lawyers to our General Counsel's staff during the first year, with an additional 25 during the second year.

The White House has assured me that the President will vigorously support such a staff increase, as well as authorization of our full fiscal year 1970 budget request. We have a serious backlog problem—over 2,500 respondent investigations at this point—and it will be imperative to ease this situation if speedy relief is to become a reality. All the good intentions in the world will be unavailing if not backed by the necessary hard resources.

The private right of action is retained in both bills, as I think it should be. Individual initiative in the courts has historically furnished the main impetus to civil rights progress, and is indispensable as a complementary tool in building a body of title VII law.

This is as true in the area of equal opportunity as it has been in school and faculty desegregation, where legal victories have enjoyed more publicity. In *Quarles v. Philip Morris* (271 F. Supp. 842), for example, the legal defense and education fund was successful in urging that the provisions of the act reach the present consequences of past discrimination; that is, a discriminatory seniority system devised before the effective date of title VII. This decision has made an important contribution to the case law of title VII and is by no means unique in illustrating the value of continual replenishment of the legal framework of the title from extragovernmental sources.

Finally, 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. Otherwise, the system becomes somewhat patronizing and thus at odds with its own end.

Still the primary burden of eliminating discrimination in employment should rest with the Government, and there is a substantial likelihood that once the credibility of governmental action is established, respondent resistance to the policy of the title will diminish. This will operate to vastly improve the possibilities of obtaining voluntary compliance through informal means of conciliation, and the informal persuasion contemplated by the title will finally gain the attractiveness that has been lacking in the absence of prospective enforcement.

S. 2453 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 I strongly favor the administration approach, and I have the assurance of the President that every effort will be made to obtain speedy passage of his proposal, free from any amendments that might be offered to cripple its provisions.

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 wish to thank the members of this committee for permitting me the opportunity to appear before it, and I would be very happy to answer any questions that they might have.

Senator WILLIAMS. Thank you very much, Chairman Brown. You did in your statement refer to the fact that you were of another mind and have been on the means of enforcing equal employment opportunity.

Of course, we are familiar with your position on other occasions. I believe right here in your hearing in April you stated your view then that the EEOC absolutely must have cease and desist orders. More recently in a letter to the chairman of the Labor Committee, to Chairman Ralph Yarborough, in answer to a request to comment on S. 2453, you will recall you said in connection with enforcement:

> Finally, equipping the Commission with such powers as cease and desist would serve to bring it into line with the framework of other regulatory agencies entrusted with the enforcement of substantive law, advantage of uniform interpretation and efficiency of effort will follow while preserving the traditional oversight function of the courts.

Of course, you have indicated you appreciate the remarkable dif-

ference that has come to you. We appreciate it, too, and understand it, and I wonder if you could explain in a little more detail how this remarkable change has come to you.

Mr. BROWN. I would be very happy to, Mr. Chairman. As I have gone through this legislation, both the bill which you yourself have introduced as well as the administration's proposal, which Senator Prouty has seen fit to introduce, I have tried to view them as dispassionately as I could.

Your references both to my letter and my hearing are absolutely correct and accurate.

Senator WILLIAMS. And if you will pause a moment, the letter we received on July 25, and without objection I would like to include the entire letter in the record at this point.

(The communication referred to follows:)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., July 25, 1969.

HON. RALPH YARBOROUGH,
Chairman, Committee on Labor and Public Welfare,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your letter of June 23, asking the Equal Employment Opportunity Commission to submit a report on S. 2453, the equal employment opportunity legislation introduced by Senator Williams and thirty-four other members of the Senate.

The Equal Employment Opportunity Commission strongly recommends adoption of this legislation. We believe that if equal opportunity as promised by Title VII of the Civil Rights Act of 1964 is to be made a reality for all Americans, the Government must be provided with means appropriate to reaching that goal.

The major provision of the bill would empower the Commission to issue judicially enforceable cease and desist orders after a full hearing on the merits, should informal methods of persuasion and conciliation fail. Under present law, the Commission is only able to investigate charges of discrimination, and if it finds that a violation of Title VII has occurred, attempt to resolve the controversy by voluntary means. Absent the filing of a pattern or practice suit by the Attorney General, enforcement is left to the initiative and resources of the aggrieved individual, who can seek relief in the District Court.

This is to place the burden precisely where it should not lie. Of 1,054 attempted conciliations during the first three years of the Commission's existence, only 779, or less than half, were completely or partially successful. Since the brunt of employment discrimination falls on those who due to economic disadvantage are particularly unable to withstand the delay and expense of a court trial, it is clear that in a vast majority of the cases where conciliation was unsuccessful, the aggrieved person went without a remedy.

If the Commission were granted cease and desist power as in the Bill, the burden of enforcement would shift to the Government, which could then implement the policies of Title VII in a meaningful and consistent manner, as befits any national commitment to the public good. The conciliatory functions of the Commission would in no way be derogated, since the prospect of an enforceable order would operate to make respondents more receptive to informal procedures.

Finally, equipping the Commission with such powers would serve to bring it into line with the frameworks of other regulatory agencies intrusted with the enforcement of substantive law. Advantages of uniform interpretation and efficiency of effort will follow, while preserving the traditional oversight function of the courts.

There are a number of other changes, substantive as well as perfecting, that the Bill would make in the present structure of Title VII, which I would be happy to comment on at the time of hearings. The provisions regarding cease and desist orders, however, constitute the basic revision that would be effected in the law, and deserve the greatest amount of attention.

I shall be available to appear at hearings on the Bill at your convenience, and am hopeful that you will be able to schedule proceedings at the earliest opportunity.

Sincerely,

WILLIAM H. BROWN III, *Chairman.*

Mr. BROWN. I think this is quite appropriate particularly in view of the fact that at the same time I sent the letter there was under consideration by myself, as well as members of the administration, an attempt to strengthen the proposal.

At the time I sent that letter and the date you indicated, July 25 of this year is correct, I had very little hope that I would be persuasive enough to get any stronger proposal through or approved.

It seems to me the fact that we have taken the traditional approach should not deter us from looking at something which in my opinion is a stronger measure designed to do the job we are so interested in seeing done. I think the most important thing that all of us here this morning, or at least certainly most of us, would agree to is the very substantial need of enforcement power for this agency.

As I view the Prouty bill as compared with the traditional approach of cease and desist, and being a good lawyer I am always open to other suggestion and recommendations, I have some present pride in authorship because I had a great deal to do with the drafting of the new Senate bill.

It seems to me, as I view the effects of both of these bills, the most important thing is what can we do to get enforcement power for the agency and to get it as soon as we humanly possibly can do it.

Under the proposal of the bill S. 2453, trying to view this in the most objective manner in terms of how long it would take us to put this into operation, and having had the opportunity of discussing this matter with some of the members of the National Labor Relations Board who presently have this sort of enforcement power, the indications are that it would take us approximately 2 years to tool the agency up.

It would mean the hiring of some 100 or more hearing examiners. It would require a great deal of regulations being drafted and adopted by the Commission. It would require the obtaining of physical facilities for the hearings. This is estimated to be approximately 2 years.

Senator JAVITS. May I ask a question at this point?

There would be nothing to stop us, would there, from passing the bill that you want; that is, giving you the right to sue, offer it for 2 years and then give the Commission cease and desist powers.

Mr. BROWN. You are absolutely correct, Senator Javits. There is nothing to prevent this at all. But the most important thing is that we be given the right to do something about the problems we are faced with promptly.

In addition to the procedures, Senator Javits, I might also add we would have to wait until the first cases came through the pipeline on which we could use the cease and desist orders and that is presently estimated to be 1½ to 2 years.

So, we are talking about a 4-year period. Last Friday I had an opportunity of discussing this matter with a member of the National Labor Relations Board as to how long it takes them to get one of their orders enforced in court.

His estimate, at that time, was it would take approximately 18 months before the first briefs are even filed. So, actually, we are talking about a period of about 6 years. It seems to me as a lawyer, and I pride myself on being a good trial lawyer, that within that 6-year period of time, given the authority which would be present in Senate

bill 2806, we could do a great deal to turn this whole matter around completely because if this measure was passed by the end of the year, as of January of 1970, we could be initiating the first suits under the proposed bill of the administration.

Senator PROUTY. What was the time again, Mr. Brown?

Mr. BROWN. I would estimate the time to put cease and desist in full order and get the first court-enforced order would be 5 or 6 years.

Senator PROUTY. And under the administration's proposals?

Mr. BROWN. It would be a matter of a week. We have some lawyers on hand and we have the mechanism in the agency all ready for handling this type of proposal.

Senator PROUTY. Thank you.

Senator WILLIAMS. As I received your projection of the time it would take with cease and desist, which is the legal enforcement provision, did you say it would take 6 years to get a case——

Mr. BROWN. From the time it was originally started until the time the first order was enforced by the court, it would take between 5 and 6 years. That is my first estimate.

Senator WILLIAMS. Would you run through that again and how it would work? Why would it take that long? We are going now from the date of enactment.

Mr. BROWN. That is correct.

Senator WILLIAMS. Why would it take 5 or 6 years?

Mr. BROWN. The first step would be the actual tooling up of the agency to handle cease and desist authority. We are not presently geared for that kind of authority.

Senator WILLIAMS. You are not starting with the filing of a charge?

Mr. BROWN. No, we are not.

Senator WILLIAMS. You are starting with the period of tooling up.

Mr. BROWN. That is correct.

Senator WILLIAMS. What goes into the tooling?

Mr. BROWN. Under the National Labor Relations Board, they have about 130 hearing examiners, so it would mean we would have to get on board probably 50, 60, or 70 of these persons anyhow in order to cover the entire country. These people are hard to come by. We would have to go out and actually recruit them very actively.

Senator WILLIAMS. That would be harder than getting the lawyers that the President has promised you?

Mr. BROWN. I think it would be infinitely harder than just getting the lawyers we would need.

Second, of course, is the obtaining of physical facilities, because you would have to have hearing rooms available to you and these would be needed throughout the country.

In addition to that, the necessity of restructuring our own organization: namely, to pass new regulations which would be able to handle the cease and desist regulations which we presently do not have, of course. That is the initial period of time.

Senator WILLIAMS. That is the initial period for tooling up.

What does the Commission have now in terms of professional personnel to deal with complaints?

Mr. BROWN. Basically, our conciliators and investigators as well as our general counsel staff. Then, of course, the Commissioners themselves make the determination of reasonable cause.

I might also point out to the chairman that, under the present setup as it exists under the National Labor Relations Board, there are 23 lawyers on each Commissioner's staff. We have presently under our setup only one administrative assistant for each Commissioner.

So, of course, in addition to the hearing officers, even under the cease-and-desist proposal, we would find it necessary to obtain probably some 100 additional lawyers as well.

Senator WILLIAMS. That is the first stage, phase 1 of tooling up if it were to be cease and desist. What would be the first phase of tooling up in the event that the alternate approach were used?

Mr. BROWN. As a practical matter, there would be no first phase because we presently have within the Commission attorneys in the General Counsel's staff which could start filing suits immediately. We, of course, would be recruiting lawyers in addition to those lawyers we have.

We would be selective in the cases we would file suit on but, if the proper case came about, this could be done within a matter of weeks.

Senator WILLIAMS. This would be the instant-action approach?

Mr. BROWN. It would just about amount to that.

Senator WILLIAMS. How long will it take you to accomplish your suggestion and the present objective? How many new lawyers?

Mr. BROWN. Approximately 50 in the first year.

Senator WILLIAMS. Is there budget for that now or does that require additional budgeting?

Mr. BROWN. I would say to you, Mr. Chairman, in the event we got the full budget under the 1970 proposal, the budget figure, and the figure the President has assured me he will press to get, we will have enough money in that budget to take care of that additional number of lawyers in the first year, and we certainly would, of course, urge in the following years additional money to give us the additional supporting help that we would need.

Senator WILLIAMS. Would you go back briefly to the second phase of cease and desist? We have the 2 years of tooling up. What are the next 4 years?

Mr. BROWN. Under S. 2453 of course, we would have to wait until after we had been granted cease-and-desist power prior to the time we could use any of those cases which would mean we would start at the end of that 2-year period. If we go by the backlog that we presently have, which is approximately a year and a half to 2 years, it would mean the first case would come through in which we could issue an order at the end of the 2-year period.

Senator WILLIAMS. I did not quite follow that. If after the date of enactment, a charge is filed and goes into the pipeline for consideration, that would not take 2 years to mature to the potential cease-and-desist order.

Mr. BROWN. They would take about that time, because it presently takes us about 18 months to 2 years before a case comes through before conciliation could even be attempted.

This is part of the crying problem we have. Our backlog is just so tremendous, and of course, if there ever was a case of justice delayed being justice denied, it is certainly one being experienced by this agency.

Senator WILLIAMS. An individual claim of discrimination under the law as it is takes 18 months?

Mr. BROWN. It takes approximately 18 months to 2 years. This is very interesting in light of the fact that the Congress when it enacted this statute had hoped this would take only 60 days.

Senator WILLIAMS. Senator Javits?

Senator JAVITS. Mr. Brown, I might just tell you frankly because I am on your side ultimately that I am deeply troubled about your effort to carry the burden of proof in this matter, that this is a preferable course to a cease-and-desist order.

I can see lots of reasons why we must do this, but I must say as a lawyer, perhaps not equal to you in experience or quality, but still a lawyer who has had considerable time in service and was paid very high fees, I might wish to wager the burden of proof that this is a preferable way, and frankly, I think you are taking on more than the administration can prove.

But, frankly, I think there are lots of reasons why we should do this in the sense that we may really be unable to do anything else to push this tremendous movement forward.

As I say, frankly, that is my view. If you wish to comment on that you may and I have some specific questions I would like to ask.

Mr. BROWN. Your experience as well as your fees certainly exceed my own and I bow to your wisdom in this area. It would seem to me that as lawyers, both of us know that you take the best cases and certainly we realize, of course, there is a difference in terms of the burden of proof.

The burden upon us would be that we would have to prove by a mere preponderance of the credible evidence that our cause was right. I think that being a good lawyer as yourself we would certainly select the best cases and going into court with the best cases, of course, we would hopefully get the best results.

I might also add that part of the idea of filing these suits, and I think that every suit that was filed would be filed with the understanding and with the intention that if it became necessary, you would try it to its conclusion.

But I would daresay that we will find most of these cases will never reach that stage. I think that we would create by the filing of certain selective suits a climate in which the conciliation effort would be able to operate and operate as it was intended to operate under the original legislation.

Senator JAVITS. Is there any difference between what you would do and what the Justice Department is doing now?

Mr. BROWN. I would say basically there is a difference. The Justice Department presently operates, as you well know, under section 707 of the act which is designed to facilitate a pattern or practice of discrimination suits. Because of the Justice Department's limited resources, they have not been able to bring as many cases as we would like.

I think we should also point out that the Justice Department is not a single-focus agency. They are concerned not only with discrimination in employment but in many other areas. Our agency is set up and designed to deal with one specific problem; namely, discrimination in employment. For that reason I think we would be in a

better position to bring the kinds of cases that are important and to give it the kind of attention that it would require.

Senator JAVITS. You would have no more power than the Justice Department except that you might be able to sue in an individual case other than a pattern and practice case; isn't that true?

Mr. BROWN. We could do that but we would bring cases which are representative of a pattern of practice in actuality.

Senator JAVITS. That is what they are supposed to do, too. In other words, there is no difference in quality. You say there is going to be a difference in quantity and a difference in your concentrating on a particular line of case, but the case power is in the law now except that it is not your agency, it is the Department of Justice that is charged with it; isn't that true?

Mr. BROWN. This is true and many times understandably there are differences between agencies, and it has happened in the past and I imagine it will happen in the future. There may be patterns of discrimination we feel should be filed and Justice may be against it.

Senator JAVITS. When you were passionately for the cease-and-desist order as the chairman stated, did you evaluate the alternative of being given the power to institute suit? That has been around a long time. We tried to get Senator Dirksen to give us at least that much in 1964 so this is not really new. Did you evaluate and inventory that when you decided that cease and desist was better and what were your reasons for assessing cease and desist as being better then and now as being less desirable?

Mr. BROWN. I might say that my passions are aimed toward the results that we can achieve here in terms of getting enforcement power, and not to any particular kind of enforcement power. I did not completely evaluate the difference between the cease-and-desist legislation and the one which the administration is proposing. At that particular time, I did not think it was possible to get that kind of bill through, to be perfectly honest about it.

Senator JAVITS. Did you at that time consider the right to sue preferable to cease and desist?

Mr. BROWN. What I am saying is I did not consider that at all. The only thing I considered at that time was the bill presently pending before this committee.

Senator JAVITS. Do you really want us to believe that the administration has taken you by the hand and led you up to the mountain and showed you the promised land of lawsuits as being the solution?

Mr. BROWN. No, I would like to think it was I who took them up to the mountain and showed them those things because it was I who was the strong advocate of this particular piece of legislation. It came from me and was presented to those at the top and we had a very difficult time getting it accepted.

Senator JAVITS. Yet, you did not disclose this to us when you were strong for cease and desist.

Mr. BROWN. If you will read the letter, the only thing I indicated was that the proposal made by Senator Williams was a good proposal, and that cease-and-desist legislation is important. There is no question in my mind that in the event the piece of new legislation which has been proposed by the administration is not passed, I will support cease and desist. I don't think that puts us on opposite sides of the

fence at all. It seems to me that a good physician uses many means to treat the same disease. It seems to me both of these things are appropriate treatments. The question then only becomes which of the two is preferable and I say in terms of getting this thing operational and getting the kinds of results that we want immediately, that the proposal which is being put forth by the administration is preferable. We certainly can disagree as to methods.

Senator JAVITS. I would not wish to disagree. Frankly, I am very embarrassed by the necessity for any disagreement. I want very much to get more powers for the Commission. The only reason that I am put in this rather strange position for me is that, very frankly, the universal opinion of all mankind of lawyers is that a commission with cease and desist power has a lot more moxie than just a commission that has a right to go into court and sue. I am trying to see your argument, and I think you are taking the very toughest argument; to wit, that this is preferable. As a matter of fact, it may give us a little more trouble with our southern colleagues who I would rather have thought would have considered the right to sue as being something of a compromise. If this is preferable, they may give us a lot more trouble than they give us on cease and desist orders.

I am very serious about that. This is a very worrisome thing to me. I think it is very true. You are making a very hard case and could make our whole role very much harder. Be that as it may, that is the choice which has been made and we will do our utmost to live with it.

I would now like to ask you a few specific questions, if I may.

The administration coverage would continue at 25 employees. Our coverage in S. 2453, the chairman's bill and mine, would expand the coverage to eight or more employees. Would you give us your opinion on that?

Mr. BROWN. Senator, knowing the facts of life and realizing, of course, the kind of budget we would need to handle the number of employers and employees under Senator Williams' bill, I think would be just as impossible for the agency to operate. You are talking about a 20- to 25-percent increase in the number of employees covered. You are talking about a 200-percent increase in the number of employers covered. We are presently running, as I have indicated, a year and a half to 2 years behind on our caseload already. To be given those additional kinds of powers at this particular point would be an impossibility for us to handle in any effective manner.

Senator JAVITS. Is it not true we step down even in our agreement with Senator Dirksen, hard as that was to arrive at? I must say again, without him there would have been no Civil Rights Act of 1964, so I hasten to add that. He was the man who made it possible, and this was by no means an inordinate price to pay.

To get back to the case, we reduced it from 100 to 25 a year. What would you say about stepping it down from 25 to eight in a new law as we go at it again over a period of years?

Mr. BROWN. I think that is an appropriate argument to be made. I would hope that the ripple kind of effect that we are receiving now from coverage of employers with 25 or more employees combined with some sort of strong enforcement power would be felt by those persons who employ eight or more persons as well.

Senator JAVITS. Do I understand you are against stepping it down over a period of time to eight employees?

Mr. BROWN. I think it is something we could consider in the future, but we are working with such a tight budget and limited resources that it would be just impossible to handle presently. If we were to increase immediately the coverage to employers of eight or more employees, and we are already running 2 years behind our backlog, I am sure this would double the backlog.

Senator JAVITS. I did not say increase immediately. I asked you if you were for stepping it down as we stepped down the coverage in the bill as we passed it in 1964 from 100 to 25. I ask whether you are against and if you are, what is your reason for not phasing in the stepdown from 25 to eight which is about in the same order of magnitude? I might point out that many State fair employment practice laws, including that of my own State, deal with employers with a small number of employees. Why would you be against that?

Mr. BROWN. I have not indicated I am against it. This is certainly something we ought to consider in the future.

Senator JAVITS. Are you for putting it in this bill on a stepped down basis?

Mr. BROWN. If the Senator would indicate in what period of time he would envision it, I would be happy to comment on that.

Senator JAVITS. I will do better than that. I will ask you as Chairman of the Commission to suggest to us what you would consider a feasible period of time, not this minute. Do it in writing and think it over. No one is trying to get you in an awkward position. Think it over and let us know. I ask unanimous consent that that be made a part of the record.

(The information follows:)

COMMENTS ON EXPANSION OF EEOC JURISDICTION TO INCLUDE EMPLOYERS OF 8 TO 24 PERSONS

Expansion of E.E.O.C.'s jurisdiction to include employers of from 8 to 24 persons would be a salutary improvement in the law, since discrimination ought to be reached wherever it exists, and the small establishment is a traditional trouble area in the field of equal opportunity.

It is evident, however, that expansion of jurisdiction in this fashion will detract from the multiplier effect of decisions involving large employers. The potential respondent workload -which is the relevant statistic -will be increased by 200%, and an immediate expansion of jurisdiction on that scale would almost certainly lead to a crippling avalanche of cases.

A more prudent method of taking on this new responsibility would be to step-down the minimum number of employees necessary to trigger E.E.O.C. action over a five-year period, and thus allow the Commission to gradually absorb jurisdiction over the various levels of small employers. A suggested schedule would be:

First Year: Employers of 20 or more persons.
Second Year: Employers of 16 or more persons.
Third Year: Employers of 13 or more persons.
Fourth Year: Employers of 10 or more persons.
Fifth Year: Employers of 8 or more persons.

This would accomplish the desired end while preserving organizational stability, and in fact parallels the jurisdictional expansion of the Commission during its first years of operation.

The circumstance of a gradual step-down, however, is not in itself sufficient to enable the Commission to absorb the added burden. Additional staff and monetary resources will be absolutely necessary if the Commission is to successfully implement its new mandate, and the legislative history should indicate that such was the intent of Congress.

Senator JAVITS. Somewhat along the same line is bringing the Commission to handling the compliance function of the Civil Service Commission. The bill which is technically before us provides for such a transfer of authority to you, to your Commission; the administration bill does not. Again, no one is trying to get you to give a quick answer, but I would ask that you give us a considered answer as to the position on that subject and if the answer should be affirmative, what period of time would it take to give an opportunity for the Commission to meet that issue.

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

(The information follows:)

FEDERAL EMPLOYEES AND EQUAL JOB OPPORTUNITY

The Federal Service is an area where equal job opportunity is of the highest importance. Americans traditionally measure the quality of their democracy by the opportunity they have to participate in governmental processes, and the degree to which a minority group is excluded from the Federal bureaucracy accurately reflects its status in the body politic.

Executive Order 11246, issued in 1965, recognized the importance of the need for full participation of minorities in government, but did not go far enough in spelling out the responsibilities of administrators in that regard. On August 8, however, the President promulgated Executive Order 11478 to rectify the deficiency, and now for the first time the duty of every federal department and agency head has been made clear. Section 2 of the Order states:

"The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affects employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out."

In the context of this significant step forward, it would not be desirable to transfer jurisdiction over these matters from the Civil Service Commission to the Equal Employment Opportunity Commission, especially if E.E.O.C. is now to assume cognizance over the employment practices of State and local governments, and employers of 8 or more persons. The added burden would simply be too great.

A better course would be to afford the Civil Service Commission the opportunity to implement the new Order until such time as a reasonable assessment of its performance can be made, and if necessary, alternative systems considered.

Senator JAVITS. The same problem relates to State and local employees. I would appreciate very much having your view on that particular question. All of these go to what should be the essence of the law.

(The information follows:)

EMPLOYEES OF STATE AND LOCAL GOVERNMENTS, AND EQUAL JOB OPPORTUNITY

At present there are approximately 9.5 million persons employed by 81 thousand governmental units in the United States. Unfortunately, most of these jurisdictions do not have effective equal job opportunity programs, and the limited Federal requirements in the area (e.g., "Merit Systems" in Federally

aided programs) have not produced significant results. The problem is particularly acute in those governmental activities which are most visible to the minority communities (notably law enforcement and the administration of justice) with the result that the credibility of the government's claim to exist "for all the people . . . by all the people" is called into serious question.

The Fourteenth Amendment not only promised, but guaranteed equal treatment of all citizens by States and their political subdivisions. Too often the last sentence of the Amendment, enabling Congress to enforce the article's guarantees "by appropriate legislation," is overlooked and the plain words of the Constitution allowed to lapse. "Appropriate legislation" to implement the aspect of State and local governmental activity in question is long overdue, and should be enacted without further delay.

The Equal Employment Opportunity Commission and its parent statute, Title VII of the Civil Rights Act of 1964, provide existing machinery for realization of the Fourteenth Amendment's goals, and will be an even more suitable mechanism once the defect of lack of enforcement powers is cured. It should be made clear, however, that E.E.O.C.'s existing ambit of jurisdiction has produced a caseload extremely difficult to handle under the present level of appropriations, and the addition of a significant class of employers to E.E.O.C.'s jurisdiction without a corresponding significant increase in funds would impossibly flood the Commission's processes. The legislative history of this proposal, if enacted, should again clearly demonstrate that substantial additional funds were recognized as being essential to its implementation.

Senator JAVITS. I am impressed with one thing, Mr. Chairman, and I would like to ask you about that and whether you are impressed by that.

You say there are 40,000 charges in the 4 years of the existence of the Commission. As I figure it on the mathematics, almost 16,000 you found reasonable cause for. Do you not consider that a very impressive proportion in view of the claims of the opponents of the EEOC when we passed the act that just hosts of vexatious complaints and difficulties and business would be filed and business would do nothing to answer them? Are you not impressed with the fact that in 16,000 cases the Commission found reasonable cause for complaint?

Mr. BROWN. There is no question I am impressed with it. It seems to me, as we have traveled around the country, there has not been very much done by businesses and unions in this country toward the implementation of this act. I am appalled by the fact that after 5 years of this particular act, there has been so little change.

I think a major part of the problem is we have not had the enforcement power we so desperately need.

Senator JAVITS. I certainly agree with that. I am sorry I have taken so long, Mr. Chairman.

But I rather deprecate and think it important that this difference of view should intrude in the situation but I hope it will work out all right. I think it is a measurable step forward and I would not discount it at all. I do not think it is preferable. I think cease and desist is definitely preferable. It is difficult because of my long history in this matter to take another position but I would wish to say again and again and again that it is a measurable step forward if we can get some increased powers and these are my words, not yours, even if it is only the right for this Commission to go into court. Certainly, you need more money and people. I think it is going to take you a lot longer than you think to get ready for any kind of increased power again whether it is cease and desist or otherwise.

I don't think there is any argument against cease and desist on that score, but be that as it may, the administration is for this and that is a

powerful ally and it is a measurable step forward. I still think we should go for cease and desist, and I will fight for you, but I would not wish to denigrate in any way what you have put forward as the administration's position.

Mr. BROWN. I appreciate your comment.

Senator WILLIAMS. I have a former Attorney General on my right and two former Attorneys General on my left.

Senator MONDALE. Mr. Chairman, as I understand your testimony, you favor a change in the law that would permit the EEOC to begin a lawsuit in court?

Mr. BROWN. That is correct.

Senator MONDALE. You also find merit in the cease and desist power, but you do not think it will be as effective as the first?

Mr. BROWN. That is correct. I do not think it will be as effective and certainly we could not put it into operation as quickly.

Senator MONDALE. Would you have any objection to, or would you favor, supplying the EEOC with both remedies?

Mr. BROWN. I would have no objection to that.

Senator MONDALE. In other words, the court power and the cease and desist power.

Mr. BROWN. It would be a wonderful thing to have the combination of both of them.

Senator MONDALE. Let me ask you again, are you saying it is your position that, if we passed a law with both court proceedings authorized and cease and desist, you would prefer that to a bill which had only one or the other?

Mr. BROWN. Provided, of course, the legality of it could be worked out, I think it would be preferable to have both of them in there. If we had to take the choice between the two, in my opinion I think at this point I would prefer seeing the administration's bill put in.

Senator MONDALE. I don't want to belabor this point about what happened to the EEOC's interest in cease and desist except to say that I spent nearly 5 years as the Attorney General of my State and Senator Eagleton spent a similar period in his State and, if there is one thing we repeatedly heard from our agencies about improving their capacity to deal with the problems with which they were charged, it was the need for cease and desist power.

It has been my experience in that regard that cease and desist power is an indispensable tool for intelligent, swift, and just enforcement of the kind of laws we are dealing with here today.

It is not just a question of how long it takes to wind its way through court. You must know many employers, and many agencies fear the issuance of the order, period. Because it is a public declaration by a responsible public agency that that particular person is in violation of the law and many will go far to satisfy the complaints of an agency to avoid the commencement of a cease and desist order. Based upon my experience, and I think Senator Eagleton joins with me and Senator Javits who served for many years as the Attorney General of his State, the cease and desist order is the classic and most respected tool for administrative agencies and has been long recognized as perhaps the best and most flexible tool.

When you came up for hearings on April 15, I am sure that you were aware your nomination was looked at in the context of whether or not you would support cease and desist powers.

The then Chairman was a strong advocate of cease and desist powers. He had been publicly criticized by members of this body for intimidating American business, and that was the allegation. It was clear that he would not be reappointed as Chairman and the question that faced this Senate in your confirmation was whether your nomination represented a new policy, a new course for this country.

Central to that issue was whether you favored cease and desist powers or whether you oppose them. I asked a question on April 15 at this hearing:

Mr. Brown, do you believe that the EEOC can discharge its full responsibility without cease and desist authority? If you were named Chairman, would you request cease and desist orders for this agency?

That was not just a casual inquiry but a key question about the fundamental role of that agency about which we were all concerned, because of the events that led up to your nomination, and this was your answer:

Senator Mondale, I looked at this question seriously and it is my sincere opinion without the cease and desist power, the operations of EEOC is completely hampered. If we are to do our job, we absolutely must have cease and desist powers.

That was your answer. I was delighted and pleased with it. In response, I said, as a member of the "loyal opposition," I was proud of your nomination and I looked forward to supporting you.

Last week, on August 4, you spoke to Alpha Pi Alpha of Houston and you said this:

Your bipartisan support is needed if the Commission is to secure from Congress the enforcement power that is essential if job discrimination is ever to be worked out. With the present statutory limitations, agencies and employers and so on, refuse to conciliate with the Commission. Therefore the EEOC is unable to protect either wholly the individual victim nor the community from the unjust employment practices which still undermine our economy.

This was last week.

We now seek the passage of legislation which was introduced in Congress which would allow the EEOC, after a full hearing on the merits of the case, the authority to issue a cease and desist order in the event conciliation should fail.

I guess this point has been belabored enough, but we might call your position a "deathbed conversion." What has happened here?

Mr. BROWN. Let me just respond to you if I might. First, I do not mean to give the impression here today that the position I have taken is the position of the Commission. This is the position of Bill Brown who happens to be Chairman of the Commission.

Secondly, the remarks that you have cited are accurate remarks and there is no question about that. I might say to you that at the time of my confirmation I certainly was aware of the fact that we had been seeking cease and desist powers for many, many years. Many of the people on this very Commission, many of the people on the committee before which I am now appearing, have been strong advocates of cease and desist powers.

I am aware of those efforts and I certainly applaud them. The remarks which were contained in the speech of about a week ago are accurate. That speech was written prior to the time that I convinced those who had to be convinced of the desirability of the new piece of legislation which has now been introduced.

It seems to me that that speech and all of the other things which have been said point out one thing and one thing only; that if this Commission is to do its job it must have enforcement power. I might say that something almost in the nature of a legend has been built up about cease and desist. There is nothing to say that because a particular thing has been sought so long that that is an end in itself.

It seems to me that one of the things that we all should face is whether we have the guts to sit up here and say, "Well, maybe I was wrong at that time."

It seems to me the thing I have to consider is if I do in fact see something which in all honesty I feel is stronger, then I would be remiss in my duty if I did not say so. That is all I am saying to this committee this morning.

As I have reviewed both of these proposals, we are in complete accord that enforcement power is absolutely necessary if this Commission is to do its job, but I am also saying as I have reviewed both of these side by side, it is my opinion and my honest and sincere opinion if we are to do our job as quickly and as effectively as we possibly can that the proposal which has been put forth under Senate bill 2806 will achieve that end and that is the only thing I am saying.

Senator EAGLETON. I have asked Senator Mondale to yield to me for one question so I can make a quorum at another meeting.

I have read your prepared statement and I have read some of your testimony here and I have heard your responses to Senator Javits and Senator Mondale.

I view this as a whole sequence of events beginning back with the Labor Department giving in on the compliance requirements of the South Carolina textile producers contracts and the administration's school desegregation guideline retreat, and the failure of the administration to oppose the Whitten amendment in the House last week and their bizarre position on the extension of the 1965 Voting Rights Act, and now your presentation—particularly in light of what you said in Houston but a few days ago—is just another surrender.

It cannot be labeled anything but that. It is purely and simply that. It is a backdown in terms of the administration's obligation to enforce civil rights policies, whether it be education, employment, job training or whatever. I feel sorry for you. I think you have become an unwitting handmaiden in this surrender endeavor. You have my sympathy for the position I think you are in. I think you must have a troubled conscience.

Mr. BROWN. Senator Eagleton, I might say I have no troubled conscience on this. I might further say I sleep quite well at night and I also say to you very sincerely that it was I who put forth this idea.

I was asked to prepare a stronger piece of legislation than cease and desist and this represents my work. It is not something which was handed to me by the administration and I don't want to give anybody that impression, be it good or bad.

I will take the personal responsibility for it. I may be castigated for it, but this is not the administration's bill, this is Bill Brown's response to their request to come up with something stronger. For anyone to sit here and say this something else, they just do not know the facts.

Senator MONDALE. If that is an accurate representation, and I assume it is, why did you not include cease and desist as an alternative remedy?

Mr. BROWN. Very simply because cease and desist is already before this committee. If our bill cannot pass, I would be absolutely in favor of cease and desist.

You see, part of our problem has been that some of us always look at these things as one or the other.

Senator MONDALE. That is my suggestion. If you thought that judicial proceedings gave you an additional power, would it not have been logical to include both of them in the bill rather than deleting the cease-and-desist power?

Mr. BROWN. To be very honest with you, I did not have the opportunity of investigating the legality of including both of them within the same agency.

Senator MONDALE. Is there any doubt about the legality of including alternative remedies in administrative agencies?

Mr. BROWN. There might very well be.

Senator MONDALE. Are you an attorney?

Mr. BROWN. Yes, I am.

Senator MONDALE. Have you ever heard of an objection on that basis?

Mr. BROWN. When you set up the agency for cease-and-desist powers, you have certain regulations which would be necessary to govern that situation, and there would have to be certain regulations added altering the present setup of the EEOC.

Of course, we could work it in within our basic administrative setup of the agency.

Senator MONDALE. Would you have any objection to the EEOC having cease-and-desist powers if we also added civil penalties for an employer who continued to be in noncompliance? Would you object to that?

Mr. BROWN. There are penalties proposed in both pieces of legislation which would include reinstatement and backpay which is included in S. 2806 as well as Senator Williams' bill.

Senator WILLIAMS. Thank you very much.

Senator Prouty?

Senator PROUTY. Mr. Chairman, as one who is not a lawyer, I feel I am treading on very thin ice in the presence of three former distinguished Attorneys General and the distinguished lawyer who is presiding.

It seems to me, Mr. Brown, that anyone who knows your background cannot conclude otherwise than that you are as dedicated to the elimination of discrimination in employment and in other areas as anyone I can think of in this country.

I think there are times, too, when some of us in Congress have a tendency to be more interested in issues than in getting legislation passed. As I listened to your testimony, I think one of the major reasons for the position that you have taken is because you want legislation that can be enacted and, in my judgment, you are taking a proper approach.

Senator Javits discussed with you briefly the question of reducing the jurisdiction below the present figure of 25. I think we all favor that

and I am sure you do too, but there again we have a political question to consider. The same is true of bringing municipal and State employees under title VII, but there again this will generate tremendous opposition to this bill. It may be better to get some kind of enforcement power now and attempt to correct these other inequities at a future time, rather than endangering any improvement in the enforcement area by attempting to do everything at the same time. So, it leaves me rather cold when I hear some of the philosophic concepts expressed here, which I have every reason to believe could not be passed by this Congress. I commend you for the position you have taken. The idea that you switched your position is entirely inaccurate. You are a highly dedicated man who has done the best possible. You have come up with a stronger approach, I think. At least it strikes me as a layman as being much stronger in getting enforcement off the ground and into operation. I would like to ask you one question about cease and desist orders. How long would that take to operate effectively?

Mr. BROWN. If you eliminate the tooling up period, the time it takes for a case to come through our backlog which is presently one and a half to 2 years, and if the NLRB is any indication of how long it takes you actually to get the order enforced, this would be another one and a half years.

Senator PROUTY. Assuming the Commission had the authority to issue a cease and desist order against an employer or labor union, whoever is respondent, what happens then? Is he forced to comply with that order immediately?

Mr. BROWN. No, we would have to go into court under the provisions of Senate bill 2453.

Senator PROUTY. It is not self-enforcing, but you are suggesting now that the Commission be given the right to go into court immediately under S. 2806?

Mr. BROWN. Yes, sir. I might say I am deeply appreciative of your remarks, Senator Prouty, and in addition to that, down through the years my record has shown me to be completely in favor of all of the things that title VII stands for and I am certainly appreciative of the fact that you pointed this out.

The other thing I would say is that the remarks that you have made are quite accurate, particularly in light of the fact that just a week ago we had a budget hearing and we came originally out of the House committee with an appropriation of only $10 million which was not a penny more than it had been the prior year, when you take into consideration the annualization. It was because of efforts by a lot of people that we got it raised to $11.5 million on the House floor. I would hope the Senate would see fit to restore the remaining $4.5 million which is so badly needed.

Senator PROUTY. In his prepared testimony, Mr. Alexander states that only one out of 100 individuals whose cases are found to be meritorious will receive equitable treatment under the administration's bill. I am sure Mr. Alexander will expand on that when he testifies but I would like to get your response to that.

Mr. BROWN. I have not had the opportunity of reviewing Mr. Alexander's position, but it seems to me that that is completely inaccurate. Certainly, you are going to take selected cases. Mr. Alexander, like myself, is an attorney and as an attorney, and as a good attorney, he

is not going to put just any kind of case into court. The ripple kind of effect that comes from having a good case in court and having a good decision made is going to be felt throughout this country. Due to the fact that we filed a complaint, many of the things you get from cease and desist, namely a climate being created in which employers and labor unions look at title VII as they should look at it, as a piece of legislation which they have the obligation to obey like any other law, I believe that they will then sit down in a meaningful manner and start to negotiate and conciliate these cases and within a short period of time we will have this thing turned about.

Many, many times lawyers disagree and this is nothing new. I did not realize we had so many lawyers on this committee.

Senator PROUTY. I have known that for a long time.

Mr. BROWN. I might say each one of us is in favor of enforcement power. Whatever the Congress gives us is certainly going to be a step forward in achieving the ends of title VII.

Senator PROUTY. Thank you, Mr. Chairman.

Senator WILLIAMS. Senator Javits?

Senator JAVITS. I have just one question which I think we should not leave undealt with in the record. I think you equated the power of the Commission in cease and desist and the power of the Commission in your bill—that is, in the administration's proposals—as if they were the same as the court proceedings.

Is it not a fact that that is not true, that if a cease and desist order is issued, if you go to a court you go to an appellate court at once, the proceeding is a review proceeding and the proceeding is on the basis of the evidence which has already been taken and the evidence is only to be overturned as basis for the appellate action if it is insubstantial or there is some fraud or something like that involved or some illegality, whereas, under the bill which you are advocating, if you go into court you have a trial in the lower court with witnesses and so on just as you do now if the Department of Justice brings the case?

Is that not true?

Mr. BROWN. That is true. I did not mean to give the impression that there was a similarity in the way in which it goes through the courts. There is not a similarity. In answer to your earlier question, I pointed out we do have a different burden of proof.

Senator WILLIAMS. May I parenthetically observe here as a lawyer, but not as a former Attorney General, if I were in your position or any of your attorneys and had the choice of going to the fifth circuit court of appeals in New Orleans to enforce a cease-and-desist order, or bring an action in the district court in Biloxi, I know which one I would take.

Mr. BROWN. That is an interesting fact because the best cases in terms of title VII litigation came out of the fifth circuit. That includes the States of Alabama, Mississippi, Georgia, Florida, Texas, and Louisiana.

Senator WILLIAMS. I was feeling right about it.

Mr. BROWN. We have had some very excellent cases come out of some of the district courts down there. These cases had far-reaching effects. There are many, many district courts to which we would be going all over this country, not just in the South, but even in the South, if the past is any sort of guide, we have had some very excellent cases come out of some of these courts.

Senator WILLIAMS. Thank you very much.

Senator MONDALE. I think Senator Javits' point is well taken. The pending administration proposal requires an additional level of court proceedings, more costly proceedings before a jury, and the proposal which Senator Williams and Senator Javits have sponsored here and which Senator Prouty cosponsored brings the appeal to the court right away.

So, the argument supports what Senator Williams and Senator Javits both bring out. I think we could strengthen this approach even further, as has often been provided. I would think we could very easily provide that these cases, when taken before the appellate court, should receive first-treatment priority.

Mr. BROWN. This is not contemplated as a jury trial. This is an equitable proceeding in the district court before the judge and in addition to that——

Senator MONDALE. But it is a *de novo* trial before the judge.

Mr. BROWN. It starts out as a complete trial.

Senator MONDALE. Some of those antitrust suits can go on for 8 or 10 years if you have a good lawyer on the other side.

Mr. BROWN. This could be a situation involving questions of fact; that is whether or not there has been discrimination, and would be far less complex than an antitrust suit.

Senator MONDALE. The southern textile companies have resisted the Defense Department for several years and their life depends upon it. I think they would be even more effective in delaying a decision forever in a favorable trial court in their own State.

Mr. BROWN. There is also provision in Senate bill 2806 which provides for an expedited hearing and preliminary injunction in appropriate cases.

Senator MONDALE. There is no way of denying a defendant, when you have a factual *de novo* trial, all the time he needs in placing his case before the judge.

Mr. BROWN. There are certain situations which would permit us to go in and ask for injunctive relief initially in the event it was the appropriate type of case.

Senator MONDALE. I have no further questions.

Senator WILLIAMS. Thank you very much, Mr. Brown.

From the Equal Employment Opportunity Commission now, Clifford L. Alexander, Jr., Mr. Vicente T. Ximenes.

The Commission has a quorum present.

Senator JAVITS. Mr. Chairman, I think we should hear from all of the members of this Commission under the circumstances.

Senator WILLIAMS. All members have been invited. Miss Kuck did not want to appear and we have not heard from the fifth Commissioner.

Senator WILLIAMS. Mr. Alexander?

STATEMENT OF CLIFFORD L. ALEXANDER, JR., MEMBER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. ALEXANDER. Mr. Chairman and distinguished members of the Subcommittee on Labor, it is a privilege to appear before you in support of S. 2453. This bill's principal purpose is to give cease and desist authority to the Equal Employment Opportunity Commission.

It will give EEOC the kind of strength that is a necessary prerequisite for any regulatory agency. Cease and desist legislation, if passed by the Congress, will say to millions of Americans that the Federal Government stands by to defend their lawful request for equal opportunity in employment.

In my letter of resignation some 3 months after this administration had assumed office, I pointed out that the Justice Department was unresponsive to my request to discuss the future of title VII enforcement.

Six months after this administration was in office this was still true. Throughout my tenture as Chairman of EEOC and subsequently, as a member, I have, on several occasions, stated my strong support of legislation giving EEOC cease and desist legislation at numerous meetings.

This includes the present Chairman, who indicated his support of S. 2453 as recently as August 4.

Any legislation that grants less than cease-and-desist authority to our Commission would be the perpetration of a cruel hoax on women and minorities in this country. The recent bill introduced by Senator Prouty has, I believe, many deficiencies because it relies entirely on the judicial process. Only one out of 100 American men and women who have been discriminated against will receive direct and equitable treatment.

Under cease and-desist authority every complaint, not just a small sample, will have the backing in fact of a Federal administrative agency with a court-enforceable order. Legislation that barely improves the lots of those who have been abused so long will, in my opinion, only serve to heighten the frustration so many feel today; frustration stemming from promises that are stated in law but not enforceable in fact.

It has been clearly established that the most rapid and equitable remedies that can be offered by an administrative agency come when that agency can issue enforceable orders. We have seen that the court route—section 707 of our present title—has been less than adequate; too few suits have been filed; long delays inherent in the court process set in; respondents are forced to act as public adversaries and therefore are frozen in their defense of discrimination.

And courts, even Federal courts, in the Deep South on many occasions unfortunately do not give even-handed justice to blacks.

Cease-and-desist legislation would carry the expertise and consistency of the administrative agency rather than the variety of interpretations which could easily come from numerous judges in various geographic locations.

Administrative procedures under cease and desist are less formal than the austerity of the courtroom. This would mean that the poor would be able to participate more fully and comfortably in the adjudication of their rights.

Court calendars are virtually always slower than the processes of administrative agencies. Therefore, remedies would be more rapidly forthcoming to those who feel they have been discriminated against. Although I personally have a few minor differences with occasional provisions of S. 2453, I believe its basic thrust is sound and in keeping with eradicating inequities in our country.

Cease-and-desist authority as written in your bill gives sufficient due process to all interested parties. The issuance of an order would come only after a thorough investigation, a finding of discrimination, a failure of conciliation, a hearing under oath before a Commissioner or hearing examiners, and another finding of discrimination.

This entire process would be appealable to a Federal court of appeals. This thoroughgoing quasi-judicial process keeps in mind the rights of all the parties.

May I also express my support of provisions in S. 2453 shifting supervision of cases charging discrimination in the Federal Government from the Civil Service Commission to EEOC. To date, the Civil Service Commission has done less than an adequate job in overseeing discrimination in the Federal Government or in hiring minorities within its own Commission.

It's my opinion that this change could be effectuated by a stroke of President Nixon's pen. The authority to supervise discrimination in the Federal Government is contained in section 1 of Executive Order 11246.

But if the President is unwilling to take this step, then I believe section 717 of S. 2453 should be retained. Minorities and women have waited a long time to see if their Government practices what it preaches. Paper pledges are insufficient—the full force of law is required.

This is the time for affirmative support of progressive legislation, and this is why I so strongly support S. 2453.

Thank you very much.

Senator WILLIAMS. Thank you very much, Mr. Alexander.

Is Miss Kuck here?

(No response.)

Senator WILLIAMS. Mr. Ximenes.

STATEMENT OF VICENTE T. XIMENES, MEMBER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. XIMENES. 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 eight 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 municipally owned board had 14 Negro employees of whom nine were in service or labor classifications and 807 Mexican Americans of whom about 616 were labors, 157 were operatives and 31 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 American 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.

Thank you very much.

Senator WILLIAMS. Thank you very much. I have just one observation; since the bill S. 2453 was introduced, this new and most hopeful new dimension has been added and that is the President's welfare message of Friday last, and you certainly associated that with the objectives of this bill.

Senator Javits?

Senator JAVITS. We have to vote at 12 o'clock, gentlemen. I shall request the Chair to recall tomorrow all of the members of the Commission who choose to testify for questions, but in deference to Senator Prouty, Mr. Alexander, would you be kind enough to explain the sentence which says:

> Only one out of 100 American men and women who have been discriminated against will receive direct and equitable treatment?

Mr. ALEXANDER. By Chairman Brown's own testimony only, selected cases could be taken under Senator Prouty's bill which is readily apparent. If we did what the Justice Department now does perhaps one in 10,000 would have the support of the Equal Employment Opportunity Commission.

If with 50 lawyers they brought cases on a selective basis at best only one in 100 could receive help. Under cease and desist individual cases will proceed far more rapidly than through the courts.

I would like to disagree vehemently with the idea that tooling would take 2 years. I think it would take just 2 or 3 months to get started. Hiring some of the proper staff should take no longer than a few months. Also you don't have to wait for an employment discrimination to go through the entire pipeline before starting a hearing.

One need only wait for the law to be passed and then proceed with it. I would say within 2, 3, 4 months after this cease-and-desist bill

became law, we could see that an order was issued by the Commission and thereafter would be enforceable in a court of appeals. Certainly closer to 6 months than 6 years.

Senator WILLIAMS. We will proceed this way: Tomorrow if you gentlemen can return, and the Chairman and the other two members, we will hear you in the morning, and we will recess now until 2 and return to our announced schedule of witnesses for the day.

(Whereupon, at 12 noon, the subcommittee recessed to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

Senator WILLIAMS. We will reconvene the subcommittee hearings with a panel of most eminent witnesses: Mr. Clarence M. Mitchell, director of the Washington bureau of NAACP; Mr. Joseph L. Rauh, Jr., general counsel, Leadership Conference on Civil Rights; Mr. Jack Greenberg, director-counsel of the NAACP Legal Defense and Educational Fund; and Mr. Wendell G. Freeland, a member of the board of trustees of the National Urban League.

Gentlemen, we are honored to have you with us this afternoon on th' most important legislation. Our procedure will be at your pleasure.

Mr. Mitchell, what is the pleasure?

STATEMENTS OF CLARENCE M. MITCHELL, DIRECTOR, WASHINGTON BUREAU, NAACP; JOSEPH L. RAUH, JR., GENERAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS; JACK GREENBERG, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND; AND WENDELL G. FREELAND, MEMBER, BOARD OF TRUSTEES, NATIONAL URBAN LEAGUE

Mr. MITCHELL. As a courtesy to my out-of-town colleagues, I will yield to them and allow Mr. Freeland, who is representing the National Urban League, to go first, and if Mr. Greenberg would follow him, I will follow Mr. Rauh. I would be the last witness.

Senator WILLIAMS. That will be fine.

Mr. FREELAND. It seems we go in alphabetical order, which I think the last time this subcommittee had a panel was about the same way, but Mr. Greenberg was first at that time.

Mr. Chairman, 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 committee. Before joining the National Board 2 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 minorities. It is nonpartisan 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 8,000 volunteers who apply expert knowledge and experience to the resolution of racial problems.

First, let me take this opportunity to commend Senator Harrison Williams and the 31 sponsors who are responsible for introducing this important piece of legislation.

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 black 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, unfortunately, 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 percent of the 1½ million black males were in white collar jobs with only 1 percent at the managerial level, and sometimes I question what that managerial level is. I think that

the managerial level about which the report speaks entitles the holder of those managerial jobs to a key to the executive bathroom rather than any real policymaking power in the corporations or the businesses.

Laborers and service workers accounted for 47.8 percent of 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, obviously, indicate the need for changes such as are proposed in the Equal Employment Opportunities Act.

The main features of S. 2453, 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 act, and

I don't think I will go into the cease-and-desist orders, having been here this morning when Mr. Brown and other members of the commission went into this particular aspect; (2) and more significant, however, 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. I would note that Mr. Greenberg speaks to this in some detail, 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. As Senator Williams noted when he introduced the Equal Employment Opportunities Enforcement Act, EEOC 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. 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 similarly 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 aggressive unit and has gained a reputation among us all 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.

In addition, 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.

We should note that governments, Federal, State, and local, should in fact lead this. This will make that potential for leadership a more nearly realizable goal.

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, nonprofit agencies will be working to help victims of job discrimination via private law suits, a right which would be continued under the provisions of S. 2453.

I note, also, that Mr. Young asserted 2 years ago that their employers just wait for legal excuses to do the right thing. This is so.

S. 2453, 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 include the filing of a complaint by an aggrieved person; an investigation of the complaint by EEOC compliance personnel conciliation if the investigation produces reasonable causes; 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 employment 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 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 few places where Federal agencies have made an all-out enforcement effort. And some of the major barriers to the employment of low-skilled members of minority groups have thus far either been beyond the reach of civil rights agencies (the inaccessibility of industry located in suburban areas, the absence or 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 change which the National Urban League thinks is extremely important.

Section 703(h) of the current law would be amended to assure broader equality of 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.

I had a recent experience with a compensation case of a mechanic who had worked for about 25 years as a mechanic to be declared incompetent to be a mechanic because of certain tests which were clearly unrelated to the skills which he had been performing and the job that he had been doing over the years.

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 materials 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 gauged better by a 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 shares the sentiments of you, Senator Williams, who said in introducing S. 2453:

> It is my hope that through this bill we will finally act to make the Commission a truly effective instrument for eliminating discrimination in employment and thereby fulfill our commitment to make this goal a reality for all Americans.

I thank you.

I would also like to note that Mr. Mitchell will talk about two particular section in which he has a great interest. We have discussed this, and the League supports his position fully as to sections 715 and 717.

Senator Williams. Thank you very much.

Mr. Greenberg?

We will go through all the statements.

STATEMENT OF JACK GREENBERG, DIRECTOR-COUNSEL, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Mr. GREENBERG. Mr. Chairman, my name is Jack Greenberg. I am Director-Counsel of the NAACP Legal Defense and Educational Fund. I submitted a prepared statement, but in an effort to save time I will try to summarize what I think are most of the important parts of that statement.

Our position on the principal points with which you are concerned is essentially this:

First, we heartily approve of the provisions in the bill which would provide cease and desist powers to EEOC. Cease and desist powers have been considered necessary in the enforcement of any great public law provision this country has had, and I refer you for examples to the legislation providing these powers to the Food and Drug Administration, the Federal Trade Commission, the Securities and Exchange Commission, the National Labor Relations Board, and the Interstate Commerce Commission. The reasons why these powers have been provided to these agencies have been discussed at some length in the testimony earlier today. I believe the strongest argument in favor of cease and desist powers is that their use through a Federal agency charged with the administration of laws like Title VII can accomplish more effective and widespread compliance with such legislation than is possible through private litigation.

Secondly, I would like to comment on the administration proposal to give EEOC authority to prosecute its own court actions, rather than making this the responsibility of the Attorney General as it is now under the present law. In my view this would not be a significant improvement on the power now possessed by the Attorney General to bring pattern and practice suits. Under the case law a pattern and practice suit has been interpreted to mean litigation which has considerable public importance. To my knowledge it has never been held that a suit brought by the Department of Justice has failed to meet that requirement. Thus while I heartily applaud the existence of the authority to bring such lawsuits, I think it can be as readily augmented by increasing the appropriations to the Department of Justice.

Finally, that part of the proposed law which most interests us as a private agency deeply involved in the implementation of title VII is the section which preserves the right of private parties to file suits on their own behalf. At the present time, the legal defense fund is handling approximately 80 such suits on behalf of private parties. As I have pointed out in my prepared statement, private lawsuits have been a traditional and very significant vehicle for the making of new law in the civil rights area. A significant number of the school desegregation cases have been won through litigation brought by private parties. Freedom of choice was held to be impermissible under certain circumstances by the Supreme Court of the United States two terms ago through private litigation. Teacher integration according to enforceable and measurable standards was required by the Supreme Court of the United States this past term in a private lawsuit. The case outlawing hospital segregation was brought as a private suit and the principle that it established was incorporated into title VI of the Civil Rights Act of 1964.

The final reason we think it is extremely important to maintain the right of private litigation as a complement to litigation by the Government under title VII is that when Government does not act, either for reasons that are justifiable or unjustifiable, suspicion arises that the Government did not act because some labor union or corporation used its political influence. As a result, the Negro community has long felt that it ought always to be able to rely on the right to conduct its own litigation through a private agency such as ours which will not be influenced by such considerations. Thus, we feel that the committee has been very wise in preserving in this particular bill the right of private parties to conduct their own litigation to enforce rights guaranteed by title VII, in order to maintain confidence in the integrity of the law and the judicial process.

PREPARED STATEMENT OF JACK GREENBERG, DIRECTOR-COUNSEL OF THE NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

My name is Jack Greenberg. I am testifying pursuant to an invitation extended by Senator Williams to participate in a panel of witnesses representing civil rights organizations and to express my views on the equal employment provisions, Title VII, of the Civil Rights Act of 1964 and proposed amendments to the Act, S. 2453. I was extended a similar invitation by Senator Clark several years ago when the Senate Subcommittee on Employment, Manpower and Poverty was considering proposed amendments to Title VII. Some of the comments I make today I made several years ago, and I repeat them today because they are still pertinent.

I am Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc. Our organization has a deep interest in the vindication of fundamental human rights through the legal process, having devoted ourselves totally to such a program since we were formed in 1939. Perhaps the most celebrated example of the capacity of the law to start a country moving on fundamental problems in race relations is the Supreme Court decision in the School Desegregation Cases, which were brought under the leadership of Thurgood Marshall, my predecessor as Director-Counsel of the the Legal Defense Fund.

Following the passage of Title VII of the Civil Rights Act in 1964 and its becoming effective in 1965, we filed more than 70 cases in the United States District Courts. This number almost doubles the number of cases we had filed when I testified several years ago. A list of Title VII cases is appended to this statement. I would like to share with you our experiences with these cases because they are a substantial portion of all of the litigation now pending under the Act. Several other organizations have some cases among them, and the Attorney General of the United States has, I believe, filed about 40 cases. Two kinds of experiences have stemmed from our involvement in these cases. The first is rather gratifying because it demonstrates the capacity of the statue and men of good will to work out differences which will secure employment to Negro workers who have been victims of racial discrimination and until passage of the law had no remedy. The first category of outcome consists of favorable settlements we have obtained. The first case which we filed was against the A & P in Wilmington, North Carolina. The settlement of that case secured the plaintiff an immediate placement as a cashier in the A & P store in Wilmington, in addition to the assurance of the company to place other Negroes in similar and other positions in both North and South Carolina. Following this, a number of Negroes have been employed by A & P in jobs that they had therotofore not been able to hold.

Another indication of the capacity of a lawsuit to lay the basis for effective settlement of civil rights claims is the much celebrated *Newport News Shipbuilding* case. Even though the shipbuilding company came under the jurisdiction of the Office of Federal Contract Compliance and had been under investigation by OFCC for many years, and had also been investigated by the Equal Employment Opportunity Commission, there was no effective movement towards settlement of outstanding claims of racial discrimination until after we filed the lawsuit. With the case pending, counsel for the plaintiffs and representatives of the United States for the first time were able to work out an effective settlement

with the company whereby hundreds of Negro workers moved into craft and supervisory positions theretofore barred to them.

Similarly in the case of *Anthony* v. *Brooks* (Georgia State Employment Service), in Atlanta, Georgia, we filed suit on behalf of Negro applicants who had not theretofore been referred to possible employers on the same basis as similarly situated white applicants. On the eve of the trial, a settlement was worked out whereby the Georgia State Employment Service agreed to process the applications of Negro job seekers on the same basis as white applicants. A similar case recently has been concluded with the Louisiana State Employment Service involving its Shreveport, Louisiana office.

Similarly, we have settled cases, among others, with the Monsanto Company involving its Eldorado, Arkansas facilities; Werthan Bag Corporation, involving its Nashville, Tennessee facility; Norfolk and Western Railroad, involving its Roanoke, Virginia facility; and the Alpha Portland Cement Company, involving its Birmingham, Alabama facility. As a result of these settlements, Negroes will be enjoying jobs that theretofore had been barred to them because of race.

On the other hand, many of the cases are now following the classic pattern of prolonged and difficult school segregation litigation. Every procedural technicality imaginable must be gone through before the case comes to trial. Most of the cases are or have been hung up on such technical-procedural questions as: exhaustion of administrative remedies; satisfaction of certain statutes of limitations; propriety of filing class actions; whether conciliation is a precondition to filing suit and similar issues. It has taken more than 3 years of litigation just to get court determinations on these issues. When I testified several years ago before the Senate committee then considering amendments to Title VII, I indicated that the first trial in a case of racial discrimination in employment (*Quarles* v. *Philip Morris*, in Richmond, Virginia) had just then started. I am pleased to state at this time that the *Quarles* case has been decided (January, 1968) and stands as a landmark case on the issue of seniority rights of Negro employees who theretofore were denied access to jobs reserved for white persons. I might add that many of the large corporations and labor unions involved in employment litigation are employing some of the most vigorous and skillful counsel in the country and that a great deal of protracted and difficult litigation is in prospect.

Out of these experiences, we would like to make several suggestions concerning the proposed Bill S. 2453, the Williams Bill. We heartily applaud the provisions of the Bill which give the Commission cease and desist powers. Long ago it was learned that public rights cannot effectively be enforced by leaving them solely to private litigants. As a result, there has been enacted the Securities and Exchange Commission Act, the Interstate Commerce Act, the Pure Food and Drug Laws, the Federal Trade Commission Act, and the National Labor Relations Act, and similar agencies. The extent of racial discrimination in employment in America is so vast that there never will be progress unless government is armed with the power to move forward 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 law suit which the Legal Defense Fund brought (*Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (5th Cir. 1963)), In that case the "separate but equal" provision of the Hill-Burton Act, was held unconstitutional. The theory of this case was embodied in Title VI of the Civil Rights Act of 1964, giving administrative enforcement to various agencies of the government, principally the Department of Health, Education and Welfare. At the present time HEW can, by employing the sanction of cutting off federal funds, compel desegregation of schools, hospitals, and similar institutions. Private parties may also bring suits.

It has been our experience that private parties have done the pioneering into such questions as the duty of school boards not to discriminate racially in the hiring, firing and assignment of teachers. It is questionable whether HEW would have moved into the area of teacher segregation without the lawsuits that private parties won, holding that a student's right to a desegregated education included the right to attend shools staffed by teachers who had not been placed on a racial basis. Following these cases, HEW strengthened its position on the issue.

This example can be multiplied many times over. Indeed, many provisions of the HEW guidelines on school desegregation were modified after judicial decisions in privately financed lawsuits. Moreover, it is important that Negro communities maintain confidence in the legal system as something that they and their lawyers can invoke, even if a government agency will not. An article in the Wall Street Journal quoted an EEOC official as saying:

"There is a feeling on the staff level that if a complaint involves General Motors, U.S. Steel or a company of that stature, with access to the White House, then Justice will back off."

We need not accept this as true to recognize that when a complaint is filed against a powerful corporation or labor union and the Commission does not bring it to successful fruition, the suspicion is that there is something of the sort sanctioned by the law. The Wall Street Journal article had caused much concern among plaintiffs who have been victims of a long racial discrimination. Their rights to state their case and bring it before federal courts with their lawyers are the basis of assurance against cynicism developing in the Negro community concerning enforcement of the law.

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. 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 its 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 Section 3(b) of the bill. This point should be clarified.

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. Moreover, the phrase in the proposed Bill calling for "uniform administration" of tests would undercut a request 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 to delete this section entirely and leave the present language of 703(h) standing.

The provision in the proposed Bill (Section 4), retaining the right of private actions 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 who would be seeking relief under the Act to seek assistance in bringing his suit and also allow the attorney sufficient time to adequately prepare for the filing of a lawsuit. 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 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. (Section 2(a).) This is 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 significant pressure against larger employers.

Coverage is extended to governmental employment under Section 2(b) of the Bill. This is also a generally desirable change. The Fourth Amendment already covers governmental employment. The only effect of adding Title VII coverage is for any procedural advantage it might offer such as making counsel fees available. The principle importance of this provision will 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 the area of fair governmental employment. This is an area of vast employment potential which had gone largely untouched except with regard to teacher employment.

Under the present law it is unclear how conciliation agreements are to be enforced. Section 3(d) clarifies this point by making the enforcement of these agreements subject to the general enforcement powers of the Commission.

Allowing EEOC to prosecute its own court action, rather than making this the responsibility of the Attorney General as it is under the present law, is desirable. This change, I'm sure, will allow a more vigorous enforcement of the 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.

The Commission should be given direction and authority to conduct a continuing survey of apprenticeship and retraining programs which could bring substantial relief in this particularly crucial area. Section 6(c) of the proposed Bill does direct the Commission to require record keeping in this area, but we feel that this approach to apprenticeship and retaining programs is insufficient.

Under the present law, an aggrieved party unable to afford his own attorney could apply to the court for the appointment of an attorney and the court has the power to authorize the commencement of an action without the payment of fees, costs or security. We would suggest that the provision relating to appointment of counsel for indigent persons be made a part of the proposed Bill.

In summary, S. 2453 in its present form is a very desirable Bill in so far 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 are preserved for charges filed with the Commission before the effective date of the proposed Bill. (Section 10.) 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 me the opportunity to appear and present to you our experiences with the present law in addition to setting forth our observations and suggestions on the proposed Bill. It is our sincere hope that the deliberations of the Committee and the Senate will be fruitful in dealing with many of the deficiencies of the present law.

Appendix: List of NAACP Legal Defense and Educational Funds, Inc., Title VII Cases Pending in Federal Court

ALABAMA

1. Dent v. St. Louis-San Francisco Railway Co. and Brotherhood of Railway 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. Muldrow v. H. K. Porter, et al., No. 66-200 (N.D.Ala.)
8. Pearson v. Alabama By-Products Corp., Local 12136 of the United Mineworkers of America, C.A.No. 66-320 (N.D.Ala.)
9. Pettway, et al. v. American Cast Iron Pipe Company, Civ. No. 66-315 (N.D. Ala.)
10. Russell v. Alpha Portland Cement Company, Civ. No. 68-91 (S.D.Ala.)
11. Williams v. Southastern Metals Co., and United Steelworkers, Civ. No.—— (N.D.Ala.)
12. Wrenn v. American Cast Iron Pipe and Foundry Company, Civ. No. 66-315 (N.D.Ala.)

ARKANSAS

13. Page v. National Cash Register Company, Civ. No. LR-C-81 (E.D.Ark.)
14. Parham v. Southwestern Telephone Company, Civ. No. LR-68C-71, (E.D. Ark.)

GEORGIA

15. Anthony v. Marion Williamson, Director, and Edward J. Shable, Manager of Atlanta, Georgia Office, Georgia State Employment Security Agency, No. 9947 (N.D.Ga.)
16. Baxter v. Savannah Sugar Refining Co., Civ. No. 2304 (S.D.Ga.)
17. Colbert v. H-K Corporation, Inc., Civ. No. 11599 (N.D.Ga.)
18. Culpepper v. Reynolds Metal Co., C.A. No. 12179 (N.D.Ga.)
19. Gride v. Railway Express Co., Inc., Civ. No. 12,330 (N.D.Ga.)
20. Hayes v. Seaboard Coastline Railroad, Civ. No. 2371 (S.D.Ga.)
21. Johnson v. Georgia Highway Express, Inc. C.A. No. 11598 (N.D.Ga.)
22. Jones v. Georgia Power, C.A. No. 1414 (S.D.Ga.)
23. Kemp v. General Electric Co., Civ. No. 2061 (N.D.Ga.)
24. Kendrick v. American Bakery Company, Civ. No. 11490
25. Local Union No. 234 of the Wood, Wire and Metal Lathers Int'l Union and Jackson v. Acoustl Engineering Co. No. 10306 (N.D.Ga.)
26. Long v. Georgia Kraft Co., C.A. No. 2033 (N.D.Ga.)
27. Moreman v. Georgia Power, C.A. No. 12185 (N.D.Ga.)
28. Phillips v. J. P. Stevens & Co., C.A. No 774 (M.D.Ga.)
29. Roberson v. Great American Insurance Co., C.A. No. 12182 (N.D. Ga.)
30. Shy v. Atlanta Terminal Co., et al. C.A. No 12005 (N.D.Ga.)
31. Thomas v. Rich's Inc., C.A. No. 11892 (N.D.Ga.)

COLORADO

32. Burks v. Denver Rio Grande Railroad, C.A. No. 1153 (D. Col.)

LOUISIANA

33. Burrell v. Kaiser Aluminum and Local 205 of the Aluminum Workers, C.A. No. 67-68 (E.D.La.)
34. Clark, et al. v. American Marine Corp., No. 16315 (E.D.La.)
35. Dupas v. Crosby Chemical Co., C.A.No. 14155 (E.D. La.)
36. Johnson v. Louisiana State Employment Service, (W.D.La.) No. 13848.

MISSISSIPPI

37. Miller, et al. v. International Paper Co., et al. C.A. No. 3416 (S.D.Miss.)

NORTH CAROLINA

38. Black v. Central Motor Lines, Inc., C.A. No. 2152 (W.D.N.C.)
39. Bradshaw v. Associated Transport, Inc., C-245-G-67 (E.D.N.C.)
40. Brown v. Gaston County Dyeing Machine Company, Civ. No. 2136 (W.D.N.C.)
41. Brown v. Gaston County Dyestuff Co., Civ. No. 2250 (W.D.N.C.)
42. Griggs v. Duke Power Co., Civ. No. C-210-G-66 (M.D.N.C.)
43. Halrston v. McLean Trucking Company, Civ. No. C-77-WS-68 (W.D.N.C.)

44. Johnson v. Seaboard Coast Line Railroad Company, Civ. No. 2171 (W.D.N.C.)
45. Lea v. Cone Mills Corp., Civ. No. C-176-D-66.
46. Lee v. The Observer Transportation Corp., Civ. No. 2145 (W.D.N.C.)
47. Moody v. Albemarle Paper Co. and United Papermakers and Paper Workers, AFL-CIO, Civ. No. 989 (E.D.N.C.)
48. 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.)
49. Russell, et al. v. American Tobacco Co. et al., Civ. No. C-2-G-68 (E.D.N.C.)
50. Walker v Pilot Freight Carriers, Inc., C.A. No. 2167 (W.D.N.C.)

OKLAHOMA

51. Williams et al. v. American St. Gobian Corp. and Local 10, United Glass and Ceramic Workers of North America, C.A. No. 68-102 (E.D. Okla.)

TENNESSEE

52. Alexander v. Avco Corporation and Aero Lodge No. 735 of the International Machinist, AFL-CIO, No. 4335 (M.D.Tenn.)
53. Goodwin v. City Products Corp., C.A. No. 68-456 (W.D.Tenn.)
54. Hall v. Memphis Furniture Co., C.A.No. ——(W.D.Tenn.)
55. Hall v. Werthan Bag Corp., Civ. No. 4312 (M.D. Tenn.)
56. Jennings v. Illinois Central, Civ. No. 68-91 (W.D. Tenn.)
57. Newman v. Avco Corp. and Aero Lodge No. 735 (M.D.Tenn.)
58. Wesley v. Pantaze Drug Stores, Inc., C.A. No. 67-285 (W.D. Tenn.)
59. Young v. Denles Co., Civ No. — — — (W.D.Tenn.)

TEXAS

60. Barnaba v. Rohm-Haas Chemical Company
61. Jenkins v. United Gas Corp., Civ. No. 5152 (E.D. Tex.)
62. Roy v. Jefferson Chemical Co. & Local 1792 International Association of Machinists & Aero Space Workers, AFL-CIO C.A.No. 5891 (E.D.Tex.)
63. Smith and Jackson v. Hughes Tool Co., No. 67-4-591 (S.D. Tex.)

VIRGINIA

64. Carlles, et al. v. Sturgis-Newport Business Forms, No. 1153 (U.S.D.C.) (E.D.Va.)
65. Charity v. Continental Can, Civ. No. 5902 (E.D.Va.)
66. Morgan v. Norfolk and Western Railway, et al., C.A. No. 68-C-29-R (W.D.Va.)
67. Moss v. The Lane Co., Civ. No 68-C-72-R (W.D.Va.)
68. Smith v. United Papermakers and Paperworkers, Civ. No. 5897 (E.D.Va.)
69. Younger v. Glamorgan Pipe and Foundry Co., Civ. No. 68-C-16-110 (W.D. Va.)

Senator WILLIAMS. Thank you very much, Mr. Greenberg.
Mr. Rauh?

STATEMENT OF JOSEPH L. RAUH, JR., GENERAL COUNSEL, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, AND VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION

Mr. RAUH. Thank you, Mr. Chairman. I appear this afternoon not only as the general counsel of the Leadership Conference on Civil Rights, but also as vice chairman for civil rights of the Americans for Democratic Action.

I do not have a prepared statement, but I can say, having read Mr. Greenberg's statement, and having heard Mr. Freeland's statement, that I agree without reservation with the statements that have been made by both of those who have preceded me.

I would, therefore, simply like to make a few short remarks to emphasize points they have already made.

Senator WILLIAMS. By the way, at this point, I forgot to mention your statement will be fully included in the record, Mr. Greenberg.

Mr. RAUH. I believe S. 2453 is as close to the specific cure for the remedy of discrimination in employment as can be found. It is carefully worked out; it is the exactly right measure to be taken at this time. I support it without reservation.

I think the most important point, of course, is the cease-and-desist power which we have long since come to recognize as the basis of any proper administrative action.

I think that the reduction of the number of employees necessary in order to come within the act from 25 to 8 brings this bill in line with other bills of a similar nature and is very important. Possibly equally important or more important almost is inclusion of State and local employees.

One of the really worst travesties on our system is a Negro in the South being arrested by a white State trooper, taken to a jail with all white jailers, taken to court with all white personnel. Here you see our system at its worst with Congress having ratified that kind of white justice by excluding State and local employees from title VII.

I would suggest that this bill, by doing away with that exemption for State and local employees, strikes a real blow for decency and fairness.

Furthermore, one of the worst things we have in this country is government by bad example. That is why so many people have fought against Government discrimination in the administration of justice. To have Government agencies with all white employees when you are trying to have private business hire Negroes, is to make Government an example of what is wrong. It seems to me, Mr. Chairman, that you and your colleagues have done a great thing by putting together S. 2453 and I hope we can have its early passage.

I must say, however, that I think S. 2806 is a patent diversionary move to derail S. 2453. S. 2806 has none of the provisions I have mentioned. It doesn't provide for cease-and-desist orders. It doesn't reduce the number of employees necessary for coverage.

It does nothing about State and local employees. In fact, it does nothing except one point, which Mr. Greenberg very well answered. It does give the Commission power to bring suits in district court. But what is that? You don't need an administrative agency to funnel suits into court. S. 2806 would leave the EEOC as almost the only administrative agency without any administrative powers.

What the administration has done here in S. 2806 is to make civil rights second-class rights. Now, let me explain that because that is a serious charge against S. 2806 and I make it advisedly and deliberately.

Rights that other people have in front of administrative agencies are carried out by cease-and-desist orders. What the administration is saying in this bill is, "No, Negroes aren't entitled to cease-and-desist orders. You have to enforce their orders the harder way by going to court and enforcing them there."

As Mr. Greenberg so wisely pointed out, that is already in the bill. Pattern and practice suits by the Justice Department are already

in the bill. We got that in 1964. The thing that is missing is an administrative agency that will enforce the employment rights of minority groups and I think that, just like the voting rights bill, the administration came forward with this bill in an effort to derail something else that the civil rights movement wants.

In the voting rights area we wanted a straight extension and the administration voting rights bill was an effort to derail that. Here we want S. 2453. The administration bill gives us nothing. It is an effort again, it seems to me, to derail what we so badly need.

I don't have to take any more of your time. It seems to me that the situation is out in the open. We want S. 2153 and we want it badly.

Senator WILLIAMS. Thank you very much.

Mr. Mitchell?

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Mr. Chairman and members, I am thankful that you have given me this opportunity to appear and with your permission, Mr. Chairman, I would like to offer my statement for the record. I shall summarize it.

Senator WILLIAMS. Thank you. We will be glad to receive the full statement. We will be glad to have it included and be glad to hear from you.

(The prepared statement of Mr. Mitchell follows:)

PREPARED STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the sub-committee, 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 S. 2453, a bill to further promote equal employment opportunities for American workers. At this fateful hour in the Nation's history, we hope that Congress will not bow to expediency by whittling away the coverage that S. 2453 would provide in the field of employment discrimination.

The basic purpose of S. 2453 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 Section 715, which would 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 Sec. 717 which would give the EEOC jurisdiction over discrimination problems in the Federal Government and in the Government of the District of Columbia.

In order that the sub-committee 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 United States 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. Compaints 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 non-discrimination 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 complaints 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 1969'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. 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 the victims of discrimination 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 proposed in S. 2453 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 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 committees 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 records of discrimination is nothing short of fantastic. One of the most easily checked examples of foot dragging, double dealing and evasion by using technical lies is the Bureau of Printing and Engraving. For many years that agency refused 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 seven 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 benefited.

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 non-discrimination that apply to government as well as to private industry. The present law and the statute proposed in S. 2453 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 S. 2453. 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 S. 2453. 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. S. 2453 is the kind of program that reasonable men and women of goodwill can rely upon. I hope and urge that it be approved by the sub-committee, the full committee, the Congress and the President.

Mr. MITCHELL. Thank you. Before going into the summary, I would like to just say something which I think is important for the country to know and this occasion is a good setting in which to make the statement.

The average person who would look at this panel of witnesses would assume that there are three white men here and one Negro. It just happens that the gentleman sitting next to me, Mr. Freeland, is of the same race as I am. It also happens that we were members of the same church before he went off to Pittsburgh and became a highly successful lawyer. When he served in our Armed Forces during World War II, there were many, many opportunities when he, as a young officer with white skin—his hair was blond then, it is turning gray now—and blue eyes, could have escaped the humiliations which were visited upon his fellow soldiers because they had skins the same color as mine, but Mr. Freeland elected to continue in the racial category that circumstances had assigned to him and he has been a part of this struggle. The other two gentlemen who are here are persons who are white citizens of the United States, but they, too, voluntarily have cast their lot with this cause and through the years we have been working together as a team to advance the dignity of man in the greatest Nation of the world.

I think the objective that we have had and which we continue to pursue is in jeopardy now. I think it is in jeopardy to a great extent because of the kind of thing that happened here this morning at this hearing when the official position of this administration was expressed as being in favor of something less than what responsible people know must be done in this country if we are going to come to grips with this problem.

I was in Louisiana not so long ago and talked with a very mild mannered young man that I had known for a long time. He was black in color but he was wearing one of these beards that gave him a very fierce expression and I said:

Why are you wearing that beard? It just looks ridiculous for you to be walking around here, young as you are looking like some kind of a terrible individual.

He said:

Well, you know, that is the only thing that these white folks respect down here.

He said:

I have had to grow this beard because now they pay me some respect. When I was clean shaven they kicked me around and called me boy, but now they are scared of me.

Basically it seems to me that is the same kind of motivation that causes members of the Ku Klux Klan to wear hoods. They haven't got the guts to come up and talk to a colored man face to face on the street in the broad daylight, but when they can put on a sheet and a hood they can go out under the cover of darkness, they can set fire to his house, they can shoot him down, and, of course, they are all together in a big crowd.

I think it is a terrible thing in our country that we can become polarized to the extent that in order to enjoy rights on one side and in order to maintain oppression on the other side, people will wear beards and don masks or do something which makes them appear as individuals who are different from what they really are.

I am sorry to say that in my opinion, the reason why you see a great many colored people walking around with African robes on that are called Dashikis, many of them wearing these beards, is because that has been the only way that they can get attention. We come in here, Mr. Freeland and I and my associates, dressed as normal Americans. We speak in modulated voices. We present you with intelligent information. Some of the best legal brains in this country are here, to my right at this table. Against that we have the highest level of our Government coming in and saying that we are all wrong, that we don't really need this wonderful machinery that people like Senator Javits and you and other members of this committee have espoused through the years and who know of their own knowledge that it is effective.

The administration comes in and says "We don't need this." Now, of course it is true that the administration, as Senator Javits pointed out, has offered something which is perhaps a kind of shifting of the use of legal talent and it is entirely possible that this might result in some small improvement, but what we are in need of is a massive infusion of confidence which will let the country know and which will let the unhappy people and the dissident elements know that we are really serious about this effort of trying to eliminate job discrimination. I do not think that we are going to be able to win confidence with what the administration proposes.

What the administration proposes is going to look to the man in the street like another effort to give him the runaround. He has been getting the runaround at the plant gate. He has been getting the runaround when he takes these tests that Mr. Freeland described. He has been getting the runaround when it comes to the matter of promotion. And now he sees that it is not only going to be the runaround by a private corporation or a private institution, but it is going to be a runaround with the stamp of the great seal of the Government of the United States.

I believe that this is unfair to the people, I believe it is unfair to the country, and I believe it is unrealistic in the times in which we live. The day will never come, Mr. Chairman, and members of the committee, when I personally will join the forces of those who believe that by force and violence they can achieve their ends. I am dedicated to the law, I am a disciple of the law, and I am a believer in the Constitution of the United States. But I am also a realist and I know that we cannot answer the man who is about to throw a Molotov cocktail if we say "We are not going to give you cease and desist powers in this legislation. What we are going to give you is a chance to have a different set of lawyers from what we now have in the Justice Department," namely, EEOC lawyers, going into court. It is wrong to come in and tell the people of this country that the administrative process would be so cumbersome, so lengthy, and so complicated that it would take a number of years before we could successfully adjudicate a case involving the matter of employment discrimination.

I think that our experience has amply proved that we can, by making use of the administrative process speed up the whole matter of settling these cases. I venture the opinion, Mr. Chairman and members, on the basis of my experience, that the reason there has been delay in a number of cases which the EEOC now has, is because it has no way of bringing to book those who are the recalcitrants, but if it were found that because we passed this law, EEOC could bring people into an administrative hearing, it could, after giving them due process, issue a cease-and-desist order, I think that the number of voluntary compliances would take a dramatic rise.

I don't think that we can give anything less than that to the American people. In my testimony I address myself, as Mr. Freeland pointed out, to sections 715 and 717. I have included in my prepared testimony an excerpt from the report of the first Fair Employment Practice Committee, which was established by Executive Order 8802 in 1941 and that order was subsequently amended by Executive Order 9346 in 1943 for the purpose of putting this country in the business of attempting to end employment discrimination in an orderly way. You will note, Mr. Chairman and members of the committee, that that order contained all of the authority that we now have in EEOC and other agencies for opposing discrimination in employment under one tent.

It was that way because it wouldn't have made sense to do it in any other fashion. If we had attempted to have one agency administering Government contracts, another handling the Civil Service Commission, another handling some other aspect of the program, quite obviously you would have a Government speaking with many tongues and lawyers giving many kinds of opinions which certainly would not have been a desirable thing to do.

That agency went out of business because of a parliamentary device which was employed by one of the Members of the Senate known as the Russell amendment, but there were some of us, and these same people here at the table were part of the group, who wanted to keep that national idea alive. We explored various alternatives and finally we were able to get the cooperation of President Truman, who acted in the first instance, his action was supplemented by President Eisenhower, who extended the agencies established by President Truman. President Kennedy further extended the life of these agencies.

The agencies were established to police discrimination in employment in the Federal service and discrimination in Government contracts. They were set up that way, as an interim arrangement. They were supposed to be replaced when and if we were able to get an EEOC statute passed, because all of us knew that if we did not have these agencies together, we would suffer, because of lack of uniformity, if for no other reason.

Now, it just happens that, as always occurs when you get people having vested interests in certain kinds of Government activity, the principal protagonists of keeping these agencies separate, are, the Civil Service Commission and the Government contract agency. I am sorry to say that I have noticed that the people associated with those agencies are busily lobbying around in the country and in the Congress trying to create the impression that there is something great and good connected with this separatism and therefore we ought to keep it.

Well, Mr. Chairman and members of the committee, I report to you on the basis of bitter experience that there is nothing constructive that I have been able to discern in all the years around here coming out of these agencies, that we can't have under a consolidated arrangement.

I think the most flagrant example of what happens when you don't have coordination is given by the experience with Deputy Secretary Packard in the Department of Defense when he took office. All of us knew that the textile industry is a virtual temple of discrimination. All of us knew that Mr. Greenberg's lawyers and the Government lawyers had been working to try to eradicate discrimination in the textile industry. Everyone knew that the textile industry could not be relied on to give verbal assurances that it wouldn't discriminate, but there we had the second highest officer, who I understand is a man of great personal good will, making himself a party to an arrangement under which we gave contracts in excess of $9 million to these discriminators because some of their representatives came in and gave a verbal assurance that they would not discriminate. If this had not happened where I could see it, if I read about it in a tale of fiction about Government acting in error, I would have thought that whoever wrote that story was drawing too heavily on his imagination.

I simply found it hard as an American, as a person who believes in law and orderly process, to accept this as a thing which had taken place at the instances of one of the highest officials in the Government of the United States.

This made a mockery of the process that the Office of Contract Compliance is supposed to carry out. We happened to hear about that one. There was a lot of publicity attached to that one.

But, Mr. Chairman and members of this committee, this has been happening in all of the two decades or more that I have been in Washington and I would predict it will always happen as long as we make these agencies themselves the custodians, the policemen, the jury, or whatever you want to call them, for enforcing the nondiscrimination contract, you will always depend on the pleasure of the Secretary of Labor. I have met the Secretary of Labor. He is an estimable gentleman, but I don't know that he will always be Secretary of Labor and it should not be necessary in our country to depend upon the good will of the occupant of the office to get things done.

The law ought to require that things be done and that is what is proposed in the bill that you and your associates have offered to the Congress.

The second point, of course, has to do with the Federal service itself. The Government of the United States is one of the leading discriminators in the world and it gets that position because it is one of the largest employers in the world. Somehow it seems to have been infiltrated by some of the worst discriminators in the world. Through the years we have good men at the top of these agencies who have tried mightily to eliminate racial discrimination and other forms of injustice, but that function, after the wartime Fair Employment Agency went out of existence, was delegated to the Civil Service Commission and to various agencies.

So what happens? If a man has a complaint of discrimination the first place he gives voice to that complaint is before his supervisor who is the individual orginally responsible for the discrimination. He then

appeals through various parts of the agency's operation and may have an opportunity to appear before some hearing officer. These hearing officers, as selected under the present process, are notoriously unaware of the problems of racial discrimination and very adept in trying to confuse things so that they never, or very rarely ever, find that there has been any discrimination, but if in a rare instance, such as we recently experienced in the city of Philadelphia, you get a hearing officer who finds that there has been discrimination, it then comes up to the Board of Appeals and Review in the Civil Service Commission.

This Board of Appeals and Review is the epitome of entrenched bureaucracy: totally insensitive to how the people are suffering under a system of discrimination. They just don't know what discrimination is and they are unwilling to admit that there is discrimination. In that case to which I have reference, even though a hearing officer had found there had been discrimination, they overruled the hearing officer.

Now, there is no appeal as a matter of right from that kind of decision. If the Commission voluntarily wants to give you the right of appeal, you may have it but otherwise the decision of the Board of Appeals and Review will stand.

We do not give, Mr. Chairman and members of the committee, to employers, to labor unions, to training institutions, and others the right to sit in judgment on their own conduct. We make them come before what is an impartial tribunal, the Equal Employment Opportunity Commission, and hopefully eventually through the process of the courts at all times they would be appearing before an objective judge of their conduct. They would not have the luxury of being able to sit in judgment on their own acts.

The Government of the United States acting through the Civil Service Commission and through the constituent agencies sits in judgment on its own conduct and in 99 percent of the cases it gives an unfair prejudiced judgment which results in a finding that the complainant is not entitled to any kind of redress.

I offer as an example which is included in my testimony, that any of you gentlemen can check out if you want to check it out and I have included it because it is not peculiar to the one administration. I have mentioned that the Bureau of Printing and Engraving, which for years had a system of training people as apprentices so that they could become plate printers, would not admit Negroes to that craft.

I had the good fortune to meet Secretary Humphrey, Secretary of the Treasury under President Eisenhower, and he, after reviewing these facts, decided that there had been discrimination and he ruled that these people who were Negroes had to be admitted to the apprentice training program and that they could become plate printers. Rather than give these people an opportunity to become plate printers, the Bureau of Engraving abolished the course. Mr. Humphrey held that if the Bureau ever reestablished the course these people who had been the victims of discrimination would have first crack at it.

It took——

Senator WILLIAMS. I thought you were through with that thought. We have kept the Secretary of Labor here for quite a bit of time. Are you going to be with us through the rest of the afternoon?

Mr. MITCHELL. I am going to be with you, Mr. Chairman; I would like to finish just this thought.

Senator WILLIAMS. I thought you were through. Excuse me.

Mr. MITCHELL. The point I am trying to make is that 7 years later the individuals got redress in the Bureau of Printing and Engraving and they were then permitted to take part in the course.

The other thing that I would like to say before I retire from the witness stand is, I have been around here a long time and I have always tried to show the greatest respect for everybody with whom I come in contact and I have respect for the Secretary of Labor; but I think in fairness to people like myself and others who are here, that we are just as much entitled to be heard in an orderly manner without interruption as is the Secretary of Labor. If he had been here first, I would never have raised a peep about his coming ahead of me and I will respectfully retire in order that he might be heard, but I do say this is a part of the pattern that I am talking about in this country: the fact that when we get to dealing with the people, we all too often go off on protocol and ceremony so that the people feel affronted.

Now, I have nothing more to say. I would be glad to come back if you want me.

Senator JAVITS. Mr. Chairman, I don't think the Secretary of Labor would wish to testify under these conditions. I respectfully suggest that he be asked to return tomorrow if that is his convenience and that Mr. Mitchell may continue. I say this because I think that I know the Secretary and I don't think that this would be at all his desire. I think I made the suggestion to the Chair only because he is a man with enormous responsibility. He was sitting here and waiting. It is not his fault. It is mine, for which I apologize, and it just won't work that way, but it would be now just impossible.

You can't put it on the basis that you are being superseded by the Secretary as an evidence of discrimination. So I respectfully suggest that the witness continue, that his testimony continue; and that the Secretary be invited to return at his convenience.

Senator WILLIAMS. Well, I was going to say I thought that the panel would be available to us for discussion after the Secretary finished. Was I right on that, Mr. Mitchell?

Mr. MITCHELL. Yes, I understood that.

Senator WILLIAMS. I thought you were going to be with us, anyway, through the afternoon, and it wouldn't be this much of an incident. Secretary Shultz is on his feet.

Secretary SHULTZ. Mr. Chairman, I am prepared to spend the afternoon here if that is agreeable with you, and I would be glad to wait until Mr. Mitchell is through. I wouldn't be here tomorrow. I will be out in California.

Senator WILLIAMS. I would appreciate that. I am sure the witnesses do. We do.

Mr. MITCHELL. Thank you, Mr. Chairman.

Senator WILLIAMS. Mr. Mitchell?

Mr. MITCHELL. I would just like to say that one of the things that I have included in my statement at the end is a reference to the administration bill. I have done a great deal of personal soul searching in trying to devise a comment on that bill. The reason I have done that is I respect the sponsors of that legislation. I know they are men of tremendous good will. I know they have always been with us in this fight for human dignity.

I have great respect for Chairman Brown as an individual. I am happy to say that I came over to testify in his behalf when he was under consideration as the appointed Chairman. Only last week I was before the Senate Appropriations Committee urging that the appropriations for his agency be increased.

But I must say with regret, that I think Mr. Brown is on an improper course. I agree with Senator Javits that he has taken on an incredible burden in trying to be the chief defender of the administration's proposal. I think what is going to happen all around this country when Mr. Brown's testimony is widely circulated is that people will put it in the context that Senator Eaglet on put it this morning and that is that here we have seen a retreat on the Voting Rights Act, we have seen a retreat on the guidelines, we have seen the administration unwilling to come in and oppose the Whitten amendment, and now they have done two very interesting things.

First, in the hearing before one of your subcommittees I was surprised to see on television an exchange between Senator Mondale and Mr. James Farmer, Mr. Farmer being a Negro, in which Mr. Farmer was saying HEW didn't need the money for the Headstart program that Senator Mondale was saying that we do need and that all of us know that we need.

Then, of course, a distinguished lawyer, Mr. Brown, who is a dedicated civil rights person, comes and does not just present this proposition, but undertakes to defend it with all his considerable legal skill and to say that this is something which is better than what we now have or what we hope to get.

This, to me, is a pattern which I believe the people of this country will not accept. The President himself has said that the Negroes are suspicious of him and he would like to overcome that suspicion. If he wants to know why they are suspicious, look at these illustrations that I have given. We hear the voice of kindness and compassion, but we find the acts that do not correspond to the kindness of the voice. We find our rights being taken away and the things that we ought to have being minimized. I think the Congress has not only the power, but the duty, Mr. Chairman, and members of the committee, to take a stand in this matter and to report out favorably the pending bill with the enforcement powers.

I think the Congress has the duty to pass this legislation and I earnestly hope and believe that if it is passed the President of the United States will sign it and that it will become a very effective law. I thank you.

Senator WILLIAMS. Thank you, Mr. Mitchell. Senator Javits?

Senator JAVITS. I just had one question of the legal witnesses, Mr. Mitchell, and of course of yourself, if you wish to answer. I would like to hear these distinguished lawyers on the comparison of the cease and desist power and the right to institute suit both for individual cases and pattern and practice suits, which seems to be the gravamen of the issue here between the administration and, as Mr. Mitchell has just said, people who we would hope would be with him all the time, so that was the only question I had.

Mr. RAUH. Senator Javits, I think I speak for everybody, because there was some mention of this in each of the prepared statements in the initial presentations.

I think that all of us here feel that the right given in S. 2806, the administration bill, to the Commission to bring suit adds very, very little to the present pattern or practice right that the Department of Justice already has.

When compared to the cease-and-desist power, that little gain, if any, seems insignificant. The cease-and-desist power is the method that we have learned over the 50 years of administrative agencies that works the best. The reason it works is because you get people with real expertise in the field to make decision after decision after decision. You get decisions actually on a wholesale basis.

All that the court does after that is to consider whether that has been arbitrary. So what our experience has shown is that where there is a cease-and-desist power, you get the benefit of the expert knowledge of the Commission to make its decisions on the facts and you have the judicial power come in only where judicial power properly belongs, namely, to review to see that the Commission has not been arbitrary, but not to try to make the decision itself.

The danger with the administration idea of doing it all through suit is that you put the courts in the position of having to make the initial decisions which should be for people who do nothing else but understand that problem. What the administration bill therefore does, is to operate as a funnel to the court, but that is no function for an administrative agency. This is going to be the only administrative agency without administrative powers.

Let's suppose you were going to have 50 new lawyers in EEOC to bring suits. If you gave those to Justice, it would be the same thing. During the investigative process if someone said, "We will behave," there would be no suit. In other words, this adds so little as against the existing law as compared to S. 2453, of which you were one of the leading supporters, that we just feel it is a step in the wrong direction.

I think this, in answer to Senator Javits' question, is a very real danger. When the 1961 bill passed we all accepted the bill without cease and desist on the assumption that some day you would get a cease-and-desist power and you would bring up the enforcement of minority rights to the same degree you have the enforcement of other rights.

Now, if you are going to do it this way, you are in effect telling us that you are not going to treat employment rights for minorities the same way you treat all other rights. Why should a man have a better right to enforcement when he is being fired because he is a union member than when he is being fired because he is black?

They are both subjects to which my heart goes out, but I wouldn't want to be in the position of saying one is a greater right than the other, but if I had to say one was a greater right, I would say the right not to be fired because of your color is even a greater right, and yet what this administration bill would do is say "No, we won't enforce the law the way we do for these other rights. We will only say you go to court."

Jack, do you care to comment?

Mr. GREENBERG. I agree with Mr. Rauh's last statement, but I might add a thing or two.

It has been said that cease-and-desist powers would subject proceedings to considerable delay because they must be taken to the court of appeals for enforcement, but that, of course, ignores the fact that a direct court judgment also must be taken to the court of appeals if one party or the other seeks to appeal it, in addition to which even when a cease-and-desist order is taken to the court of appeals, it comes out armed with all the presumptions that an administrative agency gives to such a decision and will not be overturned except for arbitrariness, but the direct court decision is subject to a much greater scope of review.

It has also been said to staff up the agency to grant cease-and-desist orders would take a considerable period of time. I think to staff up the agency to make it another Civil Rights Division would take at least as long as it took to make the Civil Rights Division as large as it is today and that took a period of several years, so if one wants to do it on a crash basis, I think it ought to be done.

The cease-and-desist personnel can be installed in place as rapidly as anyone else with all the other advantages that come from cease-and-desist powers.

Senator JAVITS. Mr. Freeland, do you have a comment?

Mr. FREELAND. Only one comment, Senator, and that is this morning it was suggested that to give the Commission quasi-judicial powers when the Commission had sort of inborn prejudice in favor of the compliant would be unwise. I suggest to you that the history of most commissions has been a history of commission members with an interest in the area in which they were working. When the first commissions were established, we didn't go out and get someone who was completely foreign to the field in order to have them sit on the commission.

The administrative agencies from the time they began have tried to bring an expertise and with that expertise comes, of course, some prejudice, some prejudgment capacity, but also with the right of judicial review that bit is always subject to effective control by the judicial branch of the Government.

Senator JAVITS. Thank you very much. Mr. Mitchell, did you want to add anything to these comments?

Mr. MITCHELL. Only that I am in complete agreement with my colleagues.

Senator JAVITS. Thank you very much.

Senator WILLIAMS. Let me clarify this for myself. Mr. Brown suggested there would be considerable difference between gearing up to effectiveness for cease-and-desist authority and for district court enforcement. I believe you have answered that, Mr. Greenberg, but would you clarify it for me?

Mr. GREENBERG. I think no one can really say. I think if there is a resolve to staff the EEOC and if the funds are there, it can be done very promptly. I don't think there is anything inherently different between staffing an office of lawyers and lawyers' administrators. I think that is normal management and personnel procurement and staffing and drawing up an organizational table. I don't see any inherent difference between those two.

But once you are at the point where you are staffed up, then the whole administrative process carries certain presumptions and a certain familiarity as means of enforcing public laws of great general enforcement that all points in the area of administrative importance.

Mr. RAUH. I would just like to support that dichotomy that Mr. Greenberg is suggesting here. There are two time problems here. There is one of tooling up and then there is the rest of the time from then on as to which is the faster.

Personally, I agree with Mr. Greenberg it is hard to say how you tool up the faster. It may take 6, 8, 9 months in either case, but is that the most important question or how it will work once tooled up? Here I don't think there is any question. Are you going to throw 5,000 cases into the already overwhelmed Federal judiciary per year or are you going to put it with people who can do these day after day and grind them out as they will have to be.

The real point they are suggesting is they won't have so many cases. They won't do as good a job with cease and desist because there is not just the judicial capacity to do all of these cases in the courts that would be done under a proper cease-and-desist power. I do not really believe that Mr. Brown thinks he is going to be bringing 5,000 or 10,000 suits next year. What he really means is we would not do as much as if we had the cease and desist.

Senator JAVITS. The Fair Labor Act is enforced by courts and age discrimination is enforced by courts.

Mr. RAUH. That is correct.

Senator JAVITS. The point you have just made interests me greatly I think it is very important, the probative force and that is the number of cases. I really should not wear you down with this, but I do think if it becomes clear in order to even modestly administer this law, enforce this law, we had what you say, 5,000 and in the Fair Labor Standards Act, and I know it is true with the aged, but with the fair labor standards you have relatively few cases, but then I think this would be a relatively persuasive argument to Congress that this is not the way to proceed.

Mr. RAUH. I do have some experience with the fair labor standards. In 1938, when it started, and indeed through the passage of the law this very subject was considered. I think the actual way it was set up was more a political concession than a decisional process actually at that period of time.

Senator JAVITS. If you will allow me to interrupt, it is precisely the same with this. In 1961, but this is the price we had to pay.

Mr. RAUH. You are so right, but it seems to me the difference on the fair labor standards, I am not as clear about the aged—there hasn't been too much so far—but the difference with the Fair Labor Standards Act it seems to me is there is less judgment and less decision based on inferences of fact. It is a little clearer, Senator Javits, on whether they are paying a certain amount per hour. When we started, when it was 25 cents. It was not too complicated to determine if a person was paying 25 cents. It was more an enforcement problem which Justice ordinarily has.

All of our suits were brought by Justice or by the employees themselves. It is more an enforcement problem it seems to me than a careful judgment that has to be based on interferences. Here you have a situation where you have to know a great deal about the history of discrimination and the tricks that are played and so forth in order to really make a judgment. I really do not think that is the same kind of judgment that has to be made in the Fair Labor Standards Act. It

seems to me a good pencil and an arithmetic problem might solve your problem and it is a question of someone trying to get away with something rather than any matters of judgment as you do have where you get the issue of discrimination.

Senator JAVITS. Would you say the same thing about compliance with the public accommodations title of the Civil Rights Act of 1964?

Mr. RAUH. Pretty much, sir.

Senator JAVITS. In that case, two cases made all of the difference. Winning two cases set the pattern.

Mr. RAUH. Yes, sir.

Senator JAVITS. Thank you very much.

Senator WILLIAMS. Senator Eagleton?

Senator EAGLETON. Thank you, Mr. Chairman, I wish to highlight my agreement, Mr. Mitchell, with part of what you said in your statement, by reading a small portion of your prepared statement where you say, "Unfortunately, this is another example of why a great many 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 there is to obtain a compromise," as you say, and I agree wholeheartedly with the observation made this morning when Mr. Brown testified and I feel it quite strongly.

Putting it in another sequence of events, whereas very pious pronouncements were made, pretty little speeches were delivered, nevertheless, the end result showed a very distinct surrender on this whole question of civil rights.

You mentioned the textile contracts in South Carolina. I think that was one of the first indicia and we have had the Whitten amendment, the 1965 Voting Rights Act and we have had the school desegregation guidelines. Now, from this event and perhaps others that both you and I have overlooked, and it just seems to me without trying to cause a pat phrase, I can remember, though I was much younger, the 1952 Munich-Morningside Heights, and I think in the aggregate we have had a whole series of Munichs on the Potomac from this administration.

I am as sad about it as you are.

Let me ask this of you, Mr. Rauh, on the cease-and-desist order, and, by the way, I find it unusual for Mr. Mitchell to refer to you as well modulated. Doesn't the Securities and Exchange Commission have cease-and-desist authority?

Mr. RAUH. Yes, sir.

Senator EAGLETON. Doesn't the FTC have cease-and-desist authority?

Mr. RAUH. Yes, sir.

Senator EAGLETON. Doesn't the National Labor Relations Board have cease-and-desist authority?

Mr. RAUH. Yes; and that is really the closest analogy to the Labor Board where it has worked so well.

May I make the point about that? You really reminded me by asking that question.

Those who are trying to change that are not trying to throw those decisions into the Federal courts. They recognize that it will be such a burden that they are arguing for setting up special courts. I do not support this.

I think it is right the way it is, but those people who do not agree that it is right the way it is at the NLRB would not dream of saying just put this in the district court somewhere and let a judge who does not know anything about it decide it. They wouldn't even consider that, and that is what they are proposing in S. 2806.

Mr. MITCHELL. I would like to make this observation: What is being proposed here is kind of a repeat performance of what happened when the original FEPC was put out of business by the Russell amendment. At that time, the FEPC was established under the war powers of the President of the United States. There was offered in the Senate a very innocent amendment which said that no agency which had not been authorized by Congress could operate for more than one year by receiving its funds out of the President's Emergency Funds, so this amendment was approved and it was invoked against the Fair Employment Practice Committee.

Of course, it stopped that agency right on the spot. But then some discerning men and women in the Congress began raising points of order against every single agency that was in operation without being authorized by Congress and we nearly stopped the war effort in this country because almost every agency—the National War Labor Board, the Office of Price Administration—every single agency was in the same position as the Fair Employment Practice Committee.

There are many people in this country who think Negroes are stupid and they think we do not understand things of this sort, but we have long memories and I know and I could not sit here and be truthful with this committee if I did not say to you that this is a repeat performance of the kind of thing that has been done to us before and it is unfair.

Senator EAGLETON. Mr. Chairman, I would like to read into the record the case history in the case of the time lag, in the case of three cases under title VII of the 1965 Civil Rights Act which deal with this question of employment discrimination.

These are not the three most gigantically prolonged cases. These are three we got at random from sources, and they are verifiable. *United States* v. *H. K. Porter Steel Co.* filed in the Northern District of Alabama. It was filed on June 23, 1967. It was tried on August 12, 1968. It was decided on December 30, 1968. It is now on appeal and still pending on appeal.

So, a case filed on June 23, 1967 which is well over 2 years ago is still pending on appeal. This is now the same method that they wish to transfer as it were from the Civil Rights Division of the Department of Justice to EEOC.

Another case is *United States* v. *Dillon Supply Co.* in the Eastern District of North Carolina.

It was filed on February 27, 1967. It was tried on May 23, 1969. It was tried close to 2½ years after it was filed. It was decided on July 1, 1969 and a decision is now being made whether to take it up further on appeal. The decision has been made.

So as to show no discrimination myself, I will take one from my own State—*United States* v. *St. Louis Building Trades Unions*, filed in the Eastern District of Missouri, my district where I live. It was filed on February 4, 1966. It was tried on June 15, 1967. It was decided on March 7, 1968, and it, too, is on appeal with no final result obtained.

The point I want to make, and I think three case could be supplemented with others, is illustrative of the fact that using the procedure which apparently is now recommended by the administration in terms of filing these actions in district court and then taking them through that route is going to be a very time-consuming endeavor.

It is legalized foot-dragging. It cannot be anything but a retreat from the previous administration. It cannot be anything but a retreat from that which Mr. Brown spoke about a week or so ago in Houston when he asked for cease-and-desist power. I am sad for Mr. Brown—I, too, as Mr. Mitchell, am aware of his character and ability. I am sad when any mature, grown individual is put by his superiors, which obviously he has been, in such an untenable and uncompromising situation.

Senator WILLIAMS. Thank you very much, gentlemen.

Our next witness is the Secretary of Labor George P. Shultz, accompanied by Arthur A. Fletcher, Assistant Secretary of Labor, and Laurence Silberman, Solicitor.

We appreciate your full cooperation this afternoon as you cooperate always with this committee.

STATEMENT OF HON. GEORGE P. SHULTZ, SECRETARY OF LABOR; ACCOMPANIED BY ARTHUR A. FLETCHER, ASSISTANT SECRETARY OF LABOR; AND LAURENCE SILBERMAN, SOLICITOR

Secretary SHULTZ. We appreciate your courtesy, Mr. Chairman.

May I first introduce my colleagues here, Assistant Secretary of Labor for Wage and Labor Standards, Arthur Fletcher, under whose office the Office of Federal Contract Compliance falls, and Mr. Laurence Silberman, the Solicitor of the Department of Labor.

I appreciate and welcome this opportunity to present the views of the Department of Labor on S. 2453, "A bill, to further promote equal employment opportunities for American workers."

There can, of course, be no reservations, either legal or moral, on the part of government in support of this objective. It is one to which the Government has long been committed; since 1941 through various executive orders requiring equal employment opportunity to be provided by government contractors and since 1961, through the enactment of the Civil Rights Act, fixing this commitment for all covered employers, labor unions and employment agencies.

The method, rather than the objective, is the question raised by the proposed legislation. It seeks, in summary to broaden the enforcement powers of the Equal Employment Opportunity Commission by granting that body cease-and-desist powers and would transfer to the Commission the administration of the Federal Contract Compliance program presently vested in the Secretary of Labor by Executive Order 11246.

With respect to the enhancement of the powers of the EEOC and the best methods of speedy enforcement of their missions, I believe the Department of Labor should defer to the Department of Justice and the Commission. Appropriate enforcement powers are a desirable objective and the Department of Labor fully supports the administration bill on this subject as introduced last week by Senator Prouty.

There is no substitute for the knowledge acquired by the experience

of day-to-day administration of a law. This premise compels us to resist the transfer of the Executive order program from the Department of Labor to the Commission.

An incentive for the proposed transfer is, presumably, the alleged failure of the Federal contract compliance program to achieve its full potential in assuring equal employment opportunity, and I have heard some comments as I have sat here and listened that seemed to be directed toward that point and I will be glad to discuss them in response to your question.

Without trying to contest this change, it should nonetheless be noted that our burden of defense extends only a short time before yesterday. If our stewardship is in question, a more reasonable probationary period would seem to be in order, particularly in the light of the significant measures we have already undertaken.

In a statement filed on March 28 of this year with the Senate Judiciary Subcommittee on Administrative Procedures and Practices, I enumerated some actions planned for the improvement of the contract compliance program.

I can now report that much of what was then planned has been substantially accomplished and the achievement of the remainder is imminent. The Office of Federal Contract Compliance had been without a Director since June 6, 1968. Since February 4, I had assigned the administration of that agency on an interim basis to the second-ranking officer of the Department, Under Secretary James D. Hodgson.

We have now upgraded the position of OFCC Director from a GS-17 to GS-18, the top most General Schedule salary rating and have appointed to that post Mr. John Wilks, who will be Deputy Assistant Secretary for Compliance.

We have furthermore taken the Office of Federal Contract Compliance from its lonely isolation and made it a part of the organization headed by the Assistant Secretary of Wage and Labor Standards, Mr. Arthur Fletcher, under whose leadership considerable progress has already been made.

We have improved the working relationship between the Office of Federal Contract Compliance and the contracting agencies. With respect to the Department of Defense, there is now a written procedure for joint action at the staff level. Where compliance seems particularly difficult and the staff of one department, or both, feel that sanctions are called for, the case will go to the executive level of both Departments for joint disposition.

A procedure has been developed—and this is still a proposal—requiring the endorsement of OFCC to any preaward compliance settlement which is now before the various affected agencies for review.

One of the difficult problems is a managerial program; that is, how do you know sitting in the Office of Federal Compliance or EEOC or any other central place, how do you know what is going on? There are contracts being let in a very large number all the time and you need to have some kind of management information service that is telling you what is being let, what is the status of the contractor and to feed that back into your system so if need be you can do something about it.

This procedure I referred to is one avenue into that question and we have a number of other ideas about how to get into that problem, but it is a genuine problem in the administration of this order which

we are working on. We have also moved to improve the joint effectiveness of the equal employment opportunity activities of the three Federal organizations engaged in this Government objective—OFCC, the Equal Employment Opportunity Commission and the Justice Department.

This is being accomplished by devising procedures for improved sharing of information, better coordination of investigative and reporting activities, establishing priorities for action and the elimination of duplication or overlapping inspection and investigation.

This process has been formalized by the creation of an interagency coordinating committee on equal employment consisting of high officials from the Department of Justice, the Equal Employment Opportunity Commission and the Department of Labor.

A working subcommittee meets at regular intervals, at least weekly, and coordinates mutual cases and issues under the supervision and control of the full committee. It is expected that this procedure will minimize duplication and inconsistency and make the enforcement of our civil rights laws more effective with the resources available for such purposes.

The work of the committee has already resulted in the development of a uniform set of standards and criteria, on employee and job applicant testing which will represent a single Government position. Uniform standards of investigation, evidentiary burden and remedies are also in the process of development and will be tested and formally prescribed in the near future.

Decisions have been made designating specified procurement agencies with responsibility for the compliance program of a particular contractor. Such assignments are essential to avoid duplication and must reflect considerations of industry and geographical expertise which the agencies possess in varying degree.

A new designation of primary interest agencies along industry lines and a coordination of assignments to sharply reduce the number of agencies that OFCC coordinates has been prepared and distributed to these agencies for their views.

A data processing contract study, from which we have just received a sample printout, has been undertaken which will show a more current minority utilization profile by areas, industries, and companies. This will make it possible for both OFCC and contract compliance officers to understand more fully the employment practices of Government contractors, and to decide which particular establishments require priority attention.

This is one of the things we undertook in the early stages of the Nixon administration to use the information that is on file in a manner that helps you managerially to do the task of correcting a situation.

In other words, you have all of this information on employment patterns of one kind or another and it is there, statistical data, it is interesting and so on, but the question is: How do you make use of this data as part of a management information system and that is what we are trying to get at with this data processing study.

Through accumulated experience in administering the Executive order we have developed an increasingly uniform and cohesive approach to affirmative action as specified in that order. This approach involves programs designed to insure that more adequate attention is

given to the recruitment, hiring, training, and upgrading of minority members of the Nation's work force.

It involves a device to insure progress is being made through the establishment of targets or standards for industry achievement.

Because of special features that mark construction industry activity—short-term projects, hiring halls, shifting work force, et cetera—it has been necessary to devise a special approach to insure effective affirmative action programs for that industry.

I might emphasize in turning to construction what we are seeking to do is apply the same ideas about affirmative action that one applies in, say, the textile cases and which we did apply in the textile cases to a different kind of industry setting.

An earlier effort toward this objective that required the hire of minority group members in numbers negotiated after the opening of bids on contracts was determined by the Comptroller General to be violative of the competitive bidding process.

Accordingly, we worked out a new affirmative action concept we believe to be suitable for application to the special circumstances of this industry in some areas. That concept was embodied in the so-called Philadelphia plan. The Philadelphia plan was set up under the Executive order.

It specifies that in the performance of federally assisted construction work in the Philadelphia area involving contracts over $500,000, certain steps to achieve suitable affirmative action must be taken by contractors.

Public attention has almost wholly been directed toward one of those steps which calls for setting forth target ranges of minority member utilization in the invitation for bids. This requirement rests upon the obligation prescribed in the Executive order to take affirmative action to insure nondiscrimination in all aspects of employment.

In our view equal attention should be directed to the provision for affirmative action by contractors in recruitment through "outreach" programs as well as in the training of personnel to qualify them for potential placement in available jobs. The widespread shortage of skilled construction tradesmen can be significantly alleviated by such recruitment and training requirements.

It should be remembered that a basic purpose of the Philadelphia plan is to clearly specify the contractors' obligation in advance of bidding on contracts. This is done so as to permit all contractors to bid on an equal basis with respect to the equal employment opportunity obligation. These targeted ranges are not arbitrarily established. They are arrived at only after giving reasonable consideration to the many labor-market factors involved.

Even after the ranges have been established, their achievement by the contract will be judged not only on the basis of absolute numbers but on the basis of the good faith endeavors of the contractor to achieve them.

The plan has not been fully understood by many and it has been subjected to challenge but we believe it to be both legal and reasonable. It does not in our opinion nor in the opinion of the Justice Department offend title VII of the Civil Rights Act.

Much has therefore already been done to remedy the shortcomings most frequently attributed to the contract compliance program. The

inadequacy of the system of identifying contractors, preaward reviews, coordination, OFCC direction and the lack of a more current reporting system have all been faced and substantial improvement undertaken.

Other areas of criticism remain, particularly the frugal exercise of the sanctions authorized by the Executive order. In most cases the direct work of the procurement agencies through their contract compliance officers with the support, evaluation and coordination of the Office of Federal Contract Compliance, should produce satisfactory compliance. Where compliance cannot be achieved through such efforts, a variety of sanctions is available.

As part of our coordination efforts with the Equal Employment Opportunity Commission and the Department of Justice, the proper sanction will be selected on the basis of the interest and remedies available to these three agencies of the Government.

I have formerly emphasized that the results we seek, and the objective of the Executive order, is equal employment opportunity. Success in this effort is not measured by the cancellation of contracts or the debarment of contractors. Indeed, such action is really a measure of failure.

What we want is not a change in contractors but a change in employment conditions so that opportunities for employment in this country are equally opened to all. We will not hesitate, however, in appropriate cases from applying any and all remedies where this objective cannot be attained by the method of conference, conciliation, mediation, and persuasion which is directed by the Executive order before the institution of such sanctions.

The charter of the Department of Labor is to promote the welfare of the wage earners of the United States, a mission which is completely compatible with the duty to promote and enforce equal employment opportunity. The adequacy or inadequacy of the staff allotted to this mission is a question which must be examined in the framework of the proper role of the Office of Federal Contract Compliance.

The Executive order contemplates that the primary application of the equal employment opportunity obligation be through the procurement agencies of the Government. OFCC's proper role; one of broad policy guidance and coordination, can I believe, be performed with modest increments in present staffing, which we have requested.

With the development of better affirmative action approaches, and increased efficiency in administration of the entire EEO program which should flow from the new interagency coordination, I believe the administration of the program by the procurement agencies will also be a more realistic undertaking.

The basic propriety of the contract compliance program's present location should not be overlooked. The Department of Labor is the focal point of the manpower programs of the Government. Job placement, job training, and job development are all a part of the comprehensive manpower services afforded which are a vital complement to the equal employment opportunity goal.

To remove the agency involved in the attainment of that goal from the other programs also directly relevant to its attainment would, in our judgment, be ill advised. Although its full potential has not yet been developed, the effective marriage of equal opportunity and

job development will be facilitated by retention of the present organizational arrangement.

The fundamental concept of the OFCC involves the use of Government procurement power to further the Government's policy of providing equal opportunity for all. As such it is an appropriate and effective instrument for administration within the executive departments.

In our judgment, the effective use of such power would not be enhanced and no doubt would be diffused by inserting it into an independent agency less specifically structured toward pursuing this single objective.

The apparent advantages of centralizing the contract compliance program under the Equal Employment Opportunity Commission's umbrella may be illusory. There has been a body of expertise of a comprehension of the substance and procedure developed over many years through the relationship of the Office of Federal Contract Compliance with the various procurement agencies.

There has been a recognition by employers, labor unions, and the interested public of the role and the relationship of the Office of Federal Contract Compliance and an understanding of that relationship. The contract compliance program is necessarily sensitive and complicated. It would continue to be so even when administered by a new agency.

Starting anew would interpose still another hiatus in the accomplishment of the equal employment opportunity objective. To transfer the program to the Equal Employment Opportunity Commission will dissipate the momentum we have developed and will transfer the problems once more to a new starting line.

The more desirable approach is to strengthen the several agencies charged with responsibility in this area.

Senator WILLIAMS. This is an inappropriate moment to stop, but the bell has indicated we are required on the floor. I have suggested to my colleagues that we read and study your statement and if we have any observations or questions that we submit them to you in writing and receive a reply in writing for the record from you.

Would that be all right?

Secretary SHULTZ. Yes; I would like to say if I might that I was especially anxious personally to testify on this matter, because I feel so strongly about it as an individual.

I think this is a very important program and I want to record that fact. I will be glad to follow your procedure but I want to say I came and stayed strongly with this and wanted to register that point.

Senator JAVITS. Which do you feel strongly about, Mr. Secretary? There are three things, the administration bill, there is your feeling that contract compliance activities should not go over to the EEOC no matter what happens, and now you have just started the Philadelphia plan.

Would you identify the impact that you wish to leave with us?

Secretary SHULTZ. First of all, the dedication on my part and the Department of Labor and the Nixon administration to equal employment opportunity. Second, I do feel that the OFCC is best lodged in the Department of Labor and I feel we can give it good administration and I think in part the fact that we are so dedicated to it is some

evidence of that, so, I would say that and then, third, the so-called Philadelphia plan, I believe, is simply an adaptation to the construction industry of the affirmative action concept.

It really is not any different in concept than you find it in what we did in the textile cases.

So, I feel it is something very important to proceed on and to challenge it is really to challenge the entire program involved here. That is the reason I feel so strongly about it.

Senator JAVITS. I agree with you very strongly about the Philadelphia plan. May I ask you on section 2 of the contract compliance policy, are you here to testify to that as administration policy?

Secretary SHULTZ. Yes, sir.

Senator WILLIAMS. Thank you very much. We will recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:50 p.m., the subcommittee recessed to reconvene at 10 a.m., Tuesday, August 12, 1969.)

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

TUESDAY, AUGUST 12, 1969

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

The subcommittee met at 10 a.m., pursuant to recess, in room 4232, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senators Williams, Bellmon, and Schweiker.

The committee staff members present: Robert E. Nagle, associate counsel; Eugene Mittelman, minority counsel; Peter Benedict, minority labor counsel.

Senator WILLIAMS. We will reconvene our hearings on S. 2453 and comments are also invited on S. 2806, which we discussed yesterday. The committee jurisdiction is a little bit unclear at this point, but it has still been thought proper and appropriate to have comments on that bill.

In response to the request of Senator Javits, we did invite all of the members of the Commission to be here this morning Two have not made statements on the bill: Commissioner Kuck is here this morning; Commissioner Holcomb is not here.

I thought we would proceed with a statement from Miss Kuck and the other Commissioners may come forward, too. We will see if there is any further discussion members want with the Commission generally.

We will say there is a matter on the floor of the Senate which has deprived the committee of much of its membership. Many of the members on this committee are on the floor because of the student loan bill which comes from the committee.

Miss Kuck, we certainly welcome you and we welcome your observations on this legislation.

STATEMENT OF ELIZABETH J. KUCK, COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Miss KUCK. Mr. Chairman and distinguished members of the Subcommittee on Labor, it is a privilege to appear before you this morning at your request to testify on S. 2453 and S. 2806, each of which would provide for strengthening the enforcement powers of the Equal Employment Opportunity Commission. From this standpoint, both have merit.

At the time of my confirmation and subsequently in speeches, seminars, and meetings I have publicly expressed the opinion that to be

truly effective it was essential for the Commission to have cease-and-desist powers. In so doing I have been ever mindful of the resistance such proposed legislation would spawn.

Nevertheless, I did so with the equally if not more cogent realization of what less than our best effort in providing equal employment would mean to this Nation—not just in terms of unfulfilled promises—but rather, in terms of wasted human resources, broken families, violence and misplaced loyalties, and, yes, even the denigration of work itself.

In light of these realities with which the Commission is daily confronted, I express my continued support of cease and desist legislation. I have no doubt that in the long run getting the Commission cease-and-desist powers would provide the most comprehensive vehicle for the realization of equal employment opportunity in this Nation.

I recognize, however, that there are other realities to deal with and that the most effective powers may not presently be obtainable. Of course, this will be up to the administration and our leaders on the Hill to determine.

I have no doubt whatsoever of the sincerity and dedication of the President when he states that he and this administration are committed to the elimination of employment discrimination. So while I urge you to secure for the Commission those powers which would best effectuate its purposes, so, too, I urge you not to close the door on the best that we can get. In the world of practical politics, S. 2806 may well represent the best that is presently obtainable.

As I have indicated, it is not without merit and in light of the Commission's limited budget and staff, it may well be a more realistic approach. I have the greatest respect for Chairman Brown and I would like to be able to support him and the administration. Nevertheless, I must continue to support cease and desist as provided for in S. 2453.

I should like to add, though, that there are two provisions of S. 2453 which cause me some difficulty, namely, section 715 providing for the transfer of the functions of the Office of Federal Contract Compliance to EEOC, and section 717 providing for transfer of the antidiscrimination efforts in Federal employment from the Civil Service Commission to EEOC. Both of these functions will add immeasurably to the Commission's caseload, in addition to raising issues different in kind from those which the Commission has been used to handling.

Those added functions, given the lack of clarity with which their transfer is to be accomplished and the fact that both OFCC and the Federal program have recently been strengthened through administrative changes and the fact of an already understaffed EEOC, lead me to the conclusion that such transfers should not be undertaken.

Thank you.

Senator WILLIAMS. We certainly appreciate your statement, Miss Kuck. It is very clear that you have been most judicious in your approach, weighed practical considerations and the force and effectiveness of both with the conclusion that you truly believe cease and desist is the most effective enforcement tool the Commission could have. Is that correct?

Miss KUCK. That is correct, Senator.

Senator WILLIAMS. Were you here yesterday to hear the other witnesses?

Miss KUCK. Yes, I was, most of the time. I was absent for a short period in the afternoon.

Senator WILLIAMS. Two areas that give some pause are the transfer of authority from contract compliance and from the Civil Service Commission to EEOC were discussed, but perhaps these two areas have not been fully discussed and we do look forward to more observations as you have made yours this morning in these areas.

I have no questions.

Senator Bellmon?

Senator BELLMON. Thank you very much, Mr. Chairman.

I have a couple of questions. I have to admit I was not here yesterday and did not hear the discussion. Tell me if you can or describe the process you go through to get a cease-and-desist order.

Miss KUCK. It would be my understanding, of course, that this would be developed in the same way the National Labor Relations Board operates. In other words, upon the finding of cause and the failure of conciliation, the matter would be reviewed by a hearing examiner who would determine it in an open hearing.

Senator BELLMON. Say I am the employee who has a complaint. How do I go about getting a cease-and-desist order?

Miss KUCK. It is my opinion it would be handled at the very beginning much as it is handled now in the Commission. You would file a charge and this would be investigated, and once cause or no-cause was determined, if it was a cause case, it would go before a review board with a hearing examiner, provided conciliation had been unsuccessful.

Senator BELLMON. Then what?

Miss KUCK. A decision would be made which eventually would be passed upon by the full Commission.

Senator BELLMON. It would take the full Commission to issue a cease-and-desist order?

Miss KUCK. Yes, I believe so at the recommendation of the hearing examiner.

Senator BELLMON. From the time I filed a complaint or feel I have reason to file a complaint, how long would it take me to get a cease-and-desist order?

Miss KUCK. I have heard many different amounts of time stated. I cannot honestly tell you, Senator Bellmon. I don't know.

Senator BELLMON. Could you give me an estimate?

Miss KUCK. If we were adequately staffed and operating on a current basis, I would assume that it could be done within a reasonable period after conciliation fails—perhaps 3 months. However, I am told that the National Labor Relations Board figures at least 18 months.

Senator BELLMON. Are they adequately staffed?

Miss KUCK. Yes, I think so.

Senator BELLMON. Why do you feel you could do it in shorter period of time?

Miss KUCK. Eventually I would hope you would get your people trained and they would be dealing with a particular type of case, and in this way you could expedite it.

Senator BELLMON. How large a staff do you presently have?

Miss KUCK. A little over 600 people.

Senator BELLMON. How many of these are hearing examiners?

Miss KUCK. We have no hearing examiners.

Senator BELLMON. How many hearing examiners do you feel it would take in order to properly administer the law under S. 2453?

Miss KUCK. Senator Bellmon, I really don't know. I think we would have to look at the various locations from which we get the majority of our cases and determine what is the fewest number of hearing examiners we could work with and adequately do the job. I would think in terms probably of 50.

Senator BELLMON. Fifty?

Miss KUCK. That may be rather high initially.

Senator BELLMON. Those hearing examiners would be out in the States or here in Washington?

Miss KUCK. They would be out in regional areas around the country.

Senator BELLMON. You would not have one per State?

Mr. KUCK. No.

Senator BELLMON. How many do you suppose it would take, say, the State of New York?

Miss KUCK. I would think in New York you would probably have two or three.

Senator BELLMON. Two to three hearing examiners for all of the cases in the State of New York?

Miss KUCK. Yes.

Senator BELLMON. Do you think those two or three hearing examiners could get to those cases in 2 or 3 months after they were filed?

Miss KUCK. I would hope so.

Senator BELLMON. Do you feel this is a reasonable expectation? I wonder how many hearing examiners the NLRB has in New York.

Miss KUCK. I don't know.

Senator BELLMON. I wonder if we could ask Miss Kuck to get that information for us.

Miss KUCK. I would be very happy to.

(The information referred to, subsequently supplied, follows:)

NLRB TRIAL EXAMINERS LOCATION

The Trial Examiners at the National Labor Relations Board work out of Washington, D.C., and are not assigned to regional offices, except for a few permanently assigned to San Francisco to save travel time. The hearing caseload of the Board for the State of New York is extensive and would require the services of approximately seven Hearing Examiners assigned to that State on a permanent basis.

Senator BELLMON. You say 50 hearing examiners. How long would it take to recruit these examiners and get them in a position to start hearing cases? I am not sure of the availability. This is the question I am asking.

Miss KUCK. Frankly I am not either. This is one area where I gave a great deal of consideration. I think as I have indicated, the administration bill has merit because I frankly do think it would be easier to recruit attorneys than it would be hearing examiners. On the other hand, I think that the hearing examiner's grade would be higher and,

in turn, this might be more attractive under those circumstances than the attorney's position.

It is difficult to say because I frankly do think also that it requires a particular type of person to be a good hearing examiner.

Senator BELLMON. So, you would want to be a little selective in choosing these people?

Miss KUCK. Yes.

Senator BELLMON. How does the Equal Employment Opportunity Commission presently enforce its orders?

Miss KUCK. Through conciliation and persuasion. If that breaks down, than a letter is sent advising the charging party of his right to take it to court. Also in connection with patterns of discrimination there would be a referral to the Justice Department.

Senator BELLMON. You have taken some cases to court?

Miss KUCK. Yes, the charging parties have.

Senator BELLMON. How long does it take you to get a decision after you take a case to court?

Miss KUCK. This varies, of course. I believe Senator Eagleton pointed out three cases yesterday that had been pending for a very long period of time.

Senator BELLMON. I understand it is not the EEOC, but the charging party who takes the case to court. But nevertheless they get into court?

Miss KUCK. That is correct.

Senator BELLMON. Have you had decisions on cases that have been taken to court?

Miss KUCK. Yes. The charging parties have had decisions.

Senator BELLMON. Have the decisions generally been satisfactory from the standpoint of the EEOC?

Miss KUCK. Yes; in some cases. There have been a few where we were not particularly happy with the decisions.

Senator BELLMON. Is there a regional pattern? Do you find decisions, for instance, just to lay it on the table, in the South are unfavorable to the position the EEOC takes?

Miss KUCK. No, Senator, some of our best decisions have come out of southern regions.

Senator BELLMON. In your own mind, do you have any question as to the fairness of the courts on matters of this kind?

Miss KUCK. No; I do not in connection with Federal district courts have any reservations on it.

Senator BELLMON. Is there any reason why you prefer not to use the courts in matters of this kind? I am trying to find out why you prefer the cease-and-desist process rather than the use of the courts.

Miss KUCK. In the first place, I think my reason for preferring cease and desist—there are several reasons for it. Let me say I do not view our agency as a regulatory agency any different from some of the others. I feel that perhaps we should have as much authority as the other governmental regulatory agencies.

In addition, I think that cease and desist is a much clearer cut thing where the charging party will know exactly where he stands once the case has been reviewed by the Commission. Furthermore, I am a little bit concerned in connection with the appeal provisions of S. 2806

wherein appeals from the district court would be out of the hands of the Commission.

Senator BELLMON. You say at the present time the charging party will know where he stands after the cease-and-desist order has been issued. Is this what you are saying?

Miss KUCK. Yes, that's right.

Senator BELLMON. Suppose one or the other party does not accept the finding. Does the matter still go to court?

Miss KUCK. That is correct.

Senator BELLMON. How is this different from an appeal from the district court?

Miss KUCK. There is another factor, of course, in connection with cease and desist which has not been pointed out, and that is that the issue is not quite as narrow when we deal with cease and desist. There is provision for reviewing all of the matters related to discrimination.

I think once that has been introduced, this would become a part of the case when it is taken to court.

Senator BELLMON. If I understand you properly, if you use the district courts and there is an appeal, it goes into the appellate court. If the EEOC were to issue a cease-and-desist order, this also goes into the appellate court. Therefore, I cannot see why there is anything more definite about the charging party knowing where he stands in the case of a cease-and-desist order than there would be in the case of a decision rendered by district court.

Miss KUCK. I don't know frankly. It is my opinion it would be clearer. I would have to say I have perhaps not studied this aspect as much as I should have, but it is my understanding that one difference is that findings of fact under "cease and desist" must be credited by the court of appeals if supported by substantial evidence.

Senator BELLMON. At the present time, you do not have any hearing examiners at all?

Miss KUCK. No.

Senator BELLMON. If Senate bill 2453 were to become law, say, the 15th of November, how long would it be before you would be ready to start acting on the first of the cases that might reach the EEOC? How long would it take you to hire the hearing examiners and get the machinery functioning?

Miss KUCK. As an individual Commissioner, I have nothing to do in terms of employment of the staff. That would become the Chairman's responsibility and I would have to be guided by what he said in this connection in his statement yesterday, where he did indicate, of course, in reference to Senate bill 2806 he felt that he could implement that bill much more rapidly than he could the cease-and-desist bill.

Senator BELLMON. Do you have any reason to disagree with that statement? Do you agree with what the Chairman said?

Miss KUCK. I agree in that connection, yes.

Senator BELLMON. Thank you very much.

Senator SCHWEIKER. If it is all right with the Chairman, since I could not attend the meeting yesterday due to a conflict, I would like to ask Chairman Brown a few questions.

Senator WILLIAMS. Yes, Chairman Brown and other Commissioners are here for that purpose.

Senator SCHWEIKER. First, I want to say I am glad to see Chairman

Brown back again. I want to say, too, so my position is clear, I am one of the cosponsors of the bill for cease-and-desist power for your Commission. However, I have an open mind and I am interested in getting whatever is the most effective, and the quickest way of solving the problems faced by your Commission.

With that background, Mr. Brown, I would like to ask a few questions so I can further understand your position.

In your opinion, what is the difference between the two approaches, the cease-and-desist approach versus going to the district court, in terms of possible administrative delays and time problems? In other words, how do you view the two methods in terms of accomplishing the result?

STATEMENT OF WILLIAM H. BROWN III, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. BROWN. Senator, I sincerely believe to structure the organization in order to be able to handle the cease-and-desist type of litigation, would take us just about a year and a half to get hearing examiners on board and to adopt the necessary regulations, as I have indicated before.

I think Commissioner Kuck is absolutely correct. Hearing examiners are a very difficult bunch to get hold of. We would have to be guided by the number at the National Labor Relations Board. We would need approximately 130 to 135 hearing examiners.

We would have to secure these people and in addition, we would have to secure the physical facilities within which to operate. In addition to that, we would have to obtain the services of court reporters because we would have to have a complete record taken at that time.

Even though we are considering the cease and desist approach, that does not eliminate the necessity of hiring attorneys as well, because presently each individual Commissioner over at the National Labor Relations Board has some 22 to 25 personal attorneys on his staff.

In addition to that, in terms of the period of time it would take us, the provisions of Senate bill 2453, contrary to what was stated here yesterday, would not take effect immediately. As a matter of fact, as I read the act, on page 23 of the bill, section 10, it states very categorically that sections 706 and 710 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 the act.

If I read that properly, it seems to me that charges filed prior to the effective date of S. 2453 would have to be treated in the old manner; namely, conciliation.

Under S. 2806, cases pending in the pipeline, where we have been unsuccessful in obtaining conciliation, could be taken into court immediately. From the standpoint of good common sense, it seems a lot easier to hire 50 attorneys and go into the courts in a manner of weeks to get this job done than it is to set up a structure of some 130 hearing examiners, 125 additional attorneys for the personal staffs of the Commissioners, just looking at it from the practicality of things.

I might also point out, Senator, yesterday this hearing had unfortunately had almost an aura of a circus. It seems to me we can be in favor of something and not necessarily be against something else.

I think it is important to say this because as we look at these things, as we look at the proposed pieces of legislation, the most important thing from the standpoint of this Commission is that we get enforcement power.

Yesterday, some of the Senators, and those Senators who happen to have been attorneys general, were quick to point out to me because of their States' agencies having cease-and-desist powers, their conciliation rate went up. I might suggest to you, Senator, their rate went up not because they had cease and desist powers, but because they had enforcement power.

I daresay if the enforcement power they had would have been that they could have taken any employer who saw fit not to obey the law, took him out and lined him up against a wall and shot him, their conciliation rate might have been 100 percent.

Senator SCHWEIKER. What you are saying is you feel for the immediate future you can accomplish more by this approach than by going directly to cease and desist and you are not opposed to cease and desist, but you see it as a step to be taken later down the road. But to accomplish the most in the shortest possible, it is your recommendation to do this. Do I understand you correctly?

Mr. BROWN. That is correct.

Senator SCHWEIKER. Is this your own idea or has anyone in the administration asked you to take this position.

Mr. BROWN. Let me make that very clear again, because this is my proposal, and I had to sell the idea to a number of different people from the White House on down. I might also point out that it has been stated that we are the only agency that does not have cease-and-desist powers, which is true, but merely because we are the only agency that does not have this power does not mean this is the greatest power on earth. It may very well be, I would point out, we would be the only agency that would have something different.

It might be a good thing for us to take a look 2 or 3 years down the road to see if, in fact, the powers given us by Congress might be a lot better than the powers held by many of the other agencies down through the years. The cease-and-desist legislation came about at a period of time in history back in the 1930's when most of the courts were hostile. This is not presently true.

I think the more important thing we have to express here today is the fact that we must have some basic commitment and faith in the integrity of our judicial system. If we do not have that kind of faith in our judicial system, then our country is in bad shape.

Certainly there will be instances where an individual court will come up with a conclusion we may not agree with, but if you are talking about the overall picture of our judicial system as it has been administered, I have that kind of faith in it.

Senator SCHWEIKER. I gather what you are saying is you originated this proposal, it was your idea and no one in the administration asked you to modify or tone down or change your position as far as cease and desist is concerned. Is that correct?

Mr. BROWN. That is correct. As a matter of fact, they asked me to come up with a stronger proposal and this is what I have done.

Senator SCHWEIKER. I also gather from what you are saying that you feel you are somewhat swimming against the tide in light of the

powers given to other agencies, but you feel that it is desirable to do that in order to accomplish your objective, which is to have the quickest possible remedy to the problems confronting your Commission. Is that an accurate statement?

Mr. BROWN. That is an accurate statement. This has happened down through the course of mankind. Every time a new proposal is made, there are always skeptics. I don't know where we would be if Columbus gave in and agreed with most of the people around during his time.

Senator SCHWEIKER. At what stage do you think it would be desirable from a practical point of view to have cease-and-desist powers? In other words, when in the future do you project that cease and desist might be a practical and immediately beneficial approach?

Mr. BROWN. Senator, I am not absolutely certainly about that. It is my personal opinion if we view both of these proposals objectives, the proposal under the administration bill, S. 2806 is the stronger bill. If this proves to be the fact, I would think we would not need to have cease and desist at any time.

Senator SCHWEIKER. Yesterday, in the interchange of testimony there was a divergent view as to the time frame involved in this situation. In other words, I think there was one statement saying a matter of 2 or 3 years before EEOC was ready for cease and desist and some people said it was a matter of months.

How would you answer that question?

Mr. BROWN. My personal opinion is a matter of months is an absolutely inaccurate statement. There is no way under God's sun we could staff up and get the people onboard and get the physical facilities as well as draft the regulations and go over them and approve them in a matter of months.

It is impossible to do. For anyone to sit here and say this can be done, they are just not looking at the facts correctly.

Mr. ALEXANDER. I am the one who said it could be months and I think it is possible under God's sun and if you would like, I can give an explanation.

Senator SCHWEIKER. You are certainly entitled to. Go ahead.

Mr. ALEXANDER. It takes no more than a month or two to hire a hearing examiner. Also Commissioners can hear cases and they are onboard today.

Thirdly, we have plenty of competent attorneys working for the Commission who can present cases before the Commission. Fourthly, a case that comes in the day after this act is passed can be investigated, the determination can be made about discrimination and attempted conciliation can be made within a few months and then it can move to the stage of a potential hearing.

That hearing can take a day or 2 days or 3 days. There is no reason in this world why it has to take a year and a half or 2 years to initiate this process.

The most important point, however, is with cease-and-desist power under the experience of the National Labor Relations Board, 94 percent of the cases never reach the cease-and-desist stage. In other words, they are conciliated. They are settled before they even get there so very few of your cases are, in fact, before a Commissioner or hearing examiner for an attempted cease-and-desist order.

So I think it is very easy and I speak from experience as 2 years as Chairman of the Commission, from the experience where we looked into the possibility of cease and desist when it was presented to the Congress last year, examined how long it would take us to staff up and made a determination that it would be 3 or 4 months.

I think under crash conditions and conditions that people in the street require today who are being discriminated against, it can be done in 3 or 4 months and not 2 or 3 years. I think within that time those few cases that do reach the stage that require a hearing and potential cease and desist orders can be handled again in 3 or 4 months.

Mr. BROWN. I might say I have not had the experience of being chairman for 2 years. I have had the experience of being a trial lawyer for over 13 years and I have tried many of these administrative matters, including discrimination cases. I have tried quite a number of them. In fact, the last case I tried prior to going to the district attorney's office in Philadelphia was just such a case.

That case dragged on for actually 1 year and 3 months and this was just through the hearing examiner stage. The reason for it is they, like most of us, are understaffed. They have tremendous backlogs.

Under cease and desist, as has been pointed by other members of the Commission, each individual case must be granted the opportunity of going through this procedure. If you are talking about 3,000 or 4,000 cases, you have an awful lot of cases that are going to be backed up and the same kind of delay that is talked about in the courts will be experienced in your administrative procedures.

Senator SCHWEIKER. Mr. Brown, how many people now work for your Commission?

Mr. BROWN. 650.

Senator SCHWEIKER. To gear up for cease and desist, you figure you would have to add how many people?

Mr. BROWN. We would have to add approximately 100 or more hearing officers. We would have to have approximately 100 or more attorneys. In addition to that, we would need the supportive staff, the stenographers and things of that nature.

Senator SCHWEIKER. So what would be the total you are talking about?

Mr. BROWN. We are talking about another 400 or 500 people in addition to the present staff if you count all of the staff.

Senator SCHWEIKER. To go to the other approach, how many people are you talking about?

Mr. BROWN. Fifty additional lawyers the first year and 25 additional lawyers the second year. We have on board in the General Counsel's staff now people who have the expertise and this is another thing, I think, I should point out to this committee. The kind of expertise that is required to handle this kind of case basically only resides in the Equal Employment Opportunity Commission.

The hearing officers do not have this kind of expertise. They would have to be trained.

Now within the Commission presently we have an excellent General Counsel staff who have tried many cases as amicus in many of the courts. Out of 100 cases in which we have intervened as amicus, we have lost only one case and I think that is a good record.

The reason we have a good record is we have a single-focus agency

which has dealt since its inception with discrimination in employment and nothing else. That is the reason we have been able to get the kind of results that we have been fortunate to get from the staffs.

Senator SCHWEIKER. Thank you, Mr. Brown. I just want to say, Mr. Chairman, I think what we see here is an honest difference of opinion as to which approach is most effective. I think it is unfortunate if anyone questions the dedication or commitment of Mr. Brown, because I know Mr. Brown from Pennsylvania. I know the job he did in the office of Arlen Specter, the district attorney in Philadelphia. At no point in his career has he shown anything but dedication and commitment to the job to which he is assigned.

There could be some question about which is the most practical approach to solve the problem, but I want the record to show I do not think it is fair to question his dedication or commitment because, as far as I am concerned, he is a completely dedicated person.

Mr. BROWN. Thank you, Senator Schweiker.

Senator WILLIAMS. Mr. Brown, I have one lingering question. You described yesterday the feeling you had which was a feeling of less than full confidence when you approached the administration with the district court enforcement procedure that has now evolved as the Prouty bill.

You said you were less than confident and you felt it was going to be difficult. Is that accurate?

Mr. BROWN. That is accurate.

Senator WILLIAMS. At the point you started to persuade them that was the better alternative, what then was the position of the administration?

Mr. BROWN. If I can just quote the President as of Saturday morning when I met with him, his only question to me concerning this was, in my personal opinion was it a much stronger bill and I told him honestly I thought it was. He told me at that time he would support it 100 percent.

I might indicate to you that part of the problem is not only trying to persuade the administration, but this is a unique power in an agency. We had to convince the Justice Department to give us their rights in this area which they have had for quite a number of years.

There are only one or two other areas in which they have done this, but I don't believe there is any other area where they have completely abdicated their rights in favor of an agency so that they can go into court and file suit without any restrictions from them.

Senator WILLIAMS. When we started, to use the words of Miss Kuck, there was a unanimity of view that there should be a strengthening of the enforcement powers. Your response to the President was that the district court approach was stronger.

Are we therefore to conclude that before you persuaded the President, he was then for the less strong, to use your words, method of cease and desist?

Mr. BROWN. I would not be presumptuous enough to know what was in the President's mind prior to this. I have not had the opportunity to ask him about cease and desist directly. I do not know what his views may have been as far as cease and desist is concerned.

I do know in my conversation with him Saturday he indicated to me if I felt it was a stronger measure, I would have his absolute support and the support of his administration.

Senator WILLIAMS. Well, subsumed within the stronger is the weaker, and the weaker from your viewpoint is cease and desist?

Mr. BROWN. Yes, that is correct.

Senator WILLIAMS. Are there any further comments from members of the Commission?

STATEMENT OF VICENTE T. XIMENES, COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. XIMENES. There have been a number of statements made in regard to the time that it will take in order to process some of these complaints. I agree with what Mr. Alexander has just stated here, that it does not have to take a year and a half to process a case in view of the fact that Commissioners can begin hearings just as soon as the first case is processed.

Secondly, the matter of time to those individuals who have waited 100 years to come to this point, I believe, is important to inject into the record. We have worked at this for 100 years and if we have to wait a year and 3 months to get the proper machinery for processing these cases, I am willing to wait rather than act on expediency, in which case, as the Chairman stated, the likelihood is that we are not apt to ever get cease-and-desist powers.

Second, I want to state that I came before the committee to present what I thought was the best solution, the best overall solution to the employment discrimination that exists in this Nation. It is what I believe to be the correct approach. I think we ought to present to you the best approach available, the most comprehensive approach available, and then if political considerations have to go into this pot, then OK. That is up to you, the Senators, the Congress to decide just how it is that you are going to allocate priorities and allocate political considerations.

But when a Commissioner comes before you on job employment, I believe it is our duty to tell you what it takes in this country to eliminate job discrimination. I would do so if I came before you to tell you how to build a dam. I don't think I would come to tell you to build half a dam. I would come to tell you how to build a total approach to the problem of discrimination.

Finally, I want to tell you I have before me the most recent publication of the Civil Rights Commission. The title of it is "For All the People, by All the People, a Report on Equal Opportunity in State and Local Government Employment."

Two of their recommendations are that we include State and local government in the Equal Employment Opportunity Act.

The other one is that we have cease-and-desist powers. This was just published, Mr. Chairman. It comes from the Civil Rights Commission.

I believe that indicates my feelings on the subject. I repeat, I believe S. 2453 is the best approach possible in order to solve the equal employment problems of all of the minorities—blacks, Mexicans, Puerto Ricans and all of the other people who feel they need the assistance to be given to them.

I am more interested in the 94 percent that will not get to the cease-and-desist stage rather than the few good cases which the lawyers will

finally pick out of a pile of cases that will be presented to us.

Senator WILLIAMS. Thank you very much.

At this point may I ask you, Mr. Chairman, whether you can supply us with the number of cases that presently are in the investigation stage, at the reasonable cause and determination stage and at the conciliation stage and the average length of time a case now takes at each of these stages? Could that be done?

Mr. BROWN. Yes, sir; we will supply that for the record.

(The information subsequently supplied follows:)

EEOC CASELOAD AND BACKLOG

A random sample of cases indicates that the average case completes the investigation process 182 days after filing of the charge. 201 more days elapse before a decision is rendered, and if reasonable cause is found, the conciliation process requires an average additional 211 or 187 days, depending on whether the Commission's efforts are respectively successful or unsuccessful.

Thus the total elapsed time for a case in which reasonable cause has been found and conciliation has been successful averages 20 months. Currently the Commission has a backlog of approximately 2700 respondent investigations, with an additional 4000 respondent cases awaiting decision. The figures below show the four year history of the Commission's workload. The first seven months of the current calendar year indicate that the rate of incoming respondent charges will increase by approximately 48% during the twelve month period.

CASELOAD STATISTICS: FISCAL YEARS 1966-69

	1966	1967	1968	1969	Total
New incoming charges	8,854	9,688	10,095	11,720	40,357
New charges recommended	3,773	5,084	6,056	9,152	28,065
Respondent investigations:					
On hand, beginning year		561	1,476	1,675	
Received during year	1,207	2,875	3,709	5,874	13,665
Completed during year	642	1,740	3,510	4,993	10,885
On hand, end year	561	1,476	1,675	2,556	
Respondent conciliations:					
On hand, beginning year		141	311	535	
Received during year	214	339	864	916	2,333
Completed during year	68	174	640	774	1,656
Successful	45	66	253	319	683
Partially successful	7	22	53	57	139
Unsuccessful	16	86	334	398	834
On hand, end year	141	311	535	677	

Mr. BROWN. It seems to me the argument about cease and desist is a proper argument. What is the most effective way of ridding ourselves of the blight of discrimination in employment should be in question. Most of the State agencies, a lot of which are present here today would indicate they have cease-and-desist powers.

Our experience has been, and certainly the experience of this country has been, that with all of the cease-and-desist powers they have had, it still became necessary in 1964 for the Federal Government and this Congress to pass legislation which would give to us the right to investigate and conciliate discrimination.

Second, I might also point out to the chairman that some of the largest number of cases coming into the Commission have come from those various States that have cease-and-desist legislation.

I might just point out to you the number of cases coming from California which has a very strong cease-and-desist law. Last year we had 785 such cases from California filed with this Commission.

In New York we had 493. In Pennsylvania, my own State, we had 536. All of these States have cease-and-desist legislation.

In Missouri, we had 119. It is interesting to note that from Mississippi, a State which does not even have an FEPC, we only had 23 complaints.

Mr. ALEXANDER. A black man in Mississippi very often does not complain. There are a lot more than 190-some-odd blacks being discriminated against in employment in Mississippi.

In California a lot of complaints come to us as sex discrimination complaints which are not covered by the cease and desist. When it is a sex case that is not covered by the law, it comes to EEOC, and it is possible to take gross figures and determine whether or not in fact cease and desist is working on a local level.

I think what is most germane, what Senator Eagleton pointed out yesterday afternoon, and if I can repeat those dates, three random discrimination cases he picked, starting June 1967, February of 1967, February of 1966 are still before the courts today.

They are still before the courts today.

Now, when Chairman Brown talks about a case getting started, that is what he means. It is getting started; it is filed in a Federal court. As any lawyer knows, you have to negotiate a long time before that. As any lawyer knows in most cases you attempt to settle. As any lawyer knows, negotiation takes a long, long time.

As any lawyer knows, once it is, in fact, filed, it takes forever sometimes in a Federal court to get a conclusion for one individual case.

In the meantime, the thousands of individuals who have complained and showed some faith in the Federal Government come to the Equal Employment Opportunity Commission in our 13 regional offices or in Washington, say, they have been discriminated against. Those cases which are not arduously processed through the Federal courts are not held. Their cases do not get handled by our Commission.

We have had in our law up to this time section 707, which gives the Justice Department a right to file pattern or practice cases. That means any individual case today could be filed. Pattern or practice—not pattern and practice.

What are the memorable cases in the last 3 or 4 years that anyone in this room can remember that have been filed successfully by the Department of Justice that are going to help all of these other people who are complaining to us at the rate of 12,000 a year? The point is those court cases do not have general applicability. They set wonderful precedents for us lawyers to argue in other cases.

Cease-and-desist authority gives every individual complainant who feels he or she has been discriminated against a fair shake under a system of law we claim we believe in.

What we should be talking about today is not whether cease and desist or whether a court action should take place, but how can we strengthen the laws we have before us right now. What is weak about this cease-and-desist law?

I think there may be many things weak about it. Maybe there should be some monetary provisions thrown in for employers who discriminate. Perhaps a cease-and-desist order should be issued by the Commission and overturned by the court. Those are the kinds of things we should be talking to you about.

You are elected by the people to determine what can and cannot be done. We have to tell you of the grievances of the people and then you determine what you can get through your brethren here.

But to me anybody who is discriminated against and has money taken out of his or her pocket is the same thing as someone going up to them on the street and stealing their wallet from their pocket. When you take money from an individual because you pay him less or you don't hire him or you don't promote him, then you are doing exactly the same thing and we are treating it as if it is a different kind of lawful violation.

We are trying to think of fancy little ways to prolong the process rather than getting down to the hard issue of how can we solve this problem now? How can we tell labor unions and corporations that discriminate that they are in a lot of trouble, they are violating the law?

If this is the law as pronounced in 1964 and by 38 States, then why in the world are we having so much trouble with it? I submit to you it is not because of court cases. They have had them galore and the Justice Department can bring them today.

The point is corporations and unions understand full well today that nothing is going to happen to them at the end of the process. They will take the chance of the one in a hundred or one in a thousand. I think we have to set up when a case gets started, every individual is going to get some kind of help from this society and some kind of help from the Federal Commission in this field.

Senator WILLIAMS. Is there anything further?

Thank you very much.

Mr. Richard G. Kleindienst, Deputy Attorney General, will be our next witness.

Mr. Kleindienst, we welcome you before the committee.

STATEMENT OF RICHARD G. KLEINDIENST, DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE; ACCOMPANIED BY JERRIS LEONARD, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION; JOHN W. DEAN III, ASSOCIATE DEPUTY ATTORNEY GENERAL FOR LEGISLATION; AND DAVID ROSE, DIRECTOR, OFFICE OF COORDINATION AND FEDERAL PROGRAMS, CIVIL RIGHTS DIVISION

Mr. KLEINDIENST. I have with me Mr. Jerris Leonard, who is the Assistant Attorney General for the Civil Rights Division of the Justice Department; Mr. David L. Rose, who is the Director of Office of Coordination and Federal Programs of the Civil Rights Division of the Justice Department; and Mr. John Dean, who is the Associate Deputy Attorney General.

Senator WILLIAMS. We will be pleased to have your statement.

Mr. KLEINDIENST. Mr. Chairman, this subcommittee is considering legislation 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.

At the outset I would like to associate the Department of Justice

with the written statements presented to the subcommitee by the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission and the Chairman of the Civil Service Commission.

The positions they have stated with regard to S. 2453, the programs they have discussed with regard to implementation of Executive orders designed to eliminate job discrimination and the support they have given to enactment of S. 2806 (the administration's proposal introduced by Senator Prouty) are similarly endorsed and supported by the Department of Justice.

I would like to focus my testimony on the need for legislation 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 a private suit, or 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 1968, approximately 15,000 charges of discrimination were received by EEOC. During that year, however, EEOC effected only 513 partially or wholly successful conciliations; 731 "probable cause" charges were closed because conciliation was unsuccessful. An additional 1,262 charges are pending conciliation.

During the same year, the Attorney General brought 22 lawsuits, six of which were on referral from EEOC. Similarly, the number of private lawsuits filed was relatively small (probably less than 100) in proportion to the number of charges.

Even more significant is the fact that in the 4 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.

S. 2806—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—as does S. 2453—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, 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 S. 2806, which we believe to be a more effective one that can be immediately implemented by EEOC.

S. 2806, which was prepared by Chairman Brown of the EEOC and the Commission staff, and introduced by Senators Prouty, Scott, Griffin, Bellmon, and Schweiker on August 8, 1969, on behalf of the administration, 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 6 months of the filing of a charge. This bill would give EEOC the right to conduct its lower 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, S. 2806 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's investigation indicates that such prompt judicial action is necessary. In such cases, the bill makes it the duty of the court to assign the case for hearing at the earliest practicable date and to expedite the case. No other substantial changes in existing laws 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. U.S. 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 move into court will greatly facilitate its ability to implement the law without the delay that would accompany an entire restructuring of its operations if it were to employ cease and desist machinery. EEOC is confronted with a large backlog of cases. It would take several year—Chairman Brown has estimated at least 2 years—before it could commence the administrative hearings contemplated in S. 2453.

We must not delay the efforts of the Federal Government to provide equal employment opportunity when such delay is not necessary.

Third, in these circumstances we recognize that EEOC must have authority to enter the lower courts with its own attorneys. I want to be very candid with the subcommittee in telling you that the Department 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 at 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 must move to bring necessary and appropriate cases into the lower courts to obtain compliance with the provisions 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 removed under S. 2453, but retained under the administration's proposal.

Section 707 of title VII authorizes the Attorney General to commence a lawsuit whenever there is a pattern or practice of discrimination to the full enjoinment of 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 46 law suits under title VII.

The roster of defendants includes the Bethlehem Steel Co., Sinclair Oil Co., Crown Zellerbach Paper Co., 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. The roster of defendants indicates the magnitude of the problems and the difficulty of the cases.

Yet, in that short time we have been able to obtain decrees in 11 cases. Our view is that these cases and settlements have affected more workers and afforded relief to more members of minority groups than all of 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 that the Attorney General's authority in section 707 be retained.

Fifth, we do not believe that S. 2806 would flood the courts with litigation. One cannot merely take all of the pending charges before EEOC plus the charges that were not successfully conciliated and say that these matters will go to court.

To the contrary, once a respondent knows that his failure to conciliate may place him in court, it will result in a substantial reduction 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 for 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 stress or delay.

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

Senator WILLIAMS. Thank you, Mr. Kleindienst.

Mr. Kleindienst, on your last point, point 5, does not the burden of the argument there apply with about equal force to the EEOC authority backed up?

Mr. KLEINDIENST. In my opinion, I do not think that would be true for a very simple reason. When you have an attorney for EEOC who is prepared to file a complaint in district court, you are on the verge of getting an immediate remedy by a Federal district judge who has a variety of remedial weapons in his kit. The respondent might be faced with a temporary restraining order. He would be faced with a quick trial in which there could be a variety of remedies.

On the other hand, if you are going to have a complaint filed before the EEOC, based upon my many years of experience as an attorney before the National Labor Relations Board, I think that an attorney for a respondent corporation or labor union who was bent upon thwarting the law could almost guarantee his client a minimum of 3 or 4 years before there was any effective order arising out of the case.

So, as a consequence, based on my experience as a practicing lawyer, I think that going before a Federal district judge who would be able to give a remedy within weeks or perhaps a month would be a much stronger inducement to settlement than under the administrative procedure route such as the National Labor Relations Board cease-and-desist order type of procedure.

Senator WILLIAMS. You were not persuaded it is. The S. 2806 route was one which you could all support; is that correct?

Mr. KLEINDIENST. Speaking for myself as part of the administration and based upon my experience as a practicing lawyer for some 20 years and to the extent that I was involved in the administration decision, we had many reasons why we felt that the cease-and-desist authority was not going to effectuate the principles of this law immediately as we felt that they should be. It was not until our extended discussions and conversations with Mr. Brown that we became persuaded that he had an alternative that not only brought a quick, speedy remedy but would also guarantee the kind of due process that I think this area of the law should have.

Our only argument with him really was whether the Department of Justice was willing to give to EEOC the right to go into Federal court as an agency and to start litigation without the approval of the Justice Department. I think this would be one of the few instances whereby the Department of Justice has deviated from that general policy.

So, to sum up, the position of the administration would be that Senate bill 2453 in our opinion was not a good approach to the problem and that the alternative that was suggested by Mr. Brown, with the provision that EEOC could engage in litigation, really gave, in this very vital area, for the first time hope for effective, quick, speedy relief.

Senator WILLIAMS. The Department has been working under title VII with the District court enforcement procedure, is that right, that is the present law?

Mr. KLEINDIENST. The present law gives the Department of Justice the right to go into court with practice and pattern suits.

Senator WILLIAMS. This is a District court procedure?

Mr. KLEINDIENST. Yes, sir.

Senator WILLIAMS. This is a District court procedure and the EEOC could be the moving party?

Mr. KLEINDIENST. On behalf of the individual party and that is where the real problem lies in terms of doing something quickly and speedily.

Senator WILLIAMS. Just how quickly and easily can speedy relief be obtained in the District court? Can you supply for our deliberations here your experience under title VII in the District courts since the Department has had this authority which has been since 1964; is that right?

Mr. KLEINDIENST. Yes, sir.

Senator WILLIAMS. Give us the number of cases and give us the individual case-by-case record of the route to conclusion, whatever it was. I gather this will not be an undue burden because there have not been a great number of cases, have there?

(The information subsequently supplied by Mr. Kleindienst follows:)

Defendant	Judicial district	Complaint	Decision	Appeal	Appellate decision
St. Louis Building and Construction Trades Council, et al.	Eastern district, Missouri	Feb. 4, 1966	Mar. 7, 1968 (relief denied).	May 6, 1968	
New Orleans Asbestos Workers (Local 53)	Eastern district, Louisiana	Dec. 15, 1966	May 31, 1967 (relief granted)	June 5, 1967	Jan. 15, 1969 (affirmed).
Dillon Supply Co	Eastern district, North Carolina	Feb. 27, 1967	July 1, 1969 (relief denied)	Aug. 29, 1969	
Columbus Electrical Workers (Local 683, IBEW)	Southern district, Ohio	Apr. 14, 1967			
H. K. Porter Co. and United Steelworkers	Northern district, Alabama	June 23, 1967	Dec. 30, 1968 (relief denied)	Mar. 14, 1969	
Cincinnati Electrical Workers (Local 212, IBEW)	Southern district, Ohio	July 24, 1967	Sept. 13, 1968 (relief granted)		
St. Louis-San Francisco Ry. Co. and Brotherhood of Railroad Trainsmen.	Eastern district, Missouri	do			
Cleveland Electrical Workers (Local 38, IBEW)	Northern district, Ohio	Aug. 8, 1967	Mar. 20, 1969 (relief denied in part; granted in part).	May 19, 1969	
Bethlehem Steel Corp. and United Steelworkers	Western district, New York	Dec. 6, 1967			
Cincinnati Ironworkers (Locals 44 and 372)	Southern district, Ohio	Dec. 7, 1967			
Southern Weaving Co	District, South Carolina	Jan. 12, 1968	June 24, 1968 (consent decree)		
Bogalusa Papermakers (Local 189, United Papermakers) and Crown Zellerbach Corp.	Eastern district, Louisiana	Jan. 30, 1968	Mar. 26, 1968 (relief granted). June 26, 1969 (relief granted on remaining issues).	Apr. 2, 1968	July 28, 1969 (affirmed)
Los Angeles Steamfitters (Local 250)	Central district, California	Feb. 7, 1968			
Indianapolis Plumbers (Local 73)	Southern district, Indiana	Feb. 8, 1968	Aug. 15, 1969 (relief granted)		
Las Vegas Electrical Workers (Local 357)	District, Nevada	Feb. 19, 1968			
Sinclair Refining Co. and Oil, Chemical & Atomic Workers	Southern district, Texas	Mar. 21, 1968	June 13, 1969 (consent decree)		
Hayes International Corp. and United Auto Workers	Northern district, Alabama	Mar. 25, 1968	June 21, 1968 (relief denied)	Aug. 16, 1968	Aug. 19, 1969 (reversed and remanded).
Caldwell Furniture Co	Western district, North Carolina	Mar. 25, 1968	Mar. 26, 1969 (consent decree)		
Chicago Ironworkers (Local 1)	Northern district, Illinois	Apr. 12, 1968	Aug. 7, 1969 (complaint dismissed)	Aug. 8, 1969	
Roadway Express, Inc	Northern district, Ohio	May 2, 1968			
T.I.M.E. Freight, Inc	Middle district, Tennessee	May 15, 1968			
New York Lathers (Local 46)	Southern district, New York	May 22, 1968			
Manor Baking Co	Northern district, Texas	June 19, 1968	Jan. 20, 1969 (consent decree)		
Jacksonville Terminal Co. and 14 railroad craft unions	Middle district, Florida	June 24, 1968			
AMBAC Industries	District, Massachusetts	June 27, 1968			
Associated Transport, Inc	Middle district, North Carolina	do			
Cleveland Pipefitters (Local 120)	Northern district, Ohio	do			
Metro Personnel System Inc., et al	Northern district, Texas	July 3, 1968	Aug. 1, 1969 (consent decree)		
Roper Hospital	District, South Carolina	July 29, 1968	Mar. 10, 1969 (relief granted)		
Parke, Davis & Co	Eastern district, Michigan	Sept. 23, 1968	Jan. 30, 1969 (consent decree)		
C. & O. Railroad Co., and 2 unions	Eastern district, Virginia	Oct. 17, 1968			
Kayby Mills of North Carolina	Middle district, North Carolina	Nov. 12, 1968	Aug. 8, 1969 (consent decree)		
Ohio Bureau of Employment Services	Southern district, Ohio	Dec. 10, 1968			
Continental Can Co., and Local 50, United Mine Workers	Eastern district, Virginia	Dec. 27, 1968			
Alabama By-Products, and Local 50, United Mine Workers	Northern district, Alabama	Dec. 30, 1968			
Georgia Power Co., and 7 locals, IBEW	Northern district, Georgia	Jan. 30, 1969			
Owens-Corning Fiberglas Corp. and Local 15, Glass Bottle Blowers Association.	District, South Carolina	Jan. 17, 1969			

East St. Louis Operating Engineers (Local 520)	Eastern district, Illinois	do	May 13, 1969 (consent decree).
East St. Louis Electrical Workers (Local 309)	Eastern district, Illinois	do	
East St. Louis Cement Masons (Local 90)	do	do	
Texas Longshoremen (International Longshoremen's Association and 37 locals).	Southern district, Texas	Jan. 20, 1969	
Cannon Mills Co	Middle district, North Carolina	Apr. 8, 1969	
Baltimore Longshoremen (Locals 829 and 858)	District, Maryland	Apr. 22, 1969	
Gustin & Bacon	District, Kansas	Apr. 24, 1969	
Newark Sheet Metal Workers (Local 10)	District, New Jersey	Apr. 25, 1969	
San Francisco Ironworkers (Local 377)	Northern district, California	June 24, 1969	
Central Motor Lines and 3 Teamsters locals	Western district, North Carolina	Aug. 12, 1969	

Mr. KLEINDIENST. Could I make a prefatory remark?

Senator WILLIAMS. I don't expect an answer now.

Mr. KLEINDIENST. We have that information and we can supply it to the subcommittee but I would like this record to show that there is a decided difference in the complexity and time involved in a practice and pattern suit on the one hand and the probable time in a Federal district court, with respect to a complaint filed by an EEOC lawyer on behalf of an individual who was discriminated against in one particular case before any one of some 400 Federal district judges.

The time period, I think, probably would be one-tenth that of a practice and pattern suit and probably one-hundredth of the time that you would need finally to enforce the cease and desist order for an individual under the old administrative procedures setup.

Senator WILLIAMS. That is a conclusion but it will help us if we know what your experience has been in practice and pattern cases. There are more things I would like to discuss. We are expecting a vote any minute and I certainly want to give the other Senators an opportunity to ask questions.

Senator BELLMON. Mr. Kleindienst, you stated in your statement that it was your intention to strengthen the enforcement powers of the EEOC. I understand there have been some statements made that Senate bill 2806 of which I am a coauthor represents a retreat by the administration. Has it been your intention to retreat on this matter?

Mr. KLEINDIENST. On the contrary, Senator, I think S. 2806 is one of the great, true strides forward in this area and I would like to give you the reasons why I think that would be true.

Part of my reason stems from my own practice primarily before the National Labor Relations Board for some 15 years.

If I could impose upon the time of the committee for a moment, I would like to describe for you what you can expect in terms of enforcement if you had cease-and-desist authority in the EEOC and then I would like to contrast that to a complaint filed before a District court.

To begin with, if a charge is filed before the Commission or Board, it would have to be investigated. Investigations in these cases could last 2 or 3 months. After the investigation is completed, then a complaint would be filed. Once the complaint is filed, if we had any kind of process, the respondent corporation or labor union would be given a reasonable period of time in which to file a written answer before the Commission.

It is my experience that attorneys for labor unions as well as corporations quite often ask you for an extension of time in which to file an answer in order to investigate the charge, so you would have 30 to 60 days in filing the answer.

The next thing that would happen would be setting the matter for trial. You have a trial examiner. They are burdened with cases and you have to get a place and date that can meet with the normal problems of the attorney for EEOC, the attorney for the respondent and the trial examiner.

It has been my experience that these trial dates were changed and delayed from time to time. In any event, you should be able to get a trial within 6 months and that was the usual time. With the backlog of cases here, I would say it could be postponed up to a year.

You then have your trial. After the trial is over, both parties are invited to file a brief. The Government files a brief and the respondent files a brief. Another delay occurs.

Then the examiner writes up his findings of fact, conclusions of law, and recommended order. Those are given to the parties and sent to the Commission.

Then the parties are entitled to file objections to the recommended order of the Trial Examiner and to make oral argument or to prepare and submit briefs to the Board or the Commission itself, with respect to the findings.

On a rough average, you have already consumed about 18 months. The Commission then, let's say, finds for the aggrieved employee. At that point, all it has is authority to issue a cease-and-desist order that has absolutely no teeth in it whatsoever. It is not until the Commission or the National Labor Relations Board files a petition with a court of appeals in the respective jurisdiction asking that court to issue an order enforcing the Board's order that any respondent in any such proceeding has an obligation under the law to do anything.

As a rough rule of thumb, any private attorney for business or labor could almost assume his client that there would be a minimum of 3 years and perhaps 4 years before he ever had to take an affirmative action under such a law.

Contrasted to your Federal district court, the most delay I think that you could anticipate in a case of this kind with the priorities prescribed by this law would be 9 months to a year. Senator, the most important thing to keep in mind is the fact that at the conclusion of the court hearing, you would have an order of a Federal district judge and to persons in business and labor unions there is a significance attached to an order of a Federal district judge, as any lawyer will tell you.

So, at the end of the process, you would have something that could be effectuated in a very short, quick period of time as contrasted to the administrative delay of the cease and desist route. That is why we urge this.

Senator WILLIAMS. We will have to suspend for a few minutes while we answer a roll call.

(A brief recess was taken.)

Senator WILLIAMS. It does not take very long to say "no".

Mr. KLEINDIENST. I answered the first part of a three-part question, whether this is a retreat and similar to a retreat in other areas dealing with civil rights such as school desegregation suits and school guidelines.

With respect to those two areas, I wonder if the Senator would permit Mr. Leonard, Assistant Attorney General for the Civil Rights Division, to comment.

Senator BELLMON. Yes; surely.

Mr. LEONARD. All I can do, Senator, is point to the record from January 20 when this administration came into office to the end of fiscal year, the Civil Rights Division filed approximately 54 lawsuits in all of the various areas. This is more than half of the number that were filed in the entire 1968 fiscal year.

Since July 1, we filed 13 lawsuits, seven of them in education alone. We filed more public accommodations suits, housing discrimina-

tion suits and criminal conspiracy suits during that period of time than were filed for a comparable period in 1968.

I think the statewide desegregation suit against one of the Southern States is one of the most significant civil rights suits ever brought. It involves more than 100 school districts in that particular State.

I think that our position on voting rights specifically has been to try to impress both the Senate and the House that voting discrimination is not limited to those States which were covered by the 1965 act but there is at least enough evidence to justify a temporary suspension nationwide of the use of literacy tests.

Considering the activity of both the Department of Health, Education, and Welfare and the Justice Department in school desegregation, I think it is grossly unfair to say that we are backsliding. I think what we are trying to do is find a remedy that is going to get results. Of course, as the Senator well knows, in government sometimes you have to do some experimenting in order to determine what the best way is to get results.

So, in a general way, that would be my response to those who claim that we are in any way taking the pressure off the area of civil rights enforcement generally for schools, employment, whatever it might be.

Senator BELLMON. Mr. Chairman, I have one other line of questioning I would like to pursue for just a moment.

Mr. Kleindienst, you said you practiced before the NLRB and it took 3 or 4 years to bring a case to trial.

Mr. KLEINDIENST. Not to trial but to get an enforcing order from the Board.

Senator BELLMON. How long, from your knowledge, do you think it would take to get an EEOC case settled in district court?

Mr. KLEINDIENST. In my opinion, it should take no longer than 1 year to get an effective enforceable order from a Federal district court and that would be at the outside. If our proposed legislation is passed by the House as it was passed by the Senate and we can add another 59 district judges, we will come up with about 470 district judges throughout the United States and excluding one or two judicial districts where they have real problems, I would say you ought to be able to obtain an enforceable order within 6 to 9 months.

Senator BELLMON. Does this allow for the preliminary stages for investigations and for appeal?

Mr. KLEINDIENST. It would not include the time for the investigation if you assume that the EEOC would have completed the investigation prior to its filing of the complaint. It would also not include the time for appeal, since the court order is effective immediately unless the statute says otherwise, or unless the Federal district judge grants a stay on the enforcement of his order after he has ruled, or unless you can get the court of appeals to stay the order of the district judge, which they very rarely do, once that is ruled upon it is effective as of that moment.

If the order is that the person be given the job, if the person is not given the job, even pending an appeal, the respondent is in contempt of court. I can assure you that is one thing that you and I should not relish being in contempt of, an order of a Federal judge. A cease-and-desist administrative order has no teeth or force and effect until a court of appeals of the U.S. courts enforces it, and that can take 2 or 3

years, but an order of a Federal district judge is enforceable at the moment it is entered by the judge.

Senator BELLMON. It is your position starting at a given point in a given controversy, it would take three to four times longer under the cease-and-desist route than under S. 2806?

Mr. KLEINDIENST. That is correct, based upon my experience as a lawyer.

Senator BELLMON. Miss Kuck testified that the opinions, the decisions that come out of the Federal district courts were, in her judgment, fair and equitable regardless of the part of the country from which they came.

Do you feel the Federal district judges are competent and that their decisions would be equitable in cases that the EEOC might bring before them?

Mr. KLEINDIENST. With but rare, rare, rare personal exceptions.

Senator BELLMON. I want to ask you specifically if you know the judges in Oklahoma.

Mr. KLEINDIENST. With but very, very few exceptions such as the one with which you have been concerned for some time, Senator, the Federal judiciary throughout the United States is of the highest proficiency. It sets a model for judicial process in the United States and in the world because of the manner in which they are selected, because of their tenure and because of the tradition of the Federal judiciary. This rule applies in Florida, in Arizona, in Minnesota, in Mississippi, in New York, and in other States.

Some of our far-reaching decisions dealing with the whole area of civil rights have come from the Federal judiciary in the Southern States and I have no doubt or question in my mind whatsoever as to the fair and equitable, prompt, judicial processing of this law in our Federal courts.

Senator BELLMON. How many exceptions are there like the one in northern Oklahoma?

Mr. KLEINDIENST. To the extent in the context the Senator asks the question, I cannot think of another one like it.

Senator BELLMON. The answer is then that that is the only one?

Mr. KLEINDIENST. To my knowledge.

Senator WILLIAMS. I have just one or two questions.

How many attorneys are assigned to employment discrimination cases?

Mr. KLEINDIENST. I would have to defer to Mr. Leonard or Mr. Rose on that?

Mr. LEONARD. We do not assign specific lawyers to these cases, but 27 percent of our manpower for this fiscal year on an overall basis is budgeted and assigned to employment discrimination, more in employment than any other area.

Senator WILLIAMS. We are going to get from you the information on the cases that have been filed, the dates they were filed and present status?

Mr. KLEINDIENST. If it is available, I assure you, you will have it, Senator.

Senator WILLIAMS. What is the average time from referral to you from the EEOC of a case for enforcement through your procedures through the courts?

Mr. KLEINDIENST. The pattern and practice suits?

Senator WILLIAMS. Yes, sir.

Mr. KLEINDIENST. I would have to defer to Mr. Leonard.

Mr. LEONARD. I would not have the answer right here to that question, and it would vary considerably. There are some referrals that have been made to the Department that have not been acted upon that have gone through some preliminary investigations and have in effect been returned on the grounds that the investigation indicated no pattern or practice or possibly for some other reasons.

I can tell you that the time between the filing of a complaint and the trial is less than 1 year.

If I might, may I make two other points?

In one case, Crown-Zellerbach is one example, the Department was able to obtain a temporary restraining order in 1 day. Many times the order will depend on the kind of case and thus our decision to seek immediate relief or to go to full trial on the merits depends upon the circumstances and the point of law or points of law that we are trying to make.

I think the other thing with respect to your request for submission is that if the Senator would not mind, we would like to also provide you with a few examples of the manpower input that goes into a big pattern and practice case. One referral that was made by the EEOC in March of this year, in a rather substantial industry, we have had lawyers and research assistants examining the records in that industry practically full time from about April. I would say about 10 people have been assigned to that case full time just in the investigation stage.

Senator WILLIAMS. Before it comes to you, the Commission has had its procedures of investigation and conciliation and the other present tools available to them; is that right?

Mr. LEONARD. That is true; but in this particular instance the Commission in its hearings developed innumerable witnesses who claimed discriminatory practices against them but there is a substantial difference between individual claims and setting up a pattern and practice suit. It involves a tremendous amount of records work, employment records for over a period of years. It involves a lot of work with witnesses and the taking of statements in order to back up what the records tend to show.

So, the EEOC function here is extremely important in the initial development of pattern and practice cases—in other words, giving us the information that this looks like a pattern and practice situation. Frankly, that is invaluable to the Justice Department because of our limited resources and the different nature of our resources.

Senator WILLIAMS. When it comes to you, the Commission's final determination, I suppose, is a vote of the Commission as to whether it should be referred to the Department; is that right?

Mr. LEONARD. Do you mean if the Commission takes a vote?

Senator WILLIAMS. Yes.

Mr. LEONARD. Senator, I don't think that is necessarily true.

Senator WILLIAMS. Does one commissioner have the authority to send a case to the Department?

Mr. LEONARD. It is usually sent by the General Counsel, I presume, after some Commission discussion. They obviously look for the pattern and practice situations in order to refer them to Justice. On the other

hand, we have received some referrals which have not been a lot more than just statistics. They will find in a particular area that there is a substantially small number of minority group people employed and that might be referred to us on the basis of the numbers alone.

Senator WILLIAMS. You referred to the *March* case which is still in suit. Is that the moving picture industry case that you were referring to?

Mr. LEONARD. Yes, sir.

Senator WILLIAMS. Was that a numbers and percentages situation, or is it? You received it in March. It still has not been filed as a case in court; is that correct?

Mr. LEONARD. That is correct, but that is not a statistics case. EEOC held hearings on the industry generally and developed a lot of background information which has been very helpful to us but nevertheless it takes intensive investigation of the records in order to determine what the facts are and what remedies are to be requested. This is an important decision that has to be made. It is not just the finding of discrimination, but you must make the attempt to determine the facts and the appropriate remedies. In that case, there is a great deal of records investigation.

Senator WILLIAMS. I do not believe I have any further questions.

Mr. KLEINDIENST. Thank you, Senator, for your courtesy and for your invitation to us to be here.

Senator WILLIAMS. Our next witness is Mr. Robert E. Hampton, Chairman of the Civil Service Commission.

Mr. Hampton, we appreciate you being with us this morning.

STATEMENT OF ROBERT E. HAMPTON, CHAIRMAN, CIVIL SERVICE COMMISSION; ACCOMPANIED BY JAMES FRAZIER, JR., SPECIAL ASSISTANT TO THE CHAIRMAN; AND IRVING KATOR, ASSISTANT TO THE EXECUTIVE DIRECTOR

Mr. HAMPTON. Mr. Chairman, I have with me today, Mr. James Frazier, who is my special assistant for equal opportunity, and Mr. Irv Kator, who is assistant to the executive director of the Civil Service Commission, and they will assist me in any way they can.

I have a statement that I would like to read, Mr. Chairman.

Mr. Chairman and members of the subcommittee: I am pleased to have the opportunity to appear before this committee to testify on S. 2453, a bill "to further promote equal employment opportunities for American workers."

I want to make clear at the outset that my testimony relates only to section 717(a)-(e) of the bill which would transfer responsibility for equal opportunity in Federal Government employment from the Civil Service Commission to the Equal Employment Opportunity Commission.

The Commission is strongly opposed to these provisions of the bill. In my 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 these particular provisions of the bill are 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. 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. 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. 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 employment 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 available), 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 concentrations 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 65.1 percent. I do not want to mislead you, we are talking small total numbers 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 has issued a new Executive order 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 this 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.

Senator BELLMON. You have cited a letter and order.

Do you have those?

Mr. HAMPTON. I have a copy of them, the letter sent to the agency and the order.

Senator BELLMON. May we have that in the record, Mr. Chairman.

Senator WILLIAMS. Yes.

Mr. HAMPTON. I would be delighted to place this material in the record. I think it is must reading for anyone interested in this program.

(The information subsequently supplied follows.)

EXECUTIVE ORDER 11478—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national origin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully equal employment opportunity in the Federal Government.

Now, therefore, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

Section 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this order; assure participation at the local level with other employees, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this order is being carried out.

Section 3. The Civil Service Commission shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the civilian employees of and applicants for employment within the executive departments and agencies in order to assure that personnel operations in Government departments and agencies carry out the objective of equal opportunity for all persons. The Commission shall review and evaluate agency program operations periodically, obtain such reports from departments and agencies as it deems necessary, and report to the President as appropriate on overall progress. The Commission will consult from time to time with such individuals, groups, or organizations as may be of assistance in improving the Federal program and realizing the objectives of this order.

Section 4. The Civil Service Commission shall provide for the prompt, fair, and impartial consideration of all complaints of discrimination in Federal employment on the basis of race, color, religion, sex, or national origin. Agency systems shall provide access to counseling for employees who feel aggrieved and shall encourage the resolution of employee problems on an informal basis. Procedures for the consideration of complaints shall include at least one impartial review within the executive department or agency and shall provide for appeal to the Civil Service Commission.

Section 5. The Civil Service Commission shall issue such regulations, orders, and instructions as it deems necessary and appropriate to carry out this order and assure that the executive branch of the Government leads the way as an equal opportunity employer, and the head of each executive department and agency shall comply with the regulations, orders, and instructions issued by the Commission under this order.

Section 6. This order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This order does not apply to aliens employed outside the limits of the United States.

Section 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

RICHARD NIXON,
President of the United States.

AUGUST 8, 1969.

MEMORANDUM FOR HEADS OF DEPARTMENTS AND AGENCIES

Subject: Equal Employment Opportunity.

In my memorandum to you of March 28, 1969, I reaffirmed the Government's policy of providing equality of opportunity for all citizens in Federal employment. At the same time I directed the Chairman of the Civil Service Commission to review present efforts in the Government to achieve equal employment opportunity and give me recommendations for desirable policy and program changes.

The Civil Service Commission has given me its report. Because I believe the report and its recommendations are of vital importance to the Government, I am attaching a copy for your personal review. I completely endorse the new program directions which it outlines, and I look for positive results from these new efforts.

No more serious task challenges our Nation domestically than the achievement of equality of opportunity for all our citizens in every aspect of their lives regardless of their race, color, religion, national origin, or sex. This includes the opportunity for all persons, with full recognition of their dignity as individuals, to seek and to achieve their highest potential and productivity in employment situations. Discrimination of any kind based on factors not relevant to job performance must be eradicated completely from Federal employment. In addition, we must, through positive action, make it possible for our citizens to compete on a truly equal and fair basis for employment and to qualify for advancement within the Federal service. We must search for new ways to provide the necessary encouragement, assistance, and training opportunities, where appropriate, so that all employees may utilize their capabilities to the fullest extent in meeting the manpower needs of Federal agencies.

There are several points in Chairman Hampton's report which I want to emphasize:

Assuring equal employment opportunity in a Federal department or agency is the responsibility of the organization's head. It must have his continuing high priority attention and that of all agency executives.

Equal employment opportunity must become an integral part of the day-to-day management of Federal agencies and interwoven with every action which has an effect on employees. This is the road to true equal employment opportunity.

While we must continue to search out qualified personnel from all segments of our population, we must now assure the best possible utilization of the skills and potential of the present work force. Employees should have the opportunity to the fullest extent practicable to improve their skills so they may qualify for advancement.

Those who have potential to serve at the supervisory level and above should be identified and given the opportunity to develop to their fullest capability. Programs are underway and new efforts are being developed to achieve this end.

Special efforts must be made to assure that opportunities in the Federal Government at the professional levels are made known to men and women of all races, religions, and ethnic backgrounds so that positions of leadership in the future can be assumed by persons from all segments of our population.

Every possible step must be taken by agency heads to make sure that each manager and supervisor in the Government understands and implements the objective of equal employment opportunity for all Americans. Our supervisors' performance must in every way support equality of opportunity for all employees.

In addition to assuring equal employment opportunity for all persons, the Government, as a responsible employer, must do its part along with other employers to provide special employment and training programs to those who are economically or educationally disadvantaged. We must hold out a helping hand and imaginatively use the facilities of the Government to prepare such persons for useful and productive employment.

I have asked the Civil Service Commission to work closely with agencies and other interested organizations in the implementation of these program directions and to keep me informed of progress. Interagency consultation and coordination will hasten our progress and assure common understanding of our goals and the Commission will have the direct support of my staff in this effort. I request that you and your staffs cooperate fully in this urgent undertaking and move forward energetically in the direction outlined in the Civil Service Commission's report.

At the same time, I have issued a new Executive order on equal employment opportunity in the Federal Government. This order clearly states the policy of

this Administration in this critical area and demonstrates the continuing Federal commitment to equal employment opportunity.

I look forward to receiving the Commission's progress reports on a regular basis. They will have my personal attention.

I suggest that every supervisor have an opportunity to see this memorandum.

RICHARD NIXON,
President of the United States.

THE WHITE HOUSE, WASHINGTON, D.C., *August 8, 1969.*

Mr. HAMPTON. Section 717 (a) and (b) of S. 2453 raise, in my 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.

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 is well placed as the Government's central personnel agency and as the President's agent for equal opportunity 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, 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 5,000 counselors have been appointed 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 personnel 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 a final administrative adjudication.

This is a new system. We are hopeful that informal resolution will be possible in most cases. If it is not, there is the machinery for an independent, judicious, and expeditious means of arriving at a decision on individual cases and ordering corrective action.

I believe that the transfer of the equal employment opportunity function to the Equal Employment Opportunity Commission would orient the program toward complaints and have the effect of elevating all complaints to the Commission level and weaken efforts ... 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 complaint 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. An agency other than the Commission to hear complaints, as is proposed in S. 2453, would be a backward step. This arrangement would be moving back to the situation which existed under the President's Committee on Equal Opportunity.

Mr. Chairman, 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 think we should avoid.

The Commission recently 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 a new Executive order to which I referred and a memorandum to agency heads directing action on all aspects of nondiscrimination and 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 through the provision of S. 2453. We need a coherent, single 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 courtesy.

That concludes my statement.

We will be glad to answer any questions.

I would like to add one thing informally. We think we are the most severe critics of our own actions, and if we felt that this program would be improved by being transferred to the Equal Employment Opportunity Commission, we would be the first ones to recommend it.

Senator BELLMON. The chairman was called to the phone.

Thank you very much.

First of all, does the Civil Service Commission record employees according to their race?

Mr. HAMPTON. No; they are not recorded according to race.

Senator BELLMON. How do you know you have one-fifth minority employed?

Mr. HAMPTON. We get reports based on visible identification. This is a head count. Each department reports on that. While up to now there has been a restraint on putting such information on automatic data processing equipment and using it for program management purposes, under the new order agencies will be allowed to maintain data on minority employment gathered by the visible identification method on ADP equipment. This data will not be a part of any personnel file and every precaution will be taken to insure that there are no invasions of privacy. This will give us up-to-date data.

The data we are talking about today was gathered in November of 1967, and it is almost 2 years old. It is very difficult to get a picture of the trends. The data we are using is based upon a 2-year operation under the Commission's jurisdiction.

Senator BELLMON. You said you made a head count of employees. Do you count the employees in each grade?

Mr. HAMPTON. The employees are counted by the individual supervisors or whoever is designated to perform this. This is reported up through the agencies all the way up, and this data is made available to the Commission.

Senator BELLMON. I want to ask you a question, and if you can answer it, you will be the first person who can answer it.

What is an Indian?

Mr. HAMPTON. That is a broad, general question.

Senator BELLMON. When you ask somebody to go out and count the Indians in your agencies, how can you tell if he is an Indian?

Mr. HAMPTON. We tried a self-identification census, and that did not work because people who were not Indians identified themselves as Indians. There was a resistance to self-identification.

We realized that identification by a head-count method is not infallible, but I could not give you a definition of what is an Indian.

Senator BELLMON. What is a Chinaman? We talk about these things as if we know exactly what we are referring to and yet you tell me you do not record by race, that you ask people to make a head count and you are saying you don't know if they should count one as a halfbreed, so how do you know whether one is half Spanish or half Indian?

Mr. HAMPTON. I am sure this is known by the individual supervisor. This data is not the most accurate. I could not tell what a person is by looking at him. I can tell an oriental, but I do not have the definitions, and I am sure the reason you have not gotten an answer is not too many people know the answer.

Senator BELLMON. Has the Commission a set of definitions for defining the different races?

Mr. HAMPTON. No.

Senator BELLMON. So, then, we really do not know what we are talking about.

Mr. HAMPTON. I would not go so far as to say we do not know what we are talking about in terms of statistics on a specific group.

Senator BELLMON. If you can't tell me what an Indian is, how can you tell me how many you have working for you?

Mr. HAMPTON. In the obvious cases, they are identified and in some areas they are not.

Senator BELLMON. Let me get to another question or two.

You have a further elaborate structure for settling differences that come up in the Civil Service Commission, but I want to make a comment.

As someone on the other side of this business, you are not settling all of your cases because we get some of them here at the Senate. We had a real shocker come up recently. I realize you are new to your job, but I think you realize a careful look has to be taken at how this whole business of employee complaints functions. I am talking not only about employment problems, but you have a lot of disgruntled people working in the Federal Government.

You refer to a study of the Federal Government's equal employment program. You did not tell a great deal about the study. Can you describe it briefly?

Mr. HAMPTON. This study was the study the Civil Service Commission made at the direction of President Nixon who, on March 28 affirmed the Government's policy on equal opportunity and at that time he directed us to review this program. We made a very extensive review. We studied the ways the program was organized in the past, the way it is organized at the present. We reviewed the organization and the results of other patterns.

We conducted analyses of our efforts and what the results had been under our stewardship for three and a half years. We consulted with the agency heads. We requested each agency head and department head to send us his recommendations which we felt would improve this program. We dealt with Equal Opportunity representatives in the agencies, we met with representatives of the Office of Federal Contract Compliance, and the Department of Justice, and most people who have an interest in the subject to get their views.

At the same time, we had our 10 regional directors in contact with the various Federal business associations and Federal executive boards in the fields to give us their input. Then once all of this data was gathered, we sat down and analyzed it, looked at the problems and complaints and on the basis of this we made our report to the President, which is part of the package that we hope to put in the record.

It is a very comprehensive study. It is one of the best I have seen on this subject. It has a certain amount of self-criticism and insight and I think it puts in the right direction.

Senator BELLMON. Could you have a copy of that made a part of the record?

Mr. HAMPTON. Yes, sir.

Senator WILLIAMS. There is another vote.

I did want to give you an opportunity, Mr. Hampton, in a sense to reply to some of the statements that were made here yesterday. You were not here but I am sure intelligence was furnished you on observations that were made concerning the Civil Service Commission and statements that the Commission, itself, has been remiss

in bringing minority groups into its upper echelons and this was indicating it was not the proper agency to be supervising an equal opportunity program for the entire Government.

Do you know this was discussed?

Mr. HAMPTON. No; I did not hear about that, sir, but I would like to respond.

In the first place, we have a minority commissioner for the first time in the 86-year history of this agency.

Secondly, I have an assistant for Equal Opportunity. He is sitting here on my right.

We can provide you with the exact statistical breakdown in the Commission for the record and I would like that opportunity.

But I think the charge is too general to warrant, the type of specific answer that should be given. In other words, if it was more specific, I could answer it more specifically, but I can say that we make every effort to fill our jobs with the best professionals that we can find and we have many, many minority group employees and many at the higher levels and we can show you the progress and the trends.

I have a statistical breakdown on all of this and I would like to submit it for the record.

Senator WILLIAMS. Do you propose you will do this?

Mr. HAMPTON. Yes; I would like to submit this data.

Senator WILLIAMS. I have other questions and I believe for our purposes they can be answered as well in writing as coming back here after this vote.

Would you give us the answers to some procedural questions which I would like to submit to you and your reply will be for our record.

Mr. HAMPTON. Yes; I will be happy to do that.

Senator WILLIAMS. I understand the Commission recently completed a thorough study of the Federal Government's equal opportunity program and questions were asked arising out of that.

Were you requested to supply that for the record?

Mr. HAMPTON. Yes, sir.

Senator WILLIAMS. We will include that in the record.

(The information subsequently furnished follows:)

A REPORT TO THE PRESIDENT FROM THE UNITED STATES CIVIL SERVICE COMMISSION

Subject: Equal Employment Opportunity in the Federal Service

You asked that I review the Government's equal employment opportunity program and report to you recommendations for policy and program changes. This is my report.

There is no program in the Civil Service Commission of greater importance than the effort to achieve full equality of employment opportunity in the Federal service. Assuring equal opportunity and eliminating any vestige of discrimination in employment practices is essential to the well-being of the Government and crucial to the Nation. Race, color, religion, national origin, or sex must never affect the opportunity of an American to work for and advance within the Federal service.

REVIEW

In making the review, we took the following actions:

Studied the ways in which the Federal Government had organized in the past for equal employment opportunity and program effectiveness under each of these organizational approaches.

Reviewed particularly the organization and results under the President's Committee on Equal Employment Opportunity, which exercised program leadership

immediately prior to the Civil Service Commission's assumption of responsibility in 1965.

Conducted a thorough analysis of efforts and results under Commission stewardship during the past three and one-half years.

In reviewing program activities and progress since the Commission was assigned responsibility by Executive Order 11246, we did the following:

Requested and received recommendations from department and agency heads on future program direction.

Met with agency equal employment opportunity officers and directors of personnel to discuss progress and problems and to receive program suggestions.

Met with representatives of the Office of Federal Contract Compliance, the Department of Justice, the Equal Employment Opportunity Commission, and the U.S. Commission on Civil Rights, to obtain input from these Federal agencies having civil rights responsibilities.

Met with the Commission's ten regional directors to gain their insights and program recommendations.

Consulted, through our regional directors, with Federal Executive Boards and Associations to get program ideas from managers of Federal installations across the Nation.

Consulted at the staff level with minority group organizations to assure consideration of their points of view and suggestions.

Met with representatives of women's organizations and Federal agencies to obtain recommendations relating to equal employment of women in the Federal Government.

We thus compiled a comprehensive base for overall assessment of the Federal equal employment opportunity program. We looked at its beginnings; we evaluated what has been done and what is underway; we attempted to assess our overall progress. Finally, we defined the challenges which still must be met and mapped out a proposed course of action.

PROGRESS

We can report that the Government has made significant progress in equal employment opportunity. Much has been done to open the doors of opportunity to many for whom they had been closed.

Since 1965, when the Civil Service Commission was given leadership responsibility for the Government's equal opportunity program, significant gains have been made in overall minority employment in the Federal service.

One-half million jobs, almost 20% of the Federal work force in the executive branch, are held by minority group Americans.

The proportion of non-white persons employed in the Federal Government is almost 50% higher than the percentage of non-whites in the overall work force in the United States—16% as contrasted with 10.8%, based on most recent data available. In addition, the Government employs over 70,000 Spanish surnamed Americans.

Total employment figures, impressive as they are, cannot tell the whole story, either of progress or of failures.

Federal departments and agencies have engaged in action programs in their organizations and in their communities designed to improve equal employment opportunity.

The climate in the Federal service for equal employment opportunity has improved greatly over the past few years.

Equal opportunity is becoming recognized as an integral part of the responsibilities of each manager and supervisor in the Federal service.

The employment system is continually being reviewed and modified by the Civil Service Commission to assure that it is in fact open on an equal basis to all our citizens and at the same time meets the needs of Federal agencies for qualified manpower. The ultimate strength of the equal opportunity effort depends not so much on systems, however, as it does on the extent to which it becomes an inseparable part of management so that the commitment to equal opportunity is fully reflected in the day-to-day operations of the Government.

CHALLENGES

The road to equal opportunity is neither an easy one nor a short one. While our destination is coming into sight, we have a great distance to go. For example:

Despite significant gains in overall employment of minority group persons

In the Federal service, too many of our minority employees are concentrated at the lower grade levels, victims of inadequate education and past discrimination. Our women employees are also largely concentrated in the lower grade levels.

Despite recruiting efforts, comparatively few minority persons are entering the Government at the middle level and in the professional occupations.

There are still many areas of the Nation where Federal employment of minority persons does not adequately measure up to the potential represented in the population generally.

Our system for gathering information on minority employment is not sufficiently refined to pinpoint problem areas or to serve as a means for effective program management.

There is still need for better understanding by employees and supervisors alike of the objectives of the equal employment opportunity program. There are still Federal agencies which have not moved ahead as aggressively as the times demand in affirmatively seeking equal employment opportunity relating to both minority employees and women.

These are the challenges and they dictate some forthright program changes.

UPWARD MOBILITY

First, we must exert every effort possible to encourage upward mobility of Federal employees now at the lower grade levels so that they may work at their fullest potential. This can be done by training offered by the Government to employees who want the opportunity to improve their skills and qualify themselves for advancement. Therefore, we must:

Improve on-the-job training programs for employees;

Make greater and more imaginative use of the Government Employees' Training Act for lower grade employees, including enrollment in non-Government training facilities;

Establish tuition-subsidy programs to encourage employees to qualify themselves for greater responsibilities;

Provide additional cooperative work-study programs to bring persons previously denied the advantages of specialized training into occupations in which skilled manpower is needed;

Bring training opportunities within easy reach of Federal employees by working with high schools and colleges to establish "off campus" facilities in Federal buildings;

Work with schools and colleges to assure that courses of study adequately prepare minority group Americans for occupations in the Federal Government, particularly those in which there are manpower shortages; and

Identify under-utilized employees, especially those at the lower levels, and provide them with work opportunities commensurate with their abilities, training, and education.

RECRUITING

Under the merit system of employment, we have made progress in recruiting minority group Americans to the Federal work force. One-fifth of our employees are minority.

Now we need to raise our sights. We cannot afford to let up in the effort to open doors at all levels in the Federal service. We must be particularly concerned with college recruitment to assure a fair opportunity to all persons for professional careers in the Government. In this way we will bring into Government qualified young men and women of all races and ethnic backgrounds who can assume positions of leadership and trust in the future. There are occupations and levels of responsibility in the Government service in which minority Americans and women are minimally represented. We must make these occupations and levels known and assure that our recruiting is aimed at all sources to attract persons into these fields. Also, we must continue our participation at the local level with other employers, with schools, and with public and private groups on matters affecting the employability of persons for the Federal service, including efforts to assure adequate open housing near places of Government employment.

SUPERVISORY SUPPORT

The key to effective equal employment opportunity and to affirmative action to achieve this goal is the individual supervisor. He must have understanding of and sensitivity to the objective of the program and the needs and aspirations of

individual employees. Training can be an effective tool in bringing this kind of understanding to him.

To achieve this end, we plan to take the following steps:

Require each employee who becomes a supervisor in the Federal Government to participate in appropriate training courses to bring him understanding of and sensitivity to the goals of equal employment opportunity;

Call for performance evaluations of supervisors which reflect, where appropriate, the effectiveness of their efforts to carry out their equal opportunity responsibility; and

Encourage recognition of employees, supervisors, or units demonstrating superior accomplishment in equal opportunity under the Incentive Awards Act.

As a correlative, the supervisor must recognize that corrective action will follow quickly and surely when discriminatory practices are disclosed. The new discrimination complaint procedure which the Commission has ordered effective July 1, 1969, will help assure that instances of discrimination are disclosed so that corrective action can be taken immediately.

PROGRAM MANAGEMENT

While the Commission has leadership responsibility for the Government-wide equal employment opportunity program, each department and agency head is individually responsible for the program in his organization. It is up to him to do the job. He must assure that the will for equal employment opportunity exists in his organization and must also see to it that adequate manpower and sufficient funds are provided to carry out an effective and affirmative program. Commission regulations require that by July 1, 1969, the agency head appoint a Director of Equal Employment Opportunity. He should be a high level official having the full confidence of the agency head and with sufficient authority to assure action.

Each agency has been required to prepare a plan of action to guide its equal opportunity activities. We will ask each department and agency head to revise his plan of action to accord with the emphasis reflected in this report. He will be requested to evaluate his progress in accordance with the revised plan of action and based on guides supplied to him by the Commission. This will be part of a Government-wide agency self-evaluation program which we will institute and which will place responsibility for progress clearly on the agency head with review in the Civil Service Commission. We will ask for periodic progress reports from agency heads and I propose to report to you periodically on Government-wide progress on equal opportunity.

At the same time, we will intensify our evaluations of agency equal employment opportunity efforts to provide meaningful assistance to agencies in meeting program goals. We will point out deficiencies, where they exist, show the need for action, and help assure progress in this critical area.

To provide a data base for evaluation purposes by agencies as well as by the Civil Service Commission, we are authorizing the departments and agencies to maintain certain minority employment data on automatic data processing equipment, which under present restrictions they are unable to do. This approach will contribute current and comprehensive statistical information to assist in program management and will operate with proper safeguards to assure individual privacy and the separation of minority employment data from all other personnel records.

Equal employment opportunity is and must remain a major responsibility of each Civil Service Commission bureau and office. I am taking steps, however, to strengthen the focus and coordination within the Commission of our leadership responsibility for the Government-wide equal employment opportunity program. We will thus be able to intensify our efforts to improve the program within each agency of Government. At the same time we will step up consultation with minority organizations and Federal employee unions to assure their full participation in the Government's efforts.

To assure common understanding of the objectives and directions of the equal employment opportunity effort, I will convene as soon as practicable after July 1 a meeting of the Directors of Equal Employment Opportunity of all Federal agencies. This will give us the opportunity to strengthen the determination of those persons directly responsible for providing leadership to equal opportunity in the Federal Government.

THE DISADVANTAGED AND HARD-CORE UNEMPLOYED

The new thrust for equal opportunity that I have outlined in this memorandum will apply to all Federal employees and applicants regardless of race, color, religion, national origin, or sex. At the same time, we must not forget our obligation as the Nation's largest employer to do our share in meeting the problems of the disadvantaged and the hard-core unemployed. Government agencies can hire and train disadvantaged persons. A number of special programs in different agencies are now underway to provide training and employment to youth and to the hard-core unemployed.

This effort must be strengthened. We will seek to work cooperatively with other departments of Government so that Federal agencies may participate with other employers in the application of programs funded for the employment and development of disadvantaged Americans. We must find ways to give incentive to Federal agencies to develop imaginative programs so that the facilities of the Government can be used even more extensively for training disadvantaged persons for possible Federal employment. In addition, exempting from manpower ceiling controls positions held by disadvantaged persons, at least during the initial employment period when productivity is necessarily low, and offering classroom training during work hours for up to 25% of a new employee's time, are examples of possible approaches.

CONCLUSION

In summary, we have made progress in moving toward true equal employment opportunity in the Federal Government. We have now reached a stage which requires rededication and new directions to assure further achievement.

The program directions I have outlined in this memorandum point the way in the vital areas of upward mobility of employees, recruiting, supervisory support, and program management as well as new opportunities for the disadvantaged and hard-core unemployed. We will move forward and work closely with agencies to develop the needed programs.

To demonstrate the commitment of your Administration to the objectives of this important effort, I recommend a new Executive order be issued relating solely to equal opportunity in Federal employment and incorporating the new directions we believe are necessary to achieve this important national goal.

ROBERT E. HAMPTON,
Chairman, United States Civil Service Commission

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE AND ANSWERS SUPPLIED BY THE CIVIL SERVICE COMMISSION

Question 1.—What has the Civil Service Commission been doing to identify specific areas or specific agencies which do not appear to have been adequately providing equal opportunity, and what has been done about such situations? Do you plan any changes in these procedures?

Answer 1.—The Commission reviews agency effectiveness in providing equality of employment opportunity as a normal part of its onsite inspections of agency personnel management operations. In addition, the Commission carries out a program of special inquiries which include onsite review of agency equal employment opportunity effectiveness. In the past 3 years these onsite reviews have numbered over 500 per year at Federal agency installations (FY 1967 509; FY 1968 549; FY 1969 503). Through these inspections, the Commission reviews management results in analyzing the factors and problems that obstruct equality of opportunity and the extent to which action programs to achieve full employment opportunity have been planned and are being implemented.

When our reviews identify deficiencies which are in violation of the requirements of EEO statutes, Executive Orders, or regulations, we report to agency management what is wrong, indicate the corrective action to be taken, and follow up to insure that correction is made. In addition, even where we do not find statutory, or regulatory deficiencies, our reports contain recommendations to assist managers in improving the positive efforts that may already have been taken to achieve equality of opportunity.

The Commission has used other means of measuring and motivating EEO progress. For example, a program of Community EEO reviews was begun in

1963 to look at the EEO picture on a Federal-communitywide basis at centers of Federal employment. Under this program, a total of 87 communities were surveyed, some for a number of times. The objective of these surveys was to identify problems that extended throughout the Federal community and to initiate remedial action by the CSC and the agencies involved.

Since the objective of our reviews is to direct attention to the most significant and serious obstacles to full equality of opportunity, our review approach must change as changes occur in progress and needs for equal opportunity. Consequently, we plan a comprehensive study of our inspection methods in the light of the increased emphasis on upward mobility called for in Executive Order 11478 and the President's memorandum of August 8, 1969.

Question 2. Do you plan to reorganize the EEO structure in the Commission to report directly to the Commissioners? How will you organize the program internally for maximum effectiveness?

Answer 2.—We have consolidated our staff resources within the Commission for administration of the strengthened Governmentwide equal employment opportunity program under the new directions of Executive Order 11478. The Commission's Executive Director has been named as Coordinator of Federal Equal Employment Opportunity. He reports directly to the Commissioners, and is also the top career official in charge of all Commission personnel management programs. This melding of management responsibilities reflects the letter and the spirit of Executive Order 11478, which directs that the policy of equal opportunity " . . . must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement and treatment of civilian employees of the Federal Government." Equal employment encompasses all aspects of the recruitment, hiring, training and promotion of women.

The Office of Coordinator of Federal Equal Employment Opportunity includes two new high level staff positions, Director of Federal Equal Employment Opportunity (Communications) and Director of Federal Equal Employment Opportunity (Operations). The new office is being fully staffed to assure effective leadership for the Government's equal employment opportunity program.

The new office coordinates a wide variety of equal opportunity activities which are inherent responsibilities of the various Commission bureaus and offices. It is also the focal point for leadership, guidance, and assistance to agency Directors of Equal Employment Opportunity, Directors of Personnel, and staff personnel; and is the clearing house for two way communication of program policy and goals between the Commission and all interested parties and organizations in and out of Government so that the Government's equal opportunity program will reflect consideration of all viewpoints.

Question 3. It is our understanding that the Commission's chief EEO official is now a GS 15. Are there any plans to give this official higher GS status and organizational status?

Answer 3.—The Commission's Executive Director, who has been designated as Coordinator of Federal Equal Employment Opportunity, is in Level V of the Executive Schedule, and reports directly to the Commissioners. The Director of Federal Equal Employment Opportunity (Operations) and the Director of Federal Equal Employment Opportunity (Communications) are at levels GS 16 and GS 15, respectively. In addition, most of the Commissison's top level staff in headquarters and regional offices are heavily involved in, and devote a considerable portion of their time to equal employment opportunity program activities. Equal employment opportunity, moreover, is a program of the highest priority and interest insofar as the three Civil Service Commissioners are concerned, and receives considerable personal attention from them.

Question 4. The new Executive Order provides for the "prompt, fair and impartial consideration of all complaints." We understand there is now almost a two year lag between the time the individual files a complaint and the final decision is made at the Commission's Board of Appeals and Review level. How do you expect to speed up the process?

Answer 4. Speeding up complaint processing is one of the objectives of the new discrimination complaint procedures which went into effect on July 1, 1969. Under the old procedures, sixty-four percent of all cases had been closed within one year. Processing time within agencies had averaged six and one-half months and, within the Commission's Board of Appeals and Review, two months.

The new procedures emphasize informal resolution of employee grievances and this should eliminate much of the time consumed in formal complaint

processing. Also, in the past, the unavailability of investigators and appeals examiners within agencies had delayed many cases.

Under the new procedures, trained investigators, and independent third-party appeals examiners (in no way associated with the agency in which the complaint arose) will be made immediately available to investigate and hear complaints. This should reduce the time lag considerably and provide reports of investigations and hearings which will expedite processing of those cases appealed to the Board of Appeals and Review.

Question 5.—When individual cases of discrimination are found by your Board of Appeals and Review, are any financial remedies granted to the individual? (e.g. back pay for lost promotion) In what ways are the supervisors involved in cases of discrimination disciplined?

Answer 5.—Such financial remedies as retroactive promotions or awarding of back pay to complainants who are found to have been discriminated against in promotion actions are prohibited by numerous decisions of the Comptroller General. The most recent of these decisions is B 165571 of July 1, 1969. We are considering the desirability of proposing legislation to provide such relief under appropriate circumstances.

Supervisors who are found culpable in discriminatory actions can be and are appropriately disciplined as part of the corrective action taken by agencies. Our regulations emphasize that an agency's campaign to eradicate prejudice and discrimination includes taking disciplinary action against employees who engage in discriminatory practices, and require that the functions assigned to the Director of Equal Employment Opportunity include recommending disciplinary action when warranted. We have also instructed appeals examiners conducting hearings in discrimination complaints to propose disciplinary action, to the agency Director of Equal Employment Opportunity in appropriate cases.

Disciplinary action against supervisors has been recommended in a number of complaint decisions made by agencies and by the Commission's Board of Appeals and Review. These recommendations were carried out by the agencies concerned. Actions taken have included demotion or reassignment, reprimand or warning, removal from consideration for promotion, and withdrawal of supervisory authority to make appointment or promotion selections. Some decisions have required the supervisor to undergo special training in the equal opportunity aspects of his responsibilities.

Question 6.—What kind of sanctions has the Commission used when agencies are found to discriminate in employment practices? What are the sanctions that can be used under the new Executive Order? Can you withdraw appointing authority? Under what criteria do you expect to employ such sanctions?

Answer 6.—Only the Congress may withdraw the appointing authority of the head of an executive department or agency.

The Commission, however, is not without authority to restrain an appointing authority which has been found to have engaged in discriminatory employment practices with respect to employment in the competitive service.

Pursuant to power granted to it by the President under section 01.2(e) of Executive Order 9830, the Commission has delegated to departments and agencies its authority to act in a variety of personnel matters. These delegations relate to such matters as passing on the qualifications of applicants and employees, and promoting and demoting employees. The Commission's powers in these areas are derived from delegations by the President pursuant to the Civil Service Act and other statutes. Whatever restrictions of the appointing power inhere in the exercise of the Commission powers are the result of deliberate Congressional action, hence consistent with Article II, Section 2, of the Constitution. The Commission may suspend or revoke any delegation of these powers (section 01.2(f) of Executive Order 9830 and 5 CFR 230 202). Thus we could require an agency to secure the Commission's prior approval of each appointment and promotion it wanted to make. This action would serve as an effective restraint against any agency that might persist in discriminatory practices.

Our reviews of equal employment opportunity indicate, however, that the obstacles to equality of opportunity are not so much overt acts of discrimination which can be proved and thus which could be overcome by the imposition of sanctions, but rather lack of affirmative action to achieve equality of opportunity. The thrust of our regulations and guidelines is therefore premised on the conviction that equality of opportunity must be achieved through positive action, and that it does not occur simply with the removal of discrimination. Much more is needed. The new Executive Order therefore does not take the form of a list

of prohibited actions with prescribed sanctions; rather, it details the type of positive action that managers and supervisors are expected to take in achieving equality of opportunity.

To insure that supervisors do plan and carry out the type of activity described in the Executive Order, the Commission is requiring that effectiveness in promoting equal employment opportunity be considered as an element in the evaluation of supervisory performance, and that all employees who become supervisors receive training in their equal employment opportunity responsibilities.

Question 7.—What percentage of complaints of discrimination in government employment are upheld at the agency level; on appeal to the Commission?

Answer 7.—We believe that the complaint system should be supportive of positive efforts to assure equality of opportunity and regard it in this light. Discrimination complaints are not adversary procedures in which a complainant's charges must be "upheld" in order to secure appropriate corrective action. Regardless of whether or not discrimination is determined to have taken place, corrective action will be ordered where the facts after investigation indicate the need. Under this approach, investigation of formal complaints of discrimination resulted in corrective action—ordered and taken by agency management—in 42.3 percent of the complaints processed in agencies and reviewed by the Commission between April 1968 and March 1969, our most recent survey year. Findings of discrimination, which are very difficult to prove, and substantiate, were made in 4.4 percent of these cases.

During the same period, the Commission's Board of Appeals and Review closed 267 appeals of agency decisions in discrimination complaint cases. The Board found discrimination in one of these cases, and recommended corrective action in six. Agencies had already taken corrective action in a number of the complaints submitted to the Board, so that the overall corrective action rate on appeals closed by the Board of Appeals and Review between April 1968 and March 1969 was 27 percent.

Question 8.—What is your comment on the charge that permitting an agency to conduct the investigation of discrimination within that agency is just as unsound as permitting a private employer to conduct the investigation of such charges against it?

Answer 8.—Permitting a Federal agency to conduct its own investigation of alleged discrimination is not, in our judgment, analogous in any way to a private employer investigating charges against itself. For one thing, Government managers are committed under Presidential mandate and Executive Order to an all-out effort to assure equality of opportunity. This is the climate in which they operate. Therefore, when investigations are conducted, they reflect the Presidential policy of assuring equal employment opportunity. In some larger agencies specially trained and independent investigative staffs, responsible only to top management, handle discrimination cases to assure complete independence in the investigative process. In all agencies, persons specially trained in equal opportunity are used to investigate discrimination complaints.

In addition, when an investigation is completed by an agency (and the investigation must be conducted by staff of an organizational unit of the agency other than the one in which the complaint arose), the complainant is provided a copy of the entire investigative file. If he is not satisfied with the corrective action offered by the agency, he has the right to a hearing by an independent and trained third-party appeals examiner *in no way connected with the agency in which the case arose*. For example, for a case arising in the Department of Defense, the hearing must be held by an appeals examiner from the Civil Service Commission or from another agency. Again, the complainant is given a copy of the hearing transcript and the appeals examiner's recommendations. The employee also has the right to appeal to the Commission's Board of Appeals and Review if he is not satisfied with the decision in his case.

The total structure for handling discrimination complaints, therefore, bears no resemblance to a private employer investigating itself. On the contrary, it provides the basis for independent, expeditious, and fair handling of discrimination complaints and achieving corrective action where warranted.

Question 9.—Under the new complaint system, will the employees choose the counselor, or is the counselor also appointed by management?

Answer 9.—The nature of the Equal Employment Opportunity Counselor's function makes it essential that he be appointed by management. The job of the Counselor is to make inquiry when an employee believes there has been discrimination, establish the facts, and seek informal resolution by dealings with various levels of managers in the organization.

We have set standards for Counselors to assure that they have the ability to relate to and empathize with the needs and feelings of the employee and have understanding in the area of civil rights. They are expertly trained to perform their duties within a work environment with which they are familiar as agency employees. However, if they are to be successful in their job and obtain resolutions of employee grievances, they must have the strong support and backing of management. For this reason, while the Commission determines the qualifications for the positions, the selections are made by agencies. We have encouraged employee consultation in the selection process but ultimate responsibility should be with management.

The Counselor's role should not be confused with that of an employee representative. While it is the Counselor's responsibility to advise and assist employees who seek his services, and try to resolve the problem informally, he does not represent the employee in any action which the employee wishes to file. The Counselor's job is to get resolution of the matter informally by working with management officials and the employee so as to avoid the need for a formal proceeding. An employee has the right to be represented by an attorney or other person of his own choosing in any stage of the complaint processing, including the interviews and discussions with the Counselor.

Question 10.—What is being done to insure that qualification tests given by the Civil Service Commission do not needlessly operate to the disadvantage of minority group applicants?

Answer 10.—For some Federal jobs, written tests are the most accurate and appropriate predictors of job success. Therefore, for these jobs they should be used, and we do not consider that they discriminate against minority groups. For example, for jobs in post offices, written tests are used and minority group persons represent a high proportion of employees in many post offices, particularly those in large major metropolitan areas.

Nevertheless, we review our written tests on a continuing basis to detect and remove any items which might in any way be considered to be culturally biased against minority groups. Moreover, in cooperation with the Educational Testing Service, we are conducting in-depth studies into the entire matter of cultural bias in employment testing. This research is now underway and we expect in this way to develop a body of facts in an area where controversy has been based more on emotional assertion than on substantive evidence.

At the same time, we are looking closely at our total examining program to identify occupational areas for which examining tools other than written tests can accurately and practicably measure a candidate's ability to do the job. For large numbers of Federal jobs, there is no written test requirement. Applicants thus enter the Federal service at many grade and pay levels through examinations which do not involve their passing a written test. In fact, during FY 1969 approximately *30%* of all appointments to Federal positions made were without a written test. In addition, where written tests were required, close to 50% of the total appointments from such tests were for jobs in the Post Office and, as indicated above, minority group candidates are successful in these examinations. Another 35% of the appointments from written tests were for typing and clerical jobs and minority group persons qualify for appointment through these examinations. Following are the examinations in which passing a written test is not required:

There is no written test in the worker-trainee examination for entry-level positions.

Our job element method of examining for blue collar trades measures an applicant's knowledge of job techniques and tools rather than his academic background.

We are conducting promising experiments with a "programmed learning" approach—measuring potential rather than experience or education—for jobs in the apprenticeable trades.

We accept evidence of superior scholastic achievement in any college or university in lieu of the written test requirement of our Federal Service Entrance Examination for trainee positions at the college graduate entry level.

The written test portion of our Mid-Level Examination, for GS-9 through GS-12 positions, is used only for identification of a candidate's particular skills; not as a "pass or fail" screening device. The written test is not a factor in determining eligibility in the examination.

The Senior Level Examination, for positions at GS–13 through GS–15, does not include a written test. Nor is any written test required for entry into many professional jobs at any grade level; e.g., engineer, physical scientist, accountant.

There are no written tests for positions in GS–16 through GS–18.

We make every effort to assure that our examinations treat all segments of the population fairly while they identify the best job candidates. Where evaluation is based partly on work experience, our examiners look closely at the duties and responsibilities of past employment to give full credit for uncompensated work in the community or a voluntary group, work in which minority group persons may have engaged, or work for which relatively low salaries reflect depressed economic conditions existing in minority communities.

We think that our large minority group work force—about one-fifth of the total Federal work force—is evidence that our examining program does not operate to the disadvantage of minority groups. These half-million minority employees entered Government under civil service examining procedures, in fair competition with their fellow citizens.

Question 11.—What is the employment picture of blacks at the Commission itself in terms of GS grade?

Answer 11.—The attached chart contains information on the employment of minorities (Negro, Spanish American, Oriental, and American Indian) by the Civil Service Commission in the GS grades. Our most current figures, taken as of *June 30, 1969*, are compared on the chart to those of December *31, 1965*. On an overall basis, these figures show that, at the most responsible levels, the rate of increase in minority employment is greater than the rate of increase in overall employment.

Employment of minority group persons at grades GS–1 through GS–4, as a percent of total employment in these grades, has remained relatively stable since 1965, with an increase of only 0.8% (from 42.6% to 43.4%). In the higher grades, however, there have been significant increases across the board.

At GS–5 through GS–8, the percentage of minority group employment to overall employment increased from 24.2% to 31.2%—an increase of 7 percent. This represents more than a doubling in 3½ years of minority employment at these levels, from 150 employees to 321.

At GS–9 through GS–11, the percentage of minority employment increased from 4.3% to 9.8%, more than doubling. Actual minority employment in these grades went from 42 to 112.

At GS–12 through GS–15, the same is true. Employment of minority persons at these grade levels increased in the 3½ year period from 16 to 60, up from 2.4% to 6.2%.

CIVIL SERVICE COMMISSION

MINORITY GROUP EMPLOYMENT, GS GRADES ONLY

	December 1965			June 1969		
	Total employment	Minority		Total employment	Minority	
		Number	Percent		Number	Percent
GS–1 through 4	1,291	550	42.6	2,001	868	43.4
GS 5 through 8	620	150	24.2	1,029	321	31.2
GS–9 through 11	988	42	4.3	1,142	112	9.8
GS–12 through 15	665	16	2.4	967	60	6.2

EMPLOYMENT BY INDIVIDUAL MINORITY GROUPS AS OF JUNE 30, 1969

	Negro		Spanish American		Oriental		American Indian	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
GS–1 through 4	748	37.4	80	4.0	34	1.7	6	0.3
GS–5 through 8	284	27.6	23	2.2	13	1.3	1	.1
GS–9 through 11	78	6.8	21	1.8	12	1.1	1	.1
GS–12 through 15	42	4.3	15	1.6	2	.2	1	.1

We recognize that there are still relatively few minority group employees at the top grades; at GS-12 through GS-15, we are speaking of 60 minority persons out of a total of 967 employees. Currently, we have no minority persons at the GS-16, 17, or 18 levels.

But the trend is apparent. We are increasing the extent of minority employment at the middle and upper levels and this largely accounts for our percentage increase in overall minority employment. In December 1965, our total employment of 3,674 was 21.5% minority. On June 30, 1969, minority employment stood at 27.4%, of a total of 5,324 employees. It is our aim to show further improvements at the more responsible grade levels as employees being brought into our career system continue to develop their potential for advancement.

Question 12.—Section 2 of the new Executive Order requires each Department and agency head to ". . . assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability." What is meant by this? For instance, how do you plan to work with local schools, housing, etc.?

Answer 12.—A successful equal employment opportunity program cannot be operated in a vacuum, isolated from the community of which the Federal installation is a part, and in which its work force resides. Federal managers must, therefore, carry equal employment activities beyond the confines of their establishments in cooperative action with other elements of the community where conditions affecting employability are involved.

For example, equal employment opportunity is affected by the availability of adequate open housing near the worksite and by dependable transportation for all segments of the potential work force. These factors directly affect employability. The Civil Service Commission, agency managers, as well as Federal Executive Boards and Federal Executive Associations, have supported community action in these areas by testimony before governing bodies of various jurisdictions and by working cooperatively with civic groups interested in these matters. We expect these efforts to continue.

We need to assure Government a continuing source of adequately prepared job candidates. Federal agencies can help accomplish this through advice and assistance to schools and colleges, including those which are predominantly minority, in developing curricula which are relevant to Federal employment needs. Work of this kind is already underway, and the Commission intends to provide leadership for an even stronger effort in this field. We will encourage cooperative arrangements between educational institutions and Federal agencies which need manpower for shortage category occupations. We will provide school counselors and students with information designed to stimulate career motivation, and offer opportunities for part-time and summer work in Government for students and faculty members. These efforts will have the greatest effect in those schools and for those students most in need of this kind of assistance. The predominantly minority schools will be affected by these activities.

Senator WILLIAMS. Thank you very much.

We will reconvene at 2 o'clock.

(Whereupon, at 12:50 p.m., the subcommittee recessed, to reconvene at 2 p.m. of the same day.)

AFTER RECESS

(The subcommittee reconvened at 2:20 p.m. Senator Harrison A. Williams, Jr., chairman of the subcommittee, presiding.)

Senator WILLIAMS. Can we reconvene with the statements of Mr. Frank Kent, commissioner, Minnesota Department of Human Rights, and Mr. Richard Levin, assistant director of the Philadelphia Commission on Human Relations.

Commissioner Kent, do you have a statement?

STATEMENT OF FRANK KENT, COMMISSIONER, MINNESOTA DEPARTMENT OF HUMAN RIGHTS

Mr. KENT. Yes, Mr. Chairman, I do have a statement that I would like to read at this time.

Senator WILLIAMS. Very good. We appreciate your being here.

Mr. KENT. Mr. Chairman, I speak today on behalf of the International Association of Official Human Rights Agencies.

This organization is composed of those bodies which have been organized in the various States and communities in the United States and in Canada to enforce civil and human rights laws.

The association, which has just concluded its 21st annual conference in Hartford, Conn., unanimously voted to give full support to enforcement powers for the Equal Employment Opportunity Commission.

We believe that it is a cruel hoax on human lives for the Congress to create an agency ostensibly to enforce the laws which it passes and then to give it no power to enforce those laws.

If one were to ask what may have been the greatest contributing factor to our current national crises, it might well be said that the Congress of the United States is the culprit, for passing civil rights laws and raising the hopes of those who are on the outside of the mainstream of American life, that finally justice would be accomplished, only to find that these laws provided no practical way of enforcement and that the agency given the responsibility to administer the law was given neither adequate staff or budget.

I believe it is criminal that EEOC can have powers to find employers guilty of defying the law but no power to force the lawbreaker to cease. It is criminal that the Congress of the United States would create an agency to bring justice and equality of opportunity in employment, and then undercut that agency through failure to provide adequate funds for the agency to do its job.

It is criminal that any human being, discriminated against because of race, color, relation, national origin, or sex should have to wait 2½ years for an adjudication of his complaint.

I believe that it is also criminal for a respondent to be under a cloud for that period of time. And it is because of the failure to provide adequate means of enforcement for civil rights laws that so many persons have become disillusioned with our system of American Government and have said, "if we can't get it through the system we will destroy the system."

And make no mistake about it—this is the real issue: Whether Congress cares enough about the country—whether Congress cares enough about democracy—whether Congress cares enough about our great Declaration of Independence—to stop letting a handful of reactionaries move this Nation further and further along the road to disaster.

I firmly believe and the association firmly believes that the vast majority of Americans want fair employment laws enforced. I firmly believe that the vast majority of Americans want every man to have the opportunity to realize his fondest dream, and consequently, I cannot understand why it is so difficult for thinking men, raised in the Judeo-Christian concept, to deal in a progressive and meaningful way with an issue which is so basic to our American heritage.

We must stop playing games with the lives of human beings. Let it be known here and now that when Congress passes laws, it really intends for those laws—all of the laws to be enforced. Otherwise, it seems to me Congress makes a mockery of itself, but even more importantly, it sows the seeds of the destruction of our Nation.

The international association takes the position that the principle of a Federal-State partnership in handling civil rights cases is extremely important. The States could go a long way. Those States which have regulatory agencies could go a long way in reducing the backlog of cases through an expanded Federal-State grant program.

The Congress envisioned this when they passed title VII—and then they appropriated originally $900,000 for the first year, and $700,000 for the second year for 50 States and local commissions to assist in enforcing the law.

If you were just to break it among the 50 States, that would be only about $14,000 a State, and when you consider the many local agencies to whom those funds must be dispensed, it should become easily clear why people all around the country are laughing about the great farce that has been played upon minority peoples in this Nation. The grant program alone, should be at least $9 million.

We firmly believe that the principle of deferral of formal complaints to State antidiscrimination agencies holding agreements with EEOC, before the EEOC can take jurisdiction, must be maintained.

And Congress should enable the EEOC to give financial assistance to States to hire the additional personnel needed for the investigatory process.

The international association further wants Congress to insure that the provision allowing for a State investigating a deferred case that it cannot complete within the 60-day limit shall retain jurisdiction as long as that State is actively investigating, be retained in any new bill.

Finally, the international association supports the principle of administrative hearings including the power of the EEOC to issue cease-and-desist orders in similar fashion to such agencies as the NLRB. Unfortunately, we did not have the opportunity to review the administration's proposal at length prior to this hearing.

The important thing to us is not to get hung up on procedure but to get Congress to commit itself to give enough money and enough staff to the EEOC that it can enforce the law.

We are very much concerned that if the EEOC is given cease-and-desist force, that at the same time the Congress does not give it enough funds or staff to carry through with this program, then we are doing nothing more than what we are doing at the present time and that is playing games with the lives of our minority citizens.

If there is not going to be enough money appropriated for the EEOC to carry out a program of cease and desist, then it would seem much more logical to go the route that Chairman Brown has suggested.

Mr. Chairman, I wear two hats today—one as chairman of the International Association of Official Human Rights Agencies, and the second hat as commissioner of human rights for the State of Minnesota. It is in that capacity that I would like to address myself to another issue.

I have been greatly concerned because of the sizable number of complaints from minority persons who work for Federal agencies who

come to our offices asking for relief from job discrimination by those Federal agencies.

There is no doubt in my mind that many of these complaints are valid, particularly in the area of job promotion or upgrading. I would take very serious disagreement with the Chairman of the Civil Service Commission. We have some cases and practically every other State agency and local agency has cases which we can demonstrate that the present system of Federal investigation of complaints of discrimination is not working.

When we have suggested that these persons who come to us asking, "What can you do," should go through current Federal procedures of filing a complaint, we are told very frankly and very bluntly, "The equal employment officer for my agency is my supervisor. He can't be objective."

In addition, we have found that many of the persons assigned equal employment responsibilities in their agencies have no concept of what constitutes discrimination, because discrimination is often difficult to identify unless one has expertise in these matters.

And after all, why should an agency be expected to investigate itself? What stockholders would stand still for a corporation to allow its treasury department to audit itself? It is ludicrous to believe that somehow Federal agencies are superhuman.

Obviously, the real answer is that the enforcement of equal employment in Federal agencies should be the responsibility of the EEOC—an independent agency with professionals who know how to do the job. I might add that enforcement of Government contract provisions as regards discrimination also belongs to the EEOC.

The message from the ghetto is very loud and clear, as I read it. They say the Federal Government has made great statements about taking Federal contracts away from those employers who fail to enforce the law and yet it has never been done, and the agencies which are responsible for enforcing this have not taken the responsibility to do it.

Would the Defense Department really take away a Federal contract? Would the Labor Department really take away a Federal contract?

I am particularly proud of my State because in 1967, under the leadership of Governor Harold LeVander, it made a momentous decision about the policy of the State as it regards civil and human rights.

The State of Minnesota said:

> We want to make sure that the laws we have created in the area of civil and human rights are effectively enforced.

They created the first State department or human rights in the country, giving it broad and far-reaching responsibilities of insuring that every citizen in the State of Minnesota would be free from discrimination because of race, creed, color, religion, or national origin, in five basic areas: Housing, employment, public accommodations, public services, and education.

In 1969, the legislature added a provision prohibiting discrimination in employment because of sex. This department received the powers to enforce the law through administrative hearing and cease and desist.

It eliminated the commission concept by placing a commissioner

at the head of the department and granting that commissioner far-reaching powers to do the job.

In 1969, when other States were retrenching, Minnesota moved further ahead by giving powers to the hearing examiners to levy damages, both actual and punitive, and to order any other such relief as would effectuate the purposes of the law.

I might say just here I believe that our situation has indicated that it is not enough to simply give an agency cease-and-desist powers. The agencies must also have the power to levy damages, both actual and punitive.

For if it does not, we have the same situation of going back into the courts.

Now, there were those who, before the bill was passed in 1967, complained that a department with such substantial powers would disregard the rights of respondents, resulting in unfair charges of discrimination and in general, misuse such broad powers.

This did not occur. What did happen was that a backlog of cases under the old commission structure which had little power to effect relief, suddenly was wiped out. We have no cases in investigation or in conciliation at the present time which are more than 6 months old.

It seems to me this is an important thing for a person who has been discriminated against, that he get fast and prompt relief.

We held a total of seven public hearings from July 1967 to December 1968—seven, out of almost 500 cases. What happened to the rest? They were conciliated mainly because we have enforcement powers.

In other words, I believe that if the EEOC had enforcement powers, respondents would be much more willing to conciliate in good faith and you would be able to eliminate the serious backlog of cases which now faces the agency. Why conciliate, when the conciliator has no power to force you to obey the law?

In Minnesota, we have operated under one principle—that our responsibility as an agency is to bring about justice under law. I believe firmly that the Federal Government of these United States can afford to have no less of a motto.

Regulatory human rights agencies are the last hope for this Nation. We can be effective agents for positive change through law. If you allow us to fail because of inadequate staff, inadequate budget, and inadequate enforcement powers, you have failed 200 million Americans.

But most of all, you have failed those men who sat down one day in 1776 to put a dream on paper. You have failed these men who gave their lives so that dream could become reality.

That is the end of my formal statement.

Senator WILLIAMS. Thank you very much.

You speak, as you say, for your international organization?

Mr. KENT. Yes, sir.

Senator WILLIAMS. So you are familiar with the methods of realizing the objective in the various States?

Mr. KENT. Yes, sir.

Senator WILLIAMS. And your organization has Canada, too?

Mr. KENT. Has Canada also.

Senator WILLIAMS. It might be interesting to know how they handle all of this in Canada.

Mr. KENT. Yes, I believe that they also have cease-and-desist powers in some of the agencies in Canada.

They generally operate, their commissions are generally the same as ours in the United States. Most of the commissions in the United States that have enforcement powers do go the cease-and-desist route.

Senator WILLIAMS. Is that on a Provincial basis or national basis?

Mr. KENT. That is not on a national basis, on a Provincial basis.

Senator WILLIAMS. Cease and desist?

Mr. KENT. Yes, sir.

Senator WILLIAMS. Well, where did we inherit our basic business of justice from? From whence did it come? Are you a lawyer?

Mr. KENT. England, I believe.

Senator WILLIAMS. Are you a lawyer?

Mr. KENT. No, sir.

Senator WILLIAMS. We received, as I recall it, the best of their law and stayed away from the worst of their law.

Mr. KENT. That is what I understand.

Senator WILLIAMS. Up in Canada, when did they embark on cease and desist in discrimination of employment? Do you have any idea?

Mr. KENT. I really can't answer that, Senator Williams, I really don't know.

Senator WILLIAMS. When did they write equality of employment opportunity into their law? Are you familiar with that?

Mr. KENT. Well, that has been within the last 10 years, I am sure.

Senator WILLIAMS. It is about as we have——

Mr. KENT. Yes: as we have voted it here in this country, they also began to evolve the same kind of agencies, and I do know that in the last 4 or 5 years they have created at least, the Provinces have created at least four or five new commissions.

Senator WILLIAMS. In this country, and dealing with the enforcement procedure, and specifically the cease and desist, first, how many States, in your judgment, are truly effective in dealing with equality of employment opportunity?

Mr. KENT. Are truly effective?

Senator WILLIAMS. Yes.

Mr. KENT. I would say that not very many States are truly effective and the basic reason is the backlog of cases. The problem is in my opinion, Senator, the commission concept which, No. 1, says you have to get a group of commissioners together to make decisions on these cases.

In Minnesota, we have now the Minnesota plan. We did away with this because it just created a great backlog, that is No. 1.

The second thing is that after the commissioners issue a cease-and-desist order they then have to go to the courts to get those orders enforced. So then there is another backlog. And so I think that inherent within this whole process that we have right now is this problem of delay. And I don't really see how under either system at the present time that has been proposed, that you are really going to solve the problem of this 1 year, one-half year delay, unless somehow the Congress is going to be willing to provide hearing examiners of a substantial number to be in as many locations as possible.

Now, in Minnesota at the present time, I, as commissioner, I appoint a hearing examiner who is an attorney licensed to practice law

in the State of Minnesota, for any given case, and he serves for that one case as a hearing examiner and makes findings of fact and may make such order.

That is appealable to the district court without a trial de novo. We have found this is extremely effective because we can get an attorney who is not very busy, who can handle this, move it right into the courts, if necessary, and I think that perhaps this might be something that the Congress might think about. You may not have to have full-time hearing examiners.

Senator WILLIAMS. How does it work in Minnesota? This is a hearing examiner, he is not in a permanent pool?

Mr. KENT. No.

Senator WILLIAMS. He is generally an attorney?

Mr. KENT. Yes, sir.

Senator WILLIAMS. Or he is brought on as hearing examiner. Now he hears and finds and submits his findings to the commission?

Mr. KENT. That is right, his findings become the permanent findings of the department.

Senator WILLIAMS. Well, the commission can review his findings on his record?

Mr. KENT. No, we cannot review his findings. His findings become the permanent findings of the department.

Senator WILLIAMS. Then does the commission have authority to issue a cease-and-desist order?

Mr. KENT. Yes. What we do is go into court for enforcement of the hearing examiner's order.

Senator WILLIAMS. Well now, is that necessary in all cases or is it a cease-and-desist order and do you get compliance at that point in a number of cases, some cases?

Mr. KENT. In the seven cases that we have had, every single case has been appealed. Every single one. We have not lost any in the district court and they have been acted on fairly rapidly but they have been appealed at least to the first step.

Senator WILLIAMS. How many cases?

Mr. KENT. 500 in the first year and a half. Out of that 500, seven we had to take to public hearing. But I think that, you see, most of the cases we were able to resolve through conciliation, I think, because we had the enforcement powers, the threat was there.

Senator WILLIAMS. I see.

Mr. KENT. And most people don't like the public notoriety of having to go to court over these and they chose the latter settlement.

Senator WILLIAMS. Was it your experience there that an individual case, and I gather the 500 that you say you have had were individual cases, not group cases?

Mr. KENT. These were individual.

Senator WILLIAMS. Did that have a wholesome effect broader than the individual case, given a shop or plant where there was a case of discrimination and it was conciliated, would that have a rippling effect, on other cases, do you know?

Mr. KENT. Senator, I don't know exactly whether I can answer that question. I don't think so. I think that the individual case procedure probably is not the most effective means of solving discrimination problems. We use both.

We also use the systematic discrimination means of getting at that problem. We found that to be far more effective.

Senator WILLIAMS. Is that analogous to our pattern——

Mr. KENT. Yes.

Senator WILLIAMS. Approach in the Federal——

Mr. KENT. That is correct. And we have found that is much more effective in getting at the problem.

Senator WILLIAMS. I don't believe that point has been brought out in these hearings, the benefit derived from having both approaches available, case by case, the individual getting justice, specifically, and people generally, systemic as you say, pattern as we say.

Mr. KENT. I believe that this two-pronged approach really begins to enable people to see that the Government is really interested in resolving this problem. And I certainly don't think that our agency would be as effective if we did not use the two-pronged approach on this.

Senator WILLIAMS. You were here yesterday?

Mr. KENT. No; I wasn't.

Senator WILLIAMS. You were here this morning?

Mr. KENT. Yes.

Senator WILLIAMS. The bill 2453 would lend itself cease and desist enforcement provisions to both individual and pattern group treatment for enforcement.

How do you as an administrative matter handle the two types of situations?

Mr. KENT. Well, the group situation is on initiation by my department. We take a look at the practices of individual companies and then if we see that their practice would tend or would eliminate minority people from employment, the possibility of employment, or possibility of upgrading promotion, we then will issue an order or a complaint against that agency and work with it to improve itself, to remove the problem. That is the one kind on the group basis.

On the individual case, a person may call or come in or write us and we have investigators which will go out and investigate each individual case. We never turn anyone down.

We will thoroughly investigate every single case that comes before us. And generally then we will take a look also at the pattern when each individual case is given, we will also take a look at the pattern while we have that case before us.

For example, I can think of one particular firm where one person who was fired after 14 years complained that he was discriminated against. We then took a look at the whole pattern of employment in that firm and we found that minority people had been working for that company 14 and 15 years had never been upgraded, none of them, and so then, of course, that became an action on my part against the firm.

Senator WILLIAMS. Are you going to stand by?

Mr. KENT. Yes, sir.

Senator WILLIAMS. All right, we will hear from Mr. Levin.

Am I correct in describing your position with the Philadelphia Commission on Human Relations, assistant director?

STATEMENT OF RICHARD LEVIN, ASSISTANT DIRECTOR, PHILADELPHIA COMMISSION ON HUMAN RELATIONS

Mr. LEVIN. The Philadelphia Commission on Human Relations appreciates the opportunity to testify at these hearings. Unfortunately, although we made a special effort, we were unable to obtain a copy of S. 2806 yesterday. It was therefore impossible for me to prepare a statement since I did not know how I would react to this new bill.

Senator WILLIAMS. Well, of course, the hearings were called around S. 2453. S. 2806 was introduced last Friday and this is Tuesday. The hearings were called on S. 2453, but we thought it was the efficient way to deal with it for those who had had a chance to see it. You found out what it is all about.

Mr. LEVIN. I heard testimony given this morning and I have had an opportunity to read S. 2806 and have drawn my own conclusions regarding the two bills.

One thing that has not been discussed at these hearings, which is revelant to the attitudes expressed by everyone who testified, is that human relations, including equal employment opportunity, is a field which requires much knowledge and expertise. As a social science, it is a relatively new field not enjoying the status and prestige of other professions. Although it has its own jargon, it does not have the large body of literature, theoretical base, broadly accepted principles, or other things which other disciplines have had for many years. I believe that it will take several decades before it is accepted on the same level as the other social sciences.

As a result, there is no clearcut program of study in this area. The field, therefore, has to draw from other disciplines such as law, religion, psychology, sociology, education, etc. Thus individuals specializing in those areas have entered into various aspects of the field of human relations. There is no doubt in my mind that at the Federal level, the lawyer's approach has predominated. I do not say that this is necessarily undesirable, but I do believe that it is not the only approach and that all the answers cannot be found in the courts. In this morning's testimony, for example, approaches were advocated. A clear testimony to the fact that even lawyers disagree regarding the best approach to human relations problems. However, it is my contention that administrative agencies dealing in the field of human relations have developed unique knowledge and experience which makes them particularly qualified to make judgments in some very difficult fact situations. I therefore submit to you that administrative agencies are the ideal channels through which the subtle complex and abstract problems of discrimination can best be resolved.

Senator WILLIAMS. You do?

Mr. LEVIN. Yes.

I believe that the administrative process is the best way to adjudicate charges of discrimination. However, I am not as rigid about this question as apparently are the various individuals who testified this morning.

The Philadelphia Commission on Human Relations is one of the oldest commissions dealing with fair employment practices in the country. It has one of the strongest laws, and its budget compares very favorably with other agencies. In fact, I believe that we are probably in the

top 10 as far as budgets are concerned, including many State agencies. Our budget is about as large as that of the State of New Jersey and almost as large as the Pennsylvania State Commission's. However, this does not mean that we are adequately funded or staffed. At the Philadelphia commission, we have a law which enables us to choose between the courses debated here this morning. I therefore recommend strongly, so that similar options be given to the Equal Employment Opportunity Commission. I see no reason why the EEOC could not utilize the administrative hearing process to resolve most cases or, in other cases, have its attorneys go directly into court. Our agency is currently doing this and we find that where an injunction is needed or a fine is indicated, we frequently go directly into court if we have a strong case in which we are confident the court will find the respondent guilty of discrimination.

We recently revised our city ordinance so that if the case does go through our administrative process and it is appealed to court, it will be held on record and will not be heard de novo. In recognition of the fact that our agency has the expertise in the area of human relations, the only thing the court should be concerned with is whether or not there was due process in our procedures.

I therefore urge that this committee recommend to the Senate that S. 2453 and S. 2806 be combined so that the EEOC could be empowered to either hear a case at its own administrative hearings or go directly into court. This would give the EEOC the maximum flexibility to utilize its resources. They now have staff lawyers who would take certain cases directly into court and they also have commissioners who could hear other cases which they could resolve under their new cease and desist powers. They could also hire additional lawyers and hearing examiners as needed.

The field of human relations is characterized by the need for flexibility because people are infinitely variable. We also are confronted by respondents who come up with all kinds of new devices to obstruct us from reaching our goals. These obstructionist tactics require constant adjustment on the part of civil rights agencies to combat these new techniques. For these reasons, I recommend strongly that this committee follow this particular course of action.

Mr. KENT. May I add on to what he has said here? I wholeheartedly concur that perhaps this committee should consider allowing the EEOC to have the option of both choices. I think that it would be a lot more meaningful.

Mr. LEVIN. I would also like to discuss two other issues that have been raised by the introduction of S. 2806. Namely, that the administration's bill does not give the EEOC jurisdiction over employment discrimination which now is administered by the Civil Service Commission and that this bill does not give the EEOC jurisdiction over discrimination by government contractors, now administered by the Labor Department.

Earlier I was discussing the fact that human relations agencies develop a special expertise in dealing with problems of discrimination in employment. For this reason, I recommend that the EEOC be granted jurisdiction over these areas as contained in bill No. 2453. The Philadelphia Commission on Human Relations has both of these responsibilities under the city charter and has vigorous programs in

both areas. In regard to discrimination in the civil service, I disagree strongly with the position taken by Robert E. Hampton, Chairman of the Civil Service Commission. In fact, I would disagree with almost every paragraph of his statement. Chairman Hampton revealed a lack of understanding and sympathy for the goals which the EEOC and my commission are working toward. If this committee is interested, I would be happy to write out my specific observations and submit them to you.

For example, the EEOC and the OFCC have issued guidelines on employment testing. These guidelines are designed to help employers select employees who can best do the job and avoid eliminating qualified persons by discriminatory testing. I would say that the tests given by the U.S. Civil Service Commission violate those guidelines and therefore are among the most discriminatory given by any employer.

Senator WILLIAMS. Give me a specific on that.

Mr. LEVIN. The EEOC has a program under which they grant human relations agencies throughout the country funds to file complaints of discriminatory practices against employers who have poor patterns of minority employment. The basic approach in this program is the charge that employment tests and other selection procedures utilized by the employers discriminate against minority persons.

This charge is based on the fact that the employer has made no validation study that the test or other selection procedures rank the candidates according to their ability to do the job. Recent court cases and psychological studies state that persons who are successful in passing these unvalidated tests usually can do the job, but they also find that many of the persons who are eliminated by the tests could perform satisfactorily if hired. This is primarily due to cultural differences in vocabulary.

Very rarely, does the U.S. Civil Service Commission or local civil service agencies conduct any kind of validation study to show that people who did best on the test did best on the job and people that didn't pass the test couldn't do the job satisfactorily. We therefore have two governmental agencies, the Civil Service Commission on one hand and the EEOC on the other with diametrically opposed philosophical approaches to testing.

Another aspect of this problem was revealed to me by a high-ranking compliance officer who works for one of the Federal agencies in Philadelphia. As you know, each Federal agency must have its own compliance officer who handles complaints of employment discrimination before it can go to the Civil Service Commission. This individual is planning to retire early because he found his own bosses engaged in some questionable employment practices regarding minority persons. It is too much to expect that this man turn in his own bosses. He therefore is going to retire within a year. This kind of situation is very discouraging to anyone who has an interest in equal employment opportunity. It obviously would be better for an outside agency with cease and desist powers to investigate these complaints.

Also, the Philadelphia Commission has been involved in three or four specific Federal civil service problems in Philadelphia. Our Commission entered these situations either as a result of a tension situation or upon the invitation of the Federal agency requesting us to assist it in setting up a fair employment program. In our contacts with these

Federal agencies, we have found some very poor practices which required a lot of effort on our part in order to remedy. Despite Mr. Hampton's allegation, we are quite sensitive to the need for affirmative action programs.

I agree with what Mr. Kent said regarding this matter. In Philadelphia we have the power to investigate charges of discrimination in our local civil service, but we have no cease and desist power in this specific area. After we make our investigation, we recommend a specific course of action to the department concerned. If the department fails to cooperate, we then make our recommendation to the Mayor.

Senator WILLIAMS. Recommend to what?

Mr. LEVIN. The Mayor. It is then up to him. Fortunately, we have never had a case where the respondent department did not accept our recommendation, but our experience has led me to the conclusion that cease and desist powers over other departments are very important because we must move with extreme caution since we lack the power to force other departments to do anything. Nevertheless, since we lack the power to force other departments to do anything, if we cannot conciliate the charge, we must be able to persuade the Mayor to overrule the department's commissioner.

Therefore, I would recommend that the EEOC take over the investigation and adjudication of charges of discrimination in the Federal civil service. Of course, the EEOC would have to observe due progress since these cases could be appealed to the Federal courts.

In regard to the Office of Federal Contracts Compliance, our Commission has enforcement powers over employment discrimination by city contractors and has a vigorous program underway in this area. As to the Federal contract enforcement program, there are dozens of people employed by the Federal Government in the Philadelphia area whose responsibility is the enforcement of Executive Order 11246. In my opinion, this program was designed to fail. Each Federal agency has its own compliance officer who makes an investigation and files a report. This report goes to the Labor Department for review. If the OFCC does not like the quality of investigation made by the compliance officer in a given agency, it has no authority to require satisfactory investigations or reporting. Theoretically, he can go through channels to the head of his department, the Secretary of Labor, and request him to talk at the Cabinet level to the head of the department which submitted the report in question. Such a ponderous process could not possibly succeed as everyday working arrangement. Therefore, the present Federal effort in this area is almost a complete waste of time. I would say that in Philadelphia there are at least 20 persons earning more than $15,000 per year engaged in this kind of activity and I cannot say that they ever earned a nickel since they have never canceled any contracts.

Senator WILLIAMS. Is that their sole responsibility?

Mr. LEVIN. Yes. There are equal employment opportunity officers for every department and there are 12 departments at least in Philadelphia and some of them have large Equal Employment Opportunity staffs. Therefore, I think this contract compliance program is a total waste of taxpayers money. For employers, it is extremely annoying to have investigators coming in from different departments asking different questions. The whole program should be centralized.

As I mentioned, in Philadelphia we have our own contracts compliance program which is more stringent than the Federal program since we are not merely requiring lack of discrimination, but are requiring, also, specific affirmative actions by employers. In the last year, we have taken over 600 companies off of the city's bidder's list after reviewing 3,300 contractors. We have not canceled current contracts but have disqualified them from bidding on future contracts. I cite our experience to demonstrate what can be done with a vigorous centralized program.

In conclusion, I would like to restate that I do not see any substantial conflict. I would like to see the EEOC get everything that Mr. Kent has asked for in terms of budget and manpower. If the EEOC's budget were equal to our present per capita budget in Philadelphia, the EEOC would be at least 10 times better off than they are now.

I would also like to see them have full cease-and-desist powers and also the option of going directly into court with their own attorneys. I would also like to see them have full responsibility for contracts compliance and for civil service. Thank you.

Senator WILLIAMS. Thank you very much, Mr. Levin.

Could I ask you, have you conferred with your Senators, Senators Scott and Schweiker about this legislation?

Mr. LEVIN. No, I haven't, sir.

Senator WILLIAMS. Well, say there is a perfect symmetry out of Pennsylvania. You suggest the EEOC have an option to use cease and desist as its method for enforcement, or go to the Federal District Court, is that right, depending upon the nature of the case, and all factors involved?

That is your position in Philadelphia. Do you know there are two Senators here that are sponsors of both approaches, Senator Schweiker and Senator Scott. So there is a community approach here that is very good.

I would think it might be a great deal for us to consider here in what comes to us homegrown in Pennsylvania.

Mr. LEVIN. Thank you, sir.

Senator WILLIAMS. And I have heard a murmur of approval from behind me from our eminent legal staff as you suggested this optional approach. This is not in a degree a commitment of the staff to your approach but I did hear some murmurs from one side and from the other, too.

We will certainly consider this. There was something——

Mr. BENEDICT. This really isn't directly to the point, but I think that you have testified that the Philadelphia Commission has one of the strongest antidiscrimination laws in the country.

Mr. LEVIN. Yes, sir.

Mr. BENEDICT. You have jurisdiction over both companies and labor unions?

Mr. LEVIN. Pardon me?

Mr. BENEDICT. You have jurisdiction over both companies and labor organizations?

Mr. LEVIN. Yes, sir.

Mr. BENEDICT. My only question to you, if that is so, why was it necessary for the Secretary of Labor to promulgate the Philadelphia plan?

Mr. LEVIN. How much time do I have to answer that? In the first place, the Philadelphia plan that everyone knows, is a Federal plan started in Philadelphia. A lot of the ideas contained in it were mine, resulting from meetings with the Labor Department's area coordinator.

I sought this vigorous Federal program because as a city agency, we were at the small end of the stick and had no jurisdiction over problems outside of city limits and which greatly affected the city's welfare. For example, many unions we must deal with have jurisdiction much larger than the city of Philadelphia's or the State of Pennsylvania.

Second, there is another Philadelphia Plan known as the city administration's Philadelphia Plan which I feel has a much higher potential for obtaining jobs for minority group persons since it is concerned with both service and supply contractors and with construction contractors. The Federal Philadelphia Plan covers only the construction industry. In addition to our broader coverage, our program is a kind of ecumenical movement which involves the procurement policies of over 100 large purchasers including the archdiocese of Philadelphia, the school district of Philadelphia, the Philadelphia Gas Works, Temple University, and a wide range of religious groups, private and social agencies and businesses. If our commission finds that a given contractor is not in compliance with the program, none of these organizations will contract with that firm. We are currently reviewing the supplier list of each of these participating agencies. As I mentioned earlier, over 600 firms have been removed from the bidder's list. We originally notified 700 firms of their disqualification. Over 100 of them quickly came into compliance when they found out that not only would they not be able to do business with the city of Philadelphia, but that they would also be unable to do business with the archdiocese or the Philadelphia Gas Works or any other participating agencies.

As to the construction industry, there exists a terrible problem of imbalance. Unfortunately, however, the potential for obtaining a large number of jobs in this industry is quite small. In Philadelphia there are eight critical trades which have a very low representation of minority persons. However, the entire employment in these eight trades consists of only about 8,000 persons. Even if we get all 8,000 of these jobs for minority persons, this would not solve the employment problems of 600,000 black people in Philadelphia and 40,000 or 50,000 Puerto Ricans. Therefore, the amount of time and energy we have put into this project is probably disproportionate considering the probable output. These are high-paying jobs, however. Electricians in Philadelphia are now earning $20,000 per year and plumbers $19,000. In addition persons employed in these trades enjoy a good status. We are now at a key point in the whole program in which we are trying to get the Federal and city program to move in exactly the same direction. We sent a letter to Secretary Shultz last week regarding this matter, requesting him to make a decision which would enable us to go down the same road together.

Mr. BENEDICT. I will ask you one other question.

As a general question, the Philadelphia plan applies to seven specific trade unions, on Federal contracts of half a million dollars or more.

Mr. LEVIN. Yes, sir.

Mr. BENEDICT. Leaving the Federal contracts aside, in your experience with the Philadelphia commission have you encountered more resistance from the building trades unions than you have from other unions or from companies themselves?

Mr. LEVIN. Absolutely.

Senator WILLIAMS. Gentlemen, thank you ever so much. I believe this concludes the hearing for today. Now, we will reconvene September 10.

(Whereupon, at 3:10 p.m. the subcommittee recessed, to reconvene Wednesday, September 10, 1969.)

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

WEDNESDAY, SEPTEMBER 10, 1969

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

The subcommittee met at 10:15 a.m., pursuant to call, in room 4200, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senator Williams.

Committee staff members present: Robert Nagle, associate counsel; and Gene Mittelman, minority counsel.

Senator WILLIAMS. We will continue our hearings on S. 2453.

I will say that we also for this hearing have before us an amendment to that bill, an amendment introduced by Senator Prouty, so that we have two approaches to enforcement: cease-and-desist authority, and court action only.

Our first witness this morning is Mr. Howard Glickstein, staff director of the U.S. Commission on Civil Rights.

STATEMENT OF HOWARD GLICKSTEIN, STAFF DIRECTOR DESIGNATE, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY LAWRENCE GLICK, ACTING GENERAL COUNSEL; AND PETER GROSS, ASSISTANT GENERAL COUNSEL

Mr. GLICKSTEIN. Mr. Chairman, I am Howard A. Glickstein, staff director designate of the U.S. Commission on Civil Rights. I am accompanied on my right by Mr. Lawrence Glick, acting general counsel; and, on my left, by Peter Gross, one of our assistant general counsels.

I am grateful for the opportunity to testify before you on the need for legislation to promote more vigorous enforcement of the right to equal opportunity in employment.

Equal employment opportunity for minorities has been a concern of the Commission since its establishment in 1957. While a major element in the solution to this problem is increased public and private effort to provide more and better training and other vocational assistance for minority persons, it is equally clear that this alone is not enough. The effective enforcement of nondiscrimination requirements also is a necessary part of the solution.

In our 1961 report on employment, the Commission concluded that a "vicious circle of discrimination in employment opportunities" was prevalent. Since then, title VII of the Civil Rights Act of 1964 has

been passed and we have had 8 years of experience with Executive orders prohibiting discrimination by Federal contractors.

Nevertheless, our recent studies and reports have shown that only a beginning has been made toward reversing historic patterns of employment discrimination. Discrimination against minority-group persons remains today a pervasive feature of employment practices in both the private and the public sector.

In 1968, the Commission held a 5-day hearing in Montgomery, Ala., much of which was devoted to examining employment opportunities in the 16-county area being studied. Sixty-two percent of this area's population is black. However, companies filing employment data with EEOC in 1967 reported that only 22 percent of their employees were black.

More significantly, black persons were hired almost exclusively for the more menial jobs. Sixty-three percent of unskilled positions were held by Negroes, compared with 8 percent of the white-collar or skilled jobs.

One hearing witness, a 31-year-old black veteran from Prattville and a high school graduate, testified that after he was discharged from the Army with the rank of staff sergeant, it took him 4 months to find a job. The only position he could get was as a handyman. Comparing the way he felt in the Army with the way he felt in Alabama, he said:

"Here in Alabama I don't feel like I'm living. I am only existing, it seems, you know * * * to be demoted from a staff sergeant E-6 down to a boy, that is kind of hard to take."

This pattern of racial exclusion was revealed throughout our hearing. The Alabama Power Co., which at the time of our hearing, employed 5,394 persons, had only 472 Negroes on its payroll. Only four of its 1,300 craftsmen were Negro. We also learned at our hearing that the American Can Co. at its Naheola, Ala., plant had 1,550 employees, of whom 7 percent were black; only a handful of these black employees were in skilled positions.

This is in an area whose population is over 60 percent black. Dan River Mills, employer of 200 at its Greenville plant, maintained segregated outdoor washroom facilities for its three Negro employees.

Employment discrimination is not unique to the South. In hearings throughout the country, the Commission and its State advisory committees have gathered evidence of denial of equal employment opportunities.

In April 1966 we held a hearing in Cleveland, which revealed racial exclusion in the trade unions. While 22 buildings trade unions had 4,976 Negroes among their 38,631 journeymen, several of the unions had virtually no Negro members. In spite of the statistical evidence, all the union leaders who testified vowed that they were in compliance with the applicable laws.

The secretary-treasurer of Plumbers Local 55 stated that four of their 1,428 journeymen plumbers were Negro and one of them had been initiated a few days before our hearing began. He also testified that he would welcome more members in the union, and felt that "these non-union Niggers—Negro shops should organize * * *"

In San Francisco, the following year, we found no Negro electricians, ironworkers, or plumbers working on construction of the Bay Area Rapid Transit System, a federally funded project.

In June of this year, testimony received at an open meeting of our Massachusetts State Advisory Committee in Boston showed that of approximately 1,000 building trades apprentices in the Boston area just 58 were black.

It is not only Negroes who are the victims of employment discrimination; other minority groups as well have been denied equal access to jobs. In San Francisco, we heard testimony regarding the absence of job opportunities for Orientals and Mexican-Americans.

Last December we held a hearing in San Antonio, Tex. We found that Mexican-Americans are underrepresented in virtually all fields of employment. For example, El Paso Natural Gas Co. had less than 15 percent Mexican-Americans on its homeoffice staff and less than 1 percent in its Permian operating division, even though over 40 percent of the population of El Paso are Mexican-American and even though many of the counties serviced by the Permian Basin operations have substantial Mexican-American populations.

While the Commission strongly supported the adoption of title VII of the Civil Rights Act of 1964, we have found that this legislation needs strengthening if it is to be effective in changing the discriminatory practices it was enacted to remedy.

The violent demonstrations in Pittsburgh 2 weeks ago are an urgent warning that meaningful Federal enforcement of the law must be undertaken immediately if equal employment opportunity is to be attained through peaceful channels rather than by racial confrontation in the streets.

1. Enforcement machinery.—The most critical defect of title VII is its reliance on an administrative body with no enforcement power for its implementation. The EEOC is authorized by the act to use informal methods ("conference, conciliation, and persuasion") for resolving charges of job discrimination. It has no power to impose sanctions but only can refer cases to the Attorney General for action or assist complainants in their conduct of private lawsuits.

The first 4 years of the EEOC's operations have shown the inadequacy of this authority. According to the testimony of the Chairman of the EEOC before this subcommittee on August 11, the EEOC recommended that 26,065 of the 40,000 charges filed with it since 1965 be investigated. Of those cases which completed the decision process, in 63 percent EEOC found reasonable cause to believe that illegal discrimination had occurred. Yet conciliation was successful in less than half of these. This indicates the limits upon EEOC's effectiveness in the absence of enforcement power.

EEOC's lack of enforcement power robs it of a position of strength from which to bargain with employers. The weakness of EEOC raises grave doubts in the minds of many as to the Federal Government's seriousness in enforcing this law.

The proposals under consideration by this subcommittee share the premise that present title VII enforcement is inadequate. However, they differ in the reforms they would institute. S. 2806 would give the EEOC power to enforce title VII by litigation in the Federal courts, whereas S. 2453 would authorize that body to issue cease-and-desist orders after an administrative decision that an unfair employment practice exists. In addition, S. 2453 would broaden the coverage of title VII significantly.

The need for more effective enforcement power was emphasized in a study, Jobs and Civil Rights, published this April and prepared for the Commission on Civil Rights by Mr. Richard Nathan, then with the Brookings Institution. Although Mr. Nathan, who now is Assistant Director of the Bureau of the Budget and responsible for human resources programs, favored giving EEOC cease-and-desist power, he emphasized the need for ultimate enforcement authority as a means of promoting compliance.

"The point is not so much that cease and desist authority would be widely used—

Mr. Nathan wrote—

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.

As noted, Mr. Nathan recommended cease-and-desist authority, as did the Commission in a major study of State and local government employment released last month, "For All the People * * * By All the People." Although I believe that, effectively implemented, either S. 2806 or S. 2453 would present a major step forward, on balance, the cease-and-desist approach of S. 2453 is the alternative that is likely to achieve the best results.

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.

Experience has shown that one of the main advantages of granting enforcement power to a regulatory agency is that the existence of the sanction encourages settlement of complaints before the enforcement stage is reached.

In fiscal 1967, in only 5.4 percent of the NLRB unfair labor practice cases closed was there issuance of a Board order. The remaining 94.6 percent were disposed of without contested proceedings before the Board.

Information on State fair employment practice commission indicates this same effect of cease-and-desist authority. For example, the executive director of the Pennsylvania Human Relations Commission pointed to the fact that while 47 cease-and-desist orders were issued in equal opportunity cases before the State agency, another 3,838 complaints were processed successfully and adjusted without the need for such order.

It seems unlikely that the court suit authority provided in S. 2806 would be equally as effective in producing settlements as the cease-and-desist power of S. 2453. Under title VII as it has been since enactment, employers have in fact been conciliating under the threat of ultimate court suit—private suit and in some cases suit by the Attorney General—and yet this has not prevented the high rate of conciliation failure—more than 50 percent—to which I have already referred.

Another consideration which seems to favor the cease-and-desist alternative is the nature of the issues raised in employment discrimination cases. They are not simple issues. In the past several years, the development of the law of employment discrimination has made it increasingly clear that the most significant subject of dispute is often not whether there has been discrimination but what the appropriate remedy is to correct discrimination.

Further, the question of remedy is itself often not posed as to just one person or small group of persons who have been discriminated against but involves discriminatory practices inherent in the employer's basic methods of recruitment, hiring, placement, or promotion.

Increasingly, the district courts have found themselves grappling with complex questions of remedy involving, for example, the restructuring, plantwide, of pay scales, progression lines, and seniority structures.

The nature of the issues arising under title VII suggests that reliance upon the expertise of trial examiners in administrative proceedings is desirable. Enforcement of Federal law in other comparably complex settings is done primarily through administrative agencies: The FTC, SEC, CAB, ICC, to list just a few. They have the power to issue appropriate orders, after notice and hearing, to remedy violations of the law.

I believe that efficiency and predictability will be enhanced if the necessary detailed case-by-case findings of fact and fashioning of remedy is performed by a cadre of hearing examiners versed in this subject matter.

In the past 5 years, it was found necessary to rely on administrative machinery in another area of civil rights enforcement—school desegregation. For 10 years following the Brown decision, private court suits were relied upon exclusively to desegregate schools.

Significant progress in school desegregation, however, did not occur until HEW began using the administrative procedures authorized by title VI of the Civil Rights Act of 1964.

Although there appears to be an unfortunate current trend to revert from administrative handling of school desegregation to reliance on the courts, it is noteworthy that the courts welcomed HEW's administrative role, particularly where detailed questions of remedy are involved. Judge Brown of the fifth circuit observed:

> These executive standards, perhaps long overdue, are welcome. . . . By the 1964 Act and the action of HEW, administration is largely where it ought to be—in the hands of the Executive and its agencies with the function of the Judiciary confined to those rare cases presenting justiciable, not operational questions. 348 F. 2d 1010, 1013–1014 (5th Cir. 1965).

I believe that comparably complex and "operational" issues arise in connection with the case-by-case identification and shaping of remedy for employment discrimination.

By the same token, exclusive reliance on litigation means reliance on our already overworked Federal district courts.

The complexity of the issues in employment discrimination cases can give rise to an enormous expenditures of judicial resources. For example, Judge Allgood of the Federal District Court for the Northern District of Alabama, wrote an opinion 157 pages in length in

United States v. *H. K. Porter*, a title VII suit alleging employment discrimination in a single steel plant. Judge Allgood stated in his opinion that enough use was made of pretrial discovery in that case to "fill several court files."

Not only do cases of this complexity tax the courts but they also require hundreds of hours of preparation by the lawyers handling them. Deputy Attorney General Kleindienst, in his statement submitted to this subcommittee, acknowledged that "employment cases are difficult to prepare and prove." In fiscal year 1968, the Department of Justice brought only 22 such cases. Raising that number to a meaningful level probably would require an enormous number of additional lawyers.

The administration has indicated a readiness to place more reliance on court enforcement in school desegregation than has been the case in the past. If, in addition, the bill to extend the Voting Rights Act proposed by the administration—with its judicial enforcement provisions—is enacted, and then S. 2806 also is enacted, placing all employment nondiscrimination enforcement in the Federal district courts, we may run the danger both of adding serious problems of delay to the solution of our civil rights problems and at the same time further obstructing the efficient and effective course of justice in other areas.

In fiscal 1967 the average wait from the time a case was ready for trial until nonjury trial in the Federal District Court for the Eastern District of Louisiana was 24 months; in the Southern District of New York the figure was 38 months.

Those figures, indicating the degree of congestion which already exists in the Federal district courts, suggest the problem of delay which individual complainants in title VII litigation might encounter, even though S. 2806 provides for expedited handling of such cases.

While delays also inevitably are encountered in administrative proceedings, it should be noted that the average amount of time from the filing of a charge by an individual until the issuance of a trial examiner's decision in an unfair labor practice case before the NLRB is less than 7½ months; and, as noted, about 95 percent of unfair labor practice cases are disposed of without proceedings beyond this stage.

Proceedings in Federal district court are subject to fixed rules, governing such matters as pleading and motion practice, which afford opportunities for dilatory tactics 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.

It might seem to some unfair to deny to civil rights complainants this easier and more expeditious forum when it is granted to those often large and powerful businesses which are regulated by such agencies as the FTC, SEC, CAB, and ICC.

As I have noted, a principal purpose of granting EEOC enforcement power is to encourage employers to conciliate cases. To the extent that cease and desist affords a more expeditious remedy than court suit, it should promote a great willingness on the part of employers to conciliate without delay.

Questions have been raised regarding the time necessary to hire and train hearing examiners and to make the enforcement machinery of S. 2453 operative. We do not have the answers to these questions.

However, the purpose of the proposals before this subcommittee is to provide the most effective enforcement possible of equal employment opportunity. I question whether we should settle for one approach merely because it may be easier to institute initially, if the alternative is an ultimately more effective one.

2. *Coverage of State and local government employees.* A second major defect of title VII to which I would like to turn now is that it exempts State and local employees from its coverage.

It is clear under the 14th amendment that no State or political subdivision may engage in discriminatory employment practices. In exempting public employees from coverage, the act paradoxically withholds a Federal protection which is made available to private employees, to whom the Government owes no comparable constitutional duty.

Just as the Commission has in the past urged that EEOC be granted enforcement power, so we have urged that public employees be afforded the safeguards of title VII, as provided in S. 2453.

State and local government ranks among the Nation's most important sources of employment. In February 1967, this sector employed 4.4 million persons, an increase of almost 83 percent since the early 1950's.

State and local governments offer a wide variety of jobs for all levels and skills of employees and in all areas of the country. The California State Personnel Board lists approximately 3,000 job categories in its manual. It can be anticipated that this sector will grow at even a faster pace if revenue sharing and manpower training proposals presently under consideration are enacted.

The Commission's report "For All the People * * * By All the People" examines equal opportunity in public employment in seven urban areas located throughout the country—North as well as South. The report finds that in the areas studied, widespread discrimination against minority group members exists in State, city, and suburban government employment.

In some cases, the report finds, jobs requiring little skill and offering scant chance of advancement are regarded as "Negro jobs" and are held primarily by black workers. In six of the seven areas studied, Negroes constitute over 70 percent of the common laborers. On the other hand, most white-collar jobs—with the exception of health, welfare, and others concerned with minority group problems—were found to be considerably more inaccessible to minority persons. This imbalance was found to be attributable in large measure to a wide variety of discriminatory practices in hiring, placement, and promotion.

The existence of these denials of equal access to employment opportunity is evidence that State personnel agencies have failed to monitor their own programs effectively.

"For ALL the People * * * By ALL the People" concludes as follows: "The basic finding of this report is that State and local governments have failed to fulfill their obligation to assure equal job opportunity * * *. Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group

members, but they do not foster positive programs to deal with discriminatory treatment on the job."

Given the widespread continuance of these discriminatory practices, there is no justification for continuing to withhold the much-needed protection of title VII from employees of State and local governments.

At present 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.

3. *Coverage of eight employees.* I would like to urge the extension of the coverage of title VII to employers of eight or more, as provided in S. 2453. This would extend the protection of title VII to over 6,500,000 additional Americans.

This expansion of coverage also would give EEOC jurisdiction over a large portion of small employers, many of whom are located in the inner city, who are not presently covered by title VII. These smaller employers are ones with whom minority groups come in frequent contact. To include these employers within the coverage of title VII is to promote equal employment opportunity within minority neighborhoods.

Also, by reducing the number of employees which an employer must have to be covered by title VII, the Federal legislation would be brought more closely in line with that of the States, whose FEP laws generally cover the small employer.

4. *Transfer of OFCC functions.* Section 8 of S. 2453 would transfer the functions of the Office of Federal Contract Compliance to EEOC.

The study prepared by Mr. Richard Nathan, "Jobs and Civil Rights," presents a thorough analysis of the programs and procedures by which the Federal Government seeks to advance the cause of equal employment opportunity. This study reviews in some detail the operations of the Justice Department, of EEOC, and of Federal manpower programs, and concludes that the contract compliance function of OFCC should be transferred to EEOC. There is much to be said for this conclusion.

The transfer would promote the centralized enforcement of all Federal employment nondiscrimination programs under one agency, thereby eliminating much of the duplication of effort and confusion which has arisen from the bifurcation of these two major Government programs.

While consolidation would help correct administrative problems of overlap and lack of coordination in the field, an equally significant contribution should be to promote clarity and uniformity in the Federal law of employment nondiscrimination by having the rules for defining discrimination and shaping remedy developed under the aegis of a single agency.

In testimony before this subcommittee, Secretary of Labor Shultz

presented a number of arguments against this transfer of responsibility.

Perhaps the most weighty argument he advanced was the desirability of having the contract compliance function work closely with Federal manpower programs—to support affirmative action by Federal contractors. This, the Secretary argued, would best be done by leaving both functions in a single agency, the Department of Labor.

The Nathan study, while recognizing the legitimacy of this argument, concluded that it is outweighed by the other considerations of effective management referred to above.

Furthermore, this argument seems to rest on the assumption that manpower program support for affirmative action is relevant only in the enforcement of Executive Order 11246 and not of title VII. This is not the case. It is equally essential, for more effective enforcement of title VII, that EEOC develop better means for using Federal manpower programs in remedying employment discrimination disclosed in title VII proceedings.

This observation again underlines the fact that title VII and Executive Order 11246 are in fact addressed to one and the same problem—identifying and remedying employment discrimination—and that there is no reasonable basis for continuing to have two duplicating mechanisms deal with that problem.

Secretary Shultz also asked for a reasonable probationary period to test whether OFCC can be made effective; Secretary Shultz declined to contest the charge that OFCC thus far has been a failure. Though the Secretary emphasized that a number of commendable steps are being taken to strengthen the contract compliance program, these steps—which would be necessary whether the contract compliance responsibility is retained by the Department of Labor or not—simply do not meet the real point, which is that the reason for transferring OFCC's functions to EEOC is that, as concluded in the Nathan study, this is the most efficient and effective alinement for Federal enforcement of Executive Order 11246.

Where consolidation of function is needed—as I believe clearly is the case here—the Secretary's announced plans for interagency coordination are at best halfway steps to the real solution of the problem of coordination.

It cannot be too greatly emphasized that this transfer of authority can work only if—as provided in S. 2453—EEOC also is given the power now vested by Executive Order 11246 in the Secretary of Labor to invoke sanctions for noncompliance, including the cancellation of contracts and debarment of contractors.

In addition, EEOC also should be given additional staff commensurate with this responsibility. OFCC has operated for some time with a staff of less than 18 professionals; Secretary Shultz indicated that only modest increments in present staff have been requested.

While I question the adequacy of this level of staffing—whether the function is transferred to EEOC or not—it also should be noted that the transfer to EEOC would strengthen the contract compliance program even without increasing the transferred staff level, by making available to it the support of the legal, investigative, conciliation, and research staffs now possessed by EEOC.

In conclusion, I wish to stress again that the Nation is faced with a massive problem of employment discrimination, that millions of

Americans still are relegated to second-rate jobs at second-rate pay. We have temporized with this problem for many years, but now time is running out.

Father Theodore M. Hesburgh, now chairman of the U.S. Commission on Civil Rights, in a 1961 report of the Commission, put his own view of our national priorities in the following terms:

> Personally, I don't care if the United States gets the first man on the moon, if while this is happening on a crash basis, we dawdle along here on our corner of the earth, nursing our prejudices, flouting our magnificent Constitution, ignoring the central moral problem of our times, and appearing hypocrites to all the world.

I hope that a sense of urgency such as this will propel this subcommittee and the Congress toward speedy enactment of legislation providing for the strongest possible measures to give effect to our national promise of equal employment opportunity for all.

What Father Hesburgh stated in 1961 is, with the passage of 8 years, still more compelling today:

> We have the opportunity in our time to make the dream of America come true as never before in our history. We have the challenge to make the promise of our splendid Constitution a reality for all the world to see. If it is not done in our day, we do not deserve either the leadership of the free world or God's help in victory over the inhuman philosophy of communism. Even more fundamentally than this, we should as a nation take this stand for human dignity and make it work, because it is right and any other stance is as wrong, as un-American, as false to the whole Judeo-Christian tradition of the West as anything can be.

Mr. NAGLE. Senator Williams was called away for a moment. I believe he will be back in a few minutes.

I did have one question I would like you to comment on in the meantime. Do you have any conclusions as to how effective State fair employment practice commissions have been in combating employment discrimination by State and local governments?

Mr. GLICKSTEIN. Unfortunately State and local fair employment commissions in general have not been very effective. Most of the literature that I have read that has examined the operations and functions of State and local commissions paint a rather sorry picture.

There are perhaps two or three of the 38 commissions in the country that are effective agencies. Our study in the areas that we investigated for our public employment study included States that have State and local commissions, such as California and Michigan. We found nevertheless that there was employment discrimination in the State and local governments in those areas.

So I think it is fair to conclude that State and local commissions have not dealt with this problem adequately.

Mr. NAGLE. Are most of these commissions authorized to deal with that problem in their own State governments?

Mr. GLICKSTEIN. I believe that is true of the Michigan commission and the California commission, yes. Our study of State and local governments concentrated on seven areas. We did not cover the whole country, but in some of those areas—for example, Louisiana—they don't have a commission that can deal with anything. So they don't deal with that problem.

Mr. NAGLE. Senator Eagleton could not be here today but he would like your observations on whether a concentration of all the civil rights efforts in the one agency would make them more vulnerable to

appropriation cuts than is now the case with the civil rights activities lodged in several agencies.

Mr. GLICKSTEIN. Well, that is a very sensitive question. As you know, there have been proposals not only to include all of the employment jurisdiction of the Federal Government in an agency but to bring together, perhaps in a Cabinet-level agency, a Department of Human Rights, all of the civil rights functions, including various activities of the Justice Department and other agencies.

One objection that has frequently been raised to that is that it would be vulnerable to appropriation cuts. But I think that the time to be concerned about problems like that is past. I think if we are going to deal with serious problems of employment discrimination and other civil rights problems, we just have to face up to what they are and bring them out in the open.

I don't think that we hide within a variety of different agencies our efforts to reach the moon or other planets, and I don't think we should hide within a variety of different agencies our efforts to deal with civil rights violations. I think they should be put in one place and we should deal with them. I think one lesson we should learn from the moon program and other space programs is that when we want to do something we can do it, and one way to make sure we do it is to concentrate the resources necessary in one place with the adequate authority to accomplish that goal. That is what was done with the moon program and should be done with employment and other forms of discrimination.

Mr. MITTELMAN. Just following up on that, I agree with that statement on paper; theoretically I agree with Mr. Nathan's conclusion that for administrative purposes these functions should be centralized. But this is not a theoretical problem; if is a practical problem of getting the money to really implement this program on the part of the Government.

The fact of the matter is that EEOC has not been able to get the kinds of appropriations that has enabled it to cope with the workload it now has. It seems to me if we put the Office of Federal Contract Compliance into the Commission's functions, we are going to be compounding the problem, especially if we give a cease and desist order at the same time.

I was wondering if you have given any thought to the possibility of some time phasing of this joint function; that is, for example, you might give the Commission cease-and-desist order power to delay the transfer of EEOC until the Commission has had time to absorb its change in this function and until we see what effect this really would have on the Commission's operation.

Mr. GLICKSTEIN. Let me answer your question in two parts. First of all, I don't think that there have been enormous resources concentrated in the Labor Department to deal with contract compliance. I believe there are 18 professional employees in the Office of Federal Contract Compliance who deal with that problem as of today. Certainly, EEOC, if it had this responsibility, could find 18 employees to do the same work.

Going beyond that, I think it is a serious problem that we might, under 2453, burden the EEOC with so many additional responsibilities that it would just sink under the weight of all this, and fur-

ther disillusion people as to the capacity of the Federal Government to deal with these problems.

We have given some thought to the possibility of phasing in these additional functions, and it might be a good idea. As you know, when title VII was passed, there was a gradual phasing in of coverage for the very reason that you suggested—that it was felt that initially EEOC could not handle complaints against employers of 25 and over, so it started with 100 and more, then went down to 75, 50, and 25 or more over a period of years. I think, especially if EEOC is given cease-and-desist power, it probably would be a good idea to phase in those other responsibilities at yearly intervals and give the EEOC a chance to gear up to carry out its cease-and-desist authority effectively.

Mr. MITTELMAN. Pursuing the same point a little differently, do you think there is any danger that if we concentrate all of the civil rights functions in one agency, we will somewhat dilute the effect that you now have, a least in part, of having the whole Government, every agency, committed to this function?

Isn't there some possibility, some danger of the public coming to view EEOC as kind of a separate agency, "that is the one that is concerned with civil rights; we don't have to worry about the rest of the Government," not only the public but the rest of the Government also coming to that conclusion?

It seems to me one of the virtues of the program as it exists now—and I agree that there are a lot of problems in the program—is that at least people, I think, are beginning to understand the entire Federal Government has a commitment to equal employment opportunity.

Do you think there is any danger if we centralize everything in EEOC we might dilute this?

Mr. GLICKSTEIN. As I understand S. 2453, even if the Office of Federal Contract Compliance functions were transferred to EEOC, the various Government contracting agencies would still retain responsibilities that they have now to insure there is no discrimination. They would still have that initial responsibility. So we wouldn't be depriving them of that responsibility.

However, the point you make of the necessity of all Federal agencies to realize the civil rights implications of their programs is a very good one. I think as long as we have title VII on the books, which does give the responsibility to individual agencies to make sure that their Federal assistance programs are free of discrimination, we will create an atmosphere in the Federal Government that just as it is important to build highways, it is equally important to make sure that when those highways are built Federal dollars are spent in such a way that everybody gets a fair shake.

I think the point you make is very well taken, that it is a responsibility of our Commission, as of other agencies concerned with civil rights, to impress upon all Federal agencies that civil rights is not something off in the corner; it is something that is part of every single Federal agency's program.

Mr. MITTELMAN. One last question. You have completed your study of the State and local governments. Have you done anything in the area of Federal employment?

Mr. GLICKSTEIN. Our agency has never undertaken an in-depth study of Federal employment as it has of State and local government employment. We have, in the course of some of our hearings, dealt with individual situations, but we have never done an in-depth study.

As I recall, most of these individual situations we dealt with involved Federal civilian employees working on military installations, and we have not found a very pretty picture in these situations.

Mr. MITTELMAN. Do you expect to be getting into that area in the future?

Mr. GLICKSTEIN. We have just been preparing our budget submission for fiscal year 1971. One of the studies we are proposing for that year is an in-depth study of the operations of the Civil Service Commission and the whole Federal employee equal opportunity program. So we do expect to get into that area.

Mr. MITTELMAN. Thank you very much.

Mr. NAGLE. Pursuing one of Mr. Mittelman's questions, do you think that EEOC, as an independent agency, has the potential for as effectively coordinating the nondiscrimination aspects of the procurement program as has an agency such as OFCC, which is closer to the executive?

Mr. GLICKSTEIN. One difficulty with the question that you ask is that I don't know what the word "effectively" means, because I have never seen it done effectively. It has been done very poorly in the past. In fact I think Secretary Shultz almost acknowledged when he was here that the program has been a failure, but he asked for a probationary period to try to improve it.

I am not sure it could be done any worse. I would think that perhaps EEOC would be freer from political pressures or pressures from various interest groups than would an executive agency in the Government. I think that if it were made clear, if the President delegated to EEOC this authority to carry out this program, then I think the other Federal agencies would go along.

Senator WILLIAMS. Thank you, Mr. Glickstein.

Our next witness is Mr. W. L. Thornton, President of the Southern States Industrial Council.

STATEMENT OF W. L. THORNTON, PRESIDENT, SOUTHERN STATES INDUSTRIAL COUNCIL

Mr. THORNTON. My name is W. L. Thornton of St. Augustine, Fla., and I am president of the Florida East Coast Railway. I am appearing before you today in my capacity as president of the Southern States Industrial Council to present the council's views on S. 2453, a bill to expand the scope of activities and the powers of the Equal Employment Opportunity Commission.

The Southern States Industrial Council is an organization dedicated to preserving and strengthening the free enterprise system. Its membership comprises approximately 3,000 business and industrial firms, 85 percent of them located in a 16-State area extending from Texas to Maryland and the remaining 15 percent widely scattered throughout the United States. The council's headquarters are in Nashville, Tenn. We appreciate this opportunity to be heard.

It is our belief that S. 2453 and other bills to expand the powers of the Equal Employment Opportunity Commission are a threat to the rights of the States and the rights of the individual. In the area of States rights, it is the declared policy of the Southern States Industrial Council to "safeguard the rights of individual States by holding the Federal Government to the delegated power as specified by the Federal Constitution and to the statutory procedure in administrating that power."

In the area of individual rights, it is the declared policy of the council to "protect in every way the rights of the individual as guaranteed by the Constitution. These fundamental rights are inherent in every citizen and must be preserved inviolate."

SSIC is dedicated to equality of economic opportunity for all Americans without regard to race, color, or creed as one of the fundamental rights of citizens. We believe the words to be stressed here are "equality" and "opportunity" and will have more to say about that later in this statement.

The council is gravely concerned over the continuous growth of administrative agencies of the Federal Government and the steady encroachment of the Federal bureaucracy into areas of State authority. Expansion of title VII of the 1964 Civil Rights Act to cover State and local governments and bring their employment practices under the jurisdiction of the EEOC would be a major step toward bringing those governmental units under Federal control and undermining their authority.

If this trend is not halted, the balance of State and Federal powers so carefully planned by the Founding Fathers will be completely destroyed. This is one of the reasons we are opposed to any extension of the powers of the EEOC.

Thirty-nine of the States and many municipalities have their own fair employment practice laws, and it appears to us that further intrusion of the EEOC into the area of State and local governments is unwarranted and will serve only to slow the development of State fair employment practice programs.

The council opposes extending EEOC jurisdiction to firms with as few as eight employees. The owners and operators of small business firms already have been saddled by government at all levels with a heavy burden of keeping informed of the details of governmental rules and regulations, submitting to inspections and filling out forms, and maintaining many kinds of records.

Government should be concerned with encouraging the establishment and operation of small business enterprises, for this means more employment opportunities for all. Making the smallest business enterprises subject to the EEOC, adding still another burden of Government regulation on the small businessman, is a step in the opposite direction. Furthermore, we do not believe there is any need for this extension of jurisdiction.

The labor supply is short today. Most operators of not only small business establishments but large companies as well are having a great deal of difficulty in finding the employees they need. In the search for qualified employees, race, color, or creed are daily becoming less important factors to the employer, if they were factors for him in the past.

The proposed expansion of the EEOC's jurisdiction could tremendously increase the EEOC caseload. According to the EEOC report for 1968, its backlog of cases to be investigated and conciliated continues to grow. Caseload per fiscal year jumped from 8,854 in 1966 to 15,058 in 1968, the EEOC annual report stated, and S. 2453 would add another vast segment of the public to the Commission's domain.

It would seem the wiser move to allow the Commission to develop its present machinery and practices toward the judicious handling of the present caseload rather than taxing it with further expansion of authority.

Senator WILLIAMS. Your concern there is with the EEOC and their problems?

Mr. THORNTON. Yes, sir.

It is the section of the bill giving the EEOC power to issue cease and desist orders to which we object most strongly.

In the Civil Rights Act of 1964, Congress carefully stipulated that an employer accused of violating the equal employment opportunity provisions would be entitled to a trial in court, specifically the Federal district court of his locality. S. 2453 wipes out that right to a court trial and gives the Equal Employment Opportunity Commission itself the power to determine the facts and to adjudge the guilt or innocence of the accused.

The new legislation also takes from the Federal district courts and gives to the Commission itself the power to issue orders and decrees, requiring "affirmative action" on the part of employers, such as the "reinstatement" of former employees and the "hiring" of new employees, with "back pay."

There has probably been no legislation advocated in Congress, within recent years, that contains a greater danger of injustice and oppression than does this proposed statute. The issue is not whether discrimination, with respect to employment opportunities, should be prohibited. That is the law, and it is not now being challenged.

The question is whether in case of disagreement or dispute as to an employer's compliance with the law, he shall no longer have the right to a trial in court—a right which is not only traditional and fundamental, but which has heretofore been assured to him in the Civil Rights Act itself. The EEOC is not a judicial, nor a semijudicial body.

In the long history of struggle with governmental power, men have painfully learned that the difference between a trial by court and a trial by bureaucracy is the difference between day and night.

There is little consolation to be found in the fact that the new act would provide that the employer, who considers that the Commission has imposed an unjust order upon him, could seek review in the appellate courts.

It has become all too familiar that the appellate courts, deluged by such petitions to review the actions of administrative agencies, uniformly tend to declare that they would not themselves have made such a finding or ruling as the agency has made, but that the matter is one committed by Congress to the discretion and "expertise" of the administrative body and that they are, therefore, not disposed to interfere.

There are still further aspects of the proposed legislation which are startling. The procedure prescribed in the new act by which the Commission would move through a case would be upon "a complaint," filed

by the Commission with itself, asking itself to adjudge in favor of itself, and to grant to itself a decree against the defendant. In such a statute, American jurisprudence would seem to have arrived at a strange state indeed.

The present statute stipulates that the court may issue an order against the employer if it finds that he "intentionally engaged" in a violation of the law. S. 2453, in abolishing the right to a court trial, also deletes entirely this fundamental limitation. It provides that if the Commission should, for any reason, decide not to proceed upon a charge, then the respondent may still be subjected to a lawsuit upon that charge at the hands of any "aggrieved person."

S. 2453 provides that 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. This provision appears to us to be much too broad, and if it were taken literally, it would seem that under this bill there would be no such thing as a final order of the Commission. It would keep the employer found guilty of some infraction in employment practice forever subject to further penalty or EEOC orders for that same infraction.

The Southern States Industrial Council does not believe there is a demonstrated need for giving the EEOC any additional powers. If the Congress desires to grant the EEOC additional authority, it is suggested that the better method would be to grant the Commission the power to bring action in Federal district court after a finding of "probable cause" of violation of title VII and failure of conciliation. This is basically the method that would be followed under S. 2806, which was introduced on August 8.

One of the key sections of the bill would transfer functions of the Office of Federal Contracts Compliance from the Labor Department and the equal employment opportunity activities of the Civil Service Commission to the EEOC. If this would result in an end to the duplication of investigations and reviews by the various Government agencies involved in the field of equal employment opportunity, this would be one of the few salient features we find in S. 2453.

Earlier in this statement we placed stress on the words "equal" and "opportunity." We now come back to that because we believe it is the key to many of the problems arising from the actions taken by Federal officials under the heading of civil rights.

We believe the Congress made clear in civil rights legislation that it intended to prevent discrimination in hiring and advancement of employees on the basis of race and did not intend to compel preference in employment and advancement of racial minorities. Nor was any congressional sanction given to establishment of percentages or quotas in employment of members of racial minorities.

Yet some Federal employees in missionary zeal to achieve what in their view is justice for racial minorities, insist on preference in the employment and advancement of members of minority groups, not just equality of opportunity. This is reverse discrimination because it denies equality of opportunity to white applicants and employees. It is a violation of the civil rights laws and the constitutional rights of the individual.

The pressure of Federal officials for preference in employment opportunities, for members of racial minorities is one of the principal

reasons the Southern States Industrial Council is opposed to giving additional powers to the Equal Employment Opportunities Commission. We, therefore, oppose passage of S. 2453 and urge that the Congress, instead, take steps to see that the rights of both black and white citizens to equal employment opportunities are safeguarded and the intent of the Congress is not twisted by employees of Federal agencies and departments.

Senator WILLIAMS. I apologize that I was called to another committee, Mr. Thornton, and I haven't read all of your statement and didn't hear the earlier part, but your last statement suggests that Congress take steps to see that the rights of the black and white citizens to equal employment opportunities are safeguarded.

Now, do you have an alternative to the suggested alternative to either of the approaches before the committee now?

Mr. THORNTON. Well, I feel, Senator, that the machinery that is now provided in the 1964 Civil Rights Act is adequate if it is fully utilized. I feel that the use of conciliation, the use of negotiaitons between the parties to derive a voluntary solving of the problem will provide an in-depth and a long-reaching solution to the problem.

The purpose and intent, as I understand the 1964 Civil Rights Act, was to try to arrive at a solution to discrimination in employment and advancement policy. I think this can be done better if it is done on a voluntary basis.

Senator WILLIAMS. You are President of the Florida East Coast Railway?

Mr. THORNTON. Yes. I am appearing here, however, as a representative of the Southern States Industrial Council.

Senator WILLIAMS. I appreciate that as representative of the Southern States Industrial Council is your capacity here. But your occupational capacity is with the East Coast Railway, and I understand that EEOC has received no complaints about your operation.

Mr. THORNTON. No, sir. We have in fact been complimented on our efforts in this direction. We feel—and I think perhaps we may be not alone in this—that great progress has been made in the South in eliminating many of the problems that we are talking about here in discrimination.

I think this is a result of the growth, the business opportunities, the employ nent opportunities that have been achieved through free enterprise and through this area, and I think a great deal of the credit goes to the progress that is being made throughout the country and particularly in the South as a result of free enterprise and the opportunity, the job opportunities that are being developed through free enterprise and through the training that is being provided people by industry.

Senator WILLIAMS. Where is your railroad's home base of operations?

Mr. THORNTON. St. Augustine, Fla., is our headquarters.

Senator WILLIAMS. I am sure the statistics bear you out on that part of our country; the South and its employment opportunities are growing. There is no doubt about that. A lot of the former northern textile industry is now southern based; I should know, painfully, being from a former northern textile State.

Thank you. I would like to talk with you further but, as you know, we are having time problems. Thank you very much.

Mr. THORNTON. Thank you very much, sir.

Senator WILLIAMS. Now we have Mr. Julius Hobson. Mr. Hobson, you do not appear in any representative capacity this morning. You speak for——

STATEMENT OF JULIUS W. HOBSON, WASHINGTON, D.C.

Mr. HOBSON. I appear as a Federal employee on leave, speaking about the opportunities inside the Federal Government.

Senator WILLIAMS. As an individual Government employee on leave; is that it?

Mr. HOBSON. Right.

Senator WILLIAMS. On leave for a day?

Mr. HOBSON. On leave for 1 year to do a study on education in the District of Columbia in public schools. I am a social science analyst, and have been on leave of absence since April and will be until next April, doing a study of public education as a member of the District of Columbia Board of Education.

I want to thank you for an opportunity to appear here and I want to give my unqualified support to the legislation which is before this committee. I also want to say that I am very happy to hear of the attack on job discrimination in private enterprise.

I don't share the opinion that there has been that much progress in private employment in the South in terms of job discrimination. Somehow the data just don't seem to indicate to me that there has been a great leap forward.

I am very much concerned about the fact that I am a taxpayer in the United States and an employee of the Federal Government of the United States and that there is job discrimination practiced by an agency where my tax money is used to create jobs denied me.

I am very much concerned about the role of the Civil Service Commission of the U.S. Government as a keeper of the keys to what we call merit employment in the United States. I have, over a period of 25 years of Federal employment represented over 50 Federal employees in job discrimination proceedings and have never won a case. I have had cases in which the evidence was so airtight that you could have won them in a South African court.

The U.S. Civil Service Commission as of 1966 had 818 black classified employees, 73 percent or 600 of these were in grades GS–4 and below. Some 21 or 2.6 percent were in GS–11 and above. While we are concerning ourselves with private enterprise and Philadelphia plans, and so forth, it seems to me we ought to get our Federal house in order.

If I were the owner of a private company called upon to end discrimination, I would first want to know how the Government itself is dealing with this problem. The Government is dealing with this problem through the Civil Service Commission which has a very bad record.

I have submitted to this committee my testimony and I will not sit here and repeat the data from my testimony. Now I have some pictures which I would like to show, because I think pictures are worth a thousand words.

I am in the process now of preparing litigation to sue the head of every Federal agency in the executive branch of the Government for discrimination in the employment of black employees, women, and Spanish Americans. I would like to show you the 1967 statistical picture which are the latest available data on this subject, if I may.

I have here a chart, Mr. Chairman, showing that 78.7 percent of the black employees in the Federal Government are concentrated in grades GS–1 to GS–6; that 19.8 percent are concentrated in grades GS–7 to 12; and that only 1.6 percent of all black employees in the entire history of the Federal Government have ever achieved grade 13 and above. Mr. Chairman, we are talking about 133,626 positions in 1967.

I think that this is a picture of job discrimination. Black employees in 1967 held 10.5 percent of all jobs in the Federal Government. I have prepared the same kind of chart, which I would like to show you, on women employees. Women are hardly citizens of the United States. They are worse off in Federal employment than black people.

In 1967, 80.4 percent of the women in the Federal Government General Schedule and equivalent are in GS 1 to 6 jobs. About 18.3 percent were in grades GS–7 to 12, and less than 1 percent were in grades 13 and above.

In 1962, the Attorney General of the United States reinterpreted an old law to stop personnel offices from requesting registers of "men only" for jobs which they had set aside for men. Women were not guaranteed an equal opportunity for appointment at all levels until 1962.

One of the other classes which I would concern myself with are Spanish Americans. Mr. Chairman, 65.8 percent of all of the Spanish Americans employed in the Federal Government of the United States are in grades 1 to 6, and only 3.3 percent of Spanish Americans are GS–13 and above.

These are data published by the Civil Service Commission, under the seal of its Chairman. If these figures can be presented to show that discrimination is not true, then I certainly would like to be informed. I submitted to the Civil Service Commission, through Congressman Ryan of New York, many of the 300 cases on job discrimination which I collected throughout the United States from Federal employees. 4,000 employees signed petitions and asked the Congress of the United States to hold hearings on Federal job discrimination. We could not get a regular committee to do so, thus Mr. Ryan convened an ad hoc committee last December and held hearings.

I have the 300 briefs back from the Civil Service Commission. They did not find for plaintiff in a single case. So I am here to charge that the EEOC machinery is useless, intimidating, and completely lacks credibility. We thus have to go to the U.S. District Court to deal with this problem.

It has been said there is great progress being made in the Federal Government and that the picture is going to be different when the new statistics are published. Well, I have here, Mr. Chairman, a chart which I have developed which shows the total number of new General Schedule and similar jobs in the Federal Government from 1962 through 1967. Out of 155,304 jobs GS–9 and above, black people acquired only 6.4 percent. Out of 51,099 such new jobs in the Federal Government GS–8 and below, 53 percent went to black people.

Senator WILLIAMS. Let's slow down here, Mr. Hobson. Let's do that again.

Mr. HOBSON. All right. This is Federal employment, change in total number of employees 1967 over 1962 by race, and by grade. In the GS–1 to GS–4 range, some 9,906 jobs went to blacks. And the number of whites in this low level actually declined by 3,564. In grades 5 to 8, black people acquired 17,174 new jobs, while 27,583 jobs at this level went to nonblacks.

Senator WILLIAMS. Where is this? Washington?

Mr. HOBSON. This is the entire United States.

Senator WILLIAMS. Say that again. How many people in grades 1 through 4?

Mr. HOBSON. Grades 1 through 4 there were 9,906 and these are general schedule and similar pay systems. These do not take into consideration wage board and other pay plans.

Senator WILLIAMS. I am sure we can repair my misunderstanding here——

Mr. HOBSON. These are new jobs.

Senator WILLIAMS. Oh, I see.

Mr. HOBSON. These are not all the jobs in the Federal Government. These are new General Schedule and similar jobs that came on the scene from 1962 through 1967.

Senator WILLIAMS. Where did you get those figures?

Mr. HOBSON. Out of the report of "Minority Employment, Federal Government of the United States," published by Civil Service Commission.

Senator WILLIAMS. Grade 1 through 4 net increase of 9,906 jobs?

Mr. HOBSON. Yes.

Senator WILLIAMS. And that is in the period of 5 years?

Mr. HOBSON. Yes.

Senator WILLIAMS. Are you sure that is accurate?

Mr. HOBSON. I would bet on it.

Senator WILLIAMS. What?

Mr. HOBSON. I will bet on it being accurate.

Senator WILLIAMS. What is the total new jobs for that 5-year period?

Mr. HOBSON. Total new General Schedule and similar pay system jobs for that 5-year period would be 155,304 jobs GS–9 and above, and 51,099 jobs GS–8 and below.

Senator WILLIAMS. 200,000 jobs; is that it?

Mr. HOBSON. Something like that.

Senator WILLIAMS. Then the idea that we have got a runway increase in swelling our bureaucracy is disabused when you compare that with all the other growth figures including the National Governmental budget. They are rather small. It is a rather small figure, isn't it?

Mr. HOBSON. These are true figures which we went over with a fine-tooth comb because this is one of the basic exhibits which we intend to use in court.

Senator WILLIAMS. All right. Now, we have got 200,000 new Federal employees, 1962 through 1967, right?

Mr. HOBSON. Right, new General Schedule and similar positions.

Senator WILLIAMS. Through. All right. Now, how does it work out on the race bit?

Mr. HOBSON. Now, if you drop down to the bottom, these two pie charts, you see here we broke these down GS–8 and below. In the GS–8 and below range where there were 51,099 jobs, 53 percent of those jobs went to blacks.

Senator WILLIAMS. Just to get appreciation of what GS–8 means in salary, what is the salary?

Mr. HOBSON. I think the salary of a GS–8 is somewhere around $8,000. Something like that. Maybe a little more starting salary. Now of the 155,304 new jobs GS–9 and above, blacks got 6.4 percent.

Senator WILLIAMS. You don't have the application figures here in percentages of black and white people?

Mr. HOBSON. I don't know what you mean by application figures.

Senator WILLIAMS. Those who applied. How many blacks applied and how many whites?

Mr. HOBSON. No, I don't have those. Shall I go on?

Senator WILLIAMS. Yes.

Mr. HOBSON. I have more charts. It has been said that one of the problems with blacks going into these high jobs is that they are not qualified or educated, therefore they can't qualify for the high-level positions. I made an investigation of Library of Congress data on education of its employees for the year 1963. I found, for example, that 6 percent and 5 percent of the whites and Negroes, respectively, in the Library of Congress have college and post-graduate degrees.

Six percent of the whites working at the Library of Congress in 1963 versus 5 percent of the blacks had college and postgraduate degrees. Now, that should be reflected in the employment situation. I was concerned then about the rate of promotion among the whites versus the rate of promotion among the blacks.

I took an average of 4 years in-grade and computed the length of time blacks versus whites stayed in-grade longer than 4 years. In the lowest job classifications GS–1 to GS–4 only one of every three white employees remained in the same grade beyond step 4 over 4 years before he was promoted or left the Library. But one of every two black employees remained in his grade longer than 4 years. The fact exists despite the relatively equal educational achievement in the Library of Congress. I have argued through time and testimony before congressional committees that black remains in-grade in the Federal Government on an average of 5 years versus whites, who remain in-grade in the Federal Government on an average of 16 months.

My final chart which I would like you to look at is one dealing with the money. Now, I am not in favor of a quota system, but if we are going to have specific quotas for private enterprise such as the Philadelphia plan, we could have one for the Federal Government. It is only fair.

Whenever you charge a Federal agency with discrimination, they say, "Oh, no; not me. Twenty-two percent of our employees are black, so I am really better than the population ratio." Or, "22 percent of my employees are black, and the national ratio of Federal employees black is 10.5 percent so we don't discriminate."

I don't buy that, but if they insist on using that quota system, then let's take it to its extreme and talk about the money. If we have to buy a quota system, which the Government seems to support, blacks

made up 10.5 percent of Federal employment in 1967 and they got only 8.6 percent of the money. Now, this reflects their concentration in the lower grades, and my position is that if we insist upon quotas, then let's have a quota system by grade, 10.5 percent in every grade, and blacks won't lose $187 million as they lost in 1967.

Quickly talking about other citizens who are discriminated against, the women—they made up approximately 42.4 percent of Federal employment in 1966. They got only 20.8 percent of the payroll. As a result of their being concentrated in lower grades they lost $1,128 million in 1966. If they had been distributed on the quota system which the agency heads like to quote, then they would have certainly made more money.

I want to clean up the question of in-house discrimination. I am a taxpayer and with my taxes my Government creates the jobs which it denies citizens because of race, national origin, or sex. I have done just about everything I could within the framework of the existing machinery designed to deal with Federal job discrimination, and I ask this committee that while concerning yourselves with private employment, please do not overlook the picture inside of the Federal Government.

I think it is a waste of time and resources, for Federal employees, and it is certainly beyond our ability to pay, to have to go to the U.S. district court to deal with this problem. But after 300 cases in 25 years, I think the time has come to go into the arena of last resort which is the U.S. district court. Thank you.

Senator WILLIAMS. Do you address yourself to the cease-and-desist authority that one of the bills proposes?

Mr. HOBSON. Well, I think I agree with the cease-and-desist authority in the bill that you have before you. I think that the power to enforce this legislation should be vested in the EEOC. I have had quite a bit of experience in court—not as a lawyer but as a plaintiff—sometimes in jail and sometimes trying to put other people in jail, and I have found that court cases are not only long and drawn out, but very expensive, and sometimes questions become moot in the process of litigation and employees discriminated against who carry through the court process really become discouraged and leave, or die, even, before this can be carried forward.

I think the proposal to go to court is nothing but a proposal to circumvent and dodge the issue of dealing directly and quickly with the question of job discrimination, so I support that part of the bill.

Senator WILLIAMS. Well, then, I gather, I would conclude that you are in agreement with the part of the bill that would lift questions of equal employment from the Civil Service Commission and put that responsibility in EEOC; right?

Mr. HOBSON. I certainly would remove it from the Civil Service Commission. Excuse the expression, but I think we have got billy goats in charge of the garden. Their record itself is a dastardly record which cannot be matched in terms of discrimination by any other agency inside the Federal Government. They have a very poor record. Their rate of finding on discrimination at the appellate level leaves something to be desired. Whenever an employee appeals a case of discrimination, and even where they find discrimination—after 2 years of litigation—almost never is anything done.

I have 4,000 signatures, Mr. Chairman, of employees from all over the United States who have petitioned the Civil Service Commission in this area. Two thousand of us are going to file a suit Friday morning in the U.S. district court on this very question of the time involved in getting redress when you charge discrimination in the Federal Government of the United States, and of having to charge your supervisor and remain under him for 2 years after you charge him with discrimination.

Senator WILLIAMS. It is not a very comfortable feeling.

Mr. HOBSON. It is a frightening process and I say to Federal employees now, "I think you are crazy if you charge that man with discrimination under present circumstances, because you are going to be left there and he can do exactly as he pleases. Even if the Commission finds for you after 2 years, nothing may happen."

Senator WILLIAMS. I see your point. Now 2,000 employees are going to file suit, you say, this coming Monday?

Mr. HOBSON. Friday morning at 10 o'clock in the U.S. district court.

Senator WILLIAMS. Here?

Mr. HOBSON. Right here in Washington, D.C.

Senator WILLIAMS. Federal Government employees?

Mr. HOBSON. Yes, Mexican-Americans, women, and black employees.

Senator WILLIAMS. What is the nature of their action?

Mr. HOBSON. A class action to deal with the question of job discrimination measured in terms of concentration in lower grades, measured in terms of rate of promotion, measured in terms of effectiveness of grievance procedure. We are seeking more than just an Executive order with rapturous statements about discrimination based on race, creed, color, and national origin. Those of us in minority groups realize that words are not things, and what we would like to see in the Federal Government is a positive goal of how many black people are you going to get in these jobs, 12 to 13 and above. Just like we are doing in private industry with some overseer, some agency where they should report to, to show the progress they have made.

Senator WILLIAMS. Are these 2,000 petitioners plaintiffs seeking individual personalized relief, or a general relief for a class of people?

Mr. HOBSON. This is a general relief for a class of people and it will be supported by about 35 or 40 individual cases in point. The class action will show the overall statistical picture. The individual cases will be used to say, "Well, I am an example of what happened to a member of the class." The case will turn on the total picture, not on some individual's merit. That is too precarious.

My supervisor can always prove that I don't deserve a promotion, but he can't explain away what's happened to the entire class.

I have here an article on this, if you would like to see it.

(The document referred to follows:)

[From the Washington (D.C.) Evening Star, Sept. 1, 1969]

HOBSON TO SEEK U.S. JOB QUOTAS

(By Philip Shandler)

Julius W. Hobson, who won a court fight to make de facto discrimination as unlawful as premeditated bias in schools, is about to launch a similar attack on federal employment.

He will suggest that the government already has a model for "affirmative action" to get more minority-group members into better government jobs: the Labor Department's so-called "Philadelphia plan" requiring specified hiring of minorities by firms with government construction contracts.

Acting through Associated Community Teams, the civil-rights group he started a few years ago, Hobson will file suit Sept. 12 in U.S. District Court here against virtually the entire administrative branch of the government. President Nixon and more than 40 agency heads will be cited as defendants.

Hobson will charge that the present civil service employment system violates the constitutional rights—as set out in the 5th and 13th Amendments—of three classes of workers: Blacks of both sexes, women of all races and Spanish-American.

He will ask the court, after hearings by a three-judge panel, to order what amounts to both relief and reparations. He will seek:

1. Employment "equality" for members of the plaintiff classes in each agency, each sub-unit of 50 employes and in each grade level.

2. The achieving of such equity within one year, through a "separate system of employment, promotion and other such procedures."

Failing such achievement in a year, he wants a freeze on hiring and promotion of others; if the goal isn't met within two years, he asks "removal of personnel" to create vacancies for the plaintiff classes.

3. Back pay to members of these classes "for the results of past discrimination." He estimates this as totalling perhaps $5 million.

4. The enjoining of present regulations and the replacement of the present decision-making by supervisors with a system in which "determinations by racial (or sexual) considerations will be either impossible or at a minimum, including if necessary a system based entirely upon machine computations."

5. The designation of some other group or agency to supersede the Civil Service Commission "in whole . . . or as to matters specifically concerning equal employment opportunity. . . ."

BATTERY OF LAWYERS

The above quotations are from a preliminary brief prepared by Hobson's lawyers, who will include William M. Kunstler of New York, William Higgs, formerly of Washington and now counseling Indians in New Mexico, and Charles Fishman of Washington. Kunstler and Higgs worked on the Hobson vs. Hansen school case in 1966.

As prospective defendants in the new case, Civil Service officials declined to comment on the particulars of the brief. Instead, they pointed to the executive order on equal employment in the civil service issued by President Nixon in July.

It ordered an "affirmative program" to help Negroes and other minority members get into better government jobs through more aggressive recruitment, counseling, training and sensitivity-training for supervisors. But it shunned any quotas or goals, and avoided any openness to relaxation of job qualifications.

The "Philadelphia Plan", on the other hand, provides for specifying the numbers of minority-group workers to be hired for a particular government-construction project.

Under the plan—which has been ordered into effect but is being attacked by Sen. Everett Dirksen and others—successful bidders must agree to hire numbers of blacks, Orientals, Indians and/or Spanish-Americans based on a flexible formula.

"I don't see why the government shouldn't set the same kind of goals in hiring its own employees as it orders private employers to have," Hobson says.

The fact that the government-employment order contains no such timetable reflects the weakness of the Civil Service Commission as overseer of the anti-bias program, Hobson says, because the CSC made recommendations on which the order was based.

"They can proclaim any policy or program they want to," he says, "but I say that the figures belie them.

"I'm not going to argue that the commission is racist by design. But if it isn't, then the so-called merit system was designed by an idiot," he declared.

Hobson is particularly critical of that aspect of the system which vests discretion in middle-level supervisors in hiring and promotion. Most discrimination arises from this arrangement, he says, and he is skeptical that the projected CSC effort to "sensitize" the supervisors will make much difference.

Hobson cites now-familiar CSC figures which show that the percentages of Negroes, Spanish-Americans and women in government jobs are lower generally than the percentages of these groups in the population, and most markedly in the higher grades. "De facto, this shows discrimination," he charges.

Hobson has collected thousands of complaints from around the country, from present or would-be federal workers, and has invited them to come to Washington Sept. 12 for a march on the courthouse when his suit is filed. He is also asking $5 contributions.

He is winnowing these complaints, and others being collected with the help of Local 41 of the American Federation of Government Employes at the Department of Health, Education and Welfare, for possible co-plaintiffs

A former statistician at HEW, Hobson now is working fulltime, with foundation funds, to pinpoint failures of the D.C. Education Department to implement the gains won in the earlier case.

Hobson would not be surprised if the suit were thrown out of the District Court. But he anticipates more receptivity in the U.S. Court of Appeals for the District.

Senator WILLIAMS. Is this in response to any feeling that the quota, a quota criteria should be observed?

Mr. HOBSON. Frankly, I would much rather see a system whereby we all had elbow room and fair play and everybody had an equal chance to get an education, and in which the tests were not biased and we really had a meritorious approach. But we do not have that, and since we do not have it and since the agencies always answer our charges in terms of the percentage of the black people, we don't have any choice but to come out in favor of some kind of numbers of people by grade in order to deal with this question of concentration in lower grades.

I am not for a quota system personally, but I don't see what else I can be for at this point to bring about change in this statistical picture.

Senator WILLIAMS. Expediency dictates, rather than the principle, is that right?

Mr. HOBSON. Right.

Senator WILLIAMS. Thank you very much, Mr. Hobson. Quite obviously you put a great deal of your thought and energy into this and it is helpful to the committee.

Mr. HOBSON. Thank you very much.

Senator WILLIAMS. Without objection your prepared statement will appear in the record at this point.

(The prepared statement of Mr. Hobson follows:)

PREPARED STATEMENT BY JULIUS W. HOBSON, WASHINGTON, D.C.

OUTLINE—FEDERAL JOB DISCRIMINATION

In the Federal Civil Service, as of June 1966, black people comprised about 9.7 percent of the classified employees, but only 1.6 percent of those above GS–11. The new *Study of Minority Group Employment in the Federal Government* prepared by the U.S. Civil Service Commission indicates that by November 1967, black people comprised 10.5 percent of the classified employees but still less than two percent (1.8%) of those above GS–11.

1. *The U.S. Civil Service Commission.*—As of June 1966, 818 black classified employees were working at the Civil Service Commission itself and 73 percent or 600 of these were in grades GS–4 and below. Some 21 or 2.6 percent were in grades above GS–11.

The Commission's new study shows that by November 1967, 70 percent were still employed in grades GS–4 and below. The new study showed 28 black employees in grades above GS–11, an increase of only one-half of one percent over 1966.

2. *The Selective Service System.*—In the Selective Service System, there were 50 employees above GS–11 in 1965; 51 in 1966; and 53 in November 1967. In each year—none were black.

3. *The Government Printing Office.* Ninety-two employees were listed above GS-11 in 1966; none were black. The new Commission study shows GPO with 104 employees above GS-11 in November 1967—still with no blacks.

4. *Department of Health, Education, and Welfare.*—In 1966, HEW black employees comprised about 18 percent of all of its classified employees. The new Civil Service Commission study shows an increase of three percent by November 1967. About 63 percent of the blacks in the department were GS-4 and below in 1966, and 60 percent were still GS-4 and below in 1967. While the new CSC study showed some positive change in HEW from 1966 to 1967, other data revealed that the 21 percent of the HEW employees who were black received only 16 percent of the department's total payroll.

5. *The Atlanta Civil Service Region.*—This region covers seven southern states. Black employees comprised about 13 percent of all Federal employees in the region in 1966, but only one half of one percent were about GS-11. The 1967 CSC study shows the very same data indicating no change in the employment of black people.

6. *The Dallas Civil Service Region.*—The Dallas region covers four southern states. About nine percent of all Federal employees in the region were black in 1966, and the new CSC study shows about nine percent of the total were black in 1967, another indication of no progress in the employment of black people.

7. The President amended Executive Order 11246 in October 1967 to deal with the much overlooked practice of discriminating against women in the Federal Service. *A Study of Employment of Women in the Federal Government, 1966,* prepared by the U.S. Civil Service Commission showed that women have fared little better than black employees.

In 1966 there were 1,837,000 white collar employees in the Federal Service; about 34 percent of some 617,000 of these empolyees were women, and about 89 percent were grade 8 and below. Seventy-two percent of all women in white collar positions in the Federal Service were employed in jobs at grade 5 and below. Until 1962, Federal personnel officers could even specify that the names of all women be left off registers submitted by the Civil Service Commission to fill some agency vacancies.

In Federal agency after agency, there have been similar defaults of responsibility to insure equal employment opportunity. This is particularly emphasized by the absence of black employees at policy-making levels. No matter how effective guarantees of equal opportunity may be on paper, they have been nullified in the hiring and promotion practices by a government that purports to be of, for and by the people. It is inexcusable that any job created in part by tax dollars paid by minorities should remain closed to minorities.

As the model employer and keeper of the keys as to what defines "merit", the Civil Service Commission cannot allow the qualification of being white to dominate, in practice, the fundamental structure upon which the employment system is built—through the encouragement of highly verbal and irrelevant examinations, prohibitive qualification standards, selective and arbitrary training programs, discriminatory promotion practices and a slipshod, intimidating grievance procedure. If this country is to survive with equal justice for all—then we must insist upon the first and foremost example of such justice in Federal employment.

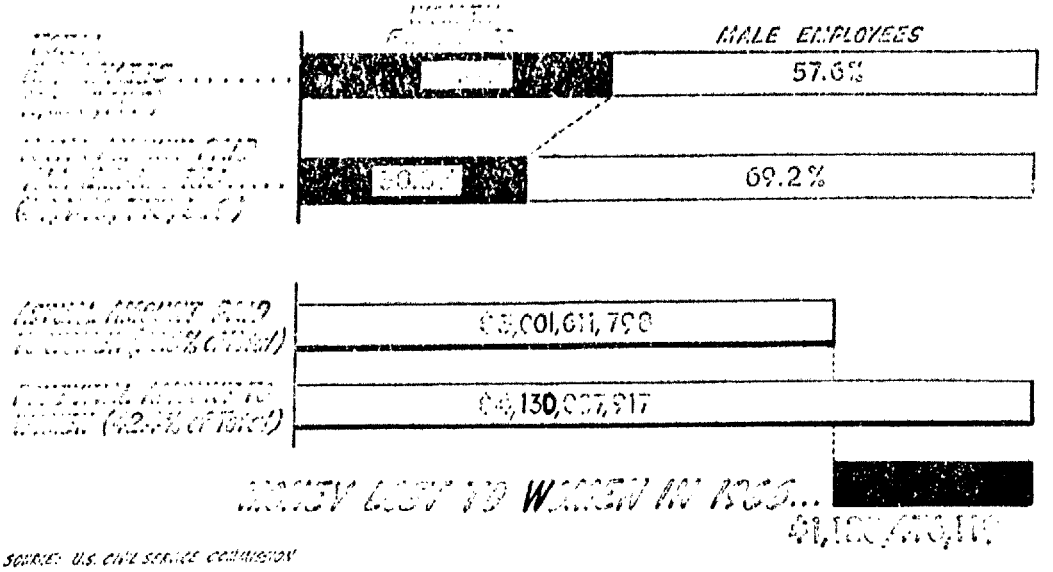
Source: U.S. Civil Service Commission, *Study of Minority Group Employment in the Federal Government, 1966 and 1967.*

The Congressional Record. U.S. House of Representatives, Congressman William Fitz Ryan, "Enforcement of Civil Rights Legislation." February 29, 1968, pp. H-1536 to H-1540.

Saturday Evening Post. "Uncle Sam is a Bigot", Julius W. Hobson, April 20, 1968. ("Speaking Out").

FEDERAL EMPLOYEES

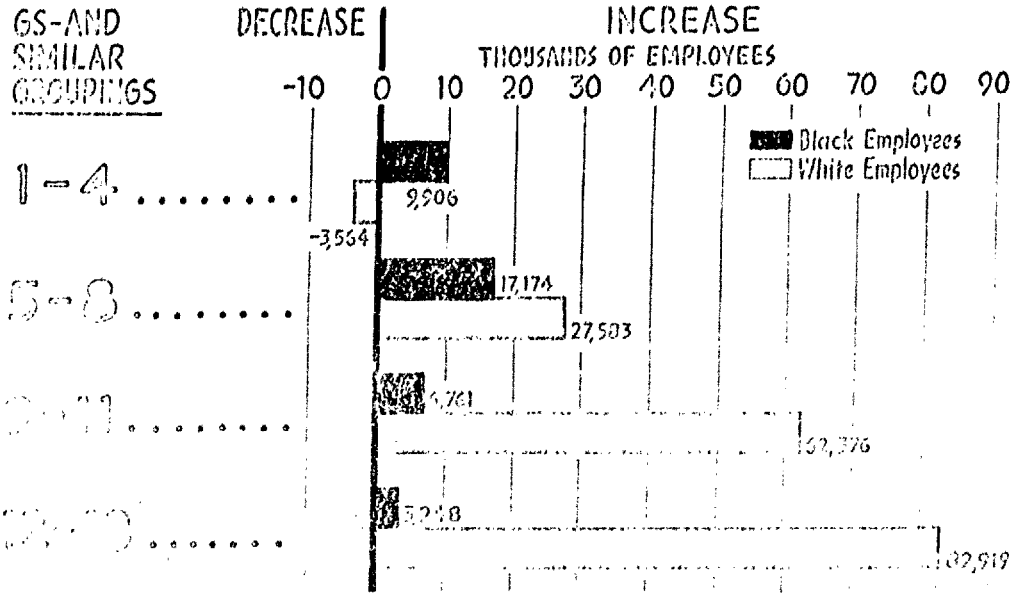
Number of Employees and Percent of Payroll by Sex, 1966



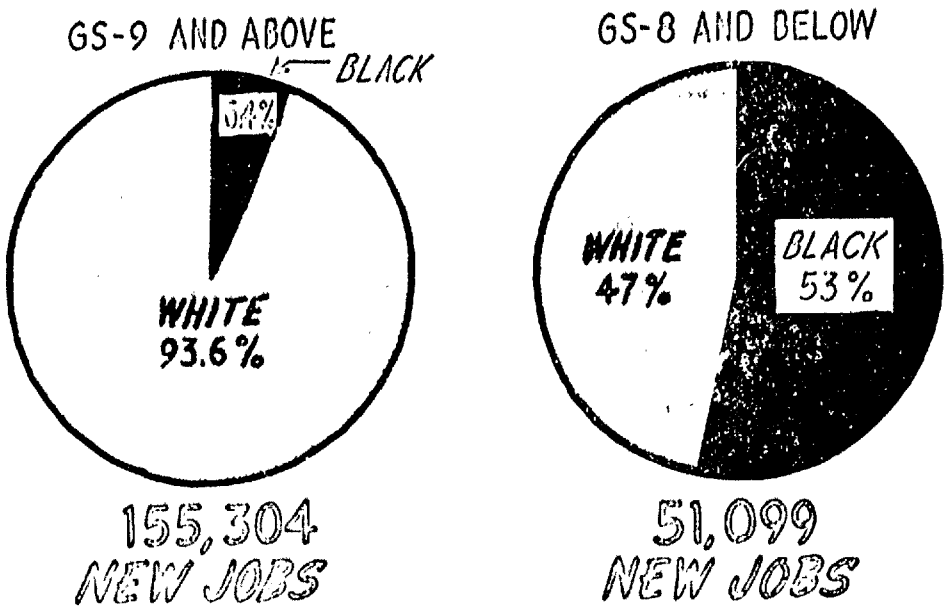
Source: U.S. civil service commission

FEDERAL EMPLOYMENT

Change in Total Number of Employees, 1957 Over 1962
By Race and Grade

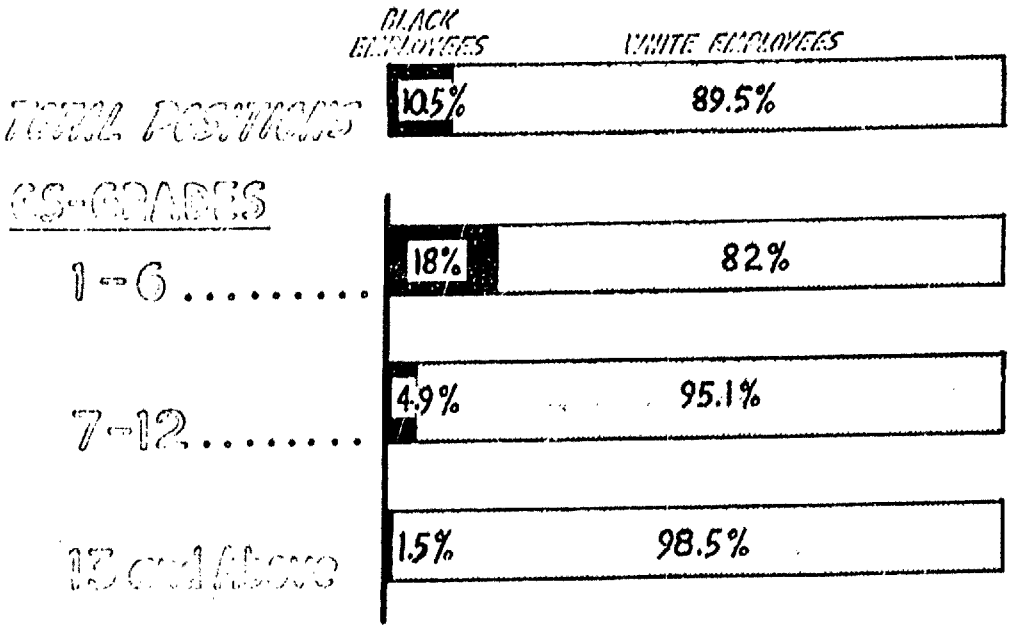


Best copy available

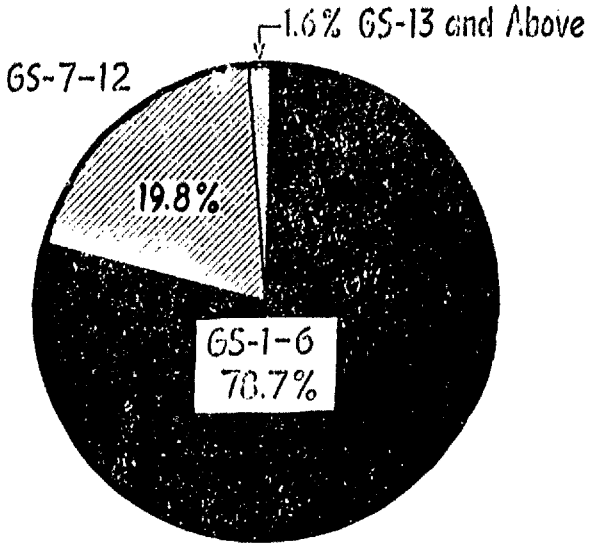


SOURCE: U.S. CIVIL SERVICE COMMISSION

PERCENT DISTRIBUTION OF ALL FEDERAL CS-POSITIONS, BY RACE AND GRADE, 1967



PERCENT DISTRIBUTION OF TOTAL BLACK EMPLOYEES, BY GS-GRADE

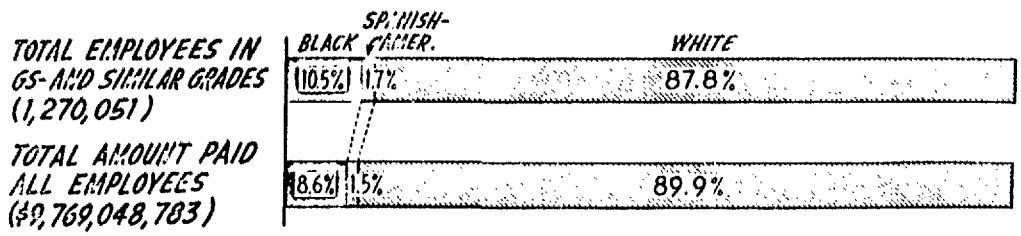


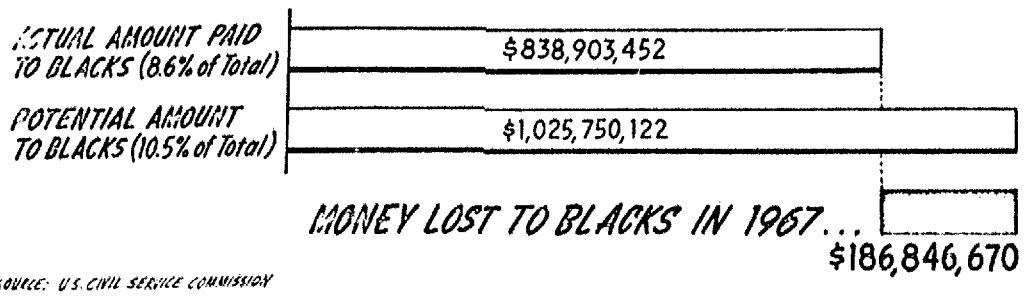
133,626 POSITIONS

SOURCE: U.S. CIVIL SERVICE COMMISSION

TOTAL FEDERAL EMPLOYMENT

Percent of Employees and Percent of Payroll by Race, 1967





MONEY LOST TO BLACKS IN 1967...
$186,846,670

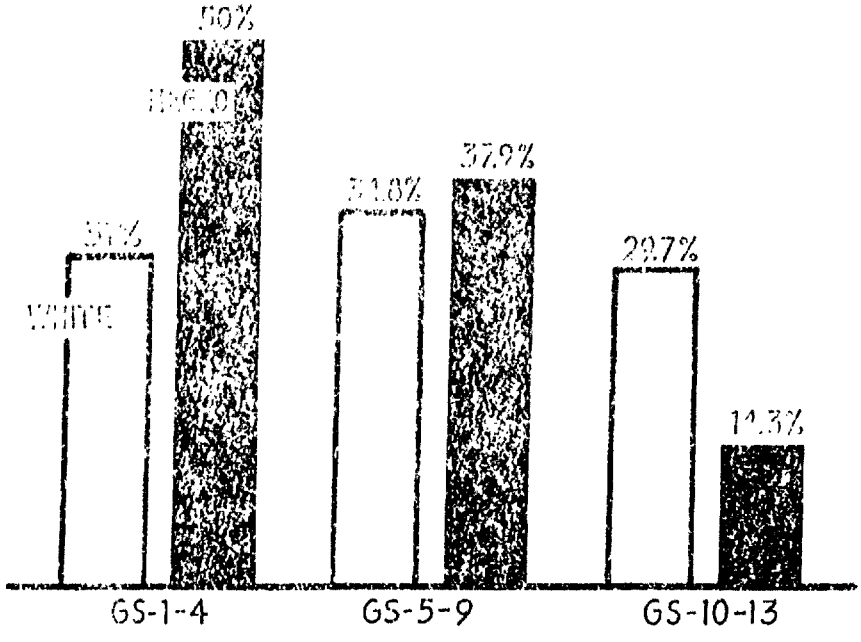
SOURCE: U.S. CIVIL SERVICE COMMISSION

CHART 2

Library of Congress Classified Employees

RELATIVE LENGTH OF TIME IN GRADE

Percent of Employees Above Step 4, By Grade and Race



SOURCE: LC Information Bulletin, May 6, 1963

- *In the lowest job classifications (grades GS-1-4), only ONE of every THREE white employees remains in his same grade beyond Step 4 (over four years) before he either is promoted or leaves the Library. But ONE of every TWO Negro employees remains in his grade longer than four years. This fact exists despite the relatively equal educational achievements of the incumbents; 6% and 5% of whites and Negroes respectively have college or post-graduate degrees.*

- *In grades GS-5-9, to a lesser degree, the same general pattern exists.*

- *Most of the Negroes in grades GS-10-13 have attained these grades only within the past years. Only [illegible] out of [illegible] has been in grade long enough to reach a level above step 4. Negroes hold less than 2 dozen out of more than 500 positions in grades GS-10-13.*
  It is often said that a college degree lacks the educational qualifications to attain [illegible] paying positions. However, the lack of a college degree has not prevented more than 100 white employees from attaining positions in the GS-10-17 category.

COMPARISON OF CHANGES IN NEGRO AND NON-NEGRO EMPLOYMENT 1962-1967—SSA AND GOVERNMENT-WIDE

	Total employed June 30, 1962			Total employed Nov. 30, 1967			Difference between July 30, 1962 and Nov. 30, 1967			Percent increase		
	Negro	Non-Negro	Total	Negro	Non-Negro	Total	Negro	Non-Negro	Total	Negro	Non-Negro	Total
SSA:												
GS 1-4	3,017	13,263	16,280	7,513	13,970	21,483	+4,496	+707	+5,203	149	5	32
GS 5-8	1,071	8,644	9,715	3,000	11,670	14,670	+1,929	+3,026	+4,955	180	35	51
GS 9-11	240	5,483	5,723	628	10,119	10,747	+388	+4,636	+5,024	162	85	88
GS 12-18	6	1,181	1,187	160	3,883	4,043	+154	+2,702	+2,856	2,567	229	241
Total GS	4,334	28,571	32,905	11,301	39,642	50,943	+6,967	+11,071	+18,038	161	39	55
Government-wide:												
GS 1-4	65,940	297,686	363,626	75,846	294,122	369,968	+9,906	−3,564	+6,342	15	−1	2
GS 5-8	23,320	280,943	304,263	40,494	308,526	349,020	+17,174	+27,583	+44,757	74	10	15
GS 9-11	5,870	221,553	227,423	12,631	283,929	296,560	+6,761	+62,376	+69,137	115	28	30
GS-12-18	1,407	166,929	168,336	4,655	249,848	254,503	+3,248	+82,919	+86,167	231	50	51
Total GS	96,537	967,111	1,063,648	133,626	1,136,425	1,270,051	+37,089	+169,314	+206,403	38	18	19

Senator WILLIAMS. Mrs. Lucille Shriver is our next witness. Mr. Hobson was speaking in part for the women, but now the women will speak for themselves. You have a fine organization.

STATEMENT OF MRS. LUCILLE SHRIVER, FEDERATION DIRECTOR, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.; ACCOMPANIED BY DR. PHYLLIS O'CALLAGHAN, LEGISLATIVE DIRECTOR

Mrs. SHRIVER. Thank you, sir. It is unfortunate that our president could not be here this morning, but it is my pleasure to be here to present the testimony and with me I have Dr. Phyllis O'Callaghan, our legislative director.

The National Federation of Business and Professional Women's Clubs, Inc. submits this statement to urge this subcommittee to favorably report pending legislation, S. 2453, a bill 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, Inc. 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 first found "reasonable cause" to support a charge of employment related discrimination. If the EEOC is unsuccessful in achieving compliance, 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 twofold 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 in this bill before us, 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.

We would also like to comment briefly on the other provisions of the proposed legislation. The recommendation that would extend the Commission's jurisdiction to include employers of eight or more persons, rather than larger establishments of 25 or more as the law now reads, seems eminently logical to us. Discrimination whether in large or small establishments is indefensible.

We also note that S. 2453 would extend the Commission's jurisdiction to employees of State and local governments as well. This too seems a reasonable extension. Just last year the Civil Disorders Commission recommended that title VII of the 1964 Civil Rights Act be expanded to cover the hiring practices of Government agencies.

In addition, the bill would consolidate the equal employment opportunity efforts of the Federal Government. The Office of Federal Contract Compliance of the Department of Labor and the equal employment opportunity activities of the Civil Service Commission would be transferred to the EEOC. The purpose would be to effect a unified national policy with respect to equal employment opportunity.

Mr. Chairman, Executive Order 11246 issued by President Johnson in 1965 prohibited discrimination in Federal employment and by con-

tractors doing business with the Government. Our organization actively worked for the addition of the word "sex" to that directive and Executive Order 11375 amended the original order in 1967.

We are therefore keenly interested in implementation of that order by the Office of Federal Contract Compliance (OFCC), which coordinates and supervises overall compliance with these Executive orders.

Just last month, Mr. Chairman, the OFCC heard testimony on proposed sex guidelines which had been devised to insure full implementation of a nondiscriminatory policy for women workers. BPW testified on those guidelines before the OFCC at that time.

With this background, Mr. Chairman, you can understand how important BPW considers the organization of the agencies which will enforce equal employment opportunities. BPW essentially supports the idea of consolidating the equal employment efforts of the Federal Government, which now operate through the EEOC, the OFCC, and the Civil Service Commission.

In their special report for the U.S. Commission on Civil Rights this spring, the Brookings Institute in discussing the OFCC and EEOC decided that:

> The conclusion of this report is that the title VII and Executive Order 11246 enforcement systems should no longer be separate. To the fullest extent possible these responsibilities should be brought together under a single agency.

Our reasoning for supporting the recommendation for unification in this pending legislation concurs with that report and for many of the same reasons. It seems to us that some coordination such as this is necessary to avoid duplication, overlaps, conflicting or confusing opinions, and regulations. Both title VII and Executive Order 11246 (as amended) ban job discrimination by employers and unions.

All Government contractors with 25 or more employees are covered (as of now) by both title VII and the Executive order. In some cases an aggrieved person would not know with whom to file a complaint, his or her particular case might well fall under both the Executive order and title VII.

Mr. Chairman, in testifying August 4 before the OFCC panel, BPW urged that the guidelines be worded much the same way as those now used by EEOC in order to avoid just such confusion, uncertainty, and delay. The need for unification of effort in seeking compliance with equal employment opportunities was clearly brought home to us at that time.

However, we would make one reservation at this point. The EEOC is already burdened with more cases than its staff or funds can accommodate. If new and additional responsibilities are to be placed on that Commission, as this legislation would provide, then we urgently recommend that appropriate and sufficient allocations be made for staff and for funds comparable with these new duties.

Certainly, Mr. Chairman, we would not in any way want to dilute our efforts. We believe, however, that this need not be the case and simply wish to make note of the issue before this committee.

Thank you for your kind attention, Mr. Chairman and members of the committee. It has been an honor and a pleasure to participate in these hearings on legislation to further our commitment to equal employment opportunities.

Senator WILLIAMS. That is an excellent statement and I am sure it will be helpful to the committee. It is a very pleasant situation to be sitting here in agreement with the witness. I would like to ask you one or two questions. Earlier in your statement you spoke of your organization's interest in the working environment that is most suitable to both working men and women. Your interest there is broader than the question of discrimination or lack of discrimination in employment, I am sure.

Mrs. SHRIVER. That is true, and we don't ask for any more than we are asking for the men.

Senator WILLIAMS. This committee has been very hard at work in an area where there is total discrimination against women, and it was never raised as a question of wrongful discrimination. Coal mining. We are in charge of bringing greater safety and health requirements to the mines. No women go into mines. Do you know why?

Mrs. SHRIVER. Why?

Senator WILLIAMS. There is an absolute superstition about women down there in the mine. Did you know that? The only American woman that we have been able to determine who has been in a coal mine in relatively modern times in this country is Mrs. Franklin Roosevelt.

Mrs. SHRIVER. That is right, when she toured the mines in West Virginia, and I am from West Virginia.

Senator WILLIAMS. This wasn't true in other countries. I don't know if that is true in other countries today, but it certainly was not true in the 19th century. Remember in the novel by Emile Zola, a woman was a very important part of the whole mining process in the 19th century. Now if you want to take this on to get women in the mines, I can tell you that it is absolute discrimination. But I think it is a matter of more than superstition. It is the hardest kind of work. But women are protected by States from unusually long hours, or unusually hard work. Many States do protect women from the worst of the arduous labor.

I know in the State of New Jersey we were slow to come to protecting children from working, but earlier in protecting women in difficult work. What do you think about the State laws in that respect?

Mrs. SHRIVER. Mr. Chairman, we don't believe really that they are protective laws for women and in many——

Senator WILLIAMS. That is what the lawmakers say they are.

Mrs. SHRIVER. I know that is what they say. We do not agree with that. In many cases I think they are a great deterrent to women in management when you say they can only work 40 hours. You couldn't have anybody in management that works 40 hours. It couldn't be.

Senator WILLIAMS. They are overly protective?

Mrs. SHRIVER. That is right. They are trying to be overly protective.

Senator WILLIAMS. Very good. I have no further questions. Thank you very much and your organization.

Mrs. SHRIVER. Thank you, Mr. Chairman.

Senator WILLIAMS. Our next witness is Mr. Edward T. Anderson, associate secretary for human relations, Friends Committee on National Legislation. Mr. Anderson?

STATEMENT OF EDWARD T. ANDERSON, ASSOCIATE SECRETARY FOR HUMAN RELATIONS, FRIENDS COMMITTEE ON NATIONAL LEGISLATION; ACCOMPANIED BY ED SNYDER, EXECUTIVE SECRETARY

Mr. ANDERSON. Yes. This is our executive secretary, Mr. Ed Snyder, who just returned to the country from a year in the Far East.

Senator WILLIAMS. You may proceed.

Mr. ANDERSON. Mr. Chairman, my name is Edward T. Anderson, human rights secretary of the Friends Committee on National Legislation. The FCNL does not pretend to speak for the entire Religious Society of Friends, but for those Friends appointed by Friends yearly meetings and Friends organizations throughout the United States.

I speak today in support of the admirable intent of S. 2453 to allow the Equal Employment Opportunity Commission to do the task Congress conferred on it over 5 years ago. I commend the subcommittee's continued efforts to move this bill over the years. I am sure the committee will work out the most appropriate details to support Congress' commitment embodied in the creation of the EEOC.

In speaking about the term "equality" we must recognize the psychic difference in attitude between whites and blacks regarding this problem. In the words of the late Dr. Martin Luther King:

> There is not even a common language when the term "equality" is being used. Black and white people have a fundamentally different definition. Black people have proceeded from a premise that equality means what it says, and they have taken white Americans at their word when they talked of it as an objective. But most whites in America, including people of good will, proceed from a premise that equality is a loose expression for improvement. White America is not even psychologically organized to close the gap—essentially it seeks only to make it less painful and less obvious but in most respects to retain it.

On the OFCC question, I feel this agency should continue to deal with the large issue of fairness in Federal spending. EEOC should continue to aid in all possible ways the individual in struggling for fair employment. This morning I would only suggest a few compelling practical as well as moral reasons why the EEOC should be given the tools needed to protect the individual from discrimination in the job market from large institutions, whether corporate, labor, or training.

1. Our society can no longer afford not to fully tap its human resources. We face crucial shortages in skilled craftsmen, competent doctors, and public health workers, and educators. The sectors of urban housing, pollution control, reliable utilities, and efficient mass transportation will need millions of new workers as national priorities change and we hopefully begin to meet these needs.

For an advanced industrial democracy to tolerate college graduates to work as elevator operators for arbitrary, capricious and racist reasons is a tragedy for the frustrated individual and insane for our society as a whole. I shall later elaborate on the statistics of cost from such inequities.

Now, I pose these questions: Is our lack of resolve to move off dead center on equal employment opportunity worth the risk of having the potential scientist who could discover a cure for cancer languish in Harlem? Must our fear of offending a few recalcitrant businessmen and union leaders mean that vital public needs are unmet for lack of enough skilled workers? The President's Manpower Report in 1968 noted that over half of nonwhite workers are engaged in service, labor-

ing and farm jobs, double the percentage of whites. Mr. Chairman, I submit that not only can we not afford to waste our human resources while these critical needs exist, but that it is money in the bank of national well-being to insure that we do so. EEOC strengthening is an essential first step.

2. Investing the EEOC with cease and desist powers simply brings that Federal agency up to par with the powers of such others as the Food and Drug Administration, Federal Trade Commission, the food inspection standards of the Public Health Service and Agriculture Department, and the exacting standards of the National Aeronautics and Space Administration.

I ask you: If Grumman Aircraft built a moon craft which violated agreed upon standards, NASA would not ask their "voluntary compliance" and then, if that failed, leave it up to Neil Armstrong to bring suit to insure delivery of a safe vehicle. Why cannot the power to demand these same no-nonsense standards hold for other governmental agencies dealing with human, rather than technical relationships?

The problem of job discrimination also must be tackled so that the efforts to improve education, public health and job training will not be in vain, due to locked business or union doors. The President's great emphasis on jobs as a solution to welfare make it doubly necessary that we act to insure that the jobs which might be available will be open to anyone qualified.

The Justice Department has, for many years, had the authority to bring suit, if voluntary compliance has failed, to end certain unconstitutional actions. Surely in the realm of work which involves 80 million Americans daily, we can take the necessary steps to likewise enable equitable treatment and compliance with American ideals, as expressed in the Constitution and acts of Congress.

3. Speaking as a black person, I insist that we also consider the costs, for minority groups, of postponed action to beef up powers of the EEOC. Last year, testifying on the manpower implications of the Kerner Report, before the Joint Economic Committee, University of Utah Economist R. T. Robson said:

> . . . the minimum you come out with in terms of present cost is something in the neighborhood of $6.3 billion just in lost income because we failed to utilize these human resources of the non-white population in this country in the same way in which we utilize the white population.

Over $6 billion. That's over half enough to bring every family income above the poverty level. Another way of looking at the costs to the Nation of the nationwide pattern of job discrimination is that in 1967 only 24 percent of Negro men with high school diplomas worked at white collar jobs while 41 percent of whites with similar education worked in the clerical, managerial, and sales levels.

White collar jobs seem aptly named. Those who oppose the work of the EEOC and who refuse to give it needed power because it allegedly will inconvenience or "harass" unions and businesses must also consider the past and present affront to millions of minority group members—workers and would be workers. Last year's Manpower Report of the President noted:

> The overall occupational position of Negro men was estimated to be 23 percent below that of whites, with differences in educational attainment accounting for a third of the difference (or perhaps as much as half if allowance is

made for qualitative differences in education). The remaining difference is largely attributable to anti-Negro bias.

For the unions and businesses yet to act, equal employment opportunity means changing old habits in some cases. For the minority workers it means dignity and equal pay for equal work. For the country it means less money needed for programs which deal with the manifestations of job discrimination and greater national productivity and utilization of human resources to solve national problems. Passage of S. 2453, which would require little or no money, would be a good first step in that direction.

There is also the price we pay when a bleak outlook for employment serves as a disincentive for further education or skills training. A brutal self-fulfilling prophecy has resulted: minority workers are treated unfairly for it is believed they are inferior—because of this treatment, it pays little to further one's education. The Subcommittee on Employment, Manpower, and Poverty last year reported.

"Negro men who had attended college, including those who graduated, earned an average of $5,928 in 1966, which was $1,140 less than the average for white men who completed high school but did not go to college."

4. Finally, broadening the authority of the EEOC, especially as outlined in S. 2453 sets up judicious procedures which both assure settlement of discrimination grievances and fair, constitutional, and reasonable treatment of offending groups. The proper channels for appeal, privacy of records, informal settlement at any point, establishment of facts, are all embodied in the bill.

Allow me to suggest several further considerations: A complement to adding cease and desist powers might be carefully conducted public hearings at a certain point along the process. This could well aid in mobilizing community feelings behind applying our democratic ideals, which all share and proclaim, to specific practices of certain institutions.

Second, the choice of how to strengthen EEOC is not simply either cease and desist powers or the administration proposal, for both powers could well interact for even more effective enforcement. Also, I do not believe it must take years to set up any new program or authority.

Third, if EEOC is to be more than a token investigatory and bookkeeping bureaucracy, funding must be adequate to provide the staff needed whether their powers are increased or not.

I am aware, Mr. Chairman, of the sad history of legislation such as that under consideration. The Nation owes you a debt of gratitude for continuing with new proposals and further hearings in this area. I have no doubt that the subcommittee and the full committee will report out an excellent piece of legislation which firmly aims at the problem while assuring constitutional and procedural equity for all parties. Therefore I urge that we unite in devoting our efforts to bring prompt floor consideration and passage after reporting the bill.

I would conclude by asserting that for the worker discriminated against, there is no difference in his life between our failing to act at all and repeating all our fine intentions in an equal employment opportunity agency with no teeth.

Indeed, there is more of a sense of betrayal, of false promises with halfway inaction among the poor. Likewise, Mr. Chairman, for my

street friends, there is no difference between the committee reporting out a strong equal employment opportunity enforcement bill with action then blocked by a few willful men and our forgetting the whole matter and going home today. The main battle is to come.

If we hold that Government is organized to promote the general welfare then we shouldn't hesitate to remove the burden of proof for enforcing job nondiscrimination from the individual worker. For by definition, a plaintiff is a single individual, unemployed or underemployed and poor.

Government should insist that the right to orgnaize unions or to conduct business entails the responsibility of conforming to constitutional standards of fairness which are actually enforced. I urge positive action now to assure equality of employment for all Americans.

Senator WILLIAMS. Thank you very much, Mr. Anderson. That was an excellent statement. Could I have a little of your personal background? Are you full time with the Friends or how do you divide your time?

Mr. ANDERSON. Yes. I have joined the Friends Committee on National Legislation last July from San Francisco, University of California, Berkeley.

Senator WILLIAMS. The University of California, Berkeley?

Mr. ANDERSON. Right.

Senator WILLIAMS. It is still there. I was there a week ago yesterday. Well, you are a good addition and my good friend with you, I am sure will attest to that.

Welcome back to Washington.

Mr. SNYDER. Thank you, sir. I was in Singapore for 2 years with the Quaker international conferences and seminars program.

Senator WILLIAMS. I hope we have an opportunity to learn at informal session more about it. We don't have time to continue our discussion here because, as you know, we are apt to very shortly adjourn. I wonder though, Mr. Anderson, here in your prepared statement you suggest that equal employment opportunity could mean less money needed for programs which deal with the manifestations of job discrimination and greater national productivity and utilization of human resources to solve national problems. Are you talking there perhaps about our need for manpower training and development for job training corps?

Mr. ANDERSON. No.

Senator WILLIAMS. For welfare programs?

Mr. ANDERSON. I am speaking to those things that we pay for because we don't solve this problem of job discrimination.

A few weeks ago on my vacation I talked to my own family, my younger nephews, about, you know, what were they going to do after high school. Were they going to go to college or trade school. And I was sort of disappointed because of, I guess, what I am doing about their view of life, their realities, as they saw it, where they could go. And I see job training programs being set up as entry level when many kids have the ability already if it is really cultivated and they know those channels are there to go straight into it without going through the job training. That is the kind of cost I am saying would be reduced if real job opportunity was there.

I am not speaking to the State and local government discrimination issue. I think that has been adequately covered already. But that whole area is really something to look at. In San Francisco over the last 5 years we were in a hassle there with the fire department. My son, that is behind me, he thinks firemen are great guys. If he wants to be a fireman he is going to be a fireman. That is the kind of thing I am talking about. He shouldn't have to take a job training program to be something else, if he wants to be a fireman.

We really had a rough time in San Francisco trying to bring around the fire department. Dick Gregory made a joke out of it by saying that he felt terribly uncomfortable staying in the Mark Hopkins Hotel when there was only one black fireman in town. If there was a fire and the firemen put out a net and said jump from the 14th floor and he looked down and saw all those faces, he would be a little reluctant. I think that is very apropos.

Senator WILLIAMS. I repeat, I wish we could go on, but we have to go ahead.

Mr. ANDERSON. Fine. Thank you, sir.

Senator WILLIAMS. Thank you very much. There will be other occasions to have you before this subcommittee.

Senator WILLIAMS. Is Mrs. Nelson Burgess here from the Unitarian Universalist Women's Federation? Mrs. Burgess?

STATEMENT OF MRS. NELSON A. BURGESS, EXECUTIVE DIRECTOR, UNITARIAN UNIVERSALIST WOMEN'S FEDERATION

Mrs. BURGESS. Mr. Chairman, my name is Constance H. Burgess. I am executive director of the Unitarian Universalist Women's Federation, an organization of 18,000 women in the United States active in church and community. I am here today to support S. 2453, the Williams-Javits bill, to improve the administration and enforcement of the equal employment opportunity provisions of the Civil Rights Act of 1964.

In 1963 and 1964, support of the passage of the Civil Rights Act was one of the primary concerns of the Women's Federation. We have remained active in the field of civil rights, though our emphasis has changed. More and more, we realize that as women, we cannot act effectively on any social issue until our own status as full and equal members of society is confirmed.

I appear today as a representative of a women's organization and my testimony, perforce, will deal most directly with the problems of sex discrimination. However, I am mindful of the fact that grievous discrimination exists in employment on the basis of race, religion, and national origin and that this bill if enacted will go far toward achieving equal opportunity for persons in all these groups.

We seek equal opportunity for women in employment because of its humanitarian aspects. We, as women, are witnesses to the fact of discrimination. We live the discrimination the U.S. Department of Labor has documented, in salary, in promotion, in seniority rights. There are 29 million working women in the United States today, many of them heads of families and by themselves supporting as many children as the men working beside them.

One-half of these working women earn less than $3,700 yearly—barely above the poverty level. The Bureau of the Census, in its Current Population Reports for 1967, demonstrated this appalling wage and salary discrimination against women. It found that median yearly earnings for white women, employed fulltime, were $4,200, and for Negro women, $3,194. The comparative earnings for men were—white men, $7,396, and Negro men, $4,777. Thus, white and Negro women both earned less than Negro men and Negro men earned less than white men, and the Negro female is at the bottom of this economic scale.

Many women with college degrees earn no more than men with high school degrees, and women generally receive less than men with equal education. This pattern of discrimination places two-thirds of women in the labor force in secretarial or menial positions—and most of these women are working for compelling economic reasons, not pin money.

Furthermore, we find a very small percentage of women active in the professions—the doctors, scientists, and lawyers that make up a large part of our country's leadership. How are women to break the cycle of frustration and disappointment created by this prejudice? We are convinced that bringing women equal treatment will require strong and effective enforcement authority in the Equal Employment Opportunity Commission.

This bill, S. 2453, promises to bring the needed enforcement authority to the EEOC, through the granting of power to the Commission to issue cease-and-desist orders after determining that the employer or union is engaged in an unlawful employment practice.

Those who fear granting these enforcement powers to the Commission, I would say the bill amply provides for the use of State and local procedures where a fair employment law exists at those levels, in addition to the use of informal methods of conference, conciliation, and persuasion by the Commission, before invoking the cease-and-desist powers.

In addition, the right of judicial review of administrative decisions is an integral part of the bill. The Williams-Javits bill is only giving to the EEOC the powers that several other Federal administrative and regulatory agencies possess.

We are pleased that S. 2453 also extends coverage to State and local government employees. Any examination of our State or local governments will reveal a very low percentage of women in positions above secretarial staff. In connection with coverage of State and local government employees, I would suggest that the teaching profession be specifically mentioned as covered, since employees of educational institutions were specifically exempted from coverage of the 1964 act.

We applaud the framers of the legislation for recommending taking equal opportunity jurisdiction over Federal employees away from the Civil Service Commission and jurisdiction over Federal contract compliance away from the Labor Department. Neither the Civil Service Commission nor the Office of Federal Contract Compliance has been shown the necessary will and vigor in carrying out the sex discrimination provisions of the act. In the Civil Service Commission, two white males head enforcement while in the Contract Compliance Office there are no women at senior levels.

I believe that transferring authority in these two Federal areas to the EEOC will make it possible to fight discrimination more effectively throughout the governmental structure.

It is important to note that only 4 percent of the top Federal civil service positions are held by women. Women's voices in public affairs will remain muted until women are truly represented in responsible positions in our Government—until women are no longer novelties, given token appointments—but accepted as integral working partners in the governing process.

It has come to our attention that complaints before the EEOC have jumped from 11,172 complaints in fiscal year 1968 to 17,000 thus far in fiscal year 1969 and that there is a 3,000-case backlog. Approximately one-third of the complaints are based on sex discrimination. Because of limitations of budget and staff, the average time spent on each case is between 18 and 24 months.

I submit that justice delayed is justice denied and that the new enforcement powers contained in this bill are absolutely necessary if the EEOC is to carry out its mandate. It is also necessary that the EEOC be given ample funds to carry on its work and in this regard I am dismayed that the House cut back enforcement funds from $15.9 million to $10.9 million. I am hopeful that the Senate Committee on Appropriations will restore the $5 million slash.

For all of the reasons detailed above, the Unitarian Universalist Women's Federation, urges this committee to report favorably on S. 2453 and urges its speedy enactment in the Congress.

I am appending pertinent resolutions of the Unitarian Universalist Women's Federation and Unitarian Universalist Association.

(The resolutions referred to follow:)

[Resolution adopted by Continental Convention of the Unitarian Universalist Women's Federation, in St. Louis, May 11, 1969]

EQUAL OPPORTUNITIES FOR WOMEN

Be it resolved, That the 1969 Continental Convention of the Unitarian Universalist Women's Federation supports action which strengthens the rights of women in employment:

1. Urges greater efforts to enforce provisions of the Civil Rights Act of 1964 prohibiting discrimination in hiring, upgrading, and pay on account of sex.

2. Calls upon states and provinces to enact fair employment legislation prohibiting discrimination on account of sex where such laws do not now exist.

3. Encourages employers, including the Unitarian Universalist Association and its members societies, to make on-the-job training and experience available to women workers at levels commensurate with their potentialities for increased responsibilities and greater skills.

Reasons: Nearly 40 percent of the labor force is made up of women, many of them heads of families. The majority of others are women who are self-supporting or wives working for compelling economic reasons. In the past ten years the difference in median wage between men and women has widened. The proportion of women in professional or executive roles has declined. The new technology requires full use of educated, trained womanpower in responsible positions, and it is wasteful and morally wrong not to encourage women to develop their talents.

EMPLOYMENT

[From the Unitarian Universalist Statement of Consensus on Racial Justice, adopted by the Fifth General Assembly of the Unitarian Universalist Association, May 21, 1966, at Hollywood, Fla.]

Discrimination in employment stifles individual initiative and wastes valuable human resources. Government at all levels should enact strong legislation to assure equal opportunity in employment in the conditions of labor and in hiring

and firing procedures and in training and apprenticeship programs. Compensation should be nondiscriminatory. No person should be discriminated against on the basis of race, religion, national origin, or sex.

The Federal Equal Employment Opportunity Commission, activated in July, 1965, should be given the power to issue cease and desist orders against employers who practice job discrimination. In the meantime, the Department of Justice should move to use its power under the Civil Rights Act of 1964 of filing suits to secure equal opportunity, where it finds a pattern or practice of discrimination. The Department of Defense and other government agencies should be urged to use, whenever necessary, the powers granted under Title VI of the Civil Rights Act of 1964, to bar bidding on contracts, or otherwise withhold funds, from those who practice racial discrimination in employment.

Mrs. BURGESS. Thank you, Mr. Senator.

Senator WILLIAMS. Thank you very much, Mrs. Burgess and speaking as one member of the committee, I certainly join you in your statement and certainly the urging at the end. As with other witnesses, I wish we could develop some of your ideas further, but we will have to recess at this point.

Thank you very much.

Mrs. BURGESS. Thank you, Mr. Chairman.

(Whereupon, at 12:05 p.m., the subcommittee recessed to reconvene at the call of the Chair.)

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT

TUESDAY, SEPTEMBER 16, 1969

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

The subcommittee met at 9:30 a.m., pursuant to recess, in room 4200, New Senate Office Building, Senator Harrison A. Williams, Jr. (chairman of the subcommittee) presiding.

Present: Senator Williams.

Committee staff members present: Robert Nagle, associate counsel; Gene Mittelman, minority counsel.

Senator WILLIAMS. The subcommittee will come to order.

This is probably our final hearing on S. 2453, dealing with the Equal Employment Opportunities Act and its enforcement procedures, and the first witness this morning is Thomas E. Harris, associate general counsel for AFL-CIO.

Mr. Harris, we appreciate your being here this morning.

STATEMENT OF THOMAS E. HARRIS, ASSOCIATE GENERAL COUNSEL, AFL-CIO; ACCOMPANIED BY DON SLAIMAN, DIRECTOR, CIVIL RIGHTS DEPARTMENT, AFL-CIO

Mr. HARRIS. Thank you, Mr. Chairman. I am accompanied by Donald Slaiman, who is director of the civil rights division of the AFL-CIO. We thought we would reverse the usual procedure and have the lawyer read the statement and the other fellow answer the questions.

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 employers.

In 1962, George Meany, testifying before a subcommittee of the House Committee on Education and Labor on the equal employment opportunities bill, had this to say:

> . . . I do not hesitate to say that overwhelming instances of employment discrimination in this country are caused by the hiring and other personnel policies of employers.
>
> Having said this, let me also say again, as I have said in many other places, that discrimination does exist in the trade union movement.
>
> * * * * * * *
>
> In short, I am not here to ask for special exemptions for unions; quite the contrary. I hope the law you draft will cover the whole range we ourselves have written into our constitution and we hope you will make sure the law will also apply to apprenticeship programs of every kind as I urged this very committee last August.

The proposal for which President Meany was testifying in 1962 gave the Equal Employment Opportunity Commission enforcement powers modeled after those of the NLRB. That is the sort of legislation the AFL-CIO, and also the NAACP and other civil rights groups, consistently sought. The Civil Rights Act passed by the House of Representatives 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 Equal Employment Opportunity Commission, 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 exist multiple overlapping and conflicting remedies and agencies, which lend themselves to unwarranted harassment of unions and employers, though not to centralized and effective enforcement.

S. 2453 would substantially correct the first of these deficiencies and would bring about some improvement in the second.

As respects enforcement, the committee may be aware that the AFL-CIO has often complained that enforcement of the Labor 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, S. 2453 transfers to the EEOC 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 & Drydock 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. These employers spin out the legal proceedings as long as they can and evidently regard any backpay liability they incur as a cheap price for avoiding or postponing unionization.

For example, J. P. Stevens has been and is involved in nine separate rounds of unfair labor practice proceedings, beginning in 1963, when the Textile Workers Union initiated an organizing campaign in its plants. In "Stevens I" the company has, under court order, paid out $654,573.56 in backpay, and it is also involved in contempt proceedings. However, the company shows thus far no disposition to abandon its illegal antiunion campaign.

On the other hand, no employer or, for that matter, union, has shown this 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 may have, or think they have, in opposing unionism. Thus the EEOC has a far easier job, in this respect, than does the NLRB.

If any employer, or union, is determined to resist the NLRB, or title VII, to the utmost, and its counsel use every possible delaying device, enforcement will be very slow, and that is true whether initial enforcement is placed in an administrative agency or in the Federal district courts. However, that sort of last ditch resistance has thus far occurred only against the NLRB, not title VII of the Civil Rights Act.

Also, the available data suggests that the NLRB, even using a two-step procedure as it does, is faster than the district courts. Here are the figures on NLRB handling of unfair labor practice proceedings:

TABLE B.—COMPARISON OF MEDIAN TIME (DAYS) ELAPSED IN PROCESSING CASES

Stages	July December (fiscal years)				
	1964	1965	1966	1967	1968
UNFAIR LABOR PRACTICE CASES					
From filing to complaint	56	57	59	60	59
From complaint to close of hearing	53	62	73	67	64
From close of hearing to trial examiner decision	77	126	114	103	106
From trial examiner decision to board decision	123	136	105	119	120
Total, filing to decision	309	381	351	349	349

Source: Hearings before subcommittee of the Committee on Appropriations, House of Representatives, 90th Cong., 2d sess., Department of Labor, related agencies, p. 1106.

Mr. HARRIS. You can see that from the filing of a charge to the issuance of a decision in the case of unfair labor practices cases, the median time elapsed runs some 349 days in each of the 2 most recent years, 1967 and 1968. That is in the case of the Labor Board. The figures there show that the time elapsed from filing of charges to filing the complaint, from complaint to close of hearing, from close of hearing to trial examiner decision, and from trial examiner decision to Board decision.

For comparison, here are some figures for the time required for the disposition of civil cases by U.S. district courts; this table also appears below:

MEDIAN TIME INTERVAL (IN MONTHS) FROM ISSUE TO TRIAL FOR TRIALS COMPLETED IN THE U.S. DISTRICT COURTS, FISCAL YEARS 1964 TO 1968

Fiscal year	Median time interval (in months)		
	All trials	Nonjury trials	Jury trials
1963	10	9	12
1964	11	11	12
1965	11	9	12
1966	11	10	13
1967	12	10	15
1968	12	10	15

Note: Annual report of the Director of the Administrative Office of the U.S. Courts, 1968.

Mr. HARRIS. I have since looked into this further and have to state that the figures I gave you here are misleading; the pertinent figures are much more favorable to the argument I am making than the ones I set out here, so that my mortification is double.

I have with me the Annual Report of the Director of the Administrative Office of the United States Courts for 1968. Now, the figure which I set out in my statement showing the median time interval in months to dispose of cases in the Federal district courts from issue to trial is defective in that it takes in cases in which no court action was involved; that is, cases which were ultimately solved without any court action.

The time taken for those cases is much shorter than where court action is involved, because the median figure for disposing of those cases is 7 months. That pulled the overall figure, say, for nonjury trials down to 10 months.

However, if the proper figures are used and the figure is used for proceedings which do involve court action, the median time interval in months for disposal in the Federal district courts is 19 months for 1968, and that 19-month figure is the one that is relevant rather than the 10-month figure which I gave here.

Senator WILLIAMS. Is that including all cases—jury and nonjury, or trial and nontrial?

Mr. HARRIS. The 19 figure includes the cases in which there was a trial.

Senator WILLIAMS. I see.

Mr. HARRIS. The 10-month figure which I gave here includes all cases—trial and nontrial. The figure for nontrial alone would be 7 months, but the pertinent figure is the 19-month one, because the Labor Board figures with which we are comparing it is the figure for cases that did go to decision by NLRB.

This table also shows that the total number of cases tried in the Federal courts in the year 1968 was only 7,323. That is the total of all Federal courts in this country. If you add to that even a few hundred more cases, obviously we would bog them down still further.

This is a very low output figure, it seems to me, for the total trials in the Federal courts, but that is what it is. Also, the figures, of course, vary greatly from district to district. In the Southern District of New York, which is always the worst, in cases that go to trial the median time taken for disposition is 43 months from filing to trial—nearly 4 years.

Your EEOC cases, many of them, would, of course, end up in the courts that are already crowded. An EEOC case handled as a court trial in Southern District of New York would be merely an historical exercise.

I will hand the chairman, for his information, a copy of the annual report of the Director of the Administrative Office of the U.S. Courts.

Senator WILLIAMS. Thank you.

Mr. HARRIS. The director of that office tells me they have a new report due out in a few days but that the figures will not be perceptibly different. They show simply a little more delay, that the delay figures are slightly larger but the overall picture is not changed.

Senator WILLIAMS. You have given me the table of all cases?

Mr. HARRIS. Yes. The figure at the top of the table shows all of the cases for all of the Federal district courts, and then there follows a breakdown by circuit and district.

You will see that figure of 10 which I used over in the upper left-hand column and that is the figure that includes all cases, including those in which there was no trial, which is the great bulk of the cases.

Now, it appears that NLRB is much, much faster in handling these cases than the Federal district courts. I read over Mr. Kleindienst's testimony before this committee, and it appeared to me he was exceedingly evasive on this subject, that he simply was not prepared to tell the committee what the Department of Justice figures were on how long it took them to dispose of cases under title VII, but the Department of Justice by now has had a good deal of experience in this, and I would respectfully suggest if the committee would direct a letter to the Department of Justice and ask for its figures on title VII cases on the length of time taken, say, from complaint to decision of the district court and so on, that the Department could easily furnish those figures and that they will show that these district court proceedings take two or three times as long as NLRB proceedings. Certainly my own personal observation is to that effect.

Apart from the factors of delay, there are other important advantages of agency as against district court enforcement. The agency should develop an expertise which 100 district courts, many of which would have few cases under title VII, could not be expected to match. Also, the agency should develop a consistent and unified body of doctrine, which 100 district courts could not.

In both cases the 11 courts of appeals, and the Supreme Court would have final review, but appellate review serves only to check arbitrary rulings or clarify clearly erroneous statutory interpretations, not to develop a coherent body of law.

Next, I want to discuss the problem of multiple overlapping and conflicting remedies and the pointless harassment of unions and employers which results. While this subject is technical, I think it is necessary to go into it because some of the proposals which have been bruited about in the committee would make the present impossible situation even worse.

In that connection, I am sorry that Senator Prouty is not here today.

At the present time, a union which is charged with discriminating, because of race, against employees it represents, or with making insufficient efforts to prevent an employer from discriminating, may be called to account in the following forums:

1. In Federal court, in a suit for breach of the duty of fair representation. *Steele* v. *Louisville & N. R. Co.* (323 U.S. 192); *Whitfield* v. *United Steelworkers* (263 F.2d 546 (5th Cir. 1958), cert. denied, 360 U.S. 902).

2. In State court, in a suit for breach of the duty of fair representation. *Vaca* v. *Sipes* (386 U.S. 171).

3. Before the National Labor Relations Board, under the doctrine that breach by a union of the duty of fair representation is an unfair labor practice. *Vaca* v. *Sipes*.

4. Before a State or city fair employment practices commission, in areas where they exist. These commissions may or may not have enforcement authority.

5. Before the Department of Labor, Office of Federal Contract Compliance, under Executive Order 10925, in the case of employees of Federal contractors or subcontractors.

6. In Federal court, in a suit brought by the Department of Justice under title VII.

7. Before the Equal Employment Opportunity Commission, in a proceeding under title VII. The Commission has authority to investigate and to attempt to secure voluntary compliance by conciliation. However, the Commission does not have the authority which the NLRB has to conduct formal hearings and issue orders enforceable by the Federal courts of appeals. (S. 2453 would give the Commission those powers.) Instead, title VII is enforceable by suits in Federal district court by the Attorney General—paragraph 6 hereof—or by aggrieved individuals.

This is some seven different remedies, and if the hypothetical employee who has been discriminated against on racial grounds should also be a woman, there are two or three additional remedies in the Labor Department, which I have not mentioned.

These multifarious remedies and forums are not mutually exclusive, and our unions are sometimes burdened and harassed by a multiplicity of simultaneous or successive proceedings. An example is *Local 189, United Papermakers and Paperworkers, etc., and Crown Zellerbach Corp.* v. *United States* (5th Cir., July 28, 1969). A charge was filed with the EEOC in 1965, and the union and 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 in New Orleans. Next, in 1967, the Office of the Federal Contract Compliance, Department of Labor, entered the picture, and it insisted on certain remedies more far reaching than those negotiated 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 (1969) relief which went beyond that proposed by the OFCC.

The court observed:

> We cannot help sharing Crown Zellerbach's bewilderment at the twists and turns indulged in by government agencies in this case.

The court held, however, that the Government was not barred from pursuing the suit by these twists and turns.

We are strongly of the view that unions should not be subjected to these multiple proceedings, or employers either for that matter. The AFL–CIO believes that equal employment opportunity is a vital national policy which must be fully effectuated; and title VII would never have been enacted without the vigorous support of the AFL–CIO.

But that does not mean that we can support duplicative and overlapping enforcement procedures which are unduly and unnecessarily burdensome to our unions.

S. 2453 would greatly improve this situation, by centering in the EEOC the authority now divided between that agency, the Department of Labor, and the Department of Justice. It would not affect the existing private remedies; that is, remedies 1, 2, and 7 above, and private litigants would indeed be given an additional remedy, in that persons aggrieved would have standing as parties in EEOC proceedings. They do not in NLRB proceedings.

However, we appreciate and understand the desire of minority workers, and the organizations which represent them, to retain private rights of action, independent of the vagaries of, and changes in, Government agencies. S. 2453 preserves and enhances those rights.

The AFL–CIO supports S. 2453, and urges that the committee report it favorably.

I thank you.

Senator WILLIAMS. Thank you very much, Mr. Harris. There are one or two questions. I note you did not comment, in your statement, on the provisions that include extension of EEOC coverage to employers of eight and more or to unions with eight or more members and the extension of coverage to employment by State and local governments, and then another provision, transfer to EEOC of supervision regarding nondiscrimination in Federal Government employment.

I wonder if you and Mr. Slaiman can comment on these provisions.

Mr. HARRIS. We are in favor of all of those proposals. The proposal to go down to employers of eight is one which we have supported consistently for several years. That is one reason I didn't say anything about it here.

We are also in favor of extending coverage to State and local governments.

The Fair Labor Standards Act was recently extended to custodial employees of schools and hospitals which are publicly owned, and we think on the same principle there is absolutely no reason why this legislation couldn't similarly apply to Government employees and indeed in many areas there is urgent need to do it.

Some of the most flagrant violations—well, they are not violations, because the law does not apply, but some of the most flagrant examples of racial discrimination we have encountered are by the State and local governments. We feel very strongly that the law should apply.

There again that is something we have been on record on for several years.

On the transfer from the Civil Service Commission to the EEOC of the responsibility for policing Federal employment, some people who are active in this field and particularly the NAACP have advised us they don't think that the Civil Service Commission has done a good job and they were very anxious to have this shift made. We know of nothing that contradicts their position.

Mr. SLAIMAN. I might add, one of the fastest growing sectors of the labor market is Government employment, and the need to cover especially State and local governments is of extreme importance if you are discussing the overall opportunities of the minorities and the high unemployment rates of the minorities.

Senator WILLIAMS. You described the *Crown Zellerbach* case where EEOC and Office of Federal Contract Compliance—they had different approaches; that was it, wasn't it?

Mr. HARRIS. Yes, the different approaches were on remedies. The Government took three different approaches. First, a settlement was worked out with the EEOC and was put into effect. Then the Office of Federal Contract Compliance got into the act and demanded some more far-reaching remedies which the union would not go along with.

Then the Department of Justice got into the act and it went beyond the proposals of the Office of Federal Contract Compliance.

Mr. SLAIMAN. I think here the problem is not that there was continuous moving forward because of any—there would always be possible appeals procedure to get more. What is disconcerting is that three different Government agencies dealing with the same case, with overlapping periods on some of it, can bring different demands on the same company or union and the satisfaction of one is no guarantee that there will not still be trouble with the other.

Now, from a procedural point of view, from time spent, money spent, this is really onerous.

Senator WILLIAMS. Were these three different branches of Government all working with the same factual base and came to different conclusions in their positions?

Mr. HARRIS. Yes, Senator; that is exactly right. These branches of the Government don't really pay any attention to the positions that the others take.

One of the issues which is recurrent under the act, for example, is the matter of testing for hire, intelligence examinations, aptitude examinations, and so on, used by employers in hiring employees. This is a matter which I can say somewhat dispassionately is much more their problem than ours.

Well, the Department of Labor has put out regulations specifying what kind of tests may in its view legitimately be used under the Executive order. I attended a conference of the Equal Employment Opportunity Commission involving a company whose tests had been cleared by the Department of Labor. The EEOC concluded with the notion that they should not pay any attention to the clearance by Department of Labor or any suggestion, they should not pay any attention to the Department of Labor regulations. The coordination has been nonexistent.

Now, I think that is outrageous, that the Government can't develop a unified position on testing; it seems to me completely ridiculous. As I say, this is a matter that hits the employer much more than it does us.

Now, having observed these Government agencies for some years, I don't think they ever will achieve any coordination. I think the only remedy really is to center all of the authority in one place, and your bill would be a substantial move in that direction.

I am sure that if the Equal Employment Opportunity Commission were administering both title VII and the Executive order, it would use common regulations on testing.

Senator WILLIAMS. We have another bill, of course, that is before us, and I just wondered whether we could get your observations in this area we are discussing here, whether you would predict how it would work out under the Prouty bill.

Mr. HARRIS. I have studied that bill and the testimony on it. I think it will be apparent from what I have said that the proposal to let the EEOC go into district court instead of conducting administrative pro-

ceedings and issue orders itself, does not commend itself to us. We think that would be lower, much lower, but less effective, that it would bog down the district courts, that either the cases would go into the district courts like that of the Southern District of New York, which are already 4 years behind in their work, and would bog them down further, or the cases that hit some of the rural districts occasionally would go before judges who knew nothing about title VII and never would get enough experience to handle it.

Also, the changes that S. 2806 makes in the existing law are really quite trivial. At the present time if the Commission is unable to effect conciliation, an aggrieved individual can go into district court. The Commission can appear amicus curiae there and it does and can also appear in the courts of appeal and it often does so.

Alternately, the Department of Justice can bring a suit in Federal district court. All this would do would be to allow the Commission to bring suit in district court in addition to the Department of Justice and in addition to the private party.

The problem of multiplicity of overlapping remedies that I described would be accentuated by this. The enforcement would not be speeded up, but would, if anything, be a little slower. The Commission oddly would lose the authority it now has to appear as an amicus curiae in the courts of appeals because that function would be vested in the Attorney General.

I am aware that the Chairman of the Commission says that he drew this bill. It doesn't look like that to me; it looks like the Department of Justice wrote it. It says that the Attorney General is to conduct all litigation to which the Commission is a party in the courts of appeals; that is, once the case leaves the district court; this is a degree of Department of Justice control which is unknown in the case of any other agency as far as I am aware.

The NLRB, for example, handles its litigation in the courts of appeals and substantially handles them in the Supreme Court, subject to the overriding authority of the Solicitor General, and the same thing is true of the Communications Commission, Wage and Hour Division, and every other agency I know of.

So that far from building up the Commission as the top controlling Government agency in the field of race discrimination, this would give the Department of Justice a degree of control which it does not have in the case of any other agency.

Now, my overall reaction to the bill is that it amounts to very little. It is as if the administration had decided it ought to have a proposal of its own and told somebody to go out and draw a bill up that does as little as you can think of. That is what I think S. 2806 does. It does not effect enough change to be worth taking up the time of Congress.

Mr. SLAIMAN. With this exception: I worked with State FEP legislation in Michigan; it used to be the position of all of the opponents of FEP to have all problems settled in the courts and give no power to the quasi-judicial expert agency. All of the civil rights groups and the pro-FEP people always insisted on the reverse situation, to have the courts as a stage of appeal to consider procedural and jurisdictional questions and let the substance be decided by an agency that could build an expertise in the field.

Mr. HARRIS. I think in this connection the information I suggested earlier as to how rapidly the Federal courts have disposed of title VII cases would be highly pertinent to this.

Senator WILLIAMS. Gene Mittelman, a representative on the minority side, would like to ask some questions.

Mr. MITTELMAN. Mr. Harris, I would like to go back to the problem of overlapping, duplication, and your comments on transfer of OFCC to the Equal Employment Opportunity Commission.

This issue has been discussed by a number of witnesses before the committee, and certain objections have been raised to this transfer. I think two principal objections were stated: first, that transferring OFCC to the Commission and centralizing the employment discrimination function in one commission would set up the Commission as a target, whose effectiveness could easily be hampered simply by controlling its appropriations.

Second, it was pointed out that the problem of coordination and overlapping and duplication could be solved through directives requiring OFCC, Justice, and the Commission to coordinate their activities in this area. I think an effort has already begun in that direction in the case of testing, which you mentioned.

I wonder if you have any comments.

Senator WILLIAMS. Where do those directives come from, if I could interrupt?

Mr. MITTELMAN. The directives could come from the President or Budget Bureau.

Mr. HARRIS. These agencies have been talking about coordination ever since 1965. I have not perceived any yet. I think it is in the nature of government that separate agencies are simply not going to achieve that degree of coordination.

On the fact that the appropriation could be used to cripple the agency, that, of course, is always true of any agency.

As far, though, as transferring OFCC to EEOC, that does not involve any large transfer of personnel or appropriation. What we are talking about is transferring only the relatively small operation in the Department of Labor which is meant to supervise and coordinate the Government procurement officials in other agencies. The great bulk of the personnel that enforces the Executive order is to be found in the various procurement agencies, with only a top centralized staff in Labor. I don't know how many people it has; do you, Don?

Mr. SLAIMAN. Relatively few in the Labor Department. I don't know exactly.

Mr. HARRIS. I think we are talking about something like 20 people maybe, something in that order, not any large group of personnel.

The bill does not propose that the responsibility of the individual procuring agencies be shifted in any way for insuring enforcement work.

Mr. MITTELMAN. Some of the witnesses who discussed this issue—and I include among them the Chairman of the Commission, Mr. Brown—have also pointed to the large backlog that now exists with the agency and the increased workload if the cease-and-desist power that is given to the Commission, objecting to transfer of OFCC at least at this time.

Do you think that is a consideration for the committee?

Mr. SLAIMAN. Let me mention that one of the reasons for cease-and-desist orders as part of the reason for the backlog, is the lack of power of enforcement in the agency. The purpose of FEPC is to maximize conciliation, to get most of the cases solved by conciliation, but a sanction is needed to make people play the game. The most recalcitrant respondents can spin around and not conciliate because they don't have anything to worry about.

One of the reasons given consistently by EEOC for the failure to get more results has been their lack of power. This has been said by one chairman after the other since its inception. I agree that just giving the sanction will not automatically take care of the backlog. There has to be more budget. There has to be more expertise. There has to be a development in the agency of people and experience that will make it a more effective agency.

But the whole thrust of the civil rights groups and the agency itself in looking to some sanction to the agency has been the cry that one of the reasons for the big backlog and lack of results is the fact that the main agency set up under title VII had no power.

Mr. HARRIS. I agree with all of that. I think that if the Commission is given either the authority to conduct hearings and issue cease-and-desist orders or the authority to sue and sue in district court, it is going to need some additional personnel and it is going to take some time for it to be able to do that effectively.

But I think it would need more personnel and more time to handle the district court suit function than it would to handle the NLRB type of procedure. I think there are a good many trial examiners available in the Federal Government, many of them underemployed, such as those at the Federal Trade Commission, so it shouldn't take too long to gear up on that.

Also, the same number of people can handle more administrative procedures than can handle court procedures, because of the much greater formality of the latter.

Mr. MITTELMAN. I think that is correct, but I would like to take issue with the statement that giving the Commission this cease-and-desist power will really break the backlog. The backlog, as I understand it, comes in the area of making reasonable-cause determinations. Conciliation does not start until reasonable cause has been found to exist.

What exists at the present time is an 18-month backlog of investigational procedures rather than conciliation procedures. Perhaps I am mistaken, but that is what I understand Commissioner Brown testified to and what the Commission's annual reports have said.

Mr. SLAIMAN. We find that the Commission has done an increasingly better job in getting investigations and findings. What we have not found coming through is a sharp increase in the number of successful conciliations.

Now, this is not for the whole 3- or 4-year history of the Commission. For a long time, everything moved slowly, but we have been given the impression that they have improved their efficiency in getting investigations, in getting findings, in getting the process moving. Where they have broken down more than anywhere else is in producing actual results of successful conciliations.

Now, part of the backlog in the areas you mentioned is cumulative. It has spilled over from the first few years, and I sympathize with the Commission's need for more appropriations and more staff, but I want to repeat, it has been their cry through the whole existence of the Commission that one of the main problems they have—aside from lack of experienced staff and enough of it and the growing pains of getting a new agency rolling—has been the fact that the agency has no powers whatsoever.

Mr. HARRIS. Of course, we want to tell you, Mr. Mittelman, this bill of Senator Williams', we don't tell you it is going to cure all of the Commission's problems. That is obviously not the case. It does have a big backlog and has a lot of problems that do not stem from its lack of enforcement authority.

It has had four chairmen in 4 years. It has never had anyone there in charge long enough to really settle down in doing the job. I think half of the time it has not even had a general counsel, and anyone knows that lawyers are absolutely indispensable. As far as I know, they don't have a general counsel right now and it is going to take some time if this bill is passed.

Sure, they will need more money, they will need more staff, and they will need some time to get started. But we think this is a step in the right direction.

I certainly agree with Mr. Slaiman that there will be larger voluntary compliance if the Commission has the possibility of issuing a complaint. As it is, many people feel they can sit back and do nothing when the Commission is investigating because nothing will conceivably happen at that point.

Mr. MITTELMAN. The last point I want to raise in connection with this particular issue is the possible problem of an inconsistency in function under the Executive order program and the Civil Rights Act of 1964. The Civil Rights Act of 1964 prohibits overt discrimination. The Executive order, at least as interpreted by some, requires considerably more. It requires affirmative action, regardless of whether actual discrimination has been practiced in the past.

The issue is perhaps more clearly drawn in connection with the revised Philadelphia plan recently promulgated by Department of Labor. I don't want to get into the merits or demerits of the plan or the dispute concerning its legality. The question I want to raise is this, isn't there essentially a different thrust to the two programs, and might there not be some inconsistency between a commissioner's role insofar as he is in charge of administering the executive order program and the quasi-judicial role of sitting in judgment of the cases, individual cases that arise under the Civil Rights Act of 1964?

Let me give you an example of what I have in mind. Let us take the Philadelphia plan, for example. Suppose the Commission, acting in its capacity as administrator of the Executive order program, makes a routine compliance investigation and requires certain changes in the company, which are made but which are not satisfactory to a particular aggrieved individual, who proceeds to file a charge before the Commission. The charge is investigated in due course and comes before the Commission. Isn't there a problem with the same commission sitting in judgment in both instances?

Mr. HARRIS. I think Don and I both will answer that one. I will try first. It seems to me you raised two problems, one procedural and the other substantive.

On the procedural problem, if this authority to enforce the executive order is transferred to the EEOC, I would think we would have to work out some procedures to coordinate it with their administration of title VII, that the contract revocation or blacklisting, for example, should only come down at the end of the road and only in clear cases after the contractor has been given an opportunity to get into compliance; that is what goes on at the Labor Department now.

Now, on the possibility of there being a substantive difference in the executive order and title VII, that, of course, gets us into the differences of opinion between the Comptroller General and the Attorney General.

I would say that if the affirmative-action program under the Executive order goes beyond title VII, that it probably not only goes beyond it but violates it; but in any event, I think that the two need to be completely coordinated substantively. I don't think it will do—whether the authority is divided, whether the authority is in two different agencies or one—I don't think it will do to have the Government carrying out programs under the Executive order that may be in violation of title VII. I think the two have to be meshed and made identical.

Mr. SLAIMAN. Let me add, I think you have two issues confused. One is the assumption that, since title VII deals with discrimination and the Executive Order calls for affirmative action, there is no affirmative action implicit in title VII. Any conciliation settlement can call for affirmative action by an employer in a review.

What is involved in the difference is whether affirmative action means quotas, and there you are not talking of affirmative action but specific interpretation of what effective affirmative action is. Nobody said that affirmative action—and this include the Comptroller General under the Executive Order—whatever its nature, its demands, violates title VII.

What is under discussion in the Philadelphia plan is the question of whether a quota is involved, which is banned by title VII. I want to repeat, there is nothing in title VII or in the whole experience of FEP that decisions under an FEP law or ordinance merely say: Stop discriminating. Every conciliation agreement or every order under title VII says: Here is what must be done to rectify the discrimination. So that I don't see any contradiction at all between the concept of affirmative action and title VII.

Mr. HARRIS. Title VII actually, of course, uses the language "affirmative action," which is taken over from the National Labor Relations Act; section 706(b) authorizes the court to order such affirmative action as may be appropriate; and section 707(a), dealing with pattern or practice suits by the Attorney General, goes farther. He is authorized to request "such relief as he deems necessary to insure the full enjoyment of the rights herein described." That is a very broad affirmative mandate.

Mr. MITTELMAN. I respectfully disagree with your interpretation of the Comptroller General's opinion. Obviously, he did deal with the quota problem. But I think it is much, much broader.

Mr. SLAIMAN. I was not discussing the Comptroller General's opinion but your statement as to conflict between affirmative action and title VII. I don't think it exists.

Mr. MITTELMAN. It seems to me under title VII, before affirmative action comes into play, you must find affirmative discrimination, and that is not necessarily so under the Executive order program.

To put it succinctly, it may well be that the title VII only deals with what might be called active discrimination, whereas the Executive order program, I think, has been construed by at least some to deal with passive discrimination: that is, discrimination which is not overt but hiring policies which have the net result or net effect of discrimination.

Mr. SLAIMAN. The Justice Department does not agree with you, and in all of their title VII suits, they include any kind of passive discrimination which brings the results.

Mr. HARRIS. I don't agree with you, either. If what you say is true, in any event I think the Executive order and statute ought to be brought into accord, whether separately administered or otherwise.

Mr. MITTELMAN. Thank you. No further questions.

Senator WILLIAMS. Thank you very much, gentlemen. You have been very helpful.

We had scheduled the Assistant Attorney General from the State of Michigan, Mr. William F. Bledsoe, who could not make it, but the record will include his statement if he submits it.

Next Mr. Andrew Yslas, National Legal Adviser of the American GI Forum.

Mr. YSLAS. Good morning.

Senator WILLIAMS. We have your statement. Proceed as you desire.

STATEMENT OF ANDREW C. YSLAS, NATIONAL LEGAL ADVISER, AMERICAN GI FORUM

Mr. YSLAS. I am Andrew Yslas, National Legal Counsel of the American GI Forum. The GI Forum is a Mexican-American family organization with chapters in 23 States and the District of Columbia.

During its national convention in August 1969, the GI Forum adopted a resolution to support S. 2453. We passed this resolution in favor of S. 2453 because the 10 million Spanish-speaking people of our Nation have suffered job discrimination for more than 100 years.

We have come to the point that we must get relief or the Mexican-American will soon take to the streets to vent his frustrations against those who consistently and systematically discriminate against us in employment.

For over 20 years, the GI Forum has fought this exclusion with lawsuits, negotiations, and public pressure. In fact, the organization was formed in 1948 in direct answer to the humiliations and acts of discrimination suffered by returning Mexican-American war veterans. In 1946, the executive secretary of the Texas Good Neighbor Commission had written about such a Mexican-American soldier.

> He was an American hero, and his face and neck offered mute testimony of the sacrifice he had made for his country. The shrapnel that caught him in Germany had shattered his left cheekbone, drawing up his mouth in a set grimace. He was blind in his left eye, deaf in his left ear, and was just regaining the power

of speech . . . He was an American hero, who had won the purple heart and the coveted blue and silver badge of the combat infantryman, but his name was Arthuro Misquiz, and his home was a little town in West Texas.

When Arthuro recovered enough to go out, he found that to the towns people he was still a "Mexican," and Mexicans were not served in the cafes or restaurants, were not given a haircut in "Anglo" barbershops, were not allowed to sit in the main part of the movie theater, and were not given employment. Today, public facilities are generally open to Mexican Americans but decent job opportunities are not.

It was in the late 1940's and 1950's that the GI Forum joined with other Mexican-American organizations in urging the creation of State fair employment practices commissions. At every opportunity, we proposed and supported civil rights legislation at the State and National level in the hope that job discrimination would be methodically eliminated.

Today, we have concluded that neither the State FEPC's nor the Equal Employment Opportunity Commission, under present law, provide effective relief to those who are victimized by discriminatory employment practices. In many instances, therefore, the GI Forum and the Mexican-American people are taking direct action against those who discriminate.

At its 1968 national convention, the GI Forum passed a resolution calling for a mass boycott of the Adolph Coors Brewery. Its Golden, Colo., plant is situated in an area with a large Mexican-American population and yet it has a very small Mexican-American work force, employed almost exclusively in menial jobs.

Specifically, in 1967, Coors had approximately 1,650 employees, of which three were Spanish-surnamed. Coors also owns a large porcelain plant in Denver, Colo. Of the 1,000 persons employed there, less than 3 percent are Spanish-surnamed. Yet, the Spanish-surnamed make up about 10 percent of the State's population.

The GI Forum is specifically demanding that Coors eliminate testing procedures which serve to weed out prospective minority group employees.

I should point out that the boycott was undertaken after State and Federal Government efforts were unsuccessful.

At the Kitayama Bros. flower farm outside Brighton, Colo., five Mexican-American women chained themselves together at the main gate to dramatize their need for higher wages and better working conditions at the huge flower farm. The chains were cut with an acetylene torch and, when the women refused to move, they were gassed without warning.

In Salt Lake City, Utah, the GI Forum joined other groups in submitting demands to the Equal Opportunity Conference meeting in that city on June 10, 1969. The demands included that retailers hire Mexican Americans or the American GI Forum and SOCIO, a fellow Mexican-American organization, will initiate boycotting and set up picket lines.

The GI Forum has also urged the American Telephone & Telegraph Co. and the Mountain States Telephone Co. to appoint Mexican Americans as sensitivity instructors and to recruit Mexican Americans for both production and management jobs. The utilities industry, in general, has a miserable record in the employment of Mexican Americans,

and the GI Forum is contemplating further action if improvements are not forthcoming.

We do not enjoy holding boycotts nor do we have the money and time to go through lengthy litigation in court. The State and Federal agencies dealing with job discrimination are ineffective, however, so we must take matters into our own hands.

Discrimination against Mexican Americans is not limited to private industry. In local, State, and Federal employment, Mexican-American employees are heavily concentrated in the laborer and general service jobs. Typical is a Mexican American who recently retired after serving for 31 years as a city watermeter reader. Thirty-one years as a watermeter reader.

Discrimination still exists at many military installations located throughout the Southwest. This is serious inasmuch as they are among the largest employers in that region. Kelly Air Force Base in San Antonio is one of the most glaring examples.

While the facility employs large numbers of Mexican Americans, they are primarily in the lower grades and consistently denied promotions, with the reason being given that they are not qualified. The protests made by Mexican-American groups and the subsequent investigations by the Air Force and Civil Service Commission have resulted in little improvement.

At Cannon Air Force Base in Clovia, N. Mex., the New Mexico Advisory Committee to the U.S. Civil Rights Commission found a Mexican American heavy-equipment operator who, told there were no openings, took a dishwashing job. After 21 months, he is still washing dishes.

Another, a qualified steamfitter with veteran's preference, is still washing dishes after 2 years. Though he was assured repeatedly of being the No. 1 applicant for a steamfitter vacancy, his application, upon investigation, could not be found.

A review of General Schedule employment at the base revealed three Negroes and no Spanish Americans out of 33 GS–3 employees, and one Spanish American and no Negroes out of a total of 18 GS–7 employees. No minority-group employees appeared to hold jobs above GS–8.

I use these examples merely to point out that all efforts to date have been ineffective in erasing discrimination and that we desperately need S. 2453 if this malady is to be cured. We need the inclusion of State and Federal employees under a strengthened Equal Employment Opportunity Commission.

We need the level of coverage dropped to employers with eight or more employees. We need much greater enforcement against discriminatory practices by companies with fat Government contracts.

Above all, we need a strong Equal Employment Opportunity Commission with cease-and-desist powers. In a recent (1969) study by Richard P. Nathan of the Brookings Institution, the potential role of cease-and-desist power is considered.

Based on his review of the Commission's first 32 months, Nathan concludes that such power is "* * * essential no matter what else is done." The author indicates that there is reason to believe that cease-and-desist authority would produce more, not fewer, conciliations, a

major consideration since only about 48 percent of EEOC's conciliation efforts are successful.

Nathan goes on to say that despite the fact that the Commission has acted vigorously in attempting to implement the broad policy goals of title VII, its impact, in its first 32 months of operation, on discrimination in the Nation's total job force has been minimal. Every day, too many Mexican-American workers find the living proof of this statement.

For that reason, we urge the Congress not to delay in granting what has been proved a very effective tool, cease-and-desist authority to the Equal Employment Opportunity Commission.

During the June 1969 hearings held by the Senate Subcommittee on Executive Reorganizations on S. 740, a bill to establish the Interagency Committee on Mexican-American Affairs, Commissioner Vicente Ximenes of the Equal Employment Opportunity Commission testified that:

> For a span of three centuries the Spanish-speaking peoples settled the vast Southwest. They tilled the soil, formed laws and governments, established commercial trade routes. * * * In the 19th century the Nordic and Anglo-Saxon people conquered and/or bought the southwest area of the United States. Until recent years this nation has turned its back and refused to hear our appeals for help against those who drove us from our lands, violated our civil rights, and instituted an educational system designed to produce hand laborers. We were forgotten except by our local draft boards in time of war, by the employers in search of cheap labor, and by political bosses at election time. Put another way, it has been said that in time of war we are Americans, during elections we are Spanish Americans and when we want a good job we are dirty Mexicans.

Mr. Chairman, we are tired of this state of affairs. We are tired of equivocations. S. 2453 is a realistic job opportunities enforcement proposal, and the American GI forum urgently calls for its enactment.

Senator WILLIAMS. Thank you very much, Mr. Yslas. We are, of course, very familiar with the American GI forum here in Congress and applaud what you stand for and all of the work you are doing and will do.

I wonder if you could described what was done other than the boycott activities that you described at Coors Brewery and Kitayama and the Mountain States Telephone, and A.T. & T., too: what have you helped others to accomplish through present EEOC opportunities through conciliation, negotiation, whatever you want to call it: what have you done at that level? What have you done through lawsuits to advance the most necessary objectives of equal opportunity employment?

Mr. YSLAS. Senator, at this point I have just assumed the role of national legal counsel. I have not the data before me to present at this point.

Senator WILLIAMS. Well, do you know whether anybody, prior to your present position, whether anybody out at the forum has helped individuals press their position of discrimination, of wrongful discrimination; in other words, did EEOC deal specifically with the Coors Brewery situation, which is out in Golden, Colo., is that right?

Mr. YSLAS. Yes.

Not specifically, Senator; however, we have had individuals out of EEOC who have handled individual cases involving school segregation, et cetera, but nothing on the Coors specific situation.

Senator WILLIAMS. How about the other situations you mentioned—Kitayama?

Mr. YSLAS. No.

Senator WILLIAMS. I wonder why it is that this was—as you suggest, if this was so clearly discrimination against Mexican people and people of Mexican background, why did not individuals or groups in the area press a claim of discrimination?

Mr. YSLAS. Just like everything else, Senator, it takes time to coordinate our efforts. I believe now that the GI forum has arrived—we are here in Washington. It has taken time to coordinate the legal staff, the talent within our people to organize and bring forth an active, positive program to enforce the discriminations that exist within our people.

Senator WILLIAMS. All right; we appreciate your testimony.

Where are you headquartered?

Mr. YSLAS. My offices are in the 6200 block of Annapolis Road, Hyattsville, Md.

Senator WILLIAMS. Where is your home?

Mr. YSLAS. I was born in New Mexico originally and I have been here for the last 22 years, practicing law in Maryland.

Senator WILLIAMS. You practice law in Maryland where?

Mr. YSLAS. Prince Georges County.

Senator WILLIAMS. Thank you very much.

Mr. YSLAS. Thank you.

Senator WILLIAMS. We will now receive a statement for the record from Senator Stevens of Alaska.

STATEMENT OF HON. TED STEVENS, A U.S. SENATOR FROM THE STATE OF ALASKA

In enacting the Civil Rights Act of 1964 Congress established as a national priority the equitable employment of all Americans, regardless of race or religion. In cosponsoring S. 2453, I felt that we must empower the Equal Employment Opportunity Commission, charged with assuring fair employment opportunities for all Americans, with the strength to consistently enforce this national goal.

My home State of Alaska, for example, has begun an industrial expansion unparalleled in its economic history. New natural industries are planning to provide employment for Alaskans that have long suffered from chronic unemployment. It is my hope that the development of our vast potential will open opportunities for all Alaskans for fair employment. A strengthened employment opportunities commission will guarantee that such worthwhile employment will be fairly available to all Alaskans and to all working Americans.

In Alaska, as a State representative, I worked long and hard to assure Alaskans equal opportunity. I strongly support here, in our Nation's Senate, this opportunity to fulfill my State's and our Nation's goal of equitable employment for all Americans.

Senator WILLIAMS. The record will be kept open for a few weeks for the statements of those who could not attend the hearings and for other pertinent material submitted for the record.

(The material referred to follows:)

PREPARED STATEMENT OF MRS. BRUCE B. BENSON, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

The League of Women Voters of the United States is deeply aware—and deeply concerned—that this nation is not moving as speedily as it should to fulfill the promise of civil rights legislation. We are determined to do our utmost to bring an end to poverty and discrimination in this country and to promote equality of opportunity for all Americans in the areas of education, employment and housing.

On a national level since 1964 we have been studying the extent and depth of poverty and discrimination. Ours is a grass roots organization of nearly 160,000 members in the 50 states, the District of Columbia, the Virgin Islands and Puerto Rico who on state and local levels sought remedies to these problems for many years before the problems became a focal point of our national attention. Today all League members know that employment discrimination based on race, color, religion, sex or national origin clearly persists despite Title VII of the 1964 Civil Rights Act. Admittedly there has been *some* progress—but not nearly enough!

The Equal Employment Opportunities Commission (EEOC) has the principal responsibility for administering Title VII. Its chief function is to promote voluntary compliance with Title VII, but the EEOC is hampered in its efforts to fulfill its mission because there is no accompanying authority to enforce compliance.

The commission's record is impressive in one sense. In Fiscal Year 1968, according to the EEOC's latest annual report, it was fully successful in 283% more cases than in Fiscal Year 1967, and 28,600 individuals benefited from EEOC's conciliation efforts in 1968 as against 8,500 individuals in 1967. But when surveyed as to failures *vs.* successes, the record is far less impressive. Sixty-six successes were matched by 80 failures in 1967, and a year later, in 1968, 253 successes compared unfavorably to 334 failures.

The League believes that with authority to insist on conciliation, the commission will improve its success record, and the intent of Title VII will come closer to attainment.

The experience of states with fair employment practice agencies supports the idea that the EEOC record for gaining *voluntary* compliance will improve when strengthened with the capability to issue cease and desist orders. Based on experience with state agencies, the Civil Rights Commission, in its 1969 Report on Equal Opportunity in State and Local Government Employment, recommends that the EEOC should be conferred with the power to issue cease and desist orders to correct violations of Title VII.

> ". . . Of the states presently having fair employment practice laws, the vast majority give the state commission administering the law power to issue cease and desist orders. Giving EEOC similar power would enhance its conciliation role by strengthening its bargaining power and make it a far more effective agent in ensuring equal employment opportunity."

The League supports the provision in S. 2453, as it has supported similar legislation in the last Congress, to give the EEOC authority to issue cease and desist orders.

The League also supports the provision in S. 2453 which would extend the commission's jurisdiction to companies hiring eight or more employees as against the 25-employee minimum in the present law, and to employees of state and local governments. This provision would extend the equal employment protection now enjoyed by 44 million workers to an additional nine million workers employed by businesses with more than eight but less than 25 employees.

Protection of state and local government employees against discriminatory practices is important. The total number employed at these levels is a significant number, and the Civil Rights Commission reports "definite discriminatory elements in state and local government personnel systems." The Civil Rights Commission states that in February, 1967, the country's 50 state governments; 3,000 county governments; more than 17,000 towns or townships; 18,000 cities, and more than 21,000 special-purposes governments employed 4.4 million persons, exclusive of employment in the field of education.

The total of state and local employees has increased 83% since the early 1950's, while federal government employment has remained fairly constant during the same period. The increase of state and local public employment can be expected to continue as population expands, making increasingly important the protection of these employees.

We have all become more sensitive in recent years to the necessity for developing within government at all levels a greater responsiveness to the needs of citizens. As government employment discrimination lessens at all levels, hiring of minority groups' members obviously will increase. The experiences and backgrounds of these groups will help to develop this responsiveness within government. The League of Women Voters is convinced that expansion of EEOC's jurisdiction to include employees of state and local government can have a double benefit: The protection of the rights of the employees themselves and a positive effect on the government's responsiveness to the needs of *all* the people.

We hope for the enactment of these provisions of S. 2453 to give EEOC enforcement authority and to extend its jurisdiction, believing they will erase some of the Title VII deficiencies. The federal government has a special responsibility to ensure equal employment opportunity for *all* Americans. Simply to set up a commission with assigned duties does not fulfill this responsibility. The EEOC *must* have authority to carry out its assignment.

PREPARED STATEMENT OF ELIZABETH BOYER, PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE (WEAL)

Mr. Chairman, Senators, and guests: I am here as president of a newly-incorporated group which is primarily concerned with employment and educational opportunities for women. Since the job advancement and upward mobility of women have been lagging, even since the enactment of Title VII, we are naturally concerned with enforcement of provisions for job equality.

The work of our organization is being encouraged by many other groups and individuals who are concerned at the slowness of progress in this area, as well as in the racial aspect. Because of the high costs of government, and economic pressures associated with inflation, the ordinary citizen is taking a much closer look at the operations of his government, and at the spending of his tax dollar, than he formerly did. The working woman, because of the job discriminations against her, as every known statistic shows, is in the worst position of all, and I can tell you that these women are reaching the end of their patience. It may surprise you to know that our organization is receiving a great deal of male support. Many men can no longer support their households and educate their children without the help of their wives. Both the Gallup and the Kentile surveys disclosed that overwhelming majorities of men now want their wives to work- and, presumably, to earn as much as they are fairly entitled to earn.

Great dissatisfaction has thus been felt with the operations of the Equal Employment Opportunity Commission, as to its actual impact on the job market for women.

Whenever criticism has been brought on this score against EEOC, the ready response has been: "Give us cease and desist powers." The former head of the agency, Mr. Alexander, constantly stressed the need for these powers.

Since those employers who intended to comply with the provisions of Title VII have presumably already done so, we now have the hard core non-compliers to contend with. They will have to be forced into compliance. Shockingly, this seems to be an overwhelming majority of employers, if statistical findings on women's employment advancement are to be believed.

It is idle to expect that an understaffed and underfinanced agency can cope with this situation effectively if heavy procedural requirements are laid on its shoulders.

The two bills which have been submitted to increase the enforcement powers of EEOC differ widely in this respect. Senate Bill 2806 simply authorizes EEOC to bring a court action against the defendant in Federal District Court. This sounds very nice, but I am a lawyer, and I know very well the amount of work and technicalities which confront one in presenting just one Federal Court case. The time and effort required to present cases by the hundreds—yes, by the thousands, if public needs are really to be served—would be appalling. To say nothing of the overloads thus forced into our already overloaded and backlogged courts.

Furthermore, S. 2806 does not even give the right of appeal to EEOC. Now really. Most lawyers would not be very willing to go into court with a dogbite case if it were made clear to their adversary that they could not appeal!

In these cases I understand appeal would be referred to the Justice Department. Inefficiency, delay and possibilities for error are manifest. As I under-

stand it, EEOC sent four sex-discrimination cases "over to Justice" long, long ago, and nothing has been heard of them since.

S. 2806 has such built in roadblocks and practical impossibilities that one is forced to be very skeptical of the motives of those who presented it at just this time—right when the long-sought Cease and Desist bill was up for consideration! What coincidence.

And then, even more baffling, the present head of EEOC comes out in favor of this peculiar bill. Is he with us or against us? Who is with us and who is against us? Especially when matters such as this assume a certain pattern, we believe the answers will not long evade us.

The bill which we favor is, of course, Senate Bill 2453. This bill removes the burden of enforcement from the complainant, and, of course, the problem of the complainant's obligation has always been the stumbling block. Few individuals have the money and determination to push through a court case to force someone to hire or promote him—and, if he were determined and angry enough to do so, what kind of status would he have with that employer—or, for that matter, with any other employer who heard about the matter?

I note that S. 2453 also transfers to the EEOC enforcement of nondiscrimination in employment by government contractors, now a duty of the Office of Federal Contract Compliance. Knowing how reluctantly OFCC seems to be taking on the responsibility of enforcing sex discrimination provisions, I believe we would favor this, but only if the cease and desist portion of the bill is also included.

We therefore favor S. 2453, and we definitely do not favor S. 2806. We are afraid that this latter bill will just provide costly busy-work without the desired results, which, we suspect, is just what it was tailored to do. We further, reluctantly, accept the fact that it will probably be better to wait for a good bill than to have to get rid of a bad law, in the event that S. 2453 cannot be passed at this time.

If S. 2453, or a similarly strong and acceptable bill, is not passed very soon, and if great strides cannot very quickly be made in alleviating job discriminations against women, I believe that I must say to you, very pointedly, that I see trouble ahead.

Young people nowadays are not the overawed and willing-to-conform sort which most of us were some years ago. They are quick to seek out hypocrisy in high places. I receive many of their mailings, because of my interest in job discriminations, and some of the things they write us are hair-raising.

They are not oblivious of what is going on. Working women as a whole, even in other age groups, are increasingly rebellious, especially as they find themselves under increasingly impossible economic and tax pressures.

Unless our elected leaders, and the industrial establishment, start to "do right by us", I honestly tell you I fear for what may result. The situation is a powder keg. It is ripe for irresponsible exploitation. Further suppression and hypocritical expedients are definitely not indicated.

The organization which I represent would like to work responsibly, through accepted channels. I therefore will tell you, instead of saving it for a surprise, that we are organizing to computerize records of congressional and administrative action of interest to us, including the names of sponsors, and voting records.

We have already made arrangements to make these records available, at strategic times, to responsible organizations and individuals in each constituency. We believe that in this way individual voters can make decisions across party lines which will be in line with the facts, and in line with their own benefits.

We have been receiving inquiries from all over the country concerning this plan, from publications, as well as from organizations and individuals.

These two bills, naturally, fall within our scope of interest.

We truly hope that your Committee and the Senate as a whole, will rise to this matter, which affects such a large segment of the working population of this country, in a statesmanlike way. We hope you will pass favorably on Senate Bill 2453, and that you will urge its passage in the Senate.

PREPARED STATEMENT OF DAVID A. BRODY, DIRECTOR OF THE WASHINGTON, D.C., OFFICE, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH

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 S. 2453, in-

troduced by a bi-partisan group of 35 Senators 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 S. 2453, like the bill reported out by the full Committee last year, is to give the Equal Employment Opportunity Commission authority to issue cease and desist orders after a hearing and finding that the employer or union is engaged in a discriminatory employment practice. Unfortunately, what we said in the statement which we submitted in support of the legislation in the 90th Congress remains true today:" . . . despite the progress made in recent years, the problem of employment discrimination is still a pervasive and persistent one."

If we are to make an effective start toward eliminating employment discrimination, then the Equal Employment Opportunity Commission must be given adequate enforcement authority. All the Commission can do under the present 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, only 46 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.

If the Commission is to be a truly effective agency it is essential that it 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 the Committee last year stated:

> An important consequence of granting the Commission authority to issue cease-and-desist orders will be enhancement of the Commission's ability to obtain successful conciliation. The experience of State fair employment agencies has shown that, when the cease-and-desist power is available, achievement of voluntary compliance is much more likely. (S. Rept. No. 1111, 90th Cong., 2nd Sess. 4 (1968).)

The same view is stressed in a 1969 study "Jobs & Civil Rights" prepared for the Commisison on Civil Rights by Richard P. Nathan, then with the Brookings Institution and now Assistant Director of the Bureau of the Budget. The author states: (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.

Finally, the National Advisory Commission on Civil Disorders in its Report (p. 234) recommends that the Commission be granted cease and desist powers in order to break down arbitrary barriers to employment and open job opportunities for minority group workers.

The Administration bill, S. 2806, while acknowledging the deficiency in the existing law, however, would not give the Commission cease and desist authority. Instead it would empower EEOC to go to court against the recalcitrant employer or union.

In its testimony before the Subcommittee, the Civil Rights Commission set forth the reasons why 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 also 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, while an improvement over the present law, 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 S. 2453 is plainly to be preferred to the court suit alternative provided for in S.2806.

In addition to giving the Commission cease and desist powers, S. 2453 would extend the coverage of Title VII of the 1964 Civil Rights Act to employers of 8 or more and also bring within its protection state and local employees now specifically exempt from the law's coverage. The bill would also transfer to the EEOC 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. We concur in the wisdom of these proposals. They 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.

In conclusion, therefore, we urge the Committee to act favorably and promptly on S. 2453.

We respectfully request that this statement be included in the printed record of the hearings.

Prepared Statement of William E. Dunn, Executive Director, the Associated General Contractors of America

We appreciate the opportunity of filing a statement for the record on S. 2453 and S. 2806. First, we would like to note the kind of experience in the field of nondiscrimination on which we based our comments. Our experience comes from the fact that many of our members perform Federal construction contracts, and for many years have been subject to nondiscrimination requirements applicable to government contractors imposed by Executive Orders. These experiences go back

years before there was any Congressional action in this field, to the days of the F. E. P. C. of the 1940's. They include the time of the Government Contract Committee of the 1950's, and the President's Committee on Equal Employment Opportunity, and now the Office of Federal Contract Compliance. In recent years, the Executive Orders have encompassed federal-aid contracts as well.

Our record with all of these agencies indicates that the Associated General Contractors and its members have always had relationships of cooperation, and that our policies have always been to support the principles of nondiscrimination.

BASIC PROBLEMS

From this experience and this background, we have come to see certain basic problems as contributing to, and perpetuating, racial and minority discrimination in the construction field, which we will point out below. Both S. 2453 and S. 2806 fail to deal with the basic problems as we see them, and we believe what is needed at this time is not patchwork but solutions.

The basic problems, as far as discrimination in construction is concerned, are the hiring halls, complex seniority systems, union referral arrangements, closed shops, and secondary boycotts, among others.

These basic problems stem from legislation already passed by the Congress, particularly section 8(f) of the Taft-Hartley Act, and we believe it would be well to re-appraise these existing provisions of law in the light of present-day realities.

HIRING HALLS

The seriousness of hiring halls and related arrangements practiced by the Building Trades Unions has come to our attention painfully on government contracts, where the Executive Orders hold the contractor alone responsible, and apply sanctions to him *only*—not the Building Trades Unions, even where their guilt on discrimination is evident. While construction contractors, for this reason, resist the inclusion of hiring halls and related provisions at the bargaining table, another arm of government gives no support or recognition to the nondiscrimination objectives of the other arm, but practically forces contractors to enter into hiring hall agreements by holding them mandatory subjects of bargaining. Perhaps the NLRB feels the act passed by the Congress gives them no other way. In any event, the man at the receiving end of the Federal establishment at the grass roots must get a very bad impression to see Washington blowing hot and cold on the same issue.

So here is a very substantial step towards the promotion of equal employment opportunity in construction, which your Subcommittee might tackle, namely:

(1) to make Building Trades Unions solely responsible for unlawful discrimination, racial and otherwise, that occurs as a result of their operation of hiring halls, and similar referral arrangements, and

(2) to make hiring halls and related conditions a permissive, rather than a mandatory subject of bargaining. (That would preclude strikes and picketing to obtain them in labor agreements.)

SECONDARY BOYCOTTS

Secondary boycotts pose a similar problem for minorities in construction. These are strikes and picketing to force one company to quit doing business with a Negro subcontractor or other firms employing Negroes or other minorities. The deadly impact of secondary boycott attacks on minorities in construction is documented in the St. Louis Arch case, an excerpt of which is attached.

While secondary boycotts are illegal *today* under Section 8(b)(4)(B) of the Taft-Hartley Act, they may be legalized by legislation now pending in the 91st Congress. If that happens, we would advise your Subcommittee that the cause of nondiscrimination in construction would be set back a great deal farther than it would be advanced by either S. 2453 or S. 2806. While common situs picketing legislation is not directly related to the legislation at hand, they are, in fact, related to the same thing. Again, we believe it would be prudent for the Congress and its committees to avoid getting into conflicting positions on the same issue, and that your Subcommittee should carefully study the adverse impact that situs picketing would have on nondiscrimination in construction and do your utmost to defeat it.

SHOT IN THE DARK

We would also suggest that the Subcommittee first obtain a better understanding of the character of the problem before embarking upon as revolutionary a course as outlined in S. 2453. The lack of contribution of knowledge on this score from government spokesmen appearing before your Subcommittee is curious, in view of the years of accumulation of voluminous surveys under the Executive Orders from government contractors on minority aspects of their employment. It is also curious in view of the mandate of the Civil Rights Act of 1964 to canvass unions, hiring halls, and training groups for information on minorities. Nearly three years later, no such survey has yet been made but is, however, about to be launched.

We are familiar with voluminous surveys under the Executive Orders, beginning with so-called Form 41 in 1963, 1964 and 1965 and then Form 100 in 1966 and Form 100 revised in 1967. These reports must literally fill warehouses of data on minority aspects of employment in the construction industry. We believe the Subcommittee would be prudent, indeed, to first obtain available statistical dimensions and locations of the nondiscrimination problem before shooting as big a shot as S. 2453 into the dark.

A CONSTRUCTIVE APPROACH

A final suggestion, while not involved in S. 2453 or S. 2806 but related, would be to seek for ways of taking a positive and constructive position, rather than banking on the perennial "thou shalt not" approach. As a practical constructive approach, we would urge your Subcommittee to consider ways of curing the anemic climate now blighting training in construction.

Our experiences with the Federal apprenticeship and training programs convince us that they will not permit the kind of breakthrough of large numbers of new skilled construction workers in time to meet the great demands in the construction industry. We are also convinced that government can and should take every practical step to make participation in training programs, on the part of the trainee and employers, as attractive as possible. Certainly, one of the least difficult steps would be to provide tax credit for employers' financial contributions to training programs. This idea has already been far developed in bill form in committees of this Congress.

We would urge your earnest consideration of our views, and your thorough reconsideration of this entire complex but serious problem before reporting S. 2453 or S. 2806 to the full committee. If we can be of further assistance, please let us know.

Attachments.[1]

PREPARED STATEMENT OF WILMA SCOTT HEIDE, MEMBER, PENNSYLVANIA HUMAN RELATIONS COMMISSION

I am Wilma Scott Heide, a Behavioral Research Scientist, a member of the Pennsylvania Human Relations Commission, and of the Pennsylvania Boards of Directors of the American Civil Liberties Union (ACLU), vice-chairman of the Allegheny County Council on Civil Rights and a leader of the National Organization for Women, Inc. (NOW). However, I am here today as a citizen to briefly share some observations, raise some fundamental questions and make specific recommendations to this Senate Subcommittee so you may truly act to legislate effectively and thus not only promote but unequivocally *advocate* equal employment opportunity for American workers.

First, thank you for this opportunity. I had no intention of taking a day away from my other citizen commitments, my family and my employment to personally address this subcommittee. However, the quality and equality of life to which I am committed within and outside my home compel me to be here and be heard. If the federal legislation under question is *at all* equivocal, ineffective, incomplete, or uncommitted to human equity, then our more local, regional efforts are diminished by just that much absence of national leadership and/or action. I do detect a need for fuller commitment of this nation to human equity as variously evident in the approach and content of both bills S. 2453 and S. 2806 and in the

[1] May be found in the files of the subcommittee.

serious omission from both of necessary provisions. So much for my reasons for being here.

Now, for some observations and fundamental questions vis-a-vis S. 2453 and S. 2806. It may be revealing to note that: S. 2453 . . . "may be cited as the 'Equal Employment Opportunities Enforcement Act'" (lines 3 and 4, page 1 of Bill; S. 2806 . . . "may be cited as the 'Equal Employment Opportunity Act of 1969.'" I have 3 observations/questions: (1) is the omission of the word enforcement from the administration bill S. 2806 significant and indeed reflect the real intent? Its proponents claim it is designed for enforcement not mere administration of the law. (2) Why does S. 2806 state "Act of 1969?" Why must the date be included in the title of the law? Will the administration have some other laws to introduce in 1970 or 1971, depending on the political climate then? If the commitment to equity is present, the Act will be independent of the year or the climate and will in title, approach, and content reflect the ongoing commitment to Law, Order, and Justice, so frequently proclaimed. However, neither S. 2453 nor S. 2806 maintains active advocacy as purposes of the bills.

"To further promote equal . . . opportunities . . ." is weak, weasel language that communicates little more than platitudinous niceties. Measure that language, I urge you, against the unequivocal language and force of bills designed to repress and punish citizen unrest often arising from unequal opportunities and other fundamental inequities.

In studying bills S. 2806 from the administration and S. 2453, the former places reliance on the courts via the Justice Department to enforce equal employment opportunity under Title VII of the 1964 Civil Rights Act. This may be *one* important option needed by the EEOC in its resources to fully implement equal employment opportunity. To depend on this method alone for EEOC enforcement power might be utter folly and an outrageous insult to the intelligence particularly of those citizens still excluded from equal opportunity and for the following reasons:

1. Approximately only 1% (not 5–10–50) of the U.S. Justice Department's *total* budget is allocated to its Civil Rights Division although this division represents one of seven (not 1 of 100) major divisions of Justice. The Civil Rights Division itself has jurisdiction in eight principal areas, only one of which deals with employment cases under Title VII. Thus, it is conceivable that only 1/8th of 1%, and certainly *less than* 1%, of its funds are available for employment justice. Who can honestly claim satisfaction with putting all one's enforcement eggs in *that* basket?

2. Forty of the Justice Department's own 76 Civil Rights Attorneys have been meeting secretly to draw up grievances that reflect concern about this Administration's back-tracking on civil rights in the instance of school desegregation. This action has been mandated since 1954. One shudders at the inactivity of the Justice Department since 1964 on employment and indeed that inactivity is confirmed by the report of Richard Nathan of the Brookings Institution for the U.S. Commission on Civil Rights, dated April, 1969 and on page 76.

3. There are several other reasons for favoring S. 2453 over S. 2806, the most fundamental of which is: Bringing suit against recalcitrant employers is a time-consuming, costly and awkward enforcement method that requires the EEOC to assemble witnesses and assume all the burden of proof even after probable cause has been established. No wonder aggrieved persons and groups feel little hope of redress. A cease and desist order, while not enough (as I shall detail shortly), does put an immediate stop to discrimination and puts the onus of litigation on the offending employer or contractor. I leave to your sense of real justice which has demonstrated more effective practice in producing equity.

4. In those instances where the Justice Department has acted for employment equity, not a single one of the 33 cases to date has been initiated in cases of sex discrimination, although sex discrimination has made up from ¼ to ⅓ of EEOC cases at any one time. While the symbol of justice may appear as a woman, the practice and concept of justice in the U.S. has seldom involved women themselves, women's real needs as persons, let alone their real definitions as persons entitled to full protection under all laws guaranteed to other U.S. citizens. In short, by systematic sexual inequity in law and practice, women have been and are today denied sexual equality so that gross and outrageous legislation without representation even seems natural and inevitable.

In brief, I am truly grieved that the EEOC Chairman was somehow persuaded to accept S. 2806 and that the protest of other EEOC members has not been more forceful and illuminating of S. 2806's real and present dangers.

S. 2453 is the more desirable of the bills for reasons I will detail and yet it, itself, is inadequate in the absence of necessary provisions which I will recommend. S. 2453 is desirable for the following reasons and I would urge retention of these provisions with extensions as noted:

1. Removal of the burden of enforcement from the complainant by providing authority to the EEOC to issue cease and desist orders and to enforce them through the courts. The EEOC needs, additionally, the authority to prosecute appeals to or from the Circuit Court of Appeals and discretion to proceed on its own or through the Justice Department. I recommend that S. 2453 be so amended.

3. Deletion of the exception for state and local governments from coverage of Federal Civil Rights Acts is good. The exemption of educational institutions from employment coverage is unthinkable, if we value at all the critical role of education in social change to promote human equality. In fact, I would specifically advocate inclusion of educational institutions and public employees in general and teachers and administrators in particular, in coverage under all civil rights legislation.

3. The expansion of coverage to employers of eight (as against the present 25) is desirable.

4. The transfers to the EEOC of enforcement of nondiscrimination in employment by government contractors and subcontractors from the U.S. Department of Labor, Office of Federal Contract Compliance and from the Civil Service Commission authority to enforce nondiscrimination in Federal employment are important steps in the direction of better coordination and commitment to employment equity. I would additionally advocate transfer of administration of the Federal Women's Program to the EEOC. Steps to eliminate Social Security laws and practices that disadvantage working women should come under the jurisdiction of the EEOC.

Neither bill addresses itself to some serious situations I would like to see corrected by specific amendment to S. 2453. While S. 2453 represents some improvements, I would suggest that lines 11–22 on page 3 of this bill raise serious value questions. This part deals with violating confidentiality of EEOC information in processing complaints (after probable cause is established) and effecting conciliation. Now, as a State Commissioner, I am not unfamiliar with the rationale and value of confidentiality and do not oppose practical implementation of the same. I do protest the relative sanction of a fine of not more than $1,000.00, or imprisonment for not more than one year or both for revealing information *about* a violation and yet can only say (even if S. 2453 becomes law) to those who violate the law: "You mut cease and desist." Does this mean that revealing data about a violation is indeed more serious than the act of violation?

This Subcommittee might be well advised to reverse the negative sanctions for the respective behaviors from that now proposed. In fact, this raises the whole question of the serious commitment of this nation to equal opportunity in employment or elsewhere and is but one of numerous examples of laws which protect "the haves" as against "the have nots." Is it more serious if someone robs $50.00 (or whatever) from my purse or your wallet or, if others deprive whole groups of people of employment opportunity to even acquire and retain the discretionary $50.00? The negative sanctions applied for robbing of already acquired possessions contrasted with the slap on the wrist (if that) for systematically still excluding blacks and women (especially) from the chance to acquire equity must suggest we are a long distance from justice in social concept and the law.

This brings me to my final recommenations: The EEOC has issued guidelines that state that: (1) Title VII supersedes state protective (so-called) laws and that (2) classified employment advertising segregated by sex without a proven bona fide occupational qualification (BFOQ) violates Title VII of the 1964 Civil Rights Act. I urge amendment of S. 2453 to make both of these guidelines specific sections of the law in unequivocal language so that newspapers be specifically named as subject to the jurisdiction of the law. The present typical sex segregated want ads represent a flagrant frustration of equal employment opportunity especially for women at their point of entry: it seriously blunts the aspirations of the young and irresponsibly denies employers the full range of pools from which to draw human resources. As women and men, we're perfectly able to define our own interests and preferences. In a day when overpopulation is of increasingly critical concern, we cannot encourage, and dare not countenance, parenthood as the chief occupation of one half the population and so sex stereotype roles as to absolve the other half from all but economic responsibility for that.

The recommendations for coverage to strengthen the EEOC and for programs to be shifted to the EEOC require the priorities, funds and quality of commitment to guarantee effective results. The legislation you recommend must include specific attention to effective fiscal and other behaviors.

Now, I note that my Senators: Hugh Scott and Richard Schweiker have both sponsored both Bills—S. 2806 and S. 2453. Since these bills are different in intent and probable effect, I would like to ask Senator Scott, who is not here, and Senator Schweiker of this Labor Subcommittee precisely and pointedly where they stand on Equal Employment Opportunity. Are they for both bills? Are they covering all options? Is this dual sponsorship window-dressing? More important than what they, or anyone else, sponsor is what they advocate regardless of political consequences. I have stated that S. 2453, with certain specific amendments and additions, is clearly preferable with provisions of S. 2806 to be available for discretionary use at the option of the EEOC.

As a constituent of Senators Scott and Schweiker with several different constituencies of my own relevant to social issues, I am frankly worried. Laws and practices in this achievement-oriented culture are still primarily decided by white men. Most of these white men have as their birthright the opportunities and facilitating social system that still effectively excludes most blacks and most women from significant roles. Until middle-aged affluent white male-dominated America sees the outrageous incompatibility of a democracy with still present need of people like me to plead for my birthright along with my black brothers and sisters, citizen unrest will increase and multiply. Women's violence will be redirected from self-hate, husband-pressuring, and child-battering to changing the present inequitable system. Just as Black is Beautiful: Women are People. Please take Civil Rights *Laws* more seriously if you want order and justice in this land.

PREPARED STATEMENT OF LUTHER HOLCOMB, VICE CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The following observations are made in light of my experiences during the last four years which I have served on the Equal Employment Opportunity Commission.

There are two bills pending before your Committee about which I would like to make a statement.

S. 2453 would authorize the Commission to issue cease and desist orders enforcible in the Circuit Courts of Appeals while S. 2806 would authorize the Commission to file civil actions in the Federal District Courts.

Of the two, I believe that S. 2806 represents the more practical and effective means of strengthening the Commission at this time. Adding the responsibilities for conducting cease and desist order hearings and issuing definitive rulings on unresolved charges of discrimination would substantially increase the work load of the Commission. It would require considerable recruitment of new personnel and some shifting of present personnel. The difficulties and time required for such personnel recruitment and change should not be disregarded or minimized.

As much as I favor strengthening the enforcement powers of the Commission, I urge most sincerely that the Commission not be given further powers that it is not in a position to discharge. Doing so would only further compound the problems the Commission now has in adequately discharging its functions.

I do not believe we could prepare for cease and desist order responsibilities at this time without disrupting and delaying our efforts to expedite and improve our processing of charges of discrimination. However, I do believe that we could move immediately to discharge the litigation responsibilities proposed in S. 2806. We would, of course, need to employ additional attorneys, but we have a background in Title VII litigation through our involvement in private actions as *amicus curiae* and we should be able to supplement our staff as needed—assuming adequate funds are appropriated for this purpose.

Despite my feeling that the Commission can better adjust to litigation responsibilities than to cease and desist order power, I would not support the former unless I believed that it would significantly increase our effectiveness in ending job discrimination. I do believe that it would make such a contribution.

S. 2806 would give the Commission enforcement power comparable to that of the Department of Labor under the Fair Labor Standards Act. The Labor Department is generally regarded as a vigorous and effective enforcer of the minimum wage and overtime laws. I see no reason why the Commission could not

achieve a similar position in regard to job discrimination if it is given comparable power.

Some questions of employment discrimination are complex and subtle, but I am confident that the courts would consider such matters sensitively and fairly and would give appropriate weight to the expertise of the Commission. While I am not a lawyer, it is my impression that the cases decided so far generally support that view.

In addition, there is reason to believe that given the power to litigate, the Commission would be better able to achieve settlements without litigation. Certainly, the Commission as well as the Respondents should be inclined to fully explore the possibilities of voluntary agreement before resorting to trial.

For all of these reasons, I recommend your favorable consideration of S. 2806. As indicated, I do not favor adoption of S. 2453 at this time. This does not represent a feeling on my part that cease and desist power would never be appropriate or necessary for the Commission. However, it clearly seems preferable to me to seek immediate enactment of S. 2806 and then to have a reasonable period of time to evaluate the effectiveness of the enforcement power that it would convey.

PREPARED STATEMENT OF ROBERT J. MANGUM, COMMISSIONER, STATE OF NEW YORK DIVISION OF HUMAN RIGHTS, NEW YORK, N.Y.

I regret that I will be unable to accept your kind invitation to testify before your subcommittee on Tuesday, August 12, 1969, concerning S. 2453, a bill to strengthen the Federal Equal Employment Opportunity Commission by giving it the power to issue cease and desist orders.

Without committing myself to the provisions of the particular bill presently before the subcommittee, I wish to go on record as strongly in favor of giving power to the Equal Employment Opportunity Commission to issue enforceable cease and desist orders where it finds, after a public hearing, that a respondent has committed an unlawful employment practice.

The New York State Division of Human Rights and its predecessor commission has had such power since its inception, July 1, 1945. These orders are enforceable and reviewable through the courts. Our record of successful conciliation has been made possible only because the New York law gives this agency the power not only to investigate and conciliate, but also to hold public hearings, issue cease and desist orders and enforce its orders through the courts. The fact that this agency has these powers gives it persuasive force at the conference table which it probably would not have otherwise.

These sanctions provided in the New York law have served to support the conciliation process. It is my opinion that they would serve equally well in EEOC cases, provide adequate funds are appropriated for the conduct of proceedings when necessary. These sanctions have been used to reinforce and not to abort the conciliation process.

I should note also the importance of maintining and strengthening the provisions for cooperation between the EEOC and the state antidiscrimination agencies. Under the Civil Rights Act of 1964, state agencies are given notice of a charge and allowed a stated period in which to act before the EEOC may become actively involved in a case. There are also provisions in the Law authorizing EEOC to cede jurisdiction to state agencies. In order to avoid amultiplicity of litigation and to strengthen the mutual efforts of Federal and state agencies, consideration should be given to some procedure under which appropriate types of cases would be handled and determined finally by state agencies and courts without subjecting respondents to reinvestigation by EEOC.

PREPARED STATEMENT OF MISS MARGUERITE RAWALT, STATUS OF WOMEN'S DIVISION, GENERAL FEDERATION OF WOMEN'S CLUBS

As a member of the bar who has served as volunteer lawyer in several sex discrimination cases in the courts under Title VII, and from my background of knowledge of the increasing determination of informed women to eliminate barriers of discrimination in employment, I am writing to urge that your Committee favorably report S. 2453.

Family life is a program area of great concern in the General Federation of Women's Clubs for a large percentage of its thousands of Junior Club members are working wives. At least 15,200,000 wives held jobs outside the home in 1967 and women were heads of families in some 5.2 millions of U.S. homes according to Labor Department statistics. Women who work should have completely open opportunity to earn at the level of their capacities and training. They should not be denied a job simply because of sex.

The provisions which would confer enforcement powers upon the Equal Employment Opportunity Commission would greatly enlarge the effectiveness of Title VII for all workers, men and women, white and black. Under present law women workers who are being discriminated against in employment in violation of the Act must bear the burden of seeking out legal counsel and of financing costly court suits when the employer fails to respond to conciliation efforts. Women will continue to bear with the situation rather than risk getting fired.

The procedure here proposed is in harmony with that long tested and proved in the case of other Federal administrative bodies and commissions.

Your Committee is urged to approve this procedure.

PREPARED STATEMENT OF GERARD C. SMETANA AND SIMON LAZARUS, JR. ON BEHALF OF THE AMERICAN RETAIL ASSOCIATION

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 is 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 dozen com-

---

[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., 2d 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).

prehensive 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 it 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 glowing report of the progress the EEOC has already made expressing satisfaction with the number of conciliations achieved, the affirmative acts 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 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 two bills—the bill presented by Senator Williams (S. 2453), and that proposed on behalf of the Administration by Senator Prouty (S. 2806)—which seek to correct these deficiencies in the Act. We believe the Administration bill is the better of the two solutions.

The bill introduced by Senator Prouty 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 disturbed. And finally, S. 2806 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 Attorney General Kleindienst stated in his testimony before this Committee:

---

[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 Prouty 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.

"The appropriate forum to resolve civil rights questions—questions of employment discrimination as well as such matters as public accomodations, 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 Prouty 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 Prouty Bill also permits the Commission, as Chairman Brown observed, 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. It 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 Prouty 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 Prouty 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 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,

---

[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, U.S. Senate, 90th Cong., 2d 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 1956 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. There is no equivalent limitation imposed on suits to enforce agency orders nor is any such limitation provided for in S. 2453. In addition, the Prouty 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.

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 Prouty 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 Prouty 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. S. 2453 does not provide for such a private remedy. 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 aggrieved 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 Legal Defense Fund Director-Counsel Greenberg, have made a traditional and significant contribution to the development of the law in various areas of civil rights. And, finally,

---

[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 and Departmental Statistics.

[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 Instant Subcommittee on S. 830, "To Prohibit Age Discrimination in Employment," 90th Cong., 1st sess. (1967).

the Prouty Bill removes the uncertainty and procedural barriers which surround the institution of private civil suits under the present act.[12]

S. 2806 also retains, as S. 2453 fails to do, 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 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 Prouty 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 eliminate 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.

Prepared Statement of the Aerospace Industries Association of America, Inc.

The Aerospace Industries Association of America, Inc. (AIA), representing the nation's major manufacturers of aircraft, spacecraft, missiles and components thereof, welcomes this opportunity to comment on S. 2806, the Equal Employment Act of 1969, and S. 2453, the Equal Employment Opportunities Enforcement Act.

This Association's member companies have been deeply committed and involved in promoting equal employment opportunities for several years. AIA companies were early and active members of Plans for Progress which is now a part of the National Alliance of Businessmen. Plans for Progress is a voluntary organization committed to going beyond nondiscrimination by developing programs and activities designed to further the employment, training and upgrading of minorities. These include recruiting in depressed areas, hiring the hard-core unemployed, developing special training programs for the disadvantaged, establishing plants in slum areas and special recruitment of managerial employees at Negro schools and colleges. Plans for Progress began in May 1961 with the strong backing of the aerospace industry. Since its inception, many aerospace officials have served on its council and committees.

In connection with its many contacts with such projects, AIA has become concerned about the effectiveness of the EEOC as presently constituted. While we recognize the need for adequate machinery for final resolution of discrimination charges we feel that such machinery must be designed not only to be practicable for all parties concerned but also to best serve the objective of making national progress in the environment most conducive to such progress.

Recourse to Federal Courts

Based on the experience of our member companies since the EEOC was created, we believe that S. 2806 provides the most equitable, and the best, means for settling matters relating to discrimination. By requiring resolution of such disputes in the federal court system, S. 2806 has identified the most appropriate forum for settling civil rights disputes and also the one most likely to provide solutions acceptable to all parties.

Several benefits derive from looking to the federal courts as the ultimate resort. Most importantly, perhaps, the prospect of eventual court action would encourage all parties involved to abide by fundamental legal procedures. A

---

[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 Prouty Bill.

precise statement of the charges against the company accused, for example, would therefore be necessary.

Under judicial procedures all parties would be compelled to establish facts fully and adhere to rules and procedures governing the handling of witnesses and presentation of evidence. In short, the use of a federal court would place a premium on the establishment of facts.

Moreover, from experience with lengthy National Labor Relations Board proceedings, AIA member companies believe the Administration bill's enforcement procedure promises to provide faster action than would the procedures of S. 2453 which call for a full hearing, a cease and desist order, followed by a petition to the appropriate court of appeals for enforcement.

Finally, the federal court decisions would soon develop a set of precedents enhancing the possibilities of achieving compliance through informal means of conciliation.

Because court rulings are more likely to be acceptable to the parties involved, and because all of the foregoing factors would contribute markedly to fairer and more equitable handling of discrimination cases, such qualitative upgrading of procedures would benefit most the person for whom the program is designed, i.e., the minority worker.

INADVISABILITY OF CEASE AND DESIST

AIA opposes the proposal of S. 2453 to broaden the enforcement powers of EEOC by granting it cease and desist powers. In addition to creating many unjustifiable problems for industry, such action would be seriously detrimental to the intent of Title VII of the Civil Rights Act of 1964. Title VII is predicated on the good faith of industry in eliminating practices which have bound minority groups to the lower levels of employment or have consigned them to chronic unemployment. The aerospace industry, in particular, has worked vigorously and is working vigorously to improve the employment opportunities for such minority groups. Cease and desist powers would discourage rather than advance this effort.

Moreover, there are other substantial reasons against granting such powers. For discrimination cases to be handled equitably equal hearing must be afforded both sides. Industry must have protection against cease and desist orders that lack a basis in fact, not only in the interests of equity but because such instances would inevitably create an environment which would work against the progress being sought.

Secondly, AIA believes that the findings of other agencies, state bodies, arbitration proceedings, OFCC and judicial rulings on discrimination cases identical to those EEOC may be considering should be weighed carefully by the Commission before any conclusions are reached. To involve powers as stringent as cease and desist without including some recognition of such precedents would be totally unsound.

Finally, a tool as powerful as a cease and desist order might well prejudice fulfillment of the EEOC's primary responsibility—conciliation and mutual eradication of differences. If no attempt is made to conciliate before invoking cease and desist, the EEOC might well see its central and most productive role and function become seriously eroded by this proposed new power. The minority worker, who has most to gain under orderly court-oriented procedures, the man who must be the center of the EEOC's concern and activities, has most to lose by inadequate conciliation in discrimination cases.

POWER OF CONTRACT CANCELLATION

It would be unwise to give the EEOC the contracts sanction power which presently rests in the Office of Federal Contract Compliance under Executive Order 11246. The EEOC is not a procurement agency. Its lack of expertise in industrial contract and administrative practices clearly dictates against transfer of contract cancellation powers.

As Secretary of Labor George P. Shultz has pointed out, cancellation of contracts and/or debarment of contractors are mesures of failure, not success, in the equal employment opportunity effort. Such actions can, and often do, create unemployment. All too often, unfortunately, unskilled workers are the first to lose their jobs.

If retention of contracts sanction should be considered necessary, AIA strongly urges that the power of cancellation, accompanied by the more positive efforts

to encourage compliance, remain in the Office of Federal Contract Compliance. The OFCC, along with the individual procurement agencies, has had several years of experience in administering the contract compliance program, including pre-award reviews, compliance reviews and development of affirmative action approaches.

AIA strongly endorses the approach of S. 2806 in granting the EEOC the authority, after failure to bring about voluntary compliance, to bring civil action against a company it has reasonable cause to believe is engaging in unlawful employment practices. In opposing conferral of cease and desist authority and contracts sanction power on the EEOC, however, we speak as much in behalf of the minority worker who may not be aware of the dangers of such actions as we do in behalf of the industrial managers who are concerned about the possible repercussions.

PREPARED 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 S. 2453, 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 are sympathetic with 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 empolyment are due more to government agency efforts at implementation of this Act beyond the intent of Congress than to any unwillingness or bad faith on the part of employers complained against. Experience has demonstrated that a reasonable presentation of grievances, well grounded in fact, is much more likely to produce a desired result than are demands couched in non-specific terms and unsupported by evidence.

We turn now to a discussion of specific proposals contained in the proposed Equal Employment Opportunities Enforcement Act. Stated in briefest form, the major provisions of S. 2453 would:

1. grant cease and desist powers to the EEOC with enforcement in the Court of Appeals;
2. authorize the EEOC to handle its own appeals cases and to become the intervenor in private suits of "general importance";
3. transfer Office of Federal Contract Compliance "authority, duties and responsibilities" to the EEOC. This would include transfer of the power to suspend, cancel, terminate and/or blacklist a government contractor;
4. authorize the EEOC to seek temporary relief in U.S. District Court;
5. grant subpoena power to the Commision;
6. require that ability tests be "directly related" to the "particular position concerned";
7. terminate authority of the Justice Department to bring suit charging a "pattern or practice" of discrimination;
8. expand coverage to employers with eight or more employees;
9. extend Title VII coverage to state and local government employees;
10. transfer Civil Service Commission non-discrimination functions to the EEOC.

CEASE AND DESIST

We question the necessity for granting cease and desist powers to the EEOC for a number of reasons. First, we feel that 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 en-

acted 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 its 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 be very costly—clearly 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.

Equally as important an objection is the fact that S. 2453 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.

Sometimes there is merit in restating the obvious. Congress created EEOC to endeavor to eliminate alleged discrimination by "conference, conciliation and persuasion." Recent testimony indicates the agency has been successful in only about 50% of the cases to come before it. The assumption is made that given the rather considerable additional authority represented by cease and desist power—in popular usage "a club in the closet"—this percentage would increase dramatically: not because the equities in any given complaint would have changed, but rather because the agency would now be able to back its demands with a formidable threat. We fail to see how such a situation would be conductive to the elimination of discrimination or how it would give impetus to voluntary efforts to create more job opportunities for minority employees.

We would point out that 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.

TRANSFER OF OFCC

We have long questioned the need for the existence of the Office of Federal Contract Compliance. Even if one grants the authority of the Executive to impose additional terms and conditions and threaten with powerful sanctions those who would do business with the federal government, there still remains the central question of whether it is necessary or proper to do so. We agree with moves designed to reduce duplication of effort within the federal government and, if the transfer of OFCC would result in less harassment of business; if it would produce a diminution in voluminous requests for information and records now received; indeed, if it would make it any easier for a businessman to comply with the law and still run his business; then we would favor such consolidation. We do not, however, favor a 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.

TESTING

We feel that the provisions within S. 2453 requiring that ability tests be "directly related" to the "particular position concerned" would severely limit their use since they would have to be validated to insure application only to the immediate job under consideration. An individual's potential, aptitude, education and skill, as well as a host of other factors, could be considered only with regard to the immediate opening and not with respect to any future job vacancies which ultimately could arise during the course of employment. In our opinion this would be a sure way to dry up a source of in-company promotion and would result in inefficient utilization of company manpower with a resultant translation into increased costs and lost opportunities. We believe the language of the existing law is adequate and should be retained.

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. A recent broad-based survey* indicates 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. NAM recommends this survey to the Subcommittee members in the belief that it is indicative of the progress being made under current law.

The many and varied government programs designed to educate and upgrade the disadvantaged in this country suggest that qualification for job placement may be as great a problem in the employment of minority group members as the matter of discrimination. In our view broader enforcement authority under such circumstances and as proposed in S. 2453 will not prove an effective remedy.

PREPARED STATEMENT OF THE NATIONAL ORGANIZATION FOR WOMEN (NOW)

My name is Jean Faust, of 417 Riverside Drive, New York, N.Y. I am National Legislative Chairman of the National Organization for Women and a member of the National Board of Directors. I am also Chairman of the New York chapter's Ad Hoc Committee on the EEOC.

NOW supports S. 2453 and hopes that the Committee will report the bill out in time for the Senate to act this session.

The goal of Title VII of the Civil Rights Act of 1964 was to assure Equal Employment Opportunity to all citizens without regard to race, color, religion, SEX or national origin.

But the commission created to administer Title VII was not given the authority to enforce the law: it was given merely conciliatory authority as if Congress were promising opponents of freedom of opportunity that nothing would really happen to change the status quo. The wheels of conciliation grind too slowly to produce change in the dimension necessary in today's revolutionary atmosphere.

At present, it is just not possible for citizens suffering discrimination to believe the United States Congress is really committed to equal opportunity for all workers; certainly we have seen no evidence in the Congress of sympathy or concern for women workers, who comprise one third of the labor force. Title VII of the Civil Rights Act is only a pretense, a hypocritical paper gesture to the cause of Equal Opportunity until the Commission is given cease and desist powers.

If the Congress wishes to re-establish its credibility with the victims of discrimination, it should move as quickly as possible to give the EEOC full enforcement powers.

While we support full enforcement powers for the EEOC, we are pleased that S. 2453 preserves the right of private individuals to bring their cases to court as this is a right that should never be denied an American citizen. We just do not believe that the government should leave the entire burden of fighting discrimination to the individual.

We support the provision to extend the Commission's jurisdiction to include employers of 8 or more employees, as well as employees of State and local governments. Neither small employees nor the government should be exempt from anti-discrimination laws.

---

*American Society for Personnel Administration—Bureau of National Affairs, Inc., Survey dated August 14, 1969.

Regarding the consolidation of all Equal Employment Opportunity efforts under EEOC: while this sounds like a logical approach, there are problems. For example, the Civil Service has very precise rules and regulations, testing procedures, etc., which might cause confusion if complainants were handled by another agency. But the great problem is budgetary deficiency. The EEOC has never been given a budget commensurate with its responsibilities; to give it all the Equal Employment Opportunity duties without substantially increasing its budget could be interpreted as intent to kill all EEOC efforts. We are not in a position to judge what the appropriation should be, but we would be happy if the committee were to be guided by the suggestion of Senator Kennedy made in the Senate on June 19th:

"Obviously a commitment from the administration is worthless without some sign of commitment from the Congress, and for that reason I think the bill ought to include an authorization level which demonstrates the range of funding that we believe is appropriate for the new duties of EEOC. Subject to further facts, I would not think that $50 million the first year, $75 million the second, and $100 million the third with an open-end authorization after that, would be out of line."

Since 1964, the major victories for equal opportunity for women have been won in the courts by private individuals. Long delays, prohibitive expenses and lack of access to legal aid preclude the majority of discrimination victims from pursuing this course of relief. If the Congress is truly dedicated to the concept of full opportunity for all American workers, it must authorize full enforcement powers to the EEOC and a budget sufficient to support the necessary action by the Commission.

If full cease and desist powers are not granted to the EEOC, the provision in S. 2806 for trial in U.S. district court where the EEOC has found reasonable cause to believe a violation has occurred might be an acceptable alternate course.

However, we fear that many subtleties of discrimnation might not have clear precedent in law. In these cases, administrative hearings are necessary.

Moreover, NOW has not been able to observe any eagerness on the part of the Justice Department to prosecute sex discrimination cases. Further, the courts have not established an enlightened record in sex discrimination cases.

We are very fearful that the Attorney General would never find occasion to act in a sex discrimination case where the case must be "certified" to be of "general public importance." So far, no branch of the federal government has indicated that it considers ending discrimination against women to be of "general public importance."

MARSHALL, TEX., *July 29, 1969.*

Hon RALPH YARBOROUGH,
U.S. Senate
Washington, D.C.

MY DEAR MR. YARBOROUGH: I have been following the efforts of Senator Scott and others to gain cease and desist powers for EEOC. I can only conclude that the proponents of cease and desist powers do not completely understand the problems at plant level, nor do they appreciate the American system of checks and balances. They are conveniently ignoring the fact that appropriate enforcement machinery already exists and is in fact being used. Senator Fannin has made this point very clear.

To make a single agency autonomous to the point that they are investigator, judge, and jury is in basic opposition to the system of checks and balances of American law. I can readily envision that, either through lack of proper training, inadequate investigation, personal bias, over zealousness, or just plain vindictiveness, with such powers, EEOC personnel could, with impunity, completely circumvent the rights of other workers, unions, and businessmen.

I invite your attention to the articles, copies attached, by Senators Scott and Fannin for a summary of their respective positions.

I support completely Senator Fannin's position and urge that you do also. I feel that his position is the only one that represents all citizens fairly.

Yours very truly,

T. M. DAVIS

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION,
Charleston, W. Va., August 5, 1969.

Senator HARRISON A. WILLIAMS
Labor and Public Welfare Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: I understand the Senate Labor and Public Welfare Committee is considering legislation that would provide enforcement powers to the U.S. Equal Employment Opportunity Commission through the addition of public hearings, the issuance of cease and desist orders, and court enforcement or court review of such orders in the processing of formal complaints of employment discrimination based on race, religion, color, national origin, ancestry or sex pursuant to Title VII, U.S. Civil Rights Act of 1964.

Enclosed is a photo copy of the letter from the West Virginia Human Rights Commission sent to Attorney General Ramsey Clark on March 10, 1967 in support of similar legislation to enable the E.E.O.C. to effectively administer the national statute to insure the basic right of employment to all citizens of this great nation.

Please note our letter of March 10, 1967 documented by personal experience as a professional with the New Jersey Division Against Discrimination, which administered a fully enforceable state antidiscrimination law; the advantageous transition in the State of Kansas from a non-enforceble, "toothless tiger" law; and the follow-up experience in West Virginia from its non-enforceable, "toothless tiger" law to a fully enforceable state law prohibiting discrimination in employment and places of public accommodations.

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.

(Of the almost equal number of formal public accommodations complaints, approximately 70 complaints, four (4) were required to go to public hearing and the issuance of cease and desist orders. But even these four cases are not typical because two posed difficult legal questions relative to the Commission's jurisdiction over "private liquor clubs" licensed under the West Virginia Alcoholic Beveral Control law, and two cases involved cemeteries which felt the question of the Commission's jurisdiction should be resolved by court review because of possible liability to prior owners of burial plots which had restricted burial to members of the Caucasian race only. One liquor club case was resolved by a Consent Order; the other has not yet been decided by the Commission's public hearing panel. The West Virginia County court of jurisdiction upheld the Commission's cease and desist order in one cemetery case for which the respondent did not appeal and the other respondent cemetery agreed to a Consent Order upon public hearing because of the finality of the first court decision.)

Thus, two states, Kansas and West Virginia, present examples of non-success versus success in resolving formal complaints of employment discrimination through the process of "conference and conciliation" once the administering state agency was backed by the power of public hearing and cease and desist orders if cooperation from respondents was not forthcoming. As the executive director in first Kansas and then West Virginia during this transition period, I can vouch that the spirit of cooperation has been in good faith, has NOT been coerced, and has produced friendly relationships between the Commission and respondent employers which have led either to immediate concrete results or the initiation and continuation of positive programs to eliminate the discriminatory practices and the resultant discriminatory patterns of employment discrimination.

So, based on my eighteen years of sound professional experience, let me reiterate: the lack of enforcement powers through public hearing and cease and desist orders makes for lack of cooperation and the creation of adversary situations in which it is difficult to arrive at a mutual understanding of the problem and to work cooperatively towards the elimination of the problem. Given full enforcement powers, the essential cooperation is forthcoming, the understanding is reached mutually, and the program for the elimination of employment discrimination is commenced and continued as a joint project for the Commission, the employer, and the community and its resources, rather than the victor-vanquished relationship following the adversary confrontation in the area of prolonged litigation or frustrated public controversy.

The thirty-nine states with full enforcement powers have had similar experiences—for complaints of employment discrimination, public hearings are the exception, not the rule. Though this would be difficult to document, I believe a fully enforceable fair employment law makes for a decreased number of potential complaint incidents because there is more voluntary compliance by employers who have no desire to risk violation of a law for which the prohibition is very meaningful.

Respectfully yours,

CARL W. GLATT,
Executive Director.

Enclosures (4) [1]

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION,
Charleston, W.Va., August 19, 1969.

Senator HARRISON A. WILLIAMS,
Chairman, Labor Subcommittee, Labor and Public Welfare Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR WILLIAMS: 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.

---

[1] May be found in the files of the subcommittee.

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, should 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 cease and desist orders.

We consider Item No. 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 conciliation. 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.*

Enclosures.[1]

HOUSTON, TEX., *September 10, 1969.*

Senator RALPH YARBOROUGH,
Chairman, Senate Labor Committee,
Senate Office Building, Washington, D.C.:

The League of United Latin American Citizens strongly supports Senate Bill 2453 giving the Equal Employment Opportunity Commission cease and desist powers and urges your Committee to give this bill your favorable consideration.

To the Mexican American community the Equal Employment Opportunity Commission has been a feeble attempt by the Government to eradicate a problem that had for too long plagued the people of our ethnic group and relegates them to employment servitude. Since the establishment of this Commission private industry and Government contractors in particular have laughed at this emasculated body that is helpless to alleviate the conditions it was created to correct. The minorities of this Nation and in particular the Mexican American segment can no longer tolerate this shameful situation. In the name of decency and humanity we urge you to favorably consider Senate Bill 2453 and give the Equal Employment Opportunity Commission the necessary tool to combat the problem of discrimination it was created to overcome. *We urge you communicate our feelings to the other members of your Committee.*

ALFRED J. HERNANDEZ,
National President, LULAC.

HARRISBURG, PA., *August 11, 1969.*

Hon. HARRISON A. WILLIAMS, JR.,
Labor and Welfare Committee,
U.S. Senate, Washington, D.C.:
Washington, D.C.:

It has been our experience over the past 10 years, that civil rights legislation without enforcement provisions is ineffective. We, therefore, recommend that such provisions be included in pending legislation to strengthen the Equal Employment Opportunity Commission being considered by your committee. Please read this communication into the record of Tuesday's hearings.

Sincerely yours,

MAX ROSENN,
Chairman, Pennsylvania Human Relations Commission.

---

[1] May be found in the files of the subcommittee.

OMAHA, NEBR., *August 12, 1969.*

Senator HARRISON WILLIAMS,
Chairman, Senate Subcommittee on Labor,
U.S. Senate, Washington, D.C.:

We urge passage of S. 2453. Cease and desist powers are vital to proper implementation of Civil Rights Act title 7. Refer case KC-7-1-93 involving Omaha resident file charge February 1967. Now in Federal court but case has not come up. Delay after delay seems to be in favor of respondent while claimant suffers economic, social, and personal loss from legal process appears inadequate to solve civil rights problems, our country endangered by further watering down of our laws such as proposed by S. 2806. To weaken EEOC are in full view of Mexican American citizens in this country and must be stopped now.

OMAHA CHAPTER, AMERICAN GI FORUM.

CORPUS CHRISTI, TEX., *August 11, 1969.*

Sen. HARRISON WILLIAMS,
Chairman, Senate Labor Committee,
Washington, D.C.:

Respectfully request support of S. 2453. After 20 years of fighting for civil rights it is imperative that EEOC have cease and desist orders so that they can function properly. Please enter my telegram for record.

DR. HECTRO P. GARCIA.

BOWLING GREEN STATE UNIVERSITY,
DEPARTMENT OF PSYCHOLOGY,
Bowling Green, Ohio, August 5, 1969.

Hon. RALPH W. YARBOROUGH,
U.S. Senate, Washington, D.C.

DEAR SENATOR YARBOROUGH: I am writing to you as chairman of the Senate Committee on Labor and Public Welfare to comment on the wording of the contents of Senate Bill 2453 regarding the use of employment tests. In two specific respects, I believe the proposed wording, beginning on line 22, page 18 of the Bill, is unfortunate. First, the Bill proposes retention of the phrase "professionally developed ability tests." I believe you would find in consultation of representatives of the EEOC and OFCC that professional development is not the key to appropriate use of tests. A professionally developed test can be quite discriminatory if it is misused. I would propose the following wording: "To give and to act upon the results of any ability test which is developed and used in accordance with accepted professional standards . . ." In my association with the Office of Federal Contract Compliance and with people in the EEOC, I am quite sure that most of the trouble comes from the way in which tests are used, rather than in terms of their development. It is possible for an employment test to be intrinsically bad; it is not possible for such a test to be intrinsically good.

The second point which concerns me is an ambiguity in the phrase beginning on line 24 of that page: "which is applied on a uniform basis to all employees and applicants . . ." The simplest example of the ambiguity is the case of the test which is valid for one group and valid in a different way (that is, with a different set of expectancies of job performance) for a different group. One way of interpreting this phrase would mean that a company establishing a cutting score would have to use the same cutting score for those groups. The other interpretation is that cutting scores would be established for both groups such that the predicted level of job performance would be the same, even though the actual test scores might be different. On page 26 of my article on Employment Tests and Discriminatory Hiring, I defined unfair discrimination (which I hope will correspond to illegal discrimination under the new bill) as that which exists when persons with equal probabilities of success on the job have unequal probabilities of being hired for the job. In the case of differential validities, a "uniform basis" would be unfairly discriminatory by that definition if the uniformity is in test scores. The test can be a means of developing the desirable kind of discrimination, that distinguishing persons who can do the job from those who are less likely to be able to do it, if the uniformity is in terms of expectancies.

I would appreciate the opportunity of meeting with appropriate members of the committee, either formally or informally, to discuss the section on testing. My qualifications to do so include authorship of a widely used text book published by

McGraw Hill, *Personnel Testing*, the enclosed article on Employment Tests and Discriminatory Hiring, and service as a consultant to the Office of Federal Contract Compliance on testing. With regard to the latter, I have been involved from the very beginning in the formulation and interpretation of the executive order regarding the use of tests.

Sincerely,

ROBERT M. GUION, *Chairman.*

U.S. COMMISSION ON CIVIL RIGHTS

Summary of

"FOR ALL THE PEOPLE—BY ALL THE PEOPLE"

A Report on Equal Opportunity in State and Local Governments

If government is to be *for* all the people, it must be by all the people. This basic precept underlies the Commission's study on the status of equal opportunity in State and local government employment.

THE IMPORTANCE OF GOVERNMENT

State and local government employment is growing rapidly in the number of persons employed, the range of services provided, and the occupational categories required to perform these services. In 1967 there were more than 80,000 units of State and local government in the United States employing 8 million persons. About 22,000 of these were responsible for meeting the public education needs of the Nation. More than 58,000 governmental units, employing 4.4 million persons, served all other functions of State and local government.

These governments are in a unique position to offer employment opportunities on a scale that few other employers can match. And because government has the clear constitutional obligation to function without regard to race, color, religion, or national origin, these employers have a basic and unquestioned responsibility to provide equal employment opportunity.

Furthermore, the civil servant, in performing government's routine chores and housekeeping duties, makes the many policy and administrative decisions which have a concrete and often immediate effect on the lives of the people living within the particular jurisdiction. If these decisions are to be responsible to the needs and desires of the people, then it is essential that those making them be truly representative of all segments of the population.

COMMISSION'S BASIC FINDING

The basic finding of this study is that State and local governments have failed to fulfill their obligation to assure equal job opportunity. In many localities, minority group members are denied access to responsible government jobs and often are totally excluded from employment except in the most menial capacities. In many areas of government, minority group members are excluded almost entirely from decision-making positions, and, even in those instances where they hold jobs carrying higher status, these jobs often involve work only with the problems of minority groups and tend to permit contact largely with other minority group members. Examples include managerial and professional positions in human relations commissions or in welfare agencies.

The Commission's study focused on government employment in seven major metropolitan areas—San Francisco-Oakland, Baton Rouge, Detroit, Philadelphia, Memphis, Houston, and Atlanta—representing 628 governmental units and nearly one-quarter of a million jobs. Negroes held about one-fourth of these jobs.

More than half of the Negro workers in State and local government were employed by central city governments. In San Francisco, Philadelphia, Detroit, and Memphis, Negroes held jobs equal to or in excess of their proportion of the population. In Baton Rouge and Oakland, the proportion of city jobs held by Negroes was half their proportion of the population.

In State, central county, and suburban employment, Negroes were generally employed in proportion to their populations in the northern governments surveyed but not in the southern governments. The poorest record was in the Louisiana State government, where only 3.5 percent of the non-education jobs surveyed were held by Negroes, who made up 31.7 percent of the area population. (See Table 1)

TABLE 1.—NEGROES AS A PERCENT OF THE POPULATION AND AS A PERCENT OF GOVERNMENT EMPLOYMENT FOR SELECTED GOVERNMENTS BY SMSA[1]

Standard metropolitan statistical area	Central city		Central county		State	
	Estimated percent of population	Percent of total employment, 1965	Percent of population, 1960	Percent of total employment	Percent of population, 1960	Percent of total employment
San Francisco-Oakland			12.3	20.2	8.6	9.6
San Francisco	12	18.5				
Oakland	34	15.3				
Philadelphia	31	40.6			15.5	26.3
Detroit	34	40.1	19.9	27.0	14.9	36.0
Atlanta	44	32.1	34.7	16.6	22.3	5.6
Houston	23	19.1	19.8	6.6	19.5	5.6
Memphis	40	41.7	36.3	26.9	37.9	27.2
Baton Rouge	32	16.4			31.7	3.5

[1] Population percentages for central cities are based on 1965 census estimates; for central counties on 1960 decennial census data. Since State data were only collected for employees in the SMSA, the population data also represents that of the SMSA.

Note: Figures exclude employees of public educational system.

Source: U.S. Bureau of the Census.

In every central city, except San Francisco and Oakland, Negroes held 70 percent or more of all laborer jobs. In the Southern cities—Baton Rouge, Memphis, Atlanta, and Houston—more than half of all Negro employees on their respective payrolls held such jobs. In Atlanta, where one-third of the 6,000 city jobs were held by Negroes, only 32 Negroes held white-collar positions. In only two cities—Philadelphia and Detroit—did the number of Negroes in white-collar positions come near to reflecting their proportion of the population.

Similar patterns were found in State, central county, and suburban governments. Baton Rouge and Atlanta, both State capitals, provide a significant number of State jobs. Yet there were only 23 Negroes, less than half of 1 percent, in the 4,800 white-collar State jobs in the Baton Rouge metropolitan area. In the Atlanta metropolitan area, less than 5 percent of the white-collar State jobs were held by Negroes, compared to 50 percent of the service worker jobs.

Despite the overall unfavorable occupational status of minority group members in State and local governments, they generally have better access to white-collar jobs than in private employment. (See Table 2)

TABLE 2.—PERCENT DISTRIBUTION OF NEGRO AND ALL OTHER EMPLOYMENT BY OCCUPATION AND BY FUNCTION FOR EACH CENTRAL CITY

Occupations and functions	San Francisco[1]		Oakland[1]		Philadelphia		Detroit		Atlanta		Houston[1]		Memphis		Baton Rouge	
	Negro	All other	Negro	All other	Negro	All other	Negro	All other	Negro	All other	All Negro	All other	Negro	All other	Negro	All other
OCCUPATION																
All occupations	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Officials and managers	.2	1.5	.7	2.0	1.7	4.0	1.1	4.3	0	1.6	1.2	4.6	.3	7.2	0	5.8
Professional and technical	11.6	24.6	12.1	17.1	12.3	22.0	6.4	14.9	.9	9.3	1.9	11.2	9.5	15.3	1.5	13.5
Office and clerical	5.5	12.3	12.1	11.7	13.7	9.8	13.2	12.5	.7	10.0	2.6	14.4	3.2	14.3	0	15.2
Craftsmen and operatives	28.7	20.8	8.5	10.9	16.5	8.6	21.1	19.0	12.6	29.7	19.1	14.2	4.6	20.5	24.5	19.3
Laborers	7.8	5.4	23.4	5.6	20.3	1.3	23.9	3.6	69.8	4.9	60.8	2.6	53.9	1.3	64.8	5.4
Uniformed police	2.3	13.7	3.9	22.2	12.2	32.4	1.9	26.1	3.9	18.4	3.0	20.4	1.0	12.6	3.4	16.6
Uniformed corrections	.3	.8	(2)	(2)	1.8	1.3	.6	.5	.3	.9	0	.2	.4	0	(3)	(3)
Uniformed fire	(3)	13.3	4.8	21.5	1.8	15.9	.4	11.3	5.3	18.7	2.9	20.6	.3	16.7	2.4	19.5
Civilian employees in public safety[4]	2.5	3.9	5.4	7.9	4.0	2.5	3.4	3.4	1.5	3.2	2.2	8.4	3.9	7.0	.3	3.5
Other service workers	41.0	3.5	29.1	1.0	16.2	2.1	28.0	4.4	5.0	3.3	6.4	3.3	22.9	5.2	3.1	1.2
FUNCTIONS																
All functions	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Financial administration and general control	3.7	9.7	3.3	5.8	7.1	8.8	3.0	7.1	.6	7.4	.8	10.2	.8	4.7	0	19.8
Community development	9.9	16.4	42.7	23.2	11.7	8.0	16.0	13.6	30.2	23.4	44.6	27.9	14.0	8.7	66.4	21.6
Public welfare	3.3	5.2	(2)	(2)	4.3	1.4	12.5	1.3	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Police protection	3.3	15.3	8.7	29.3	15.7	33.8	4.8	28.7	5.1	20.7	5.0	27.8	4.0	17.7	3.4	19.8
Corrections	1.8	2.9	(3)	(3)	2.1	2.1	.7	.9	.3	1.2	0	.3	1.2	1.5	(3)	(3)
Fire protection	.1	13.7	5.4	22.3	2.0	16.3	.7	11.7	5.6	19.3	3.0	21.7	.5	17.1	2.8	19.8
Health, hospitals, and sanatoriums	41.3	12.9	(2)	(2)	18.2	11.6	20.7	8.7	(2)	(2)	4.2	5.3	31.9	17.4	0	.1
Public utilities	34.8	20.7	21.3	7.9	28.0	8.1	36.4	19.4	53.7	17.6	37.9	1.9	47.6	32.9	20.5	8.8
All other	1.9	3.2	18.6	11.4	10.8	10.0	5.2	8.7	4.6	10.5	4.5	5.0	(2)	(2)	7..	10.1

[1] Spanish Americans and oriental Americans are not included in the "all other" category.
[2] No function.
[3] Less than 0.1 percent.
[4] Includes all managers and officials, professional and technical, and clerical and service workers other than protective service workers employed in police, fire, and correction departments.

Note: Figures exclude employees of public educational systems. Due to rounding, percents may not add to 100.

In the two metropolitan areas in which they are a significant minority—Houston and San Francisco-Oakland—Spanish Americans in public employment were more favorably distributed in white-collar jobs than Negroes but less favorably than Anglos.

Oriental Americans held a substantial number of State jobs in the San Francisco-Oakland area but were underrepresented in jobs with the cities of San Francisco and Oakland. In this metropolitan area the overall occupational status of Oriental Americans was more favorable than that of majority group employees although they tend to lag in managerial positions. (See Tables 3 & 4)

TABLE 3.—PERCENT DISTRIBUTION OF SPANISH AMERICAN AND ALL OTHER EMPLOYMENT[1] BY OCCUPATION AND BY FUNCTION FOR THE CENTRAL CITIES OF SAN FRANCISCO, OAKLAND, AND HOUSTON

Occupations and functions	San Francisco		Oakland		Houston	
	Spanish American	All other	Spanish American	All other	Spanish American	All other
All occupations	100.0	100.0	100.0	100.0	100.0	100.0
Officials and managers	0	1.5	0	2.0	1.9	4.6
Professional and technical	17.6	24.6	7.5	17.1	5.4	11.2
Office and clerical	8.5	12.3	11.3	11.7	11.0	14.4
Craftsmen and operatives	29.9	20.8	18.9	10.9	17.1	14.2
Laborers	10.3	5.4	34.0	5.6	34.1	2.6
Uniformed police	6.2	13.7	7.5	22.2	12.0	20.4
Uniformed corrections	0	.8	[3]	[3]	0	.2
Uniformed fire	7.0	13.3	13.2	2.15	3.7	20.6
Civilian employees in public safety[2]	3.8	3.9	5.7	7.9	10.3	8.4
Other service workers	16.7	3.5	1.9	1.0	4.4	3.3
All functions	100.0	100.0	100.0	100.0	100.0	100.0
Financial administration and general control	4.4	9.7	1.9	5.8	4.2	10.2
Community development	13.8	16.4	47.1	23.2	57.6	27.9
Public welfare	5.3	5.2	[3]	[3]	[3]	[3]
Police protection	7.3	15.3	13.2	29.3	21.8	27.8
Corrections	2.6	2.9	[3]	[3]	0	.3
Fire protection	7.0	13.7	13.2	22.3	4.2	21.7
Health, hospitals, and sanatoriums	22.3	12.9	[3]	[3]	5.2	5.3
Public utilities	34.3	20.7	15.1	7.9	4.8	1.9
All other functions	2.9	3.2	9.4	11.4	2.3	5.0

[1] "All other" does not include Negro employees. In San Francisco and Oakland, "All other" does not include Oriental Americans.

[2] "Civilian employees in public safety" includes all managers and officials, professional and technical, and clerical and service workers other than protective service workers employed in police, fire, and correction departments.

[3] No function.

Note: Due to rounding, percents may not add to 100. Figures exclude employees of public education systems.

TABLE 4.—PERCENT DISTRIBUTION OF ORIENTAL AMERICANS AND ALL OTHER EMPLOYEES, BY OCCUPATION AND BY FUNCTION, FOR THE CENTRAL CITIES OF SAN FRANCISCO AND OAKLAND

	San Francisco		Oakland	
	Oriental American	All other [1]	Oriental American	All other [1]
Occupations				
All occupations	100.0	100.0	100.0	100.0
Officials and managers	.3	1.5	0	2.0
Professional and technical	51.6	24.6	43.9	17.1
Office and clerical	19.8	12.3	10.5	11.7
Craftsmen and operatives	10.6	20.8	7.0	10.9
Laborers	1.9	5.4	15.8	5.6
Uniformed police	.4	13.7	1.8	22.2
Uniformed corrections	.1	.8	[2]	[2]
Uniformed fire	.1	13.8	0	21.5
Civilian employees in public safety [3]	5.3	3.9	14.0	7.9
Other service workers	9.8	3.5	7.0	1.0
FUNCTIONS				
All functions	100.0	100.0	100.0	100.0
Financial administration and general control	13.5	9.7	12.3	5.8
Community development	18.7	16.4	49.1	23.2
Public welfare	15.8	5.2	[2]	[2]
Police protection	2.7	15.3	15.8	29.3
Corrections	2.7	2.9	[2]	[2]
Fire protection	.6	13.7	0	22.3
Health, hospital and sanatoriums	27.4	12.9	[2]	[2]
Public utilities	15.4	20.7	10.5	7.9
All other functions	3.3	3.2	12.3	11.4

[1] "All other" includes neither Negro employees nor Spanish-American employees.
[2] No function.
[3] "Civilian employees in public safety" includes all managers and officials, professional and technical and clerical and service workers other than protective service workers employed in police, fire, and correction departments.

Note: Figures exclude employees of public educational systems. Due to rounding, percents may not add up to 100 percent.

CAUSES OF INEQUITY

The inequities in minority group employment in State and local government are caused by a variety of factors. The Commission found that State and local governments have often discriminated in hiring and promoting minority group members. Furthermore, these governments have failed to perceive the need for affirmative programs to recruit minority group members for jobs in which they are inadequately represented. In addition, minority group applicants frequently are subjected to a variety of screening and selection devices which bear little if any relation to the needs of the job, but which place them at a disadvantage in their effort to secure government employment. There have been few efforts by State and local governments to eliminate such unequal selection devices.

RECRUITMENT

"After 300 years of rejection, it takes a certain type of person to even apply when the chances are that he will not be selected even if he is one of the most qualified."—Negro Leader in Memphis.

The claim that qualified minority applicants are not available was made by many public officials in the cities surveyed. Yet very few governments had made any concerted attempts to seek out qualified minority applicants. In Baton Rouge, Atlanta, and Houston, for example, the minimal step of recruiting at the predominantly Negro colleges in the locality rarely was taken.

A few measures designed to attract minority group members have been adopted by several governments. These include advertising as an "Equal Opportunity Employer", mailing literature to predominantly Negro schools and organizations, and advertising through minority group news media. One weakness in these and other efforts made to recruit minority applicants is that the techniques have not been part of a systematic, comprehensive program but instead have been used on an *ad hoc* basis. Another is that there has been no evaluation to determine if these techniques has been successful.

Despite all recruitment programs the most frequently cited means of learning about job opportunities for both whites and Negroes is the word-of-mouth

referral. Because of rigid patterns of urban segregation, however, this network of communication rarely crosses racial or ethnic lines. Consequently, minority group members are least likely to learn about jobs in areas where few, if any, minorities are employed and are most likely to learn about jobs in those areas which traditionally employ minority group members. A comprehensive affirmative program to recruit minorities is essential if the patterns of employment segregation that exists in various departments and occupations in State and local government are to be broken.

Job Requirements

"There is a great temptation to translate skills needed into concrete education and experience requirements arbitrarily." Authority on Public Personnel Administration.

The most successful recruitment program is of no consequence if job requirements are unnecessarily high and unrealistic and if discrimination in the selection process eliminates capable minority group applicants.

The Commission found frequent examples of screening devices which were not valid indicators of ability to perform satisfactorily on the job. These include education and experience requirements, written and oral examinations, background and character checks, and residency and citizenship requirements. The Commission also found very little evidence that governments are reevaluating job requirements with a view toward increasing opportunities for minority group members.

In many instances education and experience requirements, set higher than necessary, eliminate minority group applicants who can actually perform the job. A Texas placement counselor recognized the problem:

"The jobs open are those requiring experienced people and minority group members just do not have the experience. It works sort of like the grandfather clause."

Written examinations

In addition to education and experience requirements many governments require written examinations for most entry white-collar positions as well as for promotions. The written examination is a recognized handicap for many minority group members who, on the average, do not perform on such tests as well as members of the majority group. The tests used by most governments have not been validated—that is, there is no established correlation between how well an individual scores on the examination and how well he subsequently will perform on the job. When such a relationship has not been established, the written test becomes a means of discrimination against minority group members in that it eliminates from consideration those who can perform the required duties of the job as readily and efficiently as majority group members who pass the test.

Several governments have failed to recognize that tests can discriminate; others have undertaken minimum steps to improve minority test performance. These steps include providing applicants with preparatory material, increasing the time allowance, and lowering the passing score. The city of San Francisco has completely eliminated the written test for many lower level positions.

Oral examinations

Oral examinations are frequently used in addition to, or in lieu of, written tests. The oral test seeks to measure attributes of behavior, such as poise, leadership, alertness and speaking ability. Oral tests were the subject of considerable criticism in the northern jurisdictions studied where they were used more extensively than in the South. Because of the unavoidable element of subjectivity, the oral test can be manipulated to the detriment of minority group applicants. The charges reported to Commission staff included discrimination on the part of board members, lack of minority representatives on boards, emphasis on traits not related to the job, and the selection of board members with no experience in dealing with minority group members.

Steps have also been taken by several governments to improve the performance of minority applicants on the oral examination. The State of California, for example, sends each applicant a pamphlet to prepare him for the interview. A briefing on the particular problems of minorities is given to board members

which, if possible, includes a minority person. In addition, the interview is tape-recorded to provide a record which can be consulted should any questions or complaints arise.

Performance tests

A third means used to evaluate an applicant's qualifications is the performance test where the applicant demonstrates his ability to do the actual tasks associated with the job. The Commission discovered an increasing interest in the potential which performance tests offer minority group members since they eliminate arbitrary and irrelevant factors, such as verbal skills, inherent in written tests. A Detroit official stated that he believed the only way to get equality of opportunity was through the use of performance testing. The International City Managers' Association accepts the relevance of the performance test for selection and states that: "Performance tests also make it more feasible to reduce or eliminate arbitrary minimum requirements yet assure that only qualified candidates will be placed on eligible lists."

Personnel administrators criticize the performance test primarily because it is time-consuming and expensive to administer. Nonetheless both the State of California and the city of Philadelphia experienced success with performance tests. A program to develop and use performance tests for a wider range of occupations was launched a few years ago by the California State Personnel Board. The Board eventually increased its production and use of performance tests and found that they were more acceptable than written tests to most minority group members because they could see a direct applicant of the test to the job.

Arrest and conviction records

As part of the general background check, governments also investigate potential employees for possible police records. The use of arrest and conviction records as disqualification for public employment affects members of minority groups more adversely than the majority group. Negroes over 18 years of age, for example, are about five times more likely to have been arrested than whites. Negroes and other minorities are also more likely to have been arrested without probable cause. Information on arrests and convictions was almost always requested on the applicant form but very seldom was the applicant informed of the government's policy on hiring persons with police records. None of the governments surveyed automatically excluded an applicant with an arrest record from employment in nonpolice jobs. Only five jurisdictions automatically disqualified an applicant with a conviction record. However, many persons feel that the presence of the arrest and conviction question on the application discourages many minority group job seekers.

Most governments surveyed state that in evaluating an applicant with a police record, they consider such factors as age at the time, recency, frequency, type of offense, subsequent conduct, and nature of the job applied for. In most governments, however, there were few or no guidelines and supervision in implementing the stated policy on applicants with police records. Arrest and conviction policies which were liberal both in design and execution were reported by some jurisdictions. The San Francisco Civil Service Commission, for example, reported that 90 percent of the applicants with criminal records gained eligibility on civil service lists. The policy of the California State Personnel Board has been stated as follows:

"Persons with arrest and conviction records are entitled to receive thorough and tolerant consideration on an individual basis, taking into account the social and humane need for their rehabilitation as well as the requirements of the position for which they apply."

General Requirements

Most State and local governments studied also impose a variety of requirements on job applicants which are unrelated to the job. Examples of these are citizenship, residency, voter registration and party affiliation. Among the jurisdictions covered by the Commission's study, citizenship requirements were a barrier only to the Spanish-speaking and Oriental aliens in California where a State statute prevents aliens from holding any State or local government job. The impact of this barrier was expressed by a Mexican construction worker:

". . . When we work on the highways, one of the requirements is that we be citizens of the United States. Why do we have to be citizens to dig a ditch or to pick up rocks? . . . My sons and my wife are all American citizens and I have to work to maintain them."

Of the 21 jurisdictions surveyed during the study's field investigation, all but five also had some form of residency requirement for public employees. However, the Commission found that residence rules, in general, present no major obstacle for minority group members who want to obtain public employment since most minority group members live in central cities where the greatest job opportunities in State and local government exist. In communities with discriminatory housing policies, however, residency requirements necessarily prevent minority group members from gaining access to local government jobs.

Two governments—the State of Louisiana and the city of Baton Rouge—have provisions which give strong preference to registered voters. These requirements present a serious barrier to Negroes, many of whom are still disfranchised in many parts of the South. In Delaware County, Pennsylvania party affiliation was a requirement for county jobs but it had no noticeable effect on minority group members there.

The probationary period

The probationary period is the last step in the process of testing the applicant's qualifications. Although it is designed to allow employees to be easily dismissed if their performance is unsatisfactory, very few employees are ever dismissed during this period in the jurisdictions surveyed. There was also no evidence that minority group members were dismissed at a higher rate during this period.

Professional public personnel administrators recognize the "crucial importance" of the probationary period, as a prolonged performance test, also offers considerable potential as a more productive selection device. By allowing personnel systems to experiment with traditional personnel techniques, the probationary period can be used to reject those who cannot satisfactorily perform the duties of the job.

Prejudiced Attitudes and Biased Treatment

"I don't think it (desegregated washrooms) is healthly for the employees of this department . . . There's no way they can get their mouth (sic) down on a drinking fountain."—Southern department official.

Prejudiced attitudes and biased treatment of minority employees were reported in several governments. Segregated facilities, segregated work assignments, social ostracism, and lack of courtesy formed the work atmosphere for many Negro employees. Examples were numerous in both the North and South: A San Francisco department head reportedly referred to Negroes as "boys" and Orientals as "Chinamen." In Shelby County, Tennessee, a former Negro porter who was promoted to a technician position found he was not welcome at the lunch table with his white co-workers. In Detroit, it was reported that the public works department assigned workmen to crews on a segregated basis. The park commission in Memphis had integrated staffs on "integrated" playgrounds but no black recreation workers were assigned to white area playgrounds.

In Baton Rouge, a city official was asked if he would hire a Negro. His response: "Would you steal a million dollars?" The personnel director of a Georgia State Highway Department, explaining why there was no black secretarial help in the department said:

"There are no Negroes at all there. 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 . . . But I am sympathetic to them. I'm not opposed to hiring a nigger."

More common than these direct expressions of racial prejudice, however, were expressions of indifference to the subject of equal opportunity. Many officials felt that their responsibility was satisfied merely by avoiding specific acts of discrimination in hiring and promoting. Concern with some of the less obvious inequalities, such as excessively high qualifications or testing devices which do not fairly evaluate potential job performance, were not seen as part of the job.

A general lack of sensitivity to the reluctance of minorities to apply for jobs in governments and agencies with reputations for discrimination was evident in the South. The sentiments of the black community in Baton Rouge were expressed by a local civil rights leader:

"Black people know that people at the Capital are white. We know our place. We know we're not supposed to be there. . . . It's not a question of what's on the books—it doesn't need to be. We can get the picture in a lot of ways. . . . This fear of working in white men's jobs just permeates the State. Most Negroes are afraid of white people, afraid of working with them, and think they're inferior to them."—Negro leader in Baton Rouge.

PROMOTIONS

"Many of the [Negro] laborers are plain darn lazy and satisfied with a laborer's salary."—Department official in Memphis.

Promotional opportunities for minority employees are critical factors in the achievement of equal employment opportunity. Minority persons interviewed in all governments studied repeatedly complained of their limited access to higher level jobs and to supervisory positions.

Promotions are generally based on one or more of the following factors which present the same problems as those encountered in the initial selection process: education and experience, length of service, performance, written and oral examinations, and such subjective character traits as leadership, personality, and cooperation.

The performance evaluation and length-of-service requirements present additional barriers to equal opportunity. The subjective nature of most performance evaluations allows for discrimination. An official of the Michigan State Civil Rights Commission said that is quite common in Detroit for a Negro employee to get high efficiency ratings until he is eligible for promotion at which point his ratings begin to decrease. In Philadelphia, as well, two respondents charged that supervisor's evaluations were systematically lowered from "outstanding" to "satisfactory" when minority group employees became eligible for promotion.

Seniority, or length of service requirements, also limit promotional opportunities for minority group members. In areas where Negroes have been systematically excluded from employment in the past, they are not on equal footing with white employees. An Atlanta personnel official confirmed that black employees were not promoted at the same rate as whites because seniority is involved and "Negroes have not filled many jobs until recently."

Other charges of discrimination in promoting minority workers were found in several jurisdictions. In Oakland, a former consultant to the California State Fair Employment Practice Commission related an incident in which a dark skinned Mexican American had failed an oral promotion examination because of "personality and attitude problems." Although the FEPC ruled it was clear and conscious discrimination, the Oakland Civil Service Commission refused to reconsider the case, agreeing only to have a minority person as a member of the next oral panel.

Particularly evident in the South was the reluctance to allow Negroes to supervise whites. Personnel officials in Memphis stated that, Negroes were a small minority among supervisors and that no Negroes supervised white employees. In the department of public works, for example, most of the laborers were black while most of their supervisors were white.

THE MERIT SYSTEM

"While it might be expected that city merit employment systems would assure nondiscrimination and high levels of minority worker participation in government employment, no general correlation can be made between the patterns of minority employment and the existence of such systems. . . ."—U.S. Conference of Mayors.

Although civil service merit systems generally have broadened opportunity for public service, they, alone do not guarantee equal opportunity or equal treatment for minority group members.

Administrators of merit systems frequently were found to have violated the merit principle and practiced conscious discrimination. Many governments with merit systems, including Atlanta and Memphis, at one time maintained separate lists of eligible candidates—one white and one black.

I addition to overt discrimination, merit system structures often embody practices and procedures developed over the years which no longer meet the current needs and which serve to inhibit the opportunities of minority group members. Among these are the written test and the education and experience requirements.

However, within a rigid framework, merit systems give the public administra-

for considerable discretion either to promote or to impede equal employment opportunity. The mechanics of the selection process, for example; lends itself to manipulation. Among the most easily manipulated are the examination "passing" score, the civil service register or list of eligibles, and the final selection procedure.

In many jurisdictions, the score which determines whether an individual will be eligible for further consideration fluctuates from one test to the next according to the supply and demand of applicants. This indicates that merit system administrators can adjust their own definition of who is qualified for employment. The procedure may be used for or against minority applicants—the lower the passing score, the more minority applicants will pass the examination.

The civil service register—a list of names ranked from highest to lowest of all those who have passed the screening process—is another merit system mechanism which can be used by administrators to affect equal opportunity. There are two types of registers: a continuous register which contains the names of all eligibles from successive examinations who are entered wherever they fit into the ranking and the closed register which contains the result of one examination. Since minority candidates on the average are likely to pass with lower scores than majority candidates, their names may never be reached on the continuous register. However, the continuous register has certain advantages. It allows for an uninterrupted recruitment program and eliminates the long interval between examinations which is found with the closed register allowing candidates who have failed to retake the test within a short period of time. On the other hand, the closed register of long duration often enables eligible candidates with low scores to be hired if they are still available when their names are reached.

The final selection procedure, where one candidate is selected for the job, offers considerable opportunity for manipulation to avoid hiring minority group members. In most of the 18 jurisdictions with merit systems in which interviews were conducted, at least one public official informed Commission staff that such manipulation was practiced. In San Francisco, where only the top name on the register is certified for consideration, officials stated that there have been instances when certain departments have left a secretarial job vacant until another department has selected the top person on the register if that person is a Negro. Other governments were said to have filled vacancies by transfer from another department to avoid hiring nonwhites.

Most governments select from among the top three candidates. In Baton Rouge, an official said that department heads have been reluctant to fill any vacancies with a black applicant when either of the other two applicants is white. A Pennsylvania official believed it was the practice of many white administrators to select a white secretary. He admitted that if given the choice he would "naturally" select a white secretary.

It is evident that the existence of a merit system alone is not a guarantee that all persons will be treated equally. The principles of merit and equal opportunity in public personnel systems are compatible but not inevitable. The principles do not necessarily reflect the system in practice and the apparatus of the system is not in itself insurance that equal opportunity is a reality.

EQUAL OPPORTUNITY IN POLICE AND FIRE DEPARTMENTS

". . . the nine black policemen employed by Baton Rouge were assigned to Negro areas and were not allowed to give so much as a traffic ticket to a white person."—Negro leader in Baton Rouge.

Barriers to equal opportunity for minority group members are greater in police and fire departments than in any other area of State and local government. Many departments have only recently begun to hire minority group members. The city of Baton Rouge, for example, did not hire Negro policemen until 1963; the city of Memphis hired its first Negro fireman in 1955.

While 27 percent of all central city jobs surveyed were in police and fire departments, only 7 percent of the Negro employees were policemen. In Philadelphia, which employed proportionately more Negro policemen than any of the other central cities surveyed, 20 percent of the police force was Negro compared to 9 percent in Atlanta and less than 6 percent in the other survey cities. State police forces had an even worse record. Four States—Louisiana, Pennsylvania, Georgia, and Texas—employed no Negro policemen in the metropolitan areas surveyed. Fire departments employ even fewer Negroes. At the time of the survey, the city of San Francisco, with more than 600 firemen, employed only one

Negro fireman. In Philadelphia, Detroit, and Memphis the proportion of firemen jobs filled by Negroes was half or less the proportion of police jobs.

In both police and fire departments, Negroes were conspicuously absent from positions above the level of patrolman or fireman. Of all the central city police departments surveyed, Oakland was the only one to have a Negro captain. In central city fire departments, only Philadelphia and Oakland had a Negro at the level of captain or above. Of the more than 2,000 sergeants and lieutenants in the eight cities surveyed, only 21 were Negroes.

Spanish Americans, similarly underrepresented, were employed in police and fire departments less than half as frequently as Anglos. In the Houston metropolitan area, there were no Spanish Americans employed by the Texas State Police Department. (See Table 5)

TABLE 5.—NEGROES AS A PERCENT OF THE CENTRAL CITY POPULATION AND OF THE TOTAL UNIFORMED FORCE AND OF SUPERVISORY POSITIONS IN POLICE AND FIRE DEPARTMENTS IN CENTRAL CITIES SURVEYED—1967

Central city	Population	Police Department		Fire Department	
		Uniformed force	Supervisory	Uniformed force	Supervisory
San Francisco	12	3.9	0	0.1	0
Oakland	34	3.2	1.2	4.0	2.2
Philadelphia	31	20.4	8.0	7.3	2.2
Detroit	34	4.6	2.2	2.1	.7
Atlanta	44	9.1	1.3	11.9	0
Houston	23	3.5	0	3.5	1.0
Memphis	40	5.5	1.6	1.3	0
Baton Rouge	32	3.8	0	2.4	3.3

The Commission found that police and fire departments have discouraged minority persons from joining their ranks by failure to recruit effectively and by permitting unequal treatment on the job, including unequal promotional opportunities, discriminatory job assignments, and harassment by fellow workers.

The police departments studies have conducted vigorous recruitment programs, many of which have included specific attempts to recruit members of minority groups. For the most part these efforts have been unsuccessful. One obstacle to successful recruiting mentioned by officials in many cities the Commission studied is the tension and hostility that exist between the black community and the police department. The Michigan State Civil Rights Commission said:

"The Departments that are making the greatest headway in obtaining minority group applicants are those that have made headway in reversing their image in the minority community . . ."

The greatest obstacle to minority hiring was the selection process. Among those Negroes who are recruited and do apply, the proportion which is finally accepted for the force is usually quite small. Proportionately more Negroes than whites are screened out by the written and oral examination, the physical and medical examinations and in particular the background and character check.

The problems inherent in the written examinations are comparable to those encountered in regular civil service examinations. Oral examinations and background investigations are also crucial areas for minority group applicants. The screening, almost always conducted by white policemen, tends to favor applicants whose background and character most closely resemble those of the investigating officer. In Detroit during one period, 49 percent of the Negro applicants who reached the preliminary oral examination stage were disqualified during the oral examination and background investigation, while only 22 percent of the whites were disqualified at this point.

The Michigan Civil Rights Commission characterized the screening process used by the Michigan State Police Department as one which provides several opportunities for persons harboring racial prejudice (consciously or unconsciously) to discriminate. An example was cited where seven black candidates for jobs as State troopers passed the written examination and five were eliminated during the field investigation. The Michigan Commission found that:

"In at least one case, there was a serious question regarding the manner in which the applicant's credit record was evaluated by the investigating trooper . . ."

In San Francisco it was reported that police investigators were unusually meticulous during security checks of black candidates, digging into past criminal records, common law marriages, and other related matters in great detail. A case was cited in which a Negro had been rejected because of a juvenile arrest for stealing a jar of hair oil, even though he had never been convicted.

Discrimination on the job was reportedly more pervasive in police and fire departments than in other areas of government. The effect of these practices—segregated assignments, limited opportunity for promotion, hostility among co-workers—was unquestionably another significant factor in increasing the difficulty of recruiting minority group members for jobs with police and fire departments.

Segregated assignments were more prevalent in the Southern cities surveyed. In Baton Rouge, a Negro leader said that Negro policemen were assigned exclusively to Negro neighborhoods and were not allowed to issue traffic tickets to a white person. The chief of police denied the allegation, but he conceded that Negro patrol cars were limited to the Negro areas of the city. Negro policemen in Memphis were restricted to Negro areas and segregated in patrol cars until 1967. Some patrol cars have now been integrated but there were still no Negro policemen assigned to white areas at the time of the study.

Racial tension ran high between black and white policemen in many areas. A San Francisco official told of instances where white policemen used racial slurs in the presence of black policemen and where derogatory notes had been posted on their lockers.

Working conditions in fire departments have been even more strained than those in police departments. Commission staff was told that problems in the sharing of facilities and equipment accompanied the integration of many fire departments. The first black fireman in San Francisco, for example, had to carry his own mattress with him when he moved from one station to another during the training period. He also had to bring his lunch because he was not allowed to use the firehouse range. During the early days of integration in Oakland black firemen had to bring their own dinner plates while white firemen used those provided by the department. When Atlanta hired its first Negro firemen, a new fire station was built with a separate house for the 12 white officers and drivers. When Negro firemen were assigned to other stations the same number were assigned to each shift so that white firemen would not have to sleep in the same bed as black firemen.

Several of the cities surveyed hired their first black policemen and firemen in groups; for example, Memphis hired 12 Negro firemen in 1955, Baton Rouge hired six Negro policemen in 1963. If these departments had continued to recruit minority applicants with the success enjoyed during their initial year, it is likely that the number currently on the force would be substantially higher.

FEDERAL REQUIREMENTS FOR EQUAL OPPORTUNITY

Although State and local public employment is not now covered by the requirements of Title VII of the Civil Rights Act of 1964, the Federal Government does administer two policies designed to promote equal opportunity in certain programs of State and local government: (1) the Federal Standards for a Merit System of Personnel Administration, which primarily cover public assistance and State health programs, State employment and unemployment insurance programs and civil defense programs; and (2) a nondiscrimination requirement in contracts between the Department of Housing and Urban Development (HUD) and local public housing and urban renewal agencies. Neither program has been effective in providing equal opportunity for minority group members. No effective standards and guidelines have been established for an affirmative action program to correct past discriminatory practices and to increase opportunities for minorities. The limited efforts which have been made have not been successful.

The Federal merit standards

The Federal Merit Standards were established by statute in 1939 to improve the State administration of federally aided programs. In 1963 a prohibition against discrimination on the basis of race and national origin was added, and State regulations were required to provide for an appeal procedure in cases of alleged discrimination.

Noncompliance with the merit standards may result in (1) withdrawal of Federal funds; (2) the disallowance of a specific program expenditure; and (3)

a Federal court suit seeking specific redress. Until 1968 none of these sanctions had ever been used to enforce compliance with the nondiscrimination clause. In 1968 the Department of Justice filed suit against the State of Alabama charging that it had refused to adopt explicit racial nondiscrimination regulations and that it had systematically denied employment to Negroes in the federally aided programs subject to the Federal merit standards.

The Federal merit standards do not now require an "affirmative action" program to increase employment opportunities of minorities. Because racial data are not collected in the various programs, it is difficult to measure the effects of the nondiscrimination clause. Judging from the data collected by the Commission and the limited data that are available elsewhere, however, the impact has been limited. The clause has not resulted in a reduction in the disparities nor has it significantly improved the performance of the States with the poorest records of minority employment.

Implementation of the merit standards is the responsibility of the Federal agency granting the assistance. Supervision, however, rests with the Office of State Merit Systems (OSMS) in the Department of Health, Education, and Welfare. OSMS has provided no definite procedure or guidelines for State action either to eliminate discrimination or to increase opportunities for minority group members.

HUD contracts with local housing and urban renewal agencies

The contracts providing for Federal financial assistance to public housing and urban renewal agencies contain clauses prohibiting discrimination in local agency employment and requiring each local agency to take affirmative action to ensure equal employment opportunity. There has been no consistent and effective machinery in HUD to make the equal employment clauses effective instruments for assuring Negroes and other minority group members equal access to all jobs and equality in promotion and assignment. The provision which provides for the filing of complaints by persons who believe they have experienced discrimination places the burden of nondiscrimination compliance on the individual.

Violation of the HUD contract can result in (1) withholding of funds; (2) HUD's taking over a project or managing it directly (in the case of public housing); (3) a Federal court suit. Until 1968 when the Department of Justice filed suit against the Little Rock, Arkansas Housing Authority because of discrimination in its employment practices, none of these sanctions had been used as a result of violation of the equal employment clause.

In summary, the Federal Government has not exerted the leverage available to it through the Federal Merit Standards and other nondiscrimination requirements of federally assisted programs to provide equal employment opportunity in State and local government employment.

RECOMMENDATIONS

I. Action needed to achieve equality in state and local government employment

A. Every State and local government should adopt and maintain a program of employment equality adequate to fulfill its obligation under the equal protection clause of the 14th amendment to assure:

1. that current employment practices are nondiscriminatory; and
2. that the continuing effects of past discriminatory practices are undone.

B. Though the programs of employment equality adopted by individual State and local governments will vary widely with the particular needs and problems of each, all such programs should include the following three elements:

1. An evaluation of employment practices and employee utilization patterns adequate to show the nature and extent of barriers to equal opportunity for minorities and of any discriminatory underutilization of minorities
2. Preparation and implementation of a program of action which is calculated:
   (*a*) to eliminate or neutralize all discriminatory barriers to equal employment opportunity; and
   (*b*) to undo any patterns of minority underutilization which have been brought about by past discrimination.

II. Methods of enforcement and assistance by the Federal Government to advance equality in employment in State and local government

A. Congress should amend Title VII of the Civil Rights Act of 1964 (1) by eliminating the exemption of State and local government from the coverage of Title VI, and (2) by conferring on the Equal Employment Opportunity Commission the power to issue cease and desist orders to correct violations of Title VII.

B. The President should seek and Congress should enact legislation authorizing the withholding of Federal funds from any State or local public agency that discriminates against any employee or applicant for employment who is or would be compensated in any part by, or involved in administering the program or activity assisted by, the Federal funds.

C. Pending congressional action on Recommendation II B, the President should (1) direct the Attorney General to review each grant-in-aid statute under which Federal financial assistance is rendered to determine whether the statute gives the agency discretion to require an affirmative program of nondiscrimination in employment by recipients of funds under the program; and (2) require all Federal agencies administering statutes affording such discretion to impose such a requirement as a condition of assistance. In the event the Attorney General determines that under a particular statute the agency does not have the discretion to impose such a requirement, he should advise the President whether he has power to direct the agency to do so. If the Attorney General advises the President that he lacks such power in a particular case, the President should seek appropriate legislation to amend the statute.

ELEMENTS OF AFFIRMATIVE ACTION

The first step in the program of employment equality is an assessment of needs and problems. This requires a thorough evaluation by the State of local government of the employment practices of each of its constituent agencies, to determine the effect of its practices on utilization of minorities. Though the principal aim is to identify barriers to equal opportunity, the evaluation also should make note, for continuation and strengthening, of those policies which have the positive effect of overcoming such barriers.

In order to make this assessment, and to identify patterns of minority underutilization, the State or local government will need to gather and review comprehensive information, by nonminority-minority classification, on employee distribution among the various agency components, job levels and locations, as well as data on referrals, applications, hires, promotions, and other personnel action.

This initial evaluation should culminate in a written analysis of discriminatory barriers to equal employment opportunity in the State or local government, as well as an analysis of any patterns of minority underutilization which have resulted from the operation of such discriminatory barriers.

Having evaluated employment practices and assessed patterns of minority underutilization, the next step is to formulate a program which will overcome barriers to equal employment opportunity and, in addition, will bring about whatever changes in minority utilization are necessary to undo the effects of past discrimination. Where patterns of minority utilization are to be changed, the program should include specific goals, or estimates, to be achieved within a specified period of time.

Even in those cases where evaluation has disclosed that the present employment practices of a government or of one of its component agencies fully overcome all barriers to equal employment opportunity and that not pattern of discriminatorily created underutilization of minorities is present, formulation of relevant practices into a program is still desirable in order to help assure that nondiscriminatory practices continue to be followed.

Affirmative programs should be developed in form which makes clear the obligations of each component agency of the government. Programs should be put in writing and made available upon request to public employees, minority leaders, and others with a legitimate interest in the status of minorities in public employment. Staff responsibilities for implementing the program should be allocated clearly, and employees informed of the program and of their rights, duties, and obligations under it.

The adoption of affirmative programs by State and local governments may be subject to limitations imposed by statute, State constitution, city, charter, or the like, which inflexibly mandate that certain employment policies be followed.

Similar limitations may be created by the amount or terms of budgetary allocations made to governments or to their component agencies.

Questions of the right or duty of individual public agencies or officials faced with such restrictions can be resolved only on a case basis. However, inherent in the supremacy clause of the Constitution is the requirement that State and local governments must alter any laws, regulations, or practices which stand in the way of achieving the equality in public employment which is required by the equal protection clause of the 14th amendment.

There follows a sampling of the kind of actions which State and local governments will need to include in programs of employment equality. Use, to some degree, of most of these techniques will be necessary to assure that all barriers to equal employment opportunity are eliminated. In addition, public employers with discriminatorily created patterns of employee utilization should use the techniques to a degree sufficient to undo the effects of past discrimination.

Recruitment

a. Maintain consistent continuing communications with the State Employment Service and schools, colleges, community agencies, community leaders, minority organizations, publications, and other sources affording contact with potential minority applicants in the job area.

b. Thoroughly and continually inform sources affording contact with potential minority applicants about current openings, about the employer's recruiting and selection procedures, and about the positions (together with personnel specifications) for which applicants may be made.

c. Inform all applicant sources, both generally and each time a specific request for referral is made, that minority applicants are welcome and that discrimination in referrals will not be tolerated.

d. Fully inform each applicant of the basis for all action taken on his or her application. Supply in detail the basis for rejection, including evaluation of tests and interviews. Suggest to rejected minority applicants possible methods for remedying disqualifying factors.

e. Make data on minority employment status available on request to employees, to minority leaders in the job area, and to others with a legitimate interest in nondiscrimination by the employer.

f. Invite minority persons to visit State and local government facilities; explain employment opportunities and the equal oportunity program in effect.

g. Have minority persons among those who deal with persons applying for employment, with clientele, or with other members of the public, in order to communicate the fact of minority equal opportunity.

h. Coordinate the employment and placement activities of the various components of the State or local government, at least for the purpose of facilitating minority applications or requests for transfer. To the same end, maintain minority applications or transfer requests on an active basis for a substantial period of time.

i. Participate in Neighborhood Youth Corps, New Careers, other Federal job training or employment programs, or similar State or local programs. In connection with such programs, or otherwise, make a particular effort to structure work in a way which gives rise to jobs which are suitable for minority persons who are available for employment.

j. Independent of outside training programs, institute on-the-job training or work-study plans, in which persons are employed part-time while studying or otherwise seeking to satisfy employment requirements; this may include summertime employment for persons in school.

k. Solicit cooperation of academic and vocational schools to establish curricula which will provide minority candidates with the skills and education necesssary to fulfill manpower requirements.

Selection

a. Take steps to assure that tests used for the purpose of selecting or placing applicants are demonstrated to be valid in forecasting the job performance of minority applicants.

b. Pending validation, discontinue or modify the use of tests, minimum academic achievement, or other criteria which screen out a disproportionate number of minority applicants.

c. Do not in all cases give preference to nonminority applicants on the basis of higher performance on tests or other hiring criteria, as long as it is apparent

that competing minority applicants, especially where they have waiting list seniority, are qualified to do the job.

d. Where tests are used, employ them as a guide to placement rather than as the determinant of whether an applicant is to be hired.

e. Make increased use of tests comprised of a sample of work to be performed on the job.

f. Make increased use of the probationary period, affording an opportunity for on-the-job training and enabling the applicant's ability to be judged on the basis of job performance.

Placement and Promotion

a. Make available to minority applicants and to present minority employees a complete description of positions for which they may be eligible to apply.

b. In the initial placement of newly hired employed, wherever possible place minority employees in positions or areas with low minority representation.

c. Broaden job experience and facilitate transfers of minority employees by creating a system of temporary work experience assignments in other positions or areas of work. Such a system may include continuously review employment practices and the status of minority persons in employment.

d. Individually appraise the promotion potential and training needs of minority employees, and take action necessary to permit advancement.

e. Announce all position openings on a basis which bring them to the attention of minority employees and makes clear that minority persons are eligible and encouraged to apply.

Discipline

a. Formulate disciplinary standards and procedures in writing, and distribute them to all employees.

b. In case of proposed disciplinary action, inform the employee of the infraction alleged and afford any opportunity for rebuttal. If rebuttal is deemed unsatisfactory, clearly state the reasons why.

Facilities

Assure that facilities, including all work-related facilities and those used in employer-sponsored recreational or similar activities, are not subject to segregated use, whether by official policy or by employee practice.

In addition to the above action, there is a need for a continuing review of employment practices and of their effect upon minority persons. Such a review requires the regular collection and evaluation of data on employee distribution and personnel actions, such as that described under paragraph 1, above.

This data affords an important measure of the effectiveness of steps taken to overcome barriers to minority employment, by showing the actual impact of employment practices on minorities; the data may indicate points at which changes are needed in the affirmative program to make it more effective. Similarly, where patterns of minority underutilization which arose from past discrimination are being corrected, such comparative nonminority-minority data shows the extent to which required changes in minority utilization are in fact being made.

Like the affirmative program itself, current data on minority employment should be made available to persons and groups with a legitimate interest in the status of minorities in public employment.

The following are illustrations of the steps necessary for an effective continuing review by State and local governments of their employment practices and of the status of minorities in employment.

a. Maintain records containing for the period covered, and indicating nonminority-minority classifications and the positions involved, complete data on inquiries, applications, hires, rejections, promotions, terminations, and other personnel actions, as well as data as of the end of the period, by nonminority-minority classification, on employee distribution within the workforce.

b. Maintain on file for a reasonable period of time, with nonminority-minority classification, a file on each applicant (including those listed on a civil service register) adequate to document the specific grounds for rejection or passing over of the applicant.

c. Maintain a record, with nonminority-minority classification, of applicants by job source, to facilitate review of the impact of each source upon minority utilization.

d. Where there are a substantial number of separate components within the State of local government, make periodic inspection and review of employment practices and minority status in the various component agencies.

e. Regularly interview minority employees upon termination to determine whether discriminatory acts or policies played a role in the termination.

EXCERPTS FROM TABLE C-5, OF THE ANNUAL REPORTS OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1965-68

[Median time interval from filing to disposition of civil cases terminated after trial in U.S. district courts during fiscal years 1965 through 1968]

Fiscal year	Number of cases	Time intervals in months		
		10 percent less than	Median	10 percent more than
1968	7,323	6	19	48
1967	6,865	6	18	45
1966	6,695	6	17	46
1965	6,705	6	17	45

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., October 15, 1969.

Hon. HARRISON A. WILLIAMS, JR.,
Chairman, Subcommittee on Labor,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for my comments on the desirability of legislation to include employees of public school systems within the ambit of Title VII of the Civil Rights Act of 1964.

As I indicated in a statement submitted for the record of the Labor Subcommittee's deliberations concerning S. 2453 and S. 2806, I am in favor of Title VII's provisions being extended to include employees of State and local governments. It was my intention to include coverage of public educational employees within that endorsement, for the governmental activity involved is certainly one critical to realization of the Fourteenth Amendment's guarantees.

I hope the above sufficiently clarifies my position on this matter. If I may be of further assistance to you, please do not hesitate to contact me.

Sincerely,

WILLIAM H. BROWN, III.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., October 24, 1969.

Hon. HARRISON A. WILLIAMS, JR.,
Chairman, Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for an evaluation of certain provisions of S. 2453, revising Title VII of the Civil Rights Act of 1964, on which I have not previously commented in statements submitted for the record.

Section 3 of S. 2453 would expand the time period for filing a charge after an unlawful employment practice has occurred from ninety to one hundred and eighty days. In addition, the requirement that charges be filed under oath is deleted.

These revisions would substantially improve Title VII's mechanisms for initiating EEOC action. Individuals are not always immediately aware either of the fact that a discriminatory act has occurred, or that a remedy is available through the Commission. One hundred and eighty days seems a more reasonable time limit than the present ninety days, which is unduly restrictive and often results in dismissal of otherwise valid grievances. Related is the revision of Section 706(a) to delete the oath requirement in aggrieved party charges, and the recital of "reasonable cause" as a basis for Commissioner's charges. These provisions are redundant in the light of standard regulatory procedure, and have proven counter-productive a a source of delaying litigation.

S. 2453 contains a number of other provisions that would perfect the Title's language in regard to Commission organization and terms of Members, as well as revise the recordkeeping requirements of Section 709(d) to lessen the duplicatory effect of overlapping Federal and State regulations. I endorse these revisions.

The Attorney General's authority to institute pattern or practice suits under Section 707 is withdrawn, however, which is a salient weakness in the bill. The Justice Department's activities have given rise to much of the law of Title VII, and abandonment of one of the government's tools in this area is undesirable, especially in the context of the Department's resources for conducting broad inquiries into patterns of institutionalized discrimination. This consideration is particularly pertinent to a bill contemplating the traditonal regulatory enforcement model of cease and desist orders, which is primarily a reactive mechanism. Withdrawal of the Attorney General's power to initiate Section 707 lawsuits could thus only result in the effectiveness of the Title being diminished, and I am accordingly opposed to such revision.

I hope the above will be useful to you in your deliberations. If I may be of further assistance to you, please do not hesitate to contact me.

Sincerely,

WILLIAM H. BROWN III.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., October 31, 1969.

HON. HARRISON A. WILLIAMS, JR.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR WILLIAMS: As you may recall on August 12, 1969, I testified before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare regarding S. 2453 and S. 2806. At that time I was under the impression that teachers in public institutions were protected by the provisions of S. 2453. I have since learned that they are not.

The plight of females teaching in the nation's public institutions is becoming alarming. The major problem with which these women are confronted is the discriminatory practices and procedures of many public education administrators. This problem is most cogently characterized by the inability of public school teachers to gain administrative positions and in the inability of female lecturers and associate professors to attain full professorships and department chairmanships regardless of qualifications.

A recent article in "U.S. News and World Report" indicates that there are over 1.5 million female primary and secondary school teachers in the nation alone. It is my hope that these teachers, as well as female teachers in public higher education, will be afforded the protection that appropriate antidiscrimination laws would provide.

My examination of the proposed legislation indicates that while S. 2453 extends coverage to teachers in public institutions, the educational institution exemption of Section 702 remains intact. The *Legislative History of Title VII* clearly indicates that this exemption was intended to apply only to private educational institutions since public educational institutions were not covered (see explanatory remarks of Senator Humphrey of 6–4–64, Congressonal Record, pp. 12,721 through 12,725).

If, upon reconsidering the Act's coverage, it is the sense of Congress that employees of state health and welfare departments and municipal fire and police departments should be afforded the protection of guaranteed equal employment opportunity, I feel that teachers should likewise be so protected. It is my sincere hope that the Senate will consider extending the Act's benefits to this dedicated but unheralded segment of our society.

Sincerely,

ELIZABETH J. KUCK, *Commissioner.*

FEDERAL BAR COUNCIL—COMMITTEE ON LEGISLATION

LEGISLATION SEEKING MORE EFFECTIVE ENFORCEMENT OF EQUAL EMPLOYMENT OPPORTUNITY

The Civil Rights Act of 1964 enacted the first federal law to provide equal employment opportunity without regard to race, color, religion, sex or national

origin. Title VII of the Act[1] established the Equal Employment Opportunity Commission (EEOC) with power to conciliate disputes under the Act, and permitted civil suits where such conciliation or proceedings under local law failed to resolve such disputes.

S. 2453, 91st Cong., 1st Sess. (1969) would further authorize the EEOC to enter cease-and-desist orders subject to judicial review in order to enforce the Act. The right of private action is retained.

S. 2806, 91st Cong., 1st Sess. (1969) supported by the Administration, provides that the EEOC may bring actions of its own aside from private actions which remain authorized, to enforce the Act.

The effectuation of equal employment opportunity is a prime necessity for this nation. Lack of equal job opportunity is a significant cause of lack of interest in schooling, hopelessness, desperation, crime and violence. It is also a tremendous waste of human resources.

Only when jobs are open to all without discrimination of the kinds prohibited by the Act will all be encouraged to do their best for their own benefit, and also have the opportunity to make their fullest contribution to society. The need for a meaningful national action to assure such equal opportunity was stated as early as the unanimous report of the President's Committee on Civil Rights in 1947.[2]

Cease-and-desist orders or injunctive relief as provided in the pending bills are crucial in order to make the Act meaningful and effective.

Indeed efforts to strengthen enforcement procedures have been found necessary other federal laws which already provide powers such as those contained in the pending bills.[3]

Equal employment opportunity for all is our stated national policy. It must be a cornerstone of our efforts to build a healthy society which can focus on the efforts of all citizens for the common benefit of all groups. In the view of a large majority of the Committee it is of vital importance to our national policy of equal employment to strengthen the effectiveness of the Equal Employment Opportunity Commission through authorizing the Commission to issue cease and desist orders. We therefore strongly recommend favorable action on S. 2453 at the earliest possible time.

Although it is the opinion of a large majority of the Committee that granting to the Commission the power to issue cease and desist orders is the most desirable vehicle to strengthen the Commission, we are unanimous in favoring enactment of S. 2806 in the event that enactment of S. 2453 cannot be accomplished at this time.

In addition, however, we are concerned over the possibility that as a price for approval of direct enforcement powers for the EEOC, it will be proposed that the private rights of action now provided by Title VII be curtailed or dropped. In our view this would be a catastrophe for the purposes of the Act.

Private enforcement is vital because it permits action where budgetary limitations alternate demands on manpower or other factors preclude administrative action.[4] Experience indicates that administrative agencies themselves can be more independent and less subject to pressure if it is clear to all concerned that issues can be brought to a judicial forum even if the agency can be persuaded not to act.[5]

The NAACP Legal Defense & Educational Fund, Inc. has brought more suits under Title VII than any other single source. According to testimony of Jack Greenberg, Esq., its Director-Counsel, before a Subcommittee of the Senate Committee on Labor and Public Welfare on August 11, 1969:

"Following the passage of Title VII of the Civil Rights Act in 1964 and its becoming effective in 1965, we filed more than 70 cases in the United States District Courts. This number almost doubles the number of cases we had filed when

---

[1] 78 Stat. 253 (1964), 42 U.S.C. § 2000e et seq. (1964). For Bar views, see "Report on Proposed Federal Legislation Relating to Equal Employment Opportunity," 3 Reports of Committees of The Association of The Bar of The City of New York Concerned with Federal Legislation 1 (1964).

[2] To Secure These Rights (1947).

[3] See Fanning, "Procedural Reform—First Step Toward A More Effective National Labor Policy", 21 Record of Ass'n Of The Bar of The City of New York 67 (1966); Committee on Labor and Social Security Legislation, "Suggested changes in National Labor Relations Board Procedures," 6 Reports of Committees of the Ass'n of the Bar of the City of New York Concerned with Federal Legislation 19 (1967).

[4] See, e.g., the brief of the Securities & Exchange Commission to the United States District Court for the Eastern District of New York, quoted in *Dalgow* v. *Anderson*, 43 R.F.D. 472, 482–84 (E.D.N.Y. 1968).

[5] Cf. Jaffe, "The Effective Limits of The Administrative Process: A Reevaluation," 67 Harv. L. Rev. 1105, 1107–13 (1954); Jaffe, "Judicial Review: Question of Law," 69 Harv. L. Rev. 239, 273–74 (1955); 58 Colum. L. Rev. 115, 117–18 (1958).

I testified several years ago. . . . I would like to share with you our experiences with these cases because they are a substantial portion of all of the litigation now pending under the Act. Several other organizations have some cases among them . . . and the Attorney General of the United States has, I believe, filed about 40 cases. Two kinds of experiences have stemmed from our involvement in these cases. The first is rather gratifying because it demonstrates the capacity of the statute and men of good will to work out differences which will secure employment to Negro workers who have been victims of racial discrimination and until passage of the law had no remedy. The first category of outcome consists of favorable settlements we have obtained.

". . . many of the cases are now following the classic pattern of prolonged and difficult school segregation litigation. Every procedural technicality imaginable must be done through before the case comes to trial. Most of the cases are or have been hung up on such technical-procedural questions as: exhaustion of administrative remedies; satisfaction of certain statutes of limitations; propriety of filing class actions; whether conciliation is a precondition to filing suit and similar issues . . .

"Out of these experiences, we would like to make several suggestions concerning the proposed bill S. 2453 . . . We heartily applaud the provisions of the Bill which give the Commission cease and desist powers. Long ago it was learned that public rights cannot effectively be enforced by leaving them solely to private litigants. As a result, there has been enacted the Securities and Exchange Commission Act, the Interstate Commerce Act and 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.

"Unfortunitely 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. First, there will be no private remedy for nonexpeditious action by the Commission . . . 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 Section 3(b) of the bill. This point should be clarified.

"The provision in the proposed bill, retaining the right of private actions 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 who would be seeking relief under the Act to seek assistance in bringing his suit and also allow the attorney sufficient time to adequately prepare for the filing of a lawsuit. 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 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."

In our view Mr. Greenberg's testimony is persuasive and we urge the adoption of his recommendations.

In regard to preemption of Title VII remedies by remedies under labor laws or *vice versa*, we note that the courts have indicated that remedies under federal law for invidious discrimination and for unfair labor practices are parallel

rather than mutually exclusive.[9] We believe that remedies under Title VII should likewise not displace or be displaced by remedies under labor statutes except in case of actual inconsistency, a situation not likely to arise since the purposes of the laws are entirely compatible.

CONCLUSION

Pending legislation to strengthen enforcement of federal guarantees of equal employment opportunity should be enacted; in doing so the private right of action now provided should be strengthened rather than weakened.

Respectfully submitted,

COMMITTEE ON LEGISLATION, FEDERAL BAR COUNCIL.

Senator WILLIAMS. This will conclude our hearings on the bills before us, S. 2453 and the Prouty bill that has come out since we started the hearings.

(Whereupon, at 10:50 a.m. the subcommittee adjourned sine die.)

[9] *Vaca* v. *Sipes*, 386 U.S. 171 (1967); see Givens, "Preemption of Judicial Jurisdiction to Enforce the Duty of Fair Representation in Collective Bargaining," 17 Labor Law Journal 469, 481–82 (1966).

○