

CIVIL RIGHTS POLICY IN THE FEDERAL SYSTEM: PROPOSALS FOR A BETTER USE OF ADMINISTRATIVE PROCESS

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1. THE CHALLENGE OF THE CIVIL RIGHTS ACT OF 1964 TO OUR FEDERAL SYSTEM

THE Federal Civil Rights Act of 1964¹ is one of the great monuments of American social legislation. It assures for the first time the employment of modern governmental processes to protect the interests of members of minority groups.² As a consequence of the Act's broad statement of healing principles, agencies and courts have considerable latitude in applying its provisions to the variety of problems that will be presented.³ More importantly, the statute provides a nucleus around which future legislation can be constructed. Like all major original legislation, however, the Act has certain imperfections. With the exception of the fair employment title, the provisions of the Act are directed almost exclusively to the kinds of discriminatory practices which occur in the southern states. Moreover, the new Federal Equal Employment Opportunity Commission will probably not exercise its full jurisdiction and, in twenty-two northern and western states, rely instead on local and state human

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1. 78 Stat. 241 (1964), 42 U.S.C.A. § 1971 (1964).

2. This subchapter II of 78 Stat. 243, §§ 201-07, 1964, 42 U.S.C.A. 2000a, 1964 prohibits the denial of equal treatment in places of public accommodation, and provides for suit for injunctive relief by the aggrieved person or, under certain conditions, by the Attorney General in case of violations. Further, subchapter I strengthens the protection the federal government has, since the 1957 and 1960 Civil Rights Acts, been authorized to provide through affirmative official action for voting rights. See 71 Stat. 634 (1957), 74 Stat. 90 (1960) for the 1957 and 1960 Civil Rights Acts. Finally, in subchapters III, IV, VI, and VII, similar authority has been granted to protect all people exercising their right to obtain government facilities, public education, employment, as well as participation in unions in industries affecting interstate commerce, and benefits of programs or activities receiving federal financial assistance. 78 Stat. 241, §§ 301-04, 401-10, 601-05, 701-16, 42 U.S.C.A. §§ 2000b-c.

3. See, *e.g.*, title IV authorizing technical assistance in desegregating schools, training institutions for improving the quality of teachers, and grants to aid with problems of desegregating, as well as suits by the Attorney General. 78 Stat. at 246, §§ 403-05, 42 U.S.C.A. § 2000c.

4. Such restraint is necessary, because the new Federal Equal Employment Opportunity Commission faces a huge problem of enforcement. It will have to choose some part or parts of the total problem for emphasis in its enforcement effort. Undoubtedly its initial

relations agencies.⁴ While these agencies have partly eliminated employment discrimination, enormous problems still remain in the states they serve.⁵

One explanation for these limitations of the new federal act is that both the legislators and the public believed that the primary role in the solution of the civil rights problem should and could be expected to be performed by local and state governments.⁶ An additional manifestation of this belief is that complaints of discrimination in public accommodations and employment practices must first be referred to state commissions before they can be federally processed, and that the Act authorizes the Federal Equal Employment Opportunity Commission to enter into cooperative agreements with state commissions. Congress recognized the need for federal intervention only in states which do not seriously challenge discrimination in voting, public education, public accommodations and government facilities. The chief significance of the new federal act may be its assertion that the failure of state and local governments to perform their essential functions has made civil rights a national problem.⁷

The present status of local and state governmental efforts to deal with civil rights problems is not encouraging. Before 1963, some twenty states and two-thirds of the population of the United States had no law or agency to enforce the title among large business entities and in the southern and other states where there is an almost total lack of local and state law and agencies to deal with the problem of employment discrimination.

5. Most state human relations agencies, as now constituted, are not currently making, nor can they make, any significant headway in eliminating employment discrimination. See Part 5, *infra*.

6. This conviction is apparent from the Senate Judiciary Committee's desire to rely on state remedies wherever possible. S. REP. No. 872, 88th Cong., 2d Sess., 2 U.S. CODE CONG. & ADM. NEWS 2368 (1964). It is the reason that the new federal act was designed to operate almost exclusively in those areas of the South where local and state governments had long since demonstrated their utter lack of responsibility and unwillingness to deal fairly with the local problems relative to minorities. For other areas of the country having a state or local law prohibiting public accommodations discrimination covered by the new Act, provisions in that Act direct that complaints of this form of discrimination be referred to the appropriate state or local authority for disposition by it before the aggrieved person may bring a civil action under the Act, § 204(c), 78 Stat. 244, 42 U.S.C.A. 2000a-b(c). Even in areas not having this state or local law, the federal court in which a complaint of public accommodations discrimination is filed may refer the matter to the new Federal Community Relations Service with a view to that agency assisting local or state authorities to resolve the dispute and obtain voluntary compliance, § 204(d), 78 Stat. 244, 42 U.S.C.A. § 2000a-3(d). For areas of the country having state or local law prohibiting employment discrimination covered by the new Act, provisions of that Act handle in much the same way the matter of reference of a complaint to local or state authorities before it may be filed with the Federal Equal Opportunity Commission, §§ 706(b) & (c), 78 Stat. 259, 42 U.S.C.A. §§ 2000e-5(b) & (c). In addition, this new federal commission may enter into cooperative agreements with state and local agencies charged with administration of state fair employment practices laws under which the federal commission in effect relinquishes to these agencies on a continuing basis its jurisdiction to process a complaint of employment discrimination, § 709(b), 78 Stat. 262, 42 U.S.C.A. § 2000e-8(b).

7. See generally, Civil Rights Act of 1964, tits. I, II, III, IV, VI, VII; 78 Stat. 241, 42 U.S.C.A. §§ 1971a(2), 1971a(3), 2000a-e.

ty local governments had established reasonably effective, though sometimes slow, human relations commissions for the purpose of eliminating discrimination in employment, public accommodations, education and housing.⁸ In 1963 and 1964, an additional two hundred communities and a few states responded to local pressures by creating their first civil rights agencies.⁹ In contrast to the earlier commissions, most of the newer ones are ineffective expedients — primitive *ad hoc* constructions reflecting no regard for prior experience. Unless local efforts are made more effective the federal government will have to assume primary responsibility for solving civil rights problems.¹⁰ The underlying thesis of this article is that the most promising approach to these problems is through local and state governments. The federal government, therefore, ought to be concerned principally with assisting local and state governments to assume their roles. The discussion which follows focuses upon three major issues: the nature of the civil rights problem, the characteristics of state and local human relations commissions which enable them to perform effectively, and the optimum roles of local, state and federal government in the civil rights field.

2. THE CIVIL RIGHTS PROBLEM FROM THE LEGISLATOR'S POINT OF VIEW

The legislator must focus upon two aspects of the civil rights problem: the defective character of the majority group in a local or state community, and the minority group as the object of majority group action. Since the majority group holds certain solidifying views about minority groups, the majority acts largely in a uniform manner towards the minority. One such view, probably dominant in many parts of the Deep South,¹¹ is that the Negro is, by nature,

8. See Appendix B.

9. The actual figure may be larger. The figure given is the result of an estimate by Mr. George Schermer, formerly Executive Director of the Philadelphia Commission on Human Relations and now a Consultant on Human Relations, in his letter to the author November 4, 1963, on file in the Yale Law Library. A list compiled in Washington, D.C. in July 1964 for mailing purposes contained the names of 500 local governments which then had some form of human relations agency. A survey was conducted by a national organization in 1964 relative to the 589 cities having over 30,000 population. This survey revealed that 225 of these cities had established human relations commissions with 120 of them having acted in 1963. It also revealed that one-third of 128 cities of the southern region, one-half of the 187 cities in the midwest region, three-quarters of all cities over 100,000 population, and more than one-quarter of all cities under 100,000 population now have these commissions. See COMMUNITY RELATIONS SERVICE, U.S. CONFERENCE OF MAYORS, § 1 (1964).

10. Disenchantment with the *ad hoc* groups is already developing. It is quite evident that they must be rapidly reorganized so as to enable them to deal effectively with the civil rights problem in their areas. Further, there remain the thirty-odd states and many hundreds of major communities across the contry that have as yet taken no action whatsoever to create human relations commissions or to deal otherwise with the civil rights problem.

11. MYRDAL, AN AMERICAN DILEMMA 26-112 (1944).

an inferior human being, not entitled to participate equally in the life of the community. This view may be held by people who bear an intense hatred for Negroes generated by irrationalisms or by considerations of self-interest, as well as by people who manifest affection for individual Negroes. A second view, the "approved" position among southern business and political leaders in the more advanced states, is that immediate integration will unjustifiably upset existing social, economic and political conditions. The status quo which strongly favors the white majority group is considered to be the paramount value.¹² Frequently, holders of this view concede the Negroes' moral claim to equality. Nevertheless, a Negro who wants to be admitted into the life of his community must meet two conditions. First, the individual Negro must prepare himself for admission. And second, even when prepared, he must persuade the majority group to accept him as an equal. The freedom of the white majority to discriminate must not, it is felt, be taken away to give freedom to the Negro. Closely associated with this second view is a fear of the Negro caused by a failure to appreciate his current condition, or the extent of his determination to change his status in society.¹³ This fear, in turn, is based on a fear of the loss of some or all of the values — social, economic and political — accruing to the white majority as a result of the status quo.¹⁴

A third view is apathy. The majority group simply disregards the Negroes' suffering whenever providing assistance may cause consequences such as panic sales of property when a Negro family moves into a formerly all-white neighborhood, painful readjustments in the current availability of neighborhood schools, or the loss of domination over better jobs made possible through long

12. Myrdal anticipated this view. *Id.* at 462-66.

13. In the South, this failure has been fostered by increasing isolation of the Negro by the white majority, similar to his earlier isolation in the North and West. The white majority, aware of the high incidence of Negro unemployment, crime, illegitimacy, drop-outs, and dependence on relief, does not know or apparently care about the underlying causes of these conditions. They are thus frequently seen merely as evidence of general group characteristics. SILBERMAN, *CRISIS IN BLACK AND WHITE* (1964).

14. Some of the most common fears are well-known even in the North — the fear that a purchase of a home by a Negro family in a neighborhood will destroy both the social structure of the neighborhood and its property values. The latter has been disproved. See generally LAURENTI, *PROPERTY VALUES AND RACE* (1960). With others, the fear covers the entire spectrum of possible community change. In many communities of the South, the democratic process is not very effective. Many white persons do not register or vote, and effective control of political power is held by a relative few. An overriding fear on the part of the entrenched establishment in communities now easily controlled by them is that emergence of the Negro into the life of the community will seriously impair their political power. This fear is doubtless increased by the knowledge that one important tool of segregationist political control — malapportionment, see PRICE, *THE NEGRO AND THE BALLOT IN THE SOUTH* 11-12 (1959) — is now doomed, see *Reynolds v. Sims*, 377 U.S. 533 (1964). It is not confined to areas where the Negro constitutes a large percentage of the population. In other areas the Negro leadership has shown facility for aligning the Negro section of the community with certain white occupational and nationality groups, eroding earlier political structures.

years of vigorous labor union efforts.¹⁵ These three views overlap, and more than one may infect a particular majority group. These views are caused by basic defects in the character of the majority group and help, in turn, to reinforce that character. This character of the group is then translated into the numerous actions, habits, customs, and official and private arrangements that have produced the conditions adversely affecting minority groups.

To insist that the civil rights problem be viewed as a problem of regulating and adjusting the defective character of the majority group in a community is not to overlook the obvious accompanying problems of regulating overt conduct. The insistence simply focuses upon the difference between the civil rights problem and other public problems. In the usual case, it is the sense of justice prevailing in the community which is responsible for new legislation to regulate overt conduct.¹⁶ But a city or a state with a major civil rights problem is a society in which the majority group has lost the virtue of listening and responding justly to the petitions for redress of grievances presented by its minority group members. In the more gross examples of deficient majority group character, an entire pattern of behavior embodying a defensive philosophy and sanctions has developed within the majority group for excluding from its official and private dialogues any genuine consideration of changes in the existing order of inter-group relations.

Few dictatorships have ever achieved a control over thought and action as effective as that produced by the defense system of the majority in many parts of the Deep South. There it is evident that the initial development and administration of any kind of beneficial civil rights policy must come from without. But the civil rights policy developed by the outside authority must be directed at much more than overt acts of discrimination. There are too many ways in which local officials, individuals and private groups can frustrate a legal program for preventing or penalizing overt discriminatory conduct. Even in the northern and western states that have had reasonably effective civil rights laws, substantial discrimination exists in employment and housing.¹⁷ Ultimately, an effective regulatory program by an outside authority, whether state or federal, operating in southern communities, must create within these communities a local leadership which can persuade the majority group to deal justly with the minority's grievances. This has been the secret of whatever progress has been made in the North and the West.

The Federal Civil Rights Act has very few provisions that deal with this central aspect of the southern civil rights problem. One is the title directed

15. The third view, of course, is more prevalent in the North and West. The attitude of the majority group in these areas toward the Negro minority is often similar to its attitude toward the Puerto Rican, the Latin-American, the Indian, and the Jew.

16. Cf. SMITH, *THE LEGISLATIVE WAY OF LIFE* 14-16, 73-84 (1940).

17. See, e.g., McENTIRE, *RESIDENCE AND RACE: FINAL AND COMPREHENSIVE REPORT TO THE COMMISSION ON RACE AND HOUSING* 176-77 (1960); UNITED STATES COMM'N. ON CIVIL RIGHTS: 1961 REPORT: EMPLOYMENT 128-30; UNITED STATES COMM'N. ON CIVIL RIGHTS: ADVISORY COMMITTEE'S REPORTS ON APPRENTICESHIP 83-84 (1964); NOR-GREN, HILL & MARSHALL, *TOWARD FAIR EMPLOYMENT* 40-50 (1964).

toward facilitating registration of Negro voters.¹⁸ Another is the title which proscribes discrimination in activities and programs receiving federal financial assistance.¹⁹ Each is calculated to compel the southern majority group, as a matter of self-interest, to confront and to resolve fairly its civil rights problem. Neither of these titles, however, and certainly none of the remaining provisions of the new federal act, are adequate to meet the central problem in the Deep South.

The legislator, in addition to focusing upon the defective character of the majority group, must also regard the resultant needs, difficulties and deficiencies of the minority group, in most cases the Negro. The Negro minority requires current protection from specific discriminatory acts. In addition, it needs assistance in obtaining employment, union membership, education, skills, training, housing, the use of public accommodations, political status, and the opportunity to become owners and managers of business concerns. Humanist values, a shortage of skilled workers²⁰ and considerations of public order²¹ demand that the acute economic crisis of the Negro be ameliorated. Continued proliferation of the effects of discrimination must be halted by the enactment of laws prohibiting discrimination and by the effective enforcement of these laws by an official governmental agency equipped to receive and fairly dispose of complaints of racial discrimination. The most important functions of this agency are to allow the tensions that build up within the minority group to be vented and to force the majority group to confront the civil rights problem it has produced. Active and vigorous representation of the interests of the Negro minority before the holders of public and private authority is necessary to improve measurably the opportunities available to Negroes. This representation can best be made by an official agency the members of which are largely drawn from the majority group itself; it can only be made with great difficulty if at all, by the Negro minority because of the lack of communication that now exists between that body and the majority.²²

18. Civil Rights Act § 101, 78 Stat. 241 (1964), 42 U.S.C.A. § 1971 (1964).

19. Civil Rights Act § 601-05, 78 Stat. 252 (1964), 42 U.S.C.A. § 2000d-d4 (1964).

20. While the number of skilled jobs in our economy has greatly increased and will increase still further, we are not now training enough persons to fill these jobs. In some instances, we are not even training enough persons to fill the shoes of our existing skilled workers when they retire. Our Negro minority, 20,000,000 or more strong, represents a great reservoir of human assets and ability available to our nation to help it fill its need for skilled workers. The great economic waste inherent in discrimination in employment was recognized early in the history of the contemporary civil rights movement. See, *e.g.*, FOSS, *ALL MANNER OF MEN* 38 (1948).

21. The Civil Rights Revolution of 1963-1964 has added a new dimension to majority-minority group relations. On the one hand, a new racial solidarity, which had gradually been emerging in the Negro community during the past twenty years, now permeates every social stratum of that community. On the other hand, a number of grievous conditions had by 1963 finally been judged intolerable by Negroes throughout the nation. The explosive and divisive potential of this situation is obvious.

22. Thus, while communication in a literal sense can be gained through such interest groups as the Congress of Racial Equality, meetings of such groups with holders of

The above functions can best be performed by local rather than state or federal agencies. Local agencies are likely to be more conversant with local problems and to be more influential with the leadership of the majority group.

Outside of the context of action channeled through an official agency, efforts by Negroes, as a group and individually, to pursue their legitimate interests must be protected from interference by the majority group. The solidarity essential to minority group leadership and action²³ cannot exist when through fear of economic reprisal or physical violence large numbers of the Negro minority refrain from joining in group action for the advancement of group interests. The individual Negro's need for assistance is even more acute because of his greater helplessness when faced with hostile action on the part of the majority group. Here again local problems demand action by a local agency.

No one should fail to assess the magnitude of the discontent which discrimination, and especially its economic aspects, has created within the Negro community. Negroes desire to be admitted now into the whole of community life — its dialogue and its processes of decision. It is inevitable that the Negro will concentrate upon and be successful in participating more effectively in the electoral and political processes at all levels. It is inevitable that the Negro will utilize the various group processes of speech, publication, boycott, picketing, and other forms of economic and social persuasion to obtain what others have obtained before him by the same means. It is inevitable that in the use of these group processes there will arise great risks of public disorder.²⁴

In light of the enormous discontent of the Negro community we must admit that we are presently treading a thin line between orderly nonviolent direct action and violent disruption of the public order. Undoubtedly the passage of

power may well take on an adversary character, while efforts by agencies whose members are drawn from the majority group are likely to meet with more sympathetic official responses.

23. Despite what has been called its new racial solidarity, the Negro minority is still greatly lacking, at the crucial local levels, in the developed capacity for effective group action to promote group interests. The greatest assurance of fair treatment of a group is its effectiveness in stating its case and in bringing various kinds of legitimate pressure to bear to ensure that a favorable response will be forthcoming. Legislation truly responsive to the civil rights problem must seek to develop a method by which wise and vigorous leadership among the Negro minority at local levels can be encouraged and assisted. It still remains true that a group that is lethargic about its status and treatment in a community achieves very little for itself.

24. It should be recalled that use of such processes by union members in earlier decades of this century led to the employment of violence by laboring men, businessmen, and public officials. Many of the reasons underlying the enormous amount of violence that occurred in the American industrial struggle as well as other similar reasons are just as likely to be operative in the American civil rights struggle. Thus, while Martin Luther King, Jr. espouses the method of nonviolent direct action, James Foreman, executive secretary of the Student Nonviolent Coordinating Committee (which is spearheading the civil rights struggle in the Deep South rural areas), has stated his judgment that the current sentiment among a large percentage of Negroes is one of not adhering to nonviolence or of not believing in it. That his judgment has relevance for northern scenes is indicated by the riots in New York and Philadelphia in 1964.

the Civil Rights Act of 1964 and the election of President Johnson will do much to support the counsel of Negro leaders like the Reverend Martin Luther King, Jr. On the other hand, since this act cannot by itself secure the elimination of discrimination these two events simply guarantee a little more time in which to solve the civil rights problem.

3. THE EMERGENCE OF MODERN CIVIL RIGHTS LEGISLATION

Prior to 1945, the main purpose of civil rights legislation, enacted mostly by state and local governments, was to protect members of minorities as customers of businesses.²⁵ This legislation, enforceable primarily through criminal prosecutions and private damage suits, was a failure. Underlying this failure — attributable to the overburdening of prosecutors and the failure to question borderline violations — is the fact that criminal procedures are incapable of providing for continuous supervision and adjustment of problems of human relations. Moreover, the remedy of private damage suits proved abortive largely because of the poverty of plaintiffs and the futility of attempting to prove substantial pecuniary damages. More satisfactory approaches to the civil rights problem were developed during World War II. In response to the demands of Negroes for the elimination of discrimination in employment by war industries and federal government agencies, President Roosevelt established, in 1941, a Committee on Fair Employment Practices.²⁶ The committee had authority to receive and investigate complaints of discrimination, to hold public hearings, to make findings of fact, and to take appropriate steps to eliminate discrimination. While the committee had no authority to enforce its determinations, it was able to publicize with good effect the facts of discrimination and to mediate disputes successfully.²⁷ The experience of this and similar state committees²⁸ proved that an administrative agency must have effective enforcement powers in order to implement satisfactorily a policy against discrimination in employment.²⁹

25. See Appendix V to the concurring opinion of Mr. Justice Douglas in *Bell v. Maryland*, 378 U.S. 226, 284-85 (1964); compare GRAVES, *FAIR EMPLOYMENT PRACTICE LEGISLATION IN THE UNITED STATES, FEDERAL-STATE-MUNICIPAL* 15-22 (Library of Congress, Public Affairs Bulletin No. 93, 1951).

26. See RUCHAMES, *RACE, JOBS, AND POLITICS* 11-21 (1953) for an excellent summary statement of the conditions leading to the establishment of the first Federal Fair Employment Practice Committee. See also MYRDAL, *op. cit. supra* note 11, at 414-19, 850-52.

27. See generally, U.S. COMMITTEE ON FAIR EMPLOYMENT PRACTICE (First and Final Reports) (1945 & 47).

28. In New York, a similar commission was established. Its experience was a surprisingly successful one. GRAVES, *op. cit. supra* note 32, at 28. Its efforts, together with those of the federal commission, helped to bring about a national increase in non-white participation in wartime employment, from 2.5 to 3.0 per cent in early 1942 to 8.3 per cent in November, 1944. U.S. FAIR EMPLOYMENT PRACTICE COMM'N., *FIRST REPORT* 89-91 (1945).

29. Thus, large numbers of employers, in addition to those who would not comply with FEPC orders, "did nothing whatsoever about hiring minority group workers." U.S. FAIR EMPLOYMENT PRACTICE COMM'N., *FINAL REPORT* 5 (1947).

By August of 1944, thirty-one cities had established local commissions similar in function and limitations to these state and federal bodies to deal with the dramatic display of racial tensions occasioned by the migration of approximately 700,000 southern Negroes to industrial areas outside the South.³⁰ Soon after their establishment, these commissions were given the more comprehensive function of ameliorating all inter-group frictions and tensions. But the lack of enforcement authority as well as inadequate staffing and financing guaranteed the initial failure of these commissions.³¹ Recognition of the ineffectiveness of the early local and state agencies and of the potential of fair employment practices legislation led to the establishment by twenty-three states and about twenty cities of more effective administrative agencies with authority to compel the elimination of discrimination in employment.³²

A brief summary of the development of these agencies is essential to an evaluation of their performance. Civil rights organizations impressed with prior successes of federal and state agencies, committed themselves at an early date to the notion that such agencies were ideal. As a result, both the effort to obtain state agencies and their establishment operated to inhibit the creation of local agencies with enforcement authority.³³ In addition, because the Federal

30. American City, August, 1944, p. 74.

31. This was the position taken by the commissions themselves. Rice & Greenberg, *Municipal Protection of Human Rights*, 1952 WIS. L. REV. 679, 701, 703-10.

Some useful functions were, of course, performed. These agencies have performed a fact-finding and educational function designed to acquaint their communities with the extent and nature of discrimination and tensions existing in the area. Frequently they have been able to make recommendations for useful action on the part of municipal authorities with respect to recreational facilities and police departments, *Id.* at 702-03, 704. In this way additional personnel were provided for understaffed parks and trained to deal with tension situations. In Detroit a major recommendation was made and adopted to increase the number of Negroes on the city's police force, Granger, *Hopeful Sign in Race Relations*, 33 SURVEY GRAPHIC 455, 476 (1944). A number of the commissions, faced with complaints about police brutality and unfair court actions, arranged conferences between the municipal officials concerned and members of minority groups, Rice & Greenberg, *supra* note 31, at 704.

32. This development occurred only after unsuccessful attempts at establishing federal commissions. Thus the modest achievements of the Federal Committee on Fair Employment Practice stimulated efforts to establish a permanent, well-financed federal agency equipped with effective enforcement authority to carry on its work. These efforts, beginning in 1944, continued without success in each succeeding Congress. See Maslow and Robison, *Civil Rights Legislation and the Fight for Equality, 1862-1952*, 20 U. CHI. L. REV. 393, 394-97 (1953); Maslow, *FEPC — A Case History in Parliamentary Maneuver*, 13 U. CHI. L. REV. 407 (1946). When it became evident in 1944 that these efforts would not bear early fruit, civil rights organizations began to focus their efforts to obtain this legislation at the state level and, where state action appeared unlikely, at the local level. Maslow & Robison, *supra* at 397-98.

33. In some states, agencies themselves discouraged local development. Thus the New York State Commission, has relied only upon "advisory councils" and has not, as has the Pennsylvania Commission, actively assisted local governments in setting up or expanding local human relations commissions with enforcement authority. 1960 N.Y. STATE COMM'N. AGAINST DISCRIMINATION ANN. REP. 85-7. By 1962 the same commission

Committee on Fair Employment Practices was the model for the local and state fair employment practices commissions established before 1950, most of the new agencies created relied almost entirely on the technique of processing individual complaints in order to eliminate discrimination in employment. The success of the state agencies in this endeavor encouraged state legislatures to expand the jurisdiction of these agencies to cover discrimination in public accommodations, housing, and education as well as in employment, while retaining the case method as the primary mode of operation.³⁴ Finally, many of the cities which established fair employment practices commissions gave to these bodies the additional, broader functions of city human relations committees.³⁵ These commissions encountered problems involving police-minority group relations, inter-group tension incidents, orientation of immigrant minorities to city life, adaptation of private and governmental facilities to minority needs, and lack of leadership within both majority and minority groups. The case method of the state agencies simply could not provide a practicable or sufficient mode for dealing with these problems. Consequently, a few of the major city agencies were forced, as the state agencies were not, to depart from the case processing approach and to develop more adequate methods.

4. COMMISSION EXPERIENCE IN PROCESSING COMPLAINTS OF DISCRIMINATION

The central difference, with respect to the processing of complaints, between the war-time Federal Committee on Fair Employment Practice³⁶ and state and

recognized a need for "reaching out to the people of the state," not by encouraging local governments to form local commissions with enforcement authority, but by creating additional regional offices to decentralize the work of the commission. Citizen "advisory committees" for these regional offices were also formed. The commission stated: "Subsequent appearances of members of the (Upper Manhattan) Committee in the community, both formally and informally, were a valuable asset to the effectiveness of the local office." 1962 N.Y. STATE COMM'N. FOR HUMAN RIGHTS ANN. REP. 51. The Commission noted that its increase in complaint activity in the Greater New York area in 1962 was due to the opening of new branch and regional offices within the area. *Id.* at 3. It also noted that its work with local governments was primarily confined to New York City. *Id.* at 30.

34. See Appendix B.

35. This additional authority was sometimes granted initially, as in the case of the Pittsburgh commission, Pittsburgh, Pa., Ordinance 479 (1946) and Ordinance 465 (1952) and sometimes subsequently, as in the case of the Baltimore commission, Baltimore, Md., Ordinance 379, April 18, 1956 and the recently enacted successor Ordinance 103. One of the city commissions in this group was a carryover from the older group of city commissions and received its first enforcement authority in the field of housing rather than in the field of employment. This was the New York City commission, 5 N.Y. CITY CHARTER AND CODE, tit. W, §§ W41-1.0—W41-4.0 (1962-63 Cum. Supp.) All of the city commissions in this group, around ten in number, were consequently given the general functions of bettering relations between the majority and minority groups, of relieving community tensions, and of creating equal opportunities for minority groups, in addition to dealing with specific complaints of discrimination in employment or housing.

36. Compare UNITED STATES FAIR EMPLOYMENT PRACTICE COMMITTEE, FIRST REPORT 18-22 (1945) with Note, *The Right to Equal Treatment: Administrative Enforcement of Anti-discrimination Legislation*, 74 HARV. L. REV. 526-555 (1961).

local commissions is that the latter may, when conciliation measures fail, hold a formal hearing and issue subpoenas and enforceable cease and desist orders. Most state human relations commissions accept complaints only from people allegedly injured by discrimination. In some jurisdictions, however, the commission itself or a specified public official may also file a complaint. When a complaint is filed, the commission appoints an investigator to develop the facts essential to a determination of whether there is probable cause for believing the allegations of the complainant.³⁷ Since much of the discrimination in employment is a result of misinformation, the investigating official in cases of this discrimination seeks to acquaint the employer with the fair employment practices provisions of the civil rights law and the operations of the commission in administering them. Many commissions consider the investigation stage a first opportunity to effectuate an immediate settlement where the investigator believes it likely that discrimination has occurred and resolve a majority of their cases at this stage. The typical investigation of a complaint of employment discrimination will require personal interviews, letters, telephone calls, record checks, conferences, and meetings.³⁸ Some cases require forty or more of these investigative steps.

If settlement does not precede filing of the investigator's report, the commissioner who has been assigned responsibility for the case determines the existence of probable cause.³⁹ Should the determination be negative, he dismisses the case on the merits. If he determines that probable cause does exist, he initiates a process of conciliation by which he seeks to convince the employer to eliminate the discriminatory practice complained of and, where appropriate, to adjust his general employment policies to preclude all future discrimination.⁴⁰ If the employer anticipates difficulties in integrating his workshop or plant, the commissioner is prepared to refer to examples of employers, including those in the same line of business, who have not encountered the supposed difficulties or have met them successfully. Every effort is made to establish an attitude of friendly understanding of the employer's problems while insisting upon some satisfactory adjustment of the complaint. The employer learns that the commission is prepared, if necessary, to institute a public administrative hearing, to make findings of fact, and to issue an administrative order to prevent the discriminatory practice. Most cases

37. The first annual report of the Pennsylvania commission describes in considerable detail investigational procedures almost universally employed by similar agencies. See 1957 PA. FAIR EMPLOYMENT COMM'N. ANN. REP. 12-14. See also NORGREN, HILL, & MARSHALL, TOWARD FAIR EMPLOYMENT 102-03 (1964) and Note, *supra* note 36, at 533-40.

38. 1958 PA. FAIR EMPLOYMENT COMM'N. ANN. REP. 2.

39. A more detailed analysis of the determination of probable cause will be presented in Part 5 *infra*.

40. A more detailed explanation of this conciliation process will be presented in Part 5 *infra*. Additional explanations may be found in NORGREN, HILL, & MARSHALL, *op. cit. supra* note 37, at 105-06 and in Note, *supra* note 36, at 540-44. Especially see the description contained in 1962-63 ST. PAUL FAIR EMPLOYMENT PRACTICE COMM'N. ANN. REP. 6-7.

involving a finding, whether informal or formal, that discrimination in employment has occurred are satisfactorily adjusted.

Between 1956 and 1963 the Pennsylvania commission processed 1,307 complaints of employment discrimination involving a particular transaction, general employment practices or both.⁴¹ In 565 of these cases there was probable cause for complaint. In all of these cases but one, about 43 per cent of its case load, the commission reached a satisfactory adjustment through conciliation, without recourse to a public administrative hearing or a cease and desist order. Of the conciliation agreements executed, 80 per cent were with employers, 10 per cent with employment agencies, and 3 per cent with unions.⁴² In addition, the commission dismissed another 44 per cent of its total number of cases on the ground that the complaint had not been verified. Such dismissals serve to protect employers from unwarranted or mistaken charges of discrimination while, at the same time, providing for the airing of grievances. Of the remaining 13 per cent of the total cases, the commission dismissed half for lack of jurisdiction, and half because the complainant failed to proceed or withdrew his complaint. Currently the commission is handling about 220 cases of alleged employment discrimination annually and is satisfactorily adjusting by conciliation almost all of the approximately 165 cases per year in which it finds probable cause to believe discrimination exists.⁴³

To the accomplishments of the Pennsylvania commission must be added those of comparable local commissions. The Philadelphia commission, for example, processed 121 complaints of employment discrimination in 1962.⁴⁴ Since 1948 the Philadelphia commission has satisfactorily adjusted by conciliation all of the cases in which it has found probable cause existing, about 25 per cent of its total case load. It has dismissed about 65 per cent of all its cases on the grounds that the evidence did not establish the allegation of discrimination. The experience of the Pennsylvania and Philadelphia commissions in dealing with employment discrimination is similar to their experience in other areas and is typical of the success of all of the twenty-three state and about twenty city commissions with enforcement authority.

The conciliation of almost all warranted grievances is due primarily to the enforcement authority of state and local commissions — the same authority which distinguishes these commissions from the Federal Committee on Fair Employment Practice. The experience of commissions without this authority supports this judgment. For example, Kansas enacted a statute in 1953 prohibiting discrimination against minority groups⁴⁵ and creating a commission on civil rights without enforcement authority. For several years the commission

41. 1962 PA. HUMAN REL. COMM'N. ANN. REP. 25, 11.

42. *Id.* at 20.

43. Information provided by staff of Pennsylvania Commission on Human Relations on the basis of preliminary data, August 11, 1964.

44. See, 5 PITTSBURGH HUM. REL. REV., No. 6, 1-2 (1962) and 1962 PHILADELPHIA COMM'N. ON HUMAN RELATIONS ANN. REP. 53.

45. See Appendix B.

attempted to eliminate discrimination through education and conciliation. It encountered complete indifference and lack of cooperation on the part of businessmen. In 1961 the commission convinced the legislature to grant it enforcement authority. The commission now obtains almost voluntary cooperation from businessmen.

There is no doubt that state and local commissions with enforcement authority⁴⁶ have slowly opened up opportunities for minority groups to obtain employment, public accommodations, education, and housing. Continuing studies by the New York State commission indicate that 85 per cent of the employers involved in satisfactorily adjusted cases have substantially increased Negro employment in professional, technical, skilled and semi-skilled jobs.⁴⁷ The same is also true of three industries that have traditionally excluded Negroes from employment — banking, department stores, and insurance.⁴⁸ In the New York public utilities industry, Negro employment increased from less than 1 to 2 per cent of the industry's total work force in 1950 to 5 per cent in 1960.⁴⁹ The number of Negroes performing skilled and semi-skilled tasks in this industry also increased markedly.

Comparative employment statistics provide another measure of the importance of enforcement authority to human relations commissions.⁵⁰ In New

46. The experience of local commissions without enforcement authority has paralleled that of the Kansas commission. The Louisville Board of Aldermen in 1963 granted enforcement authority to its human relations commission because of the inability of the commission, despite its extensive efforts to obtain voluntary integration, to persuade 35 per cent of the city's restaurants, all but one of its bowling alleys, many of its theatres, and most recreational facilities to integrate. 1962-3 LOUISVILLE HUMAN REL. COMM'N. ANN. REP. 20-1, 25, 28-9. The Baltimore Equal Opportunity Commission had much the same experience in operating under its original ordinance. BALTIMORE EQUAL EMPLOYMENT OPPORTUNITY COMM'N. 3RD ANN. REP. ii, 1, 4, 12. In its 1959 annual report the commission indicated that it had processed since its creation in excess of one hundred complaints and, after investigation, had found one third of these to be valid. It characterized its record of conciliation as fair but pointed out that use of conciliation techniques without the backing of enforcement authority did not often result in producing employment for the complainant or for the minority group of which he was a member. It stated that some employers alleged to have discriminated in employment refused to attend hearings or to obey cease and desist orders issued after a finding that they had discriminated. In 1960 the commission requested and in 1961 was granted enforcement authority. As a result of this new authority, the number of complaints filed with the commission during the next year doubled. 1961 BALTIMORE EQUAL EMPLOYMENT OPPORTUNITY COMM'N. ANN. REP. 7. Despite this fact the commission was able to obtain all information it requested from employers as well as to confer with them in investigating complaints without a single refusal to cooperate. Indeed, the mere filing of a complaint moved a number of employers to act on their own initiative to resolve the complainant's grievance. The commission reported that the grant of enforcement powers to it had had many salutary effects and that the attitude of a great many of those affected by the law had been changed.

47. 1951 N.Y. STATE COMM'N. AGAINST DISCRIMINATION ANN. REP. 7-8.

48. NORGREN, HILL, & MARSHALL, *op. cit. supra* note 37, at 119-22.

49. *Id.* at 122.

50. See, NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 126-30 which is the source of the information summarized in this paragraph.

York the number of Negroes in managerial positions increased by 164 per cent from 1950 to 1960. In Indiana, Illinois and Missouri, where no state or local commission had enforcement authority, the equivalent figure is only 6 per cent.⁵¹ This disparity exists generally. For the same decade, the comparable increases in retail sales positions were 41 and 15 per cent; in construction craftsmen, 46 and 8 per cent; and in manufacturing operatives 65 and 20 per cent. Total employment of Negroes in New York increased, on the average, by 75 per cent. In the other three states under consideration the increase was only 34 per cent. As of June, 1962, one quarter of the Negro workers in New York City occupied managerial, professional, technical, sales, and office positions in establishments holding federal contracts, five times more than the equivalent proportion in Chicago, and seven times more than the proportions in Indianapolis and St. Louis, none of which cities had commissions with enforcement authority.

Despite the successful work of some commissions, the Negro in the North and West, as elsewhere, "still ranks among the poorest of the poor and . . . his economic status relative to whites has not improved for nearly 20 years."⁵² The only real improvement in the occupational status of Negroes since 1940 is a result of their movement from the rural South to industrial urban areas.⁵³ Job opportunities for the Negro in northern and western industrial areas have not improved significantly during the lifetime of state human relations commissions.⁵⁴ There is no one cause of the Negro's continuing concentration in the lowest paid jobs, his low median pay, unemployment and absence from unions and training programs for skilled positions. It is generally agreed, however, that widespread discrimination by employers, unions and employment agencies is a major contributor.⁵⁵ Moreover, discrimination in housing and its concomitant effects tend to undermine the opportunities of Negroes to prepare for and to obtain better employment.

It seems reasonably clear that the twenty-two state human relations commissions have not been able to deal effectively with these factors.⁵⁶ To remedy

51. Illinois and Missouri had created commissions with enforcement authority only in 1961 and, of course, those commissions had not had time by June 1962 to significantly change the employment patterns within their states.

52. *Hearings on S. 773, S. 1210, S. 1211, and S. 1937, Equal Employment Opportunity, Before the Subcommittee on Employment and Manpower of the Senate Committee on Labor and Public Welfare, 88th Cong. 1st Sess. 321 (1963).*

53. *Id.* at 322.

54. *Ibid.*

55. See NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 17-55. SILBERMAN, *CRISIS IN BLACK AND WHITE* 242-48 (1964).

56. Indeed, the racial unrest in 1964 centered largely in northern and western areas, and was based on concern over the lack of adequate employment opportunities and the consequently low economic state of the Negro communities. Increasing frustration has left the Negro community in the North and West disenchanted with the performance of state human relations commissions; these agencies are now being by-passed by Negroes seeking better solutions to the problem of unequal employment opportunity.

the situation, the authors of the Norgren-Hill-Marshall study propose that state and local human relations commissions follow the New York State Commission Against Discrimination.⁵⁷ The New York State commission, however, is hardly an adequate ideal. Although the work of this commission has been relatively excellent, the Negro still confronts the same economic facts in New York as he does in northern and western states generally. In processing and disposing of a total of 710 complaints of employment discrimination in 1960, some of which had been filed prior to that year, the commission found that some unlawful discriminatory practice had been committed in 203 cases — 28 per cent of the total.⁵⁸ In 1962, 611 complaints relating to employment were filed⁵⁹ and the commission found unlawful discrimination in 24 per cent of the cases closed.⁶⁰ Since it is universally agreed that the number of complaints filed each year represents only a small percentage of the total number of discriminatory transactions,⁶¹ it is clear that discrimination in employment continues to be widespread in New York. This situation is further indicated by the fact that the New York State commission discovers unlawful discriminatory practices in a much higher percentage of cases⁶² when it initiates investigations of employment practices on its own motion.

The New York State commission has continued, nonetheless, to rely primarily on the processing of complaints filed by aggrieved parties. It has even made general requests for complaints at public meetings and in educational literature and advertisements.⁶³ One reason why it has not made more extensive use of its authority to initiate investigations of employment practices is that it does not have authority to issue enforceable cease and desist orders when it acts in this way. On the other hand, although the commission had sought this authority in previous years, it has ceased to press for this legislation.⁶⁴ Yet in its nineteen years of existence, the New York State commission has concluded agreements to revise general employment practices with only some 2,000 em-

57. NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 148, 230-33, 246-58, 275-78.

58. 1960 N.Y. STATE COMM'N. AGAINST DISCRIM. ANN. REP. 39.

59. 1962 N.Y. STATE COMM'N. FOR HUMAN RIGHTS ANN. REP. 9-10.

60. *Id.* at 14.

61. See, *e.g.*, COMMITTEE ON CIVIL RIGHTS, NEW YORK COUNTY LAWYERS ASSOCIATION, TIME FOR A CHANGE: A REEXAMINATION OF THE NEW YORK STATE LAW AGAINST DISCRIMINATION IN EMPLOYMENT AND ITS OPERATION 4-5, 9-10 (1963); 1962 MINN. COMM'N AGAINST DISCRIMINATION ANN. REP. 21; 1959 MINN. COMM'N AGAINST DISCRIMINATION ANN. REP. 9; 1962 MICH. FAIR EMPLOYMENT PRACTICES COMM'N. ANN. REP. iii; NEW HAVEN HUMAN RIGHTS COMMITTEE, SPECIAL REPORT TO THE MAYOR OF NEW HAVEN 35-36 (1964).

62. In 1960, for example, 78 per cent of the cases investigated by the commission on its own motion involved unlawful discrimination, as compared to 28 per cent of those investigated on the complaint of aggrieved parties. 1960 N.Y. COMM'N. AGAINST DISCRIMINATION ANN. REP. 25, 29, 40.

63. COMMITTEE ON CIVIL RIGHTS, NEW YORK COUNTY LAWYERS ASSOCIATION, *op. cit. supra* note 61, at 4.

64. *Id.* at 7.

ployers in the entire state,⁶⁵ and these are employers who have previously been involved in complaint cases.

As inadequate as the work of human relations commissions in eliminating discrimination in employment has been, their progress in securing equal housing opportunities through the processing of complaints has proved even more disappointing.⁶⁶ Pennsylvania may be taken as an example.⁶⁷ In 1960 this commonwealth had approximately 750,000 Negro citizens. More than 500,000 of these citizens lived in Philadelphia and more than 100,000 lived in Pittsburgh. Thirty cities in all had more than 1,000 Negro residents. Residential segregation of Negroes prevails in all these cities largely because of housing discrimination. The state and Pittsburgh commissions have exercised jurisdiction over housing discrimination since 1960 and 1958 respectively.⁶⁸ They had, by the end of 1962, disposed of a total of 184 complaints of housing discrimination, including 41 that had been initiated by the commissions.⁶⁹ Of these dispositions only 89 involved a finding of probable cause that discrimination had occurred. Although almost all of these latter cases were "satisfactorily adjusted" by conciliation, it is evident that the opening of housing accommodations to Negroes in 89 instances represents very small progress. As a general proposition it is true that no state or local commission has demonstrated that its existing

65. NORGREN, HILL, & MARSHALL, *op. cit. supra* note 37, at 117.

66. In 1960 the cities of the North and West still were characterized by a principal ghetto area in which Negroes were concentrated. McENTIRE, *RESIDENCE AND RACE* 34 (1960). This area typically included a segregated core surrounded by a cluster of zones in which Negroes were concentrated to a greater or lesser extent depending on a number of factors. If a city had more than one of these areas, it tended to resemble the principal area. The only change in the housing situation for Negroes during the past twenty years appears to be one simply of the size and shape of the areas in which they are concentrated.

The consequences of residential segregation of the Negro have been well documented. See, e.g., McENTIRE, *supra* at 88-101; SILBERMAN, *op. cit. supra* note 13, at 36-67, 249-307. This segregation, and the discrimination which enforces it, are the foundation stones upon which rest all other segregation, discrimination, and disadvantages suffered by the Negro. Public facilities of Negro neighborhoods are poorer than those of other neighborhoods. School buildings and facilities are frequently older and teachers less able. The U.S. Commissioner of Education, Francis Keppel, has remarked that education in a Negro ghetto is characterized by a massive educational deterioration. SILBERMAN, *op. cit. supra* note 13, at 257. Parks and playgrounds in a Negro ghetto are also often less well equipped and fewer in number. Enforcement of zoning and building laws is less adequate. The housing available to Negroes is both much smaller in amount and inferior in quality. The older housing available to Negroes in their ghettos does not provide enough space for them and has usually reached the point that it is costly to maintain. For these reasons many of the older residences are subdivided and shared by many more families than they were designed to hold. The resulting crowded conditions of the ghettos have a severe impact upon the vitality and wholeness of family life.

67. See, DEPARTMENT OF LABOR AND INDUSTRY, COMMONWEALTH OF PENNSYLVANIA, REPORT OF THE GOVERNOR'S COMMITTEE ON DISCRIMINATION IN HOUSING (1959).

68. See Appendix B.

69. 7 PA. HUMAN REL. COMM'N. ANN. REP. 25 (1962); 5 PITTSBURGH HUMAN REL. REV., No. 6, 2 (1962).

statutory framework and administrative policies are sufficient to ensure substantial progress in eliminating most forms of discrimination suffered by minority groups.

5. THE REASONS UNDERLYING THE RELATIVE INEFFECTIVENESS OF STATE HUMAN RELATIONS COMMISSIONS

The failure of state human relations commissions results mainly from basic flaws in their underlying structure and concept of operation. Civil rights statutes in northern and western states frequently exclude large numbers of discriminatory transactions. Most state commissions, for example, do not have jurisdiction to eliminate discrimination in housing.⁷⁰ Other state commissions have only limited jurisdiction. The Rhode Island commission has jurisdiction only over public housing;⁷¹ the Washington commission only over discrimination in public and public-assisted housing.⁷²

Only four of the twenty-two state commissions empowered to eliminate discrimination in employment practices have jurisdiction over all employers.⁷³ The authority of the commissions is limited to employers of fifty or more people in Illinois⁷⁴ and Missouri.⁷⁵ In these two states 98 per cent of all employers of four or more employees are free to discriminate.⁷⁶ In the important industrial states of Michigan,⁷⁷ Minnesota⁷⁸ and Washington,⁷⁹ the state commissions have jurisdiction only over employers of eight or more persons. Consequently in these states 87 per cent of all employers and 50 per cent of employers of four or more employees are free to discriminate. On the other hand, Ohio has found it feasible to administer its civil rights legislation with respect to employers of four or more employees⁸⁰ and has not found discrimination in the additional area covered to be any less.⁸¹

Only fifteen of the twenty-three state commissions with enforcement authority have jurisdiction over discrimination in public accommodations. Other states have either ineffective public accommodations legislation not enforced by commissions or no such legislation at all. With regard to their jurisdictional

70. See Appendix B.

71. R.I. GEN. LAWS, tit. 11, §§ 11-24-2, 11-24-3 (1956).

72. WASH. REV. CODE, tit. 59, §§ 49.60.010, 49.60.217 (1959).

73. Delaware, Hawaii, Rhode Island, and Wisconsin.

74. ILL. STAT. ANN., ch. 48, §§ 852(d), 853 (Smith-Hurd Supp. 1964).

75. MO. STAT. ANN., ch. 296, §§ 296.010(3), 296.020 (Vernon's Supp. 1964).

76. These are national percentages taken as uniformly applicable to these states. See, U.S. BUREAU OF THE CENSUS, HISTORICAL STATISTICS OF THE UNITED STATES, COLONIAL TIMES TO 1957 (1960).

77. MICH. STAT. ANN., ch. 154, §§ 17.458(2)(b), 17.458(3) (1960).

78. MINN. STAT. ANN., ch. 363, §§ 363.02(1), 363.03(1) (Supp. 1964).

79. WASH. REV. CODE, tit. 49, §§ 49.60.040, 49.60.180 (1961).

80. OHIO REV. CODE ANN., tit. 41, §§ 4112.01(B), 4112.02 (1965).

81. In 1963 the Ohio Commission processed 930 cases of employment discrimination, one of the highest caseloads in the country. 4 OHIO CIVIL RIGHTS COMM'N. ANN. REP. 10. The Michigan Commission has recently recommended that its jurisdiction be extended to the same employers reached in Ohio. 1962 MICH. FAIR EMPLOYMENT PRACTICES COMM'N. ANN. REP. 26.

coverage, commissions in the fifteen states can be classified into three groups: those having complete coverage, including Alaska, Connecticut, Indiana, Massachusetts, Ohio, Pennsylvania and Washington; those having broad jurisdiction over specified areas, including Colorado, Delaware and New York; and those whose coverage is, at best, limited, including Kansas, Maryland and Oregon. A comparison of the Massachusetts and Kansas statutes illustrates the wide variance that exists. The Massachusetts statute provides that "a place of public accommodation, resort or amusement . . . shall be deemed to include any place whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public. . . ."⁸² In contrast to this broad coverage, the Kansas commission has jurisdiction only over "discrimination, segregation or separation in hotels, motels, cabin camps and restaurants."⁸³

That the New York State commission devotes 70 per cent of its budget to administering prohibitions of discrimination in employment is also indicative of neglect of the problems in public accommodations.⁸⁴ Thus, while the commission processed about 6,000 complaints of employment discrimination from 1945 to 1960, it processed only 500 complaints of discrimination in public accommodations in the 1952-60 period.⁸⁵ Pennsylvania and Ohio extended the jurisdiction of their human relations commissions to cover discrimination in public accommodations in 1961.⁸⁶ In 1961 and 1962 the Ohio commission processed 250 complaints, one-half of the complaints processed by the New York State commission over a period of eight years.⁸⁷ The Pennsylvania commission, in the same period, processed 180 complaints,⁸⁸ nearly 40 per cent of the number processed by the New York State commission in eight years.⁸⁹

Further gaps in public accommodations coverage are created by legislative exemptions for so-called "private clubs." Although these establishments, often ordinary businesses, use elaborate techniques to create an aura of "privateness," they are extremely lenient in admitting whites, but rigidly insistent on regulations for membership with respect to Negroes.⁹⁰

82. MASS. ANN. LAWS, ch. 272, §§ 92A, 98 (1956), as enforced under MASS. ANN. LAWS, ch. 151B, §§ 5-6 (Michie Supp. 1964).

83. KAN. GEN. STAT. ANN., ch. 44, §§ 44-1001 (Corrick Supp. 1961), as amended LAWS OF KANSAS 1963, ch. 279.

84. NORGREN, HILL, & MARSHALL, TOWARD FAIR EMPLOYMENT 276 (1964).

85. 1960 N.Y. STATE COMM'N. AGAINST DISCRIMINATION ANN. REP. 40. While these figures relate to complaints filed by aggrieved persons, a similar disproportion obtains in the investigations initiated by the commission. In 1960 the commission initiated 114 investigations concerning employment discrimination while it initiated only 9 investigations concerning public accommodations discrimination. *Id.* at 29.

86. See Appendix B.

87. 4 OHIO CIVIL RIGHTS COMM'N. ANN. REP. 10 (1963).

88. Information provided by staff of Pennsylvania Commission on Human Relations on the basis of preliminary data, August 11, 1964.

89. Both the Ohio and Pennsylvania commissions reported substantial discrimination in skating rinks, taverns, swimming pools, dance halls, fishing lakes, barbershops, golf courses, motels and restaurants. 4 OHIO CIVIL RIGHTS COMM'N ANN. REP. 17-18; 7 PA. HUMAN REL. COMM'N ANN. REP. 9-10 (1963).

90. OHIO CIVIL RIGHTS COMM'N ANN. REP. 17-18.

Changes in the operation of state human relations commissions will be of little effect unless the commissions' jurisdiction extends, to the greatest practical extent, to all serious forms of discrimination. These commissions now have sufficient experience to warrant this extension of their jurisdiction. They have established a reputation for fairness and wisdom in adjusting grievances and are recognized to be essential institutions in the legal order. By extending the jurisdiction of state commissions both within and beyond the field of employment discrimination, states will help to assure acceptance of the principle of equal opportunity in all areas.

States ought to empower newly created human relations commissions to conduct public hearings when conciliation proves ineffective. These hearings serve not only to air just grievances, but also to bring public sentiment to bear against those who discriminate. State commissions should also have authority to compel the elimination of discrimination, at least where attempts at conciliation fail. It is important, however, to select carefully the area or areas of discrimination initially included within the jurisdiction of human relations commissions. In southern and border states, discrimination in certain public accommodations is normally designated the most appropriate area for initial regulation;⁹¹ in northern states the initial choice is usually discrimination in employment. The Civil Rights Act of 1964 introduces new considerations for the twenty-seven states which do not have commissions with enforcement authority. Since discrimination within the scope of the public accommodations and employment titles of the 1964 Act is subject to processing by the federal courts and a federal agency respectively, each of these states might prudently authorize commissions to compel the elimination of this discrimination. Section 709 (b) of the 1964 Act permits the Federal Equal Employment Opportunity Commission to relinquish its jurisdiction to process complaints of employment discrimination to a state agency with at least coextensive enforcement authority.⁹² A person who brings a civil action in a federal court complaining of a violation of the public accommodations title must give written notice to a state commission with concurrent jurisdiction over the violation. Even after the filing of the civil action, upon a complainant's compliance with Section 204(c),

91. In many parts of the South, substantial progress has been achieved in eliminating this form of discrimination by voluntary action. *Cf.*, The New York Times, September 1, 1963, § 4, p. 1, col. 2-3, reporting that 80 southern communities had by that time substantially or partially desegregated public accommodations. See also The Wall Street Journal, Jan. 6, 1965, p. 1, col. 6. Granting authority to a state commission to compel its elimination would, in many areas, both reinforce a process already largely completed and reach the more difficult situations in which efforts to secure voluntary compliance with the principle of equal opportunities have failed. This is the purpose underlying enactment of recent ordinances proscribing discrimination in all types of public accommodations by Louisville, Ky., and Corpus Christi, Texas. See, 1962-63 LOUISVILLE HUMAN REL. COMM'N ANN. REP. 20-1, 25, 28-9 and REPORT OF CORPUS CHRISTI HUMAN RELATIONS COMMITTEE TO THE MAYOR, CITY COUNCIL AND CITY MANAGER OF CORPUS CHRISTI, TEXAS 6-7 (June, 1964).

92. 78 Stat. 262, 42 U.S.C.A. §§ 2000e-8 (1964).

the federal court in which the action is filed may stay the proceeding pending termination of enforcement proceedings undertaken by a state agency. During this stay, the state agency may investigate the complaint, attempt conciliation and, if necessary, either proceed to a public hearing and issuance of a cease and desist order enforceable in the state courts or request the state attorney general to bring suit for enforcement of the state law. Section 706(b) and (c) of the new federal statute provides for similar treatment of complaints of discrimination in employment filed by aggrieved parties or by a commissioner of the Federal Equal Employment Opportunity Commission.⁹³

While the 1964 Act does not expressly extend this deference to state commissions in cases of discrimination in government facilities or public education, it is clear that federal authorities would wish to allow state commissions ample time to exercise their enforcement authority in all cases.⁹⁴ Titles III and IV of the Act provide that the Attorney General, before instituting a civil action complaining of discrimination in government facilities or public education, must certify that the signers of the complaint are unable to initiate and maintain appropriate state legal proceedings for relief.⁹⁵ Of course, state commissions must have authority to act effectively in order for their proceedings to be considered "appropriate." And since the Attorney General may consider as unable to initiate proceedings those people whose personal safety and economic standing, as well as that of their families, might be endangered by filing a complaint, state commissions should have authority to protect these interests. In effect, these provisions of the new federal act direct state and local governments to deal with the civil rights problem. One can no longer oppose enactment of state civil rights legislation regulating private action on the grounds that this legislation creates imprudent restrictions. The only question remaining is which element in our federal system is to administer the law. Surely prudence and commitment to the maintenance of our federal system demand that this element be the state and local governments. At the very least, state commissions should have jurisdiction to compel the elimination of discriminatory practices by state and local governments. In this area a state government can act with evident justification and can effectively set a model of behavior for employers generally. And, because the federal government has not acted in this area, the need for state and local regulation is especially great.

In the midst of a sea of discriminatory acts, however, state human relations commissions are receiving no more than a trickle of complaints.⁹⁶ The

93. *Ibid.*

94. In his remarks on December 4, 1964, before the Practicing Law Institute Forum on "The Community and Racial Crises," Mr. Harold H. Greene, Chief, Appeals and Research Section, Civil Rights Division, United States Department of Justice, agreed with this view.

95. 78 Stat. 246, 42 U.S.C.A. §§ 2000(b)-(c) (1964).

96. Most complaints filed by aggrieved parties result from personal communication with a member or employee of the commission or of some private agency with a civil rights interest. *Cf.*, 1959 MINNESOTA COMM'N. AGAINST DISCRIMINATION, ANN. REP.

complaint pattern in employment cases, for example, is inversely related to the actual incidence of discrimination.⁹⁷ The reason for this seeming anomaly is that members of minority groups, anxious not to be denied employment on racial or religious grounds, usually restrict their applications to concerns which already employ members of their group.⁹⁸ There are three persuasive reasons for the paucity of complaints. In the first place, people simply do not know about the existence and facilities of state commissions. Secondly, civil rights groups and minorities in general are not confident that these commissions will provide effective and prompt remedies for discrimination.⁹⁹ Thirdly, in most states the commission is wedded to the notion of centralized administration of the law under which it operates.¹⁰⁰ No matter how many local advisory committees the state commission employs, it remains aloof and remote and inaccessible. State human relations commissions can neither establish the necessary lines of communication between themselves and minority groups nor accelerate the filing of complaints simply by advertising their wares. The very structure and modes of operation of these commissions must be reassessed and revitalized.

A major structural defect of most state human relations commissions is that although they may initiate investigations, they have no authority to file complaints for the purpose of instituting enforcement proceedings.¹⁰¹ Surely no more disabling requirement, or one less consistent with their mission, could have been imposed upon these agencies. One of the central features of modern administrative process is its capacity to shape the litigation which gives form to the statutes administered and to regulate the emphasis and momentum developed in enforcement actions.¹⁰² The National Labor Relations Board and the Federal Trade Commission, for example, permit officials alone to file complaints instituting their adjudicative processes.¹⁰³ In other cases, the capacity of aggrieved parties to set in motion the adjudicative process is typically regarded as an alternative to the agency's acting on its own motion.¹⁰⁴ Unless state human relations commissions have authority to file complaints initiating

97. *Ibid.*; 1962 PHILADELPHIA COMMISSION ON HUMAN REL. ANN. REP. 19-20.

98. *Ibid.*

99. Committee on Civil Rights, New York County Lawyers Association, *op. cit. supra* note 61, at 1, 5, 7, 9; Hill, *Twenty Years of State Fair Employment Practice Commissions: A Critical Analysis with Recommendations*, 14 BUFFALO LAW REVIEW 22 at 23 and 68-9 (1964).

100. NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 145.

101. *Id.* at 251. See also Appendix B, *infra*.

102. DAVIS, ADMINISTRATIVE LAW TEXT 13-17 (1959).

103. 49 Stat. 451 (1935), 29 U.S.C. § 160(b) (1965); 38 Stat. 719 (1914), 15 U.S.C. § 45(b) 3 (1958).

104. This is the arrangement typically employed in the case of the Interstate Commerce Commission, 24 Stat. 384 (1887), 49 U.S.C. § 15(1), and has also been utilized in the Civil Rights Act of 1964 so far as the Federal Equal Employment Opportunity Commission is concerned. § 706(a), (c), 78 Stat. 241, 42 U.S.C.A. § 2000e.

their enforcement processes, these commissions will be unable to reach most discriminatory transactions. The peculiar virtue of complaints initiated by commissions is that they can be directed against the worst offenders. This authority is necessary to deal with businesses and unions which have not opened up employment or other opportunities to any minority, and against whom complaints are rarely filed. It is also needed to deal with those areas in which it is very difficult for one discriminated against to know whether discrimination has occurred, as is typically the case with employment agencies.¹⁰⁵

Although a few state human relations commissions have authority to file complaints initiating enforcement proceedings, they have, by and large, rarely done so. The rationale offered by the Massachusetts commission is that the initiation of enforcement proceedings is inconsistent with the commission's function of adjusting complaints through conciliation.¹⁰⁶ The Pennsylvania commission, on the other hand, has always made substantial use of its authority to file complaints after investigation. In its first operating year, the Pennsylvania commission initiated 52 per cent of the complaints it processed.¹⁰⁷ In the second and third years it initiated at least 40 per cent of the complaints processed.¹⁰⁸ In subsequent years, the commission has initiated a significant percentage of processed complaints of discrimination in employment, public accommodations and housing.¹⁰⁹ The Pennsylvania commission has as excellent a record of "satisfactory adjustments" of complaints through conciliation as has the Massachusetts commission.¹¹⁰ The experience of the Pennsylvania commission indicates that a commission can readily initiate a minimum of 35 to 50 per cent of the total number of complaints processed without loss of efficiency.

An important subordinate question is who is to have the authority to initiate complaints for the commissions? Six of the existing twenty-three state commissions may file a complaint with the approval of a majority of their members.¹¹¹ The individual commissioners have a wide variety of functions to perform both collectively and individually.¹¹² Accordingly, it is important that no

105. NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 35-39, 131-32.

106. Interview with Mrs. Mildred H. Mahoney conducted by Mrs. Judith G. Shepard, my research assistant, in April, 1964.

107. 1 PA. FAIR EMPLOYMENT PRACTICE COMM'N FIRST ANN. REP. 16 (1957).

108. 2 PA. FAIR EMPLOYMENT PRACTICE COMM'N ANN. REP. 3 (1958), 3 *Id.* 3 (1959).

109. During the seven year period ending December 31, 1963, the commission initiated 32 per cent of all complaints of employment discrimination processed by it. Information provided by letter dated August 11, 1964, from Mr. Elliot M. Shirk, Executive Director, Pennsylvania Commission on Human Relations, on the basis of preliminary data. Similarly it initiated 27 and 18 per cent, respectively, of all complaints of discrimination in housing and public accommodations processed by it by the end of 1963.

110. Pa. Comm'n. as of December 31, 1963: 896 out of 921 cases, *Ibid.*; Mass. Comm'n. as of December 31, 1962: 1291 out of 1298 cases, 1962 MASS. COMM'N. AGAINST DISCRIMINATION ANN. REP. 37.

111. Colorado, Connecticut, Massachusetts, Minnesota, Pennsylvania and Washington.

112. See Salk, *The Commissioners*, 5 PITTSBURGH HUM. REL. REV., No. 6, p. 1, col. 2 (1962) for a useful brief discussion of the role of commissioners of human relations commissions and the relationship between them and the commission staff.

function be assigned the whole commission without strong justification. Usually, single commissioners with the help of the commission's staff, investigate complaints of discrimination, make findings of probable cause and attempt to eliminate discrimination by conciliation and persuasion. Filing a complaint initiating this process is of the same order as the functions already allocated to a single commissioner. Spreading the authority to initiate complaints among each of the several commissioners will not only be convenient, but will also serve to expedite the filing of complaints.¹¹³ Much can also be said for granting this authority to the executive director of a state commission. He has general supervisory authority over the investigating staff of the commission; he is thoroughly familiar with the work of the staff and frequently advises individual commissioners or the whole commission. Moreover, he is sufficiently removed from the investigators to assure his impartial judgment.

Adoption of the above suggestions will be of little use if the commissions fail to process complaints effectively. State human relations commissions frequently cite as evidence of their accomplishments the high percentage of "satisfactory adjustments" obtained through conciliation. They point with great pride to the fact that they conduct only a negligible number of public hearings and issue even fewer orders. In maintaining their commitment to the conciliation process, however, state commissions have sacrificed a number of important values. These commissions often devote one year or more to investigation, the determination of probable cause, and conciliation. Meanwhile, the complainant has long since been forced to accept a substitute for the job or housing originally sought, or to do without it entirely. By the time the commission has finally obtained its "satisfactory adjustment" the complainant will in most instances have substantially changed his position. State commissions are victims of their own practices. As soon as minority groups become aware of this drawback of commission proceedings, they will inevitably be moved to bypass the commission. Delay, more than any other factor, has obstructed communications between state commissions and minority groups. The Colorado commission has proposed that the state legislature amend the civil rights law to permit the assessment of penalties against respondents for the purpose of remunerating complainants "for the delays and hardships suffered by them" subsequent to the determination of probable cause.¹¹⁴ This is a worthwhile proposal insofar as the commission cannot avoid the delays. But one is compelled to question whether the obstructionism and delay inherent in the present reliance on conciliation are not in themselves so unreasonable as to demand a stringent modification of this method.

The New York State commission has no authority to initiate complaints. Although it may request the Industrial Commissioner or the State Attorney

113. Section 8(a) of the suggested statute in Appendix A, grants this authority to a single commissioner.

114. 1961-62 COLO. ANTI-DISCRIMINATION COMM'N. ANN. REP. 10.

General to file a complaint,¹¹⁵ it has preferred not to do so.¹¹⁶ In 1960 aggrieved parties presented 652 complaints of employment discrimination. At the beginning of that year 653 complaints of a similar nature remained open from the year before. By the end of 1960 the commission had disposed of only 710 of these 1305 cases.¹¹⁷ If 1960 is to be taken as typical, then in a substantial number of employment discrimination cases, the commission takes at least one year to complete its investigation, determination of probable cause and conciliation. In its latest available report, the commission indicated that 140 of the 519 complaints of employment discrimination that had not been closed by December 31, 1962 had been received in earlier years.¹¹⁸ This figure is equivalent to 70 per cent of the cases satisfactorily adjusted in 1962. Moreover, when it is considered that 470 out of the 710 cases closed in 1960 were closed on grounds of no probable cause, it is not improbable that the commission takes longer than one year to dispose of many, if not a majority, of the cases in which probable cause is determined to exist. And where conciliation is ineffective the process is correspondingly lengthened. In four employment discrimination cases reported in 1960, the commission had taken approximately two years to complete the three-step process it usually follows. In two other cases, this process had taken two and four years, respectively, to complete. In all six instances, the commission had not scheduled a hearing date by the end of 1960 although public hearings had been ordered in 1959. Consequently, the period between the filing of the complaint and final commission action could not have been less than three years in five of these cases, nor less than five years in the one remaining. The Ohio and Pennsylvania commissions have records similar to that of the New York commission.¹¹⁹

115. See Appendix B.

116. 1960 N.Y. STATE COMM'N AGAINST DISCRIMINATION, ANN. REP. 18; 1962 *id.* 1-2. But in *Lefkowitz v. Farrell*, C-9287-63 (N.Y. State Comm'n for Human Rights, 1964) the commission held that a union had excluded Negroes from membership throughout its existence after hearing a complaint filed by the Civil Rights Bureau of the State Attorney General's office.

117. *Ibid.*

118. N.Y. STATE COMM'N FOR HUMAN RIGHTS, *op. cit. supra* note 116, at 2.

119. In June 1962, the Ohio commission was investigating 156 complaints of employment discrimination carried over from the previous fiscal year. 4 OHIO CIVIL RIGHTS COMM'N. ANN. REP. 10 (1963). This figure was obtained by deducting total invalid and valid new complaints from total cases processed in the fiscal year reported upon. An additional 203 complaints of discrimination in employment were made in the fiscal year ending May 31, 1963. Ninety-one of the total of 359 complaints were still under investigation at the end of the year. Another 41 complaints had been processed through the stage of conciliation but were being kept open while the quality of compliance was being checked. Since the 1963 fiscal year represented one of the best performances of the commission in its history, it is reasonable to conclude that the Ohio commission spends on the average at least one year in completely processing about 35 per cent of the complaints of employment discrimination filed with it.

The Pennsylvania commission has a record quite similar to those of the New York and Ohio commissions. At the beginning of its 1962 reporting year, the commission had on hand 81 cases of alleged employment discrimination. 6 PA. HUMAN REL. COMM'N. ANN.

One solution to the delays resulting from the almost exclusive reliance of state commissions on conciliation is to accord to the complainant the right to obtain a hearing of his charges following a finding of probable cause. In order to preserve the commission's function of attempting to obtain compliance by conciliation, the commission should be granted a period of no more than 30 days following the positive determination of probable cause in which to settle the case. If the commission has not obtained a settlement within that period, and the complainant requests a hearing, the commission should be required to accede to this request.¹²⁰ The suggested formula is similar to the one provided by Section 706(e) of the Civil Rights Act of 1964.¹²¹ The latter provision authorizes the Federal Equal Employment Opportunity Commission to extend the original thirty-day conciliation period not more than sixty days upon a determination that further conciliation efforts are warranted. But this modification is unnecessary in view of the fact that a commission can continue its conciliation efforts even beyond the hearing date.

The solution recommended may suffice to eliminate the tendency of state commissions to devote an inordinate amount of time to investigation and determination of probable cause. But there are additional problems presented by probable cause determinations. State human relations commissions dismiss a large percentage of the total number of complaints filed on the grounds that no probable cause exists for crediting the allegations of discrimination contained therein. The New York State commission dismissed on this basis 588, or 70 per cent, of the total of 843 complaints of employment discrimination finally disposed of in 1962.¹²² From 1946 to 1962, this commission dismissed 51 per cent of all complaints of employment discrimination for lack of probable cause. The Pennsylvania commission in 1962 disposed of 77, or 60 per cent, of a total of 126 complaints of employment discrimination on the same grounds.¹²³ These two commissions share a similar experience with complaints of discrimination in housing and public accommodations.¹²⁴ In Massachusetts also, the state

REP. 5 (1962). By the end of this period it had received an additional 154 complaints of such discrimination. 7 PA. HUMAN REL. COMM'N. ANN. REP. 14 (1963). Of the 235 complaints of this type under consideration in the 1962 reporting period, the agency closed only 126 cases. *Id.* at 25. As is true of the New York commission, in a substantial number of its cases in the field of employment discrimination the Pennsylvania commission takes one year or more to complete its processing.

120. Section 8(d) (2) of the suggested statute in Appendix A embodies this solution.

121. 78 Stat. 241 (1964), 42 U.S.C.A. § 2000e-5e (1964).

122. N.Y. STATE COMM'N. FOR HUMAN RIGHTS, *op. cit. supra* note 116 at 14.

123. PA. HUMAN REL. COMM'N, *op. cit. supra* note 107.

124. The New York Commission dismissed upon this basis 146, or nearly 40 per cent, of the 372 housing discrimination complaints closed by it in 1962, and 89, or 52 per cent of the 170 public accommodations complaints closed during the same year. N.Y. STATE COMM'N FOR HUMAN RIGHTS, *op. cit. supra* note 116 at 14. In 1963, the Pennsylvania Commission dismissed for lack of probable cause a much smaller, although substantial, percentage of complaints in these two areas. It will be recalled that the Pennsylvania Commission files about 35 per cent of the complaints that it processes each year, while the N.Y. Commission does not have authority to initiate complaints. This fact

commission dismissed 25 per cent of all complaints processed and closed by it in 1962 on grounds of no probable cause.¹²⁵ With respect to complaints of discrimination in employment, most of the other state commissions have a higher percentage of dismissals for lack of probable cause — *e.g.*, Illinois, 44 per cent; Connecticut, Minnesota and Ohio, 40 per cent; Michigan, 57 per cent; and New Jersey, 65 per cent.¹²⁶

There would be no cause to regard these statistics with alarm if there were adequate safeguards to assure that determinations of no probable cause were being correctly made at the administrative level or if complainants might obtain review by the courts or the commission. Unfortunately, neither is available. The determination of probable cause is designed to be only a tentative finding of whether a respondent has unlawfully discriminated. A finding of probable cause does not bind the respondent. If he wishes he may insist upon a public hearing with full opportunity to demonstrate that he has not violated the statute. On the other hand, commissions treat the determination of no probable cause not as a tentative but as a final adjudication. They do so by rarely proceeding to a public hearing of a complaint, and then only after a long drawn-out process of conciliation has failed. The objective of commissions in making this determination has not been, as one might suppose, simply to ascertain whether there is reasonable evidence for believing that a violation may have occurred; rather their practice has been to weigh all the evidence gathered in the investigation, usually of a conflicting nature, and then to determine whether a violation has in fact occurred.

The Ohio commission, for example, reported that twenty-six people "testified" in one 1961 investigation which lasted many months. The commission described its thought process in this case: ". . . *the Commission had to sift the facts as they related to the charge. Was the man dismissed because of race? Or was the employee dismissed because of disciplinary actions or for some other reason, just or unjust? After much investigation, and much weighing of evidence, the Commission determined that the employee was not dismissed because of race, and found no probable cause to credit the charge and the case was dismissed.*"¹²⁷ In a more general characterization of its concept of the determination of probable cause, the commission stated that it "conducts its investigations of allegations of employment discrimination to determine whether the

tends to weight the case load of the Pennsylvania Commission in favor of valid complaints. Nonetheless, in 1962, the Pennsylvania Commission dismissed 22, or 30 per cent, of 71 complaints of housing discrimination for lack of probable cause. 1962 PA. HUMAN REL. COMM'N ANN. REP. at 25.

125. 1962 MASS. COMM'N AGAINST DISCRIMINATION ANN. REP. 37. This percentage was obtained by starting with the figure of 59 cases pending as of Jan. 1, 1962. See, 1961 MASS. COMM'N AGAINST DISCRIMINATION ANN. REP. 35.

126. 1962 ILL. FAIR EMPLOYMENT COMM'N. ANN. REP. 4; 1961-62 CONN. COMM'N. ON CIVIL RIGHTS ANN. REP. 2; 1962 MINN. COMM'N AGAINST DISCRIMINATION ANN. REP. 8; 1962 MICH. FAIR EMPLOYMENT PRACTICES COMM'N. ANN. REP. 6; 1961 N.J. DIV. ON CIVIL RIGHTS, CIVIL RIGHTS COMM'N. FISCAL ANN. REP. 17.

127. 2 OHIO CIVIL RIGHTS COMM'N ANN. REP. 17 (1961) (emphasis added).

specific complainant has been subjected to unlawful employment discrimination."¹²⁸ In short, the Ohio commission, and the New York commission as well,¹²⁹ proceed like any court or administrative tribunal finally adjudicating the merits of a controversy.

If a commission determines that "no probable cause" exists for crediting the allegations of a complaint, the statutes direct it to dismiss the complaint. The complainant may not insist upon a public hearing as may the respondent when the determination is adverse to him. Although a determination of no probable cause is a final one for the complainant, he does not benefit from the procedural safeguards required of other administrative processes equivalent to a final adjudication. The commission does not hold a public hearing in which evidence of violation is carefully developed on a record under the testing fire of the adversary process. Moreover, the complainant is in no way permitted to participate in the procedure, which is wholly that of an *ex parte* investigation, shrouded with secrecy because of a statutory requirement that it be shielded from public view.

Commission practice in determining probable cause raises serious constitutional questions.¹³⁰ Despite the finality of the proceeding, the complainant is accorded no opportunity to obtain a fair hearing or trial in accordance with standards of procedural due process. Moreover, the procedure appears to deny complainants the equal protection of the law. To permit the respondent a full hearing if the determination of probable cause is adverse to him but to deny it to the complainant in the equivalent circumstances is to create a distinction without rational justification.¹³¹

There is yet another consideration that leads one to doubt the propriety of current commission efforts to ascertain the existence of probable cause. Little can be said for the current concept of probable cause which requires examining the evidence adverse to as well as supporting the complainant's position, and which results in a finding that the respondent either has or has not violated the law. It is true that a preliminary finding in favor of the complainant, even after consideration of the respondent's defense, is a measure of the strength of complainant's case. And the assurance that there is a substantial case against a respondent is a strong recommendation that he agree to a settlement. But

128. *Id.* at 19.

129. COMMITTEE ON CIVIL RIGHTS, NEW YORK COUNTY LAWYERS ASS'N., *op. cit. supra* note 61 at 14-15.

130. *Cf.* Justice Black's statement in the majority opinion in *Griffin v. Illinois*, 351 U.S. 12, 18-19 (1956): "Statistics show that a substantial proportion of criminal convictions are reversed by state appellate courts. Thus to deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside." By way of a strong analogy we may properly say that a substantial proportion of "no probable cause" determinations would never have stood had the complainant been permitted to participate in the procedure leading to the determination or, in lieu of this, to obtain a hearing on his complaint as the respondent in these cases may.

131. See § 8(b) of the suggested state statute set out in Appendix A *infra*.

commissions should not overemphasize the value of conciliation at the expense of depriving complainants of consideration of their grievances by the entire commission. A good compromise is to consider probable cause to exist when the evidence would be sufficient to require a court to submit the case to a jury. Moreover, the commissions do not disclose the particular data which provide the basis for their determination of probable cause. Until the legal criteria underlying the concept of probable cause are expounded and the particular data to which they are applied made available and studied, it will not be possible to judge the correctness of commissions' determinations. It is also necessary to amend the statutes administered by human relations commissions to provide that a "no probable cause" determination made by a single commissioner or staff official be subject to review by the entire commission or one of its panels as well as by the courts. Such an amendment will at least partially assure the development and uniform application of an objective interpretation of probable cause.

A further disadvantage to complainants is the inability of most human relations commissions to preserve the status quo until the final disposition of a complaint. At any time before disposition of the case the respondent is free to give the job or housing facility to someone else. Unfortunately, this is the frequent practice. Nevertheless, commissions, in cases of this sort, persist in classifying the remedies they effect through conciliation as "satisfactory adjustments." The great bulk of these adjustments, however, particularly in housing discrimination cases, are far from satisfactory from the standpoint of the aggrieved party.

Prior to April, 1962, for example, the New York City Commission on Human Rights reported the usual satisfactory conciliation of most housing discrimination cases. Yet in roughly 73 per cent of these cases, the original dwelling unit sought was no longer available to the complainant because it was rented or sold to another applicant.¹³² In 16 per cent of these cases, the only remedy was the respondent's written or oral commitment that he would not, as a matter of policy, discriminate in the future.¹³³ In 27 per cent of all cases satisfactorily closed by the New York commission, the respondent offered the complainant the dwelling unit originally sought.¹³⁴ If such an offer is made soon after the discriminatory act, the complainant will probably escape injury. In fact, 60 per cent of the complainants offered the original premises accepted the offer.¹³⁵ The other 40 per cent did not accept, in most cases because they had already contracted for other and often less satisfactory premises.¹³⁶ In an

132. 1961 N.Y. CITY COMM'N. ON HUMAN RIGHTS ANN. REP. 49.

133. In Massachusetts the state commission utilized this remedy in disposing of 35 per cent of its satisfactorily closed cases. MASSACHUSETTS ADVISORY COMMITTEE, U.S. COMMITTEE, U.S. COMMISSION ON CIVIL RIGHTS, REPORT ON MASSACHUSETTS HOUSING IN BOSTON 40 (1963).

134. 1961 N.Y. CITY COMM'N. ON HUMAN RIGHTS ANN. REP. 49.

135. *Id.* at 43.

136. *Ibid.*

additional 25 per cent of the commission's cases, an alternate dwelling unit was offered to the complainant.¹³⁷ Sixty-five per cent of the complainants receiving this offer rejected it.¹³⁸ This percentage of rejections is considerably higher than that of those rejecting an offer of the original unit sought, thus indicating that alternate units are usually less satisfactory to complainants than the housing originally sought.

Obviously, an offer of waiting list status or an offer to process an application for housing, the only remedy granted in another 30 per cent of the cases deemed satisfactorily closed,¹³⁹ is of limited value. A complainant may have to wait an unreasonably long time before a second satisfactory housing opportunity presents itself. Moreover, unrelated but not unexpected factors may intervene to prevent consummation of a transaction when these opportunities do develop.

The materials now available do not permit one fully to assess the effect of deprivation of the original opportunity sought on complainants in cases of employment and other types of discrimination. It seems clear, however, that the effect will in many instances be as drastic as in housing cases. Apprentice training programs, for example, have only a limited number of openings.¹⁴⁰ If a commission orders a union to cease and desist from its discrimination, the complainant will probably have to wait a considerable period of time before further openings develop. In many instances this delay will force the complainant to seek other training opportunities and perhaps to forego permanently an opportunity of the type originally sought.

This situation is susceptible of several remedies. A commission may be granted authority to file an action for a restraining order enjoining the respondent from disposing of the protected opportunity at issue pending disposition of the complaint. Alternatively, a commission may be granted authority to stipulate in conciliation agreements and in cease and desist orders that the respondent pay damages to a complainant who has been injured by respondent's discriminatory disposition or withholding of a particular opportunity. The first proposal is preferable because it ensures, in the usual case, the best possible remedy for the complainant. On the other hand, there will be cases in which the exercise of this authority will be impossible or would work an unusual hardship on the respondent. In these cases, the alternative authority has a special office to perform.

Human relations commissions may have inherent authority to obtain temporary restraining orders and injunctions in order to preserve their jurisdiction over the subject matter of cases properly before them.¹⁴¹ Three commis-

137. *Id.* at 49.

138. *Id.* at 43.

139. *Id.* at 49.

140. See, *e.g.*, U.S. COMMISSION ON CIVIL RIGHTS, ADVISORY COMMITTEES' REPORTS ON APPRENTICESHIP 96-9, 104 (1964).

141. See, generally, Comment, *Interim Injunctive Relief Pending Administrative Determination*, 49 COLUM. L. REV. 1124 (1949). The authority of a court to preserve the status quo by injunction pending trial or judicial review is well established. See *United*

sions have relied upon or sought statutory authority to obtain judicial assistance so to preserve their jurisdiction. Recently the New York State commission has acted under a provision authorizing the state attorney general, upon its request, to institute a civil action where necessary for the effective enforcement of the state law against discrimination.¹⁴² In 1964 the commission made scant use of this authority to preserve housing for complainants in housing discrimination cases.¹⁴³ In 1961 specific statutory authority was granted to the Massachusetts commission to file a petition in equity, subsequent to a finding of probable cause, seeking to enjoin a respondent from selling, renting, or otherwise making unavailable to a complainant any contested housing accommodation.¹⁴⁴ In 1963 this authority was extended to include complaints of discrimination in public accommodations.¹⁴⁵ The Massachusetts commission is, however, subject to one severe limitation in its use of this authority. No court may issue the requested injunction except upon hearing both parties fully and upon the commissioner's giving the respondent three days notice of this hearing. In four of the fifteen cases filed under the new statutory authority in 1963, the respondent rented or sold the dwelling unit before the expiration of the three day notice period.¹⁴⁶ The authority granted to the New York City commission in 1962 avoids this pitfall of the Massachusetts statute.¹⁴⁷ The New York City commission now has express authority to direct the corporation counsel to file an action for a temporary restraining order and injunction. Experience in obtaining temporary restraining orders in housing cases indicates that this takes no more than twenty-four hours.

One state, Oregon, has recently amended its civil rights statute to prohibit a respondent from changing the status quo prior to a final administrative determination on the merits.¹⁴⁸ This statute also gives a complainant a cause of action for actual damages resulting from a respondent's disposing of the property or other thing sought by the complainant plus a reasonable amount

States v. UMW, 330 U.S. 258, 290-5 (1947); *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4 (1942). The implied authority to preserve the status quo by injunction pending administrative determination has also been recognized. See *Public Util. Comm's. of D.C. v. Capital Transit Co.*, 214 F.2d 242 (D.C. Cir. 1954); *Board of Governors of Fed. Reserve System v. Trans-america Corp.*, 184 F.2d 311 (9th Cir., *cert. denied*, 340 U.S. 883 (1950)); *West India Fruit and Steamship Co. v. Seatrain Lines*, 170 F.2d 775 (2d Cir.), *petition for cert. dismissed*, 336 U.S. 908 (1948).

142. N.Y. EXEC. LAW, § 63(9).

143. Remarks on December 4, 1964, by Mrs. Shirley A. Siegel, Assistant Attorney General of New York in charge of the Civil Rights Bureau of the Office of the Attorney General of the State of New York, before the Practicing Law Institute Forum on "The Community and Racial Crises."

144. MASS. ANN. LAWS, ch. 151B, § 5, as amended by ch. 426, Acts 1957 (Supp. 1964).

145. MASS. ANN. LAWS, ch. 151B, § 5, as amended by ch. 613, Acts 1963 (Supp. 1964).

146. Interview in April, 1964, of Mr. Lee H. Kozol, Assistant Attorney General in charge of the Division of Civil Rights and Liberties, Commonwealth of Massachusetts, conducted by Mrs. Judith G. Shepard, my research assistant.

147. 5 NEW YORK CITY CHARTER AND CODE, ch. 41, tit. W, § W41-4.

148. OREGON LAWS 1963, ch. 622, § 4.

for exemplary damages.¹⁴⁹ Despite the virtues of the Oregon statute, it would seem more appropriate to permit the commission to award a complainant back wages or, where appropriate, restitution for the loss suffered due to the respondent's unlawful act of discrimination. If, for some reason, the commission does not seek a temporary restraining order and injunction, it does not appear justifiable to permit a complainant to recover special damages from a respondent because of the latter's disposition, prior to the commission's final action, of the opportunity sought by the complainant. Actual damages should suffice. Several state commissions already have authority to assess actual damages.¹⁵⁰ In some states, due to state constitutional provisions, a new cause of action will have to be created.¹⁵¹

An additional disadvantage of reliance on conciliation is the difficulty of securing compliance. As previously pointed out, some commissions employ the technique of conciliation not only to adjust individual grievances, but also to secure the revision of general policies and practices. There is good evidence to believe, however, that respondents in housing cases, although perhaps not employers, habitually disregard these broad agreements. Most commissions, unfortunately, do not verify the extent of compliance with conciliation agreements with any regularity or thoroughness. Moreover, it is, of course, quite possible that mere check-ups on compliance will not produce compliance. With but one exception of recent origin, no commission has authority to enforce conciliation agreements.¹⁵² If a commission discovers that a conciliation agreement is not being honored and the respondent persists in his recalcitrance, the commission can proceed against him only on the basis of a fresh complaint. The authority to enforce conciliation agreements would greatly improve the effectiveness of commissions.

Even if enforceable, conciliation agreements resulting from the settlement of individual complaints are not a panacea. Most state and some local com-

149. OREGON LAWS 1963, ch. 622, § 9.

150. See, *e.g.*, OHIO REV. CODE ANN., tit. 41, § 4112.05(G) (1965).

151. The suggested statute in Appendix A contains provisions implementing the suggestions just made. With slight modifications this statute can be utilized for a state commission. Section 8(e) of the statute authorizes the commission, once the determination has been made that probable cause exists to credit a complaint, to direct its attorney to commence an action for injunctive relief, including temporary restraining orders, to prevent the respondent from disposing of the job, housing accommodation, or other thing with respect to which complaint of unlawful discrimination has been made, pending final administrative determination of the proceedings under the statute. A court of competent jurisdiction in which the action is brought may issue temporary restraining orders upon terms and conditions it deems just and proper. Within thirty days of the effective date of the court order, the commission is required to render its decision in the case unless the time for doing this is extended by the court. Section 8(i)(1) authorizes the commission, if it determines a respondent has engaged in an unlawful practice to order him to take affirmative action that includes restitution to the complainant for losses suffered as a result of the unlawful practice.

152. In 1963 Oregon authorized its civil rights agency to enforce conciliation agreements under certain conditions. See, ORE. LAWS 1963, ch. 622, § 10.

missions rely far too much upon the technique of processing complaints of discrimination against particular individuals. It is true that these agencies perform an educational function also. They have distributed tons of literature to business concerns and their commissioners and staff directors have delivered hundreds of talks before civil groups of all kinds. Nevertheless, for most commissions, the educational function is only a secondary one. There are, in addition, far more effective techniques for creating equal opportunities. For example, commissions can negotiate with broad sections of the business community or the government in order to induce them to increase the opportunities available to minority groups. While education is essential to the commissions' performance of this negotiating function, the key ingredient is an affirmative use of the subtle powers of government to compel the institution of positive improvements. These powers include the power to conduct industry-wide or government-wide investigations and the power to conduct public hearings similar to those held by legislative committees. The artful use of publicity in disseminating the facts discovered in investigations and public hearings and of intimations that individual complaints will be filed unless changes are made is frequently sufficient to provide a climate in which industries and government agencies will agree to commission proposals for concrete remedial measures. The aim of negotiation is not merely the elimination of the more overt or gross types of discrimination, but the removal of all unreasonable obstacles to minority groups in their effort to obtain equal treatment.

In addition to negotiating with government and industry, commissions can effectively assist members of minority groups to prepare themselves to take advantage of available opportunities and to engage in action designed to increase the availability of these opportunities. Only two state commissions — those in New York and Pennsylvania — have performed both of these constructive functions to any considerable extent. Some local commissions, however, have performed them. The Philadelphia commission affords the most successful example. Since 1960 this commission has devoted most of its time, energy, and resources to negotiating broad-scale adjustments of disputes, focusing particularly on the problem of discrimination in employment.¹⁵³ Employing a "plant inspection program,"¹⁵⁴ the commission, in 1962, examined the policies and practices of seventy-one different business concerns employing a total of 21,258 persons.¹⁵⁵ Similarly, on seventy occasions, it investigated employers who have contracts with the city and unions associated with performance of these contracts.¹⁵⁶ The commission discovered that the recruiting practices of many firms limited the employment opportunities open to members of minority groups. This commission, one of the few possessing the authority to initiate complaints on its own motion, was able to persuade many employers

153. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 3, 26-7.

154. *Id.* at 3, 23-24.

155. *Id.* at 24.

156. *Id.* at 25.

to institute affirmative "merit employment programs" and to expand their recruiting programs to reach additional members of minority groups.¹⁵⁷

The Philadelphia commission has also held industry-wide public investigative hearings and conducted industry surveys without the use of hearings. In 1960, following public investigative hearings into the employment practices and policies of the hotel and restaurant industry, the commission was able to negotiate a consent order with the Greater Philadelphia Restaurant Operators Association.¹⁵⁸ This order called for the elimination of discrimination against minority groups, promotion of minority group personnel then employed, modification of seniority requirements, development of written job specifications and affirmative action towards integration of employee referral lists. By 1962 the commission was able to report that investigations subsequent to the public hearings had resulted in the employment of non-white workers in several job categories from which they had previously been excluded.¹⁵⁹ Negotiations with the banking industry subsequent to a similar industry-wide survey also resulted in a substantial increase in the number of non-white employees.¹⁶⁰ By 1962 the city commission was able to report that, together, the three techniques of plant inspection, industry-wide public investigative hearings, and industry surveys had "become far more productive than the case by case approach as vehicles for improving employment opportunities."¹⁶¹ The commission emphasizes that the basic aim of its new mode of operation with respect to discrimination in employment and housing is to produce "compensatory opportunity" for members of minority groups, who, like culturally-deprived students in public education, have suffered great losses and require special adjustments in existing arrangements in order to facilitate their entry into better employment and housing.¹⁶²

The essence of the new techniques illustrated by the operations of the Philadelphia commission is the ability of the commission to take the business section "to the country" through press releases, public investigations, and public enforcement proceedings. Although important in their own right, the proposals for expanding the jurisdiction of commissions and for improving the effectiveness with which they handle individual complaints of discrimination are far less important than the new techniques for increasing the bargaining strength of human relations commissions. The Philadelphia commission has sought agreements from business men promising action that is more than merely remedial. These agreements stipulate for the removal of unreasonable impediments to the acquisition of various needs by members of minority groups. Such action might entail the institution by an employer of a program of recruiting and training Negroes in order to build up a pool of qualified persons

157. *Id.* at 3, 23.

158. *Id.* at 20, 26.

159. *Id.* at 26.

160. *Ibid.*

161. *Id.* at 21.

162. *Id.* at 2.

for jobs that the employer is regularly filling. Failure to provide a program of this sort could well be viewed as an unreasonable impediment to Negroes' obtaining jobs for which they are not presently qualified because of past discrimination on the part of unions, employers, and educational programs. This failure, however, could probably not be considered unlawful discrimination by the particular employer. To strengthen a commission's hand in negotiating for the improvement of opportunities in this type of situation, it is essential that the commission be backed up by a new principle of law, one differing considerably from the current law against specific acts of discrimination. The principle to be established should be directed against "any method of doing business that unreasonably restricts a member of a particular race, color or religion, or a person of a certain national origin in obtaining employment, housing, public accommodations, or education." It is impossible to spell out the various kinds of unreasonable restrictions existing in the business community. The concept of "unreasonable restriction" here advanced, however, will take on a more specific meaning as commissions accumulate experience in processing cases and in negotiating with broad sections of the business community. A commission should have authority to find a violation of this principle when the action of several businessmen, either in the same or in different businesses, creates the unreasonable restriction, even though the offenders do not act in concert, and even though the action of no one businessman, taken by itself, would constitute an unreasonable restriction. In this situation the commission should have authority to order all members of the particular business or businesses affected to take affirmative corrective action, either jointly or severally.

Despite the limited functions presently assigned to state human relations commissions, inadequate staffing and financing have precluded these commissions from realizing their potential. Although the New York State commission has functioned comparatively well, even it has failed to generate more than a fraction of the complaints that should be filed. In 1960, the New York State commission allocated approximately 70 per cent of its total budget, or \$665,000, to processing cases of employment discrimination.¹⁶³ It is likely that the commission dealt with no more than 25 per cent of the existing discriminatory transactions in this area due to deficiencies in its operations outlined above. Had these deficiencies been eliminated, the commission would have required an annual budget of at least \$2,500,000 to process complaints of discrimination in employment alone. In 1960, the New York State commission had jurisdiction over only 5 per cent of all housing accommodations and was processing probably no more than 25 per cent of the discriminatory transactions within this jurisdiction. The commission allocated less than \$285,000 for this task. Had the commission possessed jurisdiction over substantially all housing in 1960, a jurisdiction which it now possesses, it would have needed an additional \$2,215,000 to exercise this jurisdiction. On the assumption that the budget required to process cases of discrimination in public accommodations and edu-

163. NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 276.

cation is typically no greater than 15 per cent of the budget required to process employment or housing cases, the commission needed \$375,000 for this purpose in 1960. In sum, the New York State commission would have needed a budget of \$5,375,000 in 1960 to process, at an optimum level, the bulk of individual complaints in employment, housing, public accommodations, and education.

Assuming that the amount allocated for police activities is related to the amount that ought to be allocated for human relations activities, we can make some interesting comparisons of the adequacy of the budgets provided state human relations commissions. A 1960 budget of \$5,375,000 for the New York State commission represents about 35 per cent of the New York State budget for state police activities.¹⁶⁴ In fact, the commission had a budget of only \$950,000 in that year. On the theory that the budget of a state human relations commission should be at least 10 per cent of the state's budget for police activities, the 1960 budgets of many human relations commissions appear to have been quite deficient. The two relevant figures (for actual and needed budgets) for the specified states in 1960 are as follows: Massachusetts (\$100,000; \$504,000), Ohio (\$100,000; \$944,700), New Jersey (\$148,000; \$1,111,900), California (\$203,000; \$2,958,700), and Michigan (\$148,000; \$1,165,200).¹⁶⁵ Budgets for the years subsequent to 1960 have still not approached the necessary levels indicated for 1960. For example, the 1965 budgets of the Massachusetts and Ohio commissions are \$170,000 and \$205,000 respectively; the New York State commission's budget for 1963 was increased only to \$1,537,000.

6. THE FUNCTIONS AND EFFECTIVENESS OF WELL-ESTABLISHED LOCAL COMMISSIONS

Local commissions, because of their structural similarity to state commissions, share with the latter the function of processing complaints of discrimination against individuals. The chief distinction of local commissions in this regard is their performance of a "constructive action" function — the employment of techniques such as negotiation and education to induce broad sectors of private industry or government to take constructive action in opening up opportunities for minorities on a broad scale. The relatively successful experience of several local commissions in performing this function argues strongly for the primary administration of civil rights law on a local rather than state level.

Local human relations commissions also perform some seven additional functions. As in the case of constructive action, state commissions generally do not share in this work. One of the most important of these functions is the resolution of inter-group conflicts arising out of various kinds of tension incidents which occur at the neighborhood or community level. This resolution usually forms part of the community relations program of a commission. One commis-

164. U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, COMPENDIUM OF STATE GOVERNMENTAL FINANCES IN 1960, Table 13, 24.

165. Actual budget figures are set out in NORGREN, HILL & MARSHALL, *op. cit. supra* note 37, at 101. Needed budgets equal ten per cent of each state's budget for police activities. U.S. DEPARTMENT OF COMMERCE, *supra* note 164.

sion has described the purpose of this type of program to be "to promote a peaceful and secure community in which dignity and mutual respect, equal opportunity, law and order, and a sense of civil responsibility prevail among peoples of all races, religions, and national origins."¹⁶⁶

Tension incidents may be classified into certain well defined categories.¹⁶⁷ The typical tension incident related to housing arises when a white home owner decides to sell or rent his home to a Negro.¹⁶⁸ The attempts of the white community to discourage the transaction are often productive of friction which extends beyond the parties immediately concerned. A second type of tension incident arises in connection with police activity. The police are the most easily identifiable official authority in a community.¹⁶⁹ They are frequently the only authority with whom the Negro minority comes in contact. When anxiety and general dissatisfaction of the Negro community reach unbearable levels, the police become the most obvious object of rebellion. Tension incidents may also result from the administration of public school systems. In 1961, for example, frequent charges of discrimination in a New York City public school¹⁷⁰ led to a "cold war" situation of long duration in which the confrontation of Negro and white students seemed likely to become violent. More recently, tension incidents have arisen in a number of cities as a result of efforts by Negroes and others to eliminate *de facto* segregation in public schools.¹⁷¹ Another type of

166. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 35.

167. The history of cities across the country indicates that the problem of community tension incidents is a large and growing problem in the field of intergroup relations. In Philadelphia in 1962, a total of 495 tension incidents were reported to the local commission. *Id.* at 4. During a twelve-month period ending September 3, 1962, the Los Angeles County commission reported the occurrence of at least four serious clashes between members of minority groups and police agencies. Three of these involved Negroes, while the fourth involved Latin Americans. In New York there has been a gradual increase of tension incidents between police and members of minority groups in the 1960's. In the month of July 1961 alone the police statistics indicated that over 290 of these incidents had occurred. 1961 N.Y. COMM'N ON INTERGROUP REL. ANN. REP. 31. In 1963, the Detroit commission processed over 160 tension incidents. DETROIT COMM'N ON COMMUNITY REL. REPORT, GEARED FOR ACTION 4 (1964). Once in a while, a particular tension incident erupts into extraordinarily serious violence. This occurred in New York in the summer of 1964 following the killing of a Negro youth by a New York policeman. Most reported incidents, however, are satisfactorily resolved through commission action.

168. See, *e.g.*, Pittsburgh Commission on Human Relations, *Hasting Street Move-In. A Case History* (Mimeo., 1961).

169. One of the best brief analyses of the problem discussed in this paragraph may be found in Buggs, *Police-Community Relations: A Critique on Issues That Tend to Divide Us* (Los Angeles County Commission on Human Relations, mimeo., 1962).

170. 1962 N.Y. CITY COMM'N. ON HUMAN RIGHTS ANN. REP. 12-13.

171. In 1961, for example, white parents boycotted a Board of Education program to bus children, most of them Negro, from seriously crowded center district schools to the three nearest schools with capacity to handle the overflow. 1961 DETROIT COMM'N. ON COMMUNITY REL. ANN. REP. 2. Up to 60 per cent of the white children were kept at home during the boycott and attempts were made by some white parents to organize a picket line to prevent the entry of Negro children into their new schools.

tension incident involves teen-age groups. For example, a pattern of animosity developed in 1962 between Jewish and Italian youths in a Philadelphia neighborhood area.¹⁷² Regular beatings of local Jewish boys resulted in talk of retaliation with weapons. Finally, tension incidents frequently occur when a minority group misunderstands the purpose of official action affecting its members. In 1962 several Philadelphia city agencies conducted a joint community rehabilitation program.¹⁷³ The group, Puerto Rican in origin, mistakenly believed rumors that the purpose of the program was to displace all Puerto Ricans from the area. The situation worsened when a Negro was killed by a Puerto Rican, and rumors circulated that Negro gangs were forming to retaliate. Subsequently, the Puerto Ricans, in turn, organized defensive groups.

To deal with such tensions and many others, commissions depend upon an expert staff to make on the spot decisions.¹⁷⁴ It is generally recognized that in no other area of inter-group relations is expertise more essential. A false step will often cause the situation to worsen. Commissions must act rapidly and accurately. Of course, a first objective is to prevent tension incidents from erupting into violence and spreading into other areas. The long-range objective is to prevent completely their occurrence. Local commissions have accumulated a considerable body of knowledge concerning the causes of these incidents as well as the appropriate techniques for resolving them. Typically, a local commission will organize a tension control center to receive and to process tension and conflict incidents.¹⁷⁵ Often commission personnel will perform the essential steps of resolution, with the help, where necessary, of other officials and private citizens and organizations. Other tension incidents, perhaps the greater number, will be referred to private groups to whom the professional staff of the commission will have communicated their know-how. Since the work of these private groups is basic to that of the commission, much of the commission's time is necessarily consumed in organizing, instructing, and servicing them.

In addition to resolving tension incidents, local commissions also seek to control activities which unreasonably obstruct members of minority groups seeking employment, housing, and other necessities. A good example of this sort of activity is "blockbusting," an invention of real estate operators in the 1960's.¹⁷⁶ On the one hand, these operators utilized deception, manipulation, and the creation of fear and anxiety to induce property owners in all-white neighborhoods to sell their property to them at low prices. On the other hand, they knew that the desperate need of Negroes and Puerto Ricans for better housing

172. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 63.

173. *Id.* at 61.

174. Notes on the History and Activities of the Human Relations Commission 3, 4, 6 (Los Angeles County Commission on Human Relations, mimeo., July, 1963).

175. See, e.g., 1960-63 N.Y. CITY COMM'N. ON HUMAN RIGHTS ANN. REP. relative to the operations of a "Tension Control Unit."

176. An excellent study of this problem may be found in NEW YORK CITY COMMISSION ON HUMAN RIGHTS, REPORT ON BLOCKBUSTING (1963). The material in this paragraph is largely drawn from this report.

would force them to buy the same property at exorbitant prices and interest rates. A study of a random selection of properties sold during one blockbusting melee showed that the average cash price paid to white property owners was about \$12,000, whereas the average resale price paid shortly thereafter by Negro purchasers was \$20,000. Resale prices exceeded fair market value anywhere from 28.5 per cent to 118 per cent. Furthermore, interest rates paid by Negroes for mortgages taken by these operators were far higher than those of FHA, VA, or conventional loans. In response to this situation, commissions in various affected areas across the country helped to organize, and thereafter cooperated closely with, neighborhood and block organizations to combat the effects of blockbusting.¹⁷⁷ The New York City commission held open investigative hearings to publicize dramatically the sordid practices which then prevailed. During these hearings, the practices diminished. After the hearings ceased, the practices resumed.¹⁷⁸ Similar hearings conducted by various commissions and city councils resulted in the recommendation of legislation to curb this exploitation.

A number of cities have recently enacted ordinances to deal with this problem. Several major cities, in addition to prohibiting specific practices, have authorized their commissions to investigate complaints of violation of these prohibitions and to settle justified grievances.¹⁷⁹ These commissions have authority to hold hearings and to issue subpoenas. If conciliation proves impossible, they may refer the case to an official, recommending prosecution or an administrative sanction. In Detroit and St. Louis, for example, convicted violators may be fined. In Chicago, the Mayor may suspend or revoke the city license of any real estate broker found by the commission to have violated the ordinance. In the case of a real estate broker licensed by the state, the Mayor is authorized to direct, after appropriate commission action, that a complaint be filed with the relevant state agency seeking a suspension or revocation of the license. The Detroit and St. Louis ordinances reach the activities of persons acting as principals as well as those of real estate brokers. Vigorous prosecution of complaints and rigorous surveillance of compliance with the law has enabled the Detroit commission to achieve great success in administering the city ordinance.¹⁸⁰ In 1963, the number of complaints filed dropped from 378 in the first half of the year to 285 in the second half.¹⁸¹ In the majority of these cases, the commission was able to obtain conciliation agreements to cease blockbusting activities.

177. See, e.g., CHICAGO COMM'N. ON HUMAN REL., *SELLING AND BUYING REAL ESTATE IN A RACIALLY CHANGING NEIGHBORHOOD* (1962).

178. 1962 NEW YORK CITY COMM'N. ON HUMAN RIGHTS ANN. REP., p. 3.

179. Chicago, Ill., Ordinance 198.7B, 8 RACE REL. L. REP. 1208 (1963); Detroit, Mich., Ordinance 753-F, 7 RACE REL. L. REP. 1260 (1962); and St. Louis, Mo., Ordinance 52328, 9 RACE REL. L. REP. 372 (1964).

180. DETROIT COMMISSION ON COMMUNITY RELATIONS, REPORT "GEARED FOR ACTION" 3 (1964).

181. *Ibid.*

The New York City commission has taken the position that a number of other steps, in addition to the enactment and enforcement of anti-blockbusting legislation, are necessary.¹⁸² One such step is to motivate banks and lending institutions to re-evaluate their entire operation with an eye towards extending their mortgage financing services to members of minority groups. Another step is to motivate brokers, managers and investors in housing to encourage the opening of neighborhoods to minority groups.

An additional function of local commissions is the processing of complaints of wrongful behavior by the police. These complaints may allege brutality, illegal arrests, illegal searches or seizures, harassment, disrespect, or other mistreatment of citizens. While complaints of discrimination in housing, employment or public accommodations are filed by or on behalf of a member of a minority group, complaints about police administration, like information concerning tension incidents and blockbusting, may originate with a member of either the white majority group or a non-white minority group. Of course, police maladministration may be attributable to racial or religious discrimination. As yet only two cities, Philadelphia and Rochester, New York,¹⁸³ have established effective agencies independent of the police department to receive and investigate complaints of police maladministration. In other cities, that department handles these complaints itself.¹⁸⁴

The Philadelphia agency, the Police Advisory Board, was established by the Mayor after the city council failed to enact an ordinance he had proposed for this purpose. Its organization and operation are similar to those of a more intricately structured state or local human relations commission.¹⁸⁵ Although it possesses neither subpoena power nor authority to issue cease and desist orders, it does have authority to investigate complaints against the police, to settle them through conciliation, to hold public hearings, and to recommend to the Mayor where appropriate, sanctions such as suspensions and departmental reprimands. During the fourth year of its operation, the Police Advisory Board received 98 complaints, of which 35 alleged police brutality, 21, illegal arrests or searches, 39, harassments, and 3, other forms of maladministration.¹⁸⁶ With a carry-over of complaints from the previous year, the Board disposes of an average of 100 complaints each year. In the fourth year of its operations, the agency satisfactorily closed 96 cases without a hearing.¹⁸⁷ These included: cases in which, after thorough investigation, the agency found the complaints unjustified, and the complainants elected not to accept the offer of a public hearing; cases in which the complainants withdrew their complaints after ex-

182. NEW YORK CITY COMMISSION ON HUMAN RIGHTS, REPORT ON BLOCKBUSTING 10-15 (1963).

183. Comment, *The Administration of Complaints by Civilians against the Police*, 77 HARV. L. REV. 499 at 511 (1964).

184. *Id.* at 499.

185. *Id.* at 512-16.

186. 4 PHILADELPHIA POLICE ADVISORY Bd. ANN. REP. Appendix "A" (1962).

187. 4 PHILADELPHIA POLICE ADVISORY Bd. ANN. REP. 3 and Appendix "A" (1962).

pressing their satisfaction with the manner in which their grievances were adjusted by the city; and cases in which the agency determined informally that the police officer respondent had misbehaved. In the last type of case, the board, with the cooperation of various police officials, arranged for an apology by the police officer and a statement that the citizen's rights would be respected in the future.¹⁸⁸ In addition there are cases in which the Board determines that a public hearing should be held, or in which the complainant requests such a hearing. Again, in its fourth year of operations the board held eleven hearings, deciding in favor of the complainant in six cases.¹⁸⁹ In each of these six cases it sent recommendations for disciplinary action to the mayor.¹⁹⁰

A recent study of the relative efficacy of independent agencies and police departments¹⁹¹ demonstrates that the former have several distinct advantages in processing complaints. In addition to the obvious fact that members of an independent agency are more able, and need not fear to exercise unbiased judgment, such an agency can be expected to increase public acceptance of the resolution of complaints when favorable to the police, as is usually the case. Moreover, civilian interest in fair administration of the law is best safeguarded by civilian administration of review procedures. Even the most impartial police department is deficient in this respect. Knowledge and experience in evaluating both police actions and the effect of the commission's decisions upon police operations can be built into the structure of an independent commission by placing one or more police officers on the commission. The fact that the accused officer and his attorney are accorded full opportunity to present the accused's side of the case already protects this interest to a considerable extent. Moreover, the police department, through its chief officers, may file a brief or make an oral presentation stating its own point of view. The argument that an independent agency will destroy the morale of a police force deserves little credit. Nor is greater merit to be accorded the argument that an independent agency will decrease the effectiveness of police operations. The experience of the Philadelphia board in its five years of operation demonstrates the errors of both arguments.¹⁹²

Local human relations commissions not only process complaints against the police department, but also cooperate with it and other local government agencies. In Detroit, for example, three years of informal commission efforts to reestablish lines of communication between the city's police department and minority groups and to end discrimination in department employment practices culminated in 1964 in a great improvement in the relationship be-

188. *Id.* at 4.

189. *Id.* at Appendix "A".

190. *Id.* at 3.

191. Comment, *op. cit. supra* note 183 at 499.

192. The experience of Philadelphia with a local human relations agency to process complaints of police maladministration has now moved city authorities across the nation to make careful studies. New York City is one of the major cities now considering the creation of an independent agency to exercise this form of jurisdiction. New York Times, August 5, 1964, p. 37, col. 1-2.

tween the police and members of the Negro community.¹⁹³ In Philadelphia, cooperation between the commission and the police department has been more structured.¹⁹⁴ The department has assigned the responsibility for improving community relations to certain police officers, each working in a different district. Each month the Philadelphia commission holds a briefing session with these special officers to provide them with information concerning current inter-group problems. In 1962, for example, these sessions focused upon the role of the American Civil Liberties Union and the activities of the American Nazi Party and the Black Muslim movement. The commission has also helped to inform and to shape the operations of police community relations teams, composed of representatives of public and private agencies. Paralleling these commission services, the executive director of the Philadelphia Police Advisory Board conducts a course at the Police Academy on the Board's functions and procedures.¹⁹⁵ And in a more formal type of cooperation, the Philadelphia commission and the police department have developed a working paper establishing the responsibilities of the commission, the police department, and other public agencies in dealing with riots, conflicts, and various forms of intimidation.¹⁹⁶

Other city departments such as recreation departments and local boards of education also require the assistance of a local human relations commission. The New York, Philadelphia, Pittsburgh, Detroit, Chicago, and Los Angeles County local commissions have worked very closely with school boards.¹⁹⁷ In these northern and western urban communities the central problem in public education is *de facto* segregation. Prior to 1963 the New York City commission on human rights had confined its cooperation with the board of education to specific cases in which decisions had to be made bearing upon the problem of integration. In 1961, for example, when sites had been proposed for a new public school to replace two older ones the commission studied both the board's choice and the alternative proposals made by civil rights organizations¹⁹⁸ in order to determine which site would provide the best possible balance between Negro, Puerto Rican and majority group students. Similarly, when a community organization presented a plan for school integration, the commission studied the proposal. Its studies in both instances contributed to the board's eventual decision.

The work of the New York City commission, in 1963 and 1964, to resolve the city's worsening school integration crisis is illustrative of an additional

193. The Wall Street Journal, August 12, 1964, p. 1, col. 6.

194. See, generally, 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 39.

195. 4 PHILADELPHIA POLICE ADVISORY Bd. ANN. REP. 6 (1962).

The commission also was instrumental in securing the creation of the office of police inspector of human relations. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 39.

196. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 39.

197. See, *e.g.*, 1961 DETROIT COMM'N. ON COMMUNITY REL. ANN. REP. 2; 1960-62 Los Angeles County COMM'N. ON HUMAN REL., BIENNIAL REP. 4-6.

198. 1961 N.Y. CITY COMM'N. ON INTERGROUP REL. ANN. REP. 27.

function of local human relations commissions — namely, to study local human relations problems, to recommend solutions to these problems to local government officials, and to actively support the adoption of these solutions.¹⁹⁹ The successful performance of this function naturally calls for a local rather than a state or federal agency. Although New York has a state human relations agency and a state education agency, the former performed no role whatsoever and the latter only a minor one in promoting acceptance of the program finally adopted. The requisite knowledge of the local situation, the possession of a working relationship with city government, the prestige enjoyed in public argument on human relations issues, and the confidence with which the private groups seeking a solution regarded the acting agency all belonged singularly to the city's human relations commission. In an eleven month period, this agency had been the central figure in substantially reversing a ten-year history of successive failure on the part of the nation's largest city in solving one of its major human relations problems.

Sometimes the remedy the commission must recommend is new legislation rather than, as in the case just examined, creative use of the existing framework of law. When the blockbusting tactic first appeared in 1961-62, local government had to act immediately and effectively in order to avoid rapid and widespread chaos in urban neighborhoods. There could be no waiting for state governments to decide whether to act, with the possibility that no action or an inadequate, overly general approach would be taken. In New York City, Detroit, Philadelphia, Pittsburgh, St. Louis and other cities local commissions immediately studied the problem, either on their own motion or by direction of the mayor or city council. Some of these commissions held public hearings. All prepared, reviewed, or submitted drafts of remedial legislation. In a number of cities, the recommendations of these commissions resulted in new and apparently successful legislation.²⁰⁰

199. The report of the New York City problem with *de facto* segregation and the role of the City Commission on Human Rights in dealing with it is largely based upon news accounts published in the New York Times between July 1, 1963, and September 1, 1964, concerning the significant developments during that period relative to these matters. In addition, the report draws upon Hechinger, *The City Schools — A Mixed Report Card*, N.Y. Times, June 14, 1964, § 6 (Magazine), p. 24; and Powledge, *Mason-Dixon Line in Queens, id.*, May 10, 1964, § 6 (Magazine), p. 12.

200. See note 199 *supra*. Similarly, in Detroit, Chicago and Pittsburgh a very considerable problem developed in private hospitals and medical institutions relative to the availability of equal hospital services, appointment and employment of physicians, and training for the medical and nursing professions. Studies were conducted by local commissions in the 1958-60 period of one or more of these matters. In 1956, for example, Negro physicians held staff appointments at only nine of the fifty-odd private hospitals in Chicago. This situation greatly affected the opportunity of Negroes to gain admission to private hospitals serving the general public since most patients enter hospitals only as a result of their physicians being on the hospital staff and making the arrangement for their admission. In addition, there were very few Negro patients in Chicago private hospitals and the evidence indicated that there was considerable discrimination against them. Moreover, some medical and nursing schools would not admit Negroes for training.

An additional major function of local human relations commissions is to provide, either directly or through cooperation with private and public agencies, various types of assistance services to members of minority groups. The services offered to individuals are designed to help them with problems encountered as newcomers to a city, as people in need of a loan or in search of more adequate housing, as leaders and representatives of minority groups and as young people in general. The services offered to communities in which members of minority groups live are designed to assist these communities with various difficult problems such as stabilization of the community in order both to prevent its further deterioration and to begin its improvement.

One of the most interesting of these services is provided the newcomer to the city, who is, in some sense, usually a member of a minority group. Unless these newcomers are provided with assistance in adjusting to their new environment and in obtaining needed training and employment, many of them will remain or become unemployed, heavily indebted, and alienated. To meet this problem the mayor of Chicago set up a committee on new residents under the guidance of the local commission. Each year this committee provides assistance services to 4,000 newcomers. In 1963, for example, the committee helped more than 800 people to obtain employment.²⁰¹ Many other newcomers

1962 CHICAGO COMM'N ON HUMAN REL. ANN. REP. 17. In Pittsburgh, although Negroes were admitted to private hospitals, there was discrimination in according them the full facilities of these institutions. PITTSBURGH COMM'N ON HUMAN REL., RACIAL PRACTICES IN PITTSBURGH HOSPITALS at 4-6, 9-11 (1959). In Detroit in the areas of bed utilization, appointments of physicians and nurses to hospital staffs, and admission to medical and nursing training, the local commission found significant discrimination against Negroes. DETROIT COMM'N ON COMMUNITY REL., *op. cit. supra* note 197, at 10.

As a result of studies and recommendations made by human relations commissions in these cities remedial action was taken. In Chicago this action took the form of appointment of a mayor's committee on staff appointments for Negro physicians. CHICAGO COMM'N ON HUMAN REL., *supra*. The committee, assisted by a full-time commission staff member, by a process of publicity and negotiation obtained significant improvements in hospital staff appointments for Negro physicians and consequently admissions of Negro patients to private hospitals. Its work culminated in enactment of a city ordinance in April, 1962, forbidding discrimination by private hospitals in employment or appointment of physicians. Ordinance, April 18, 1962, 7 RACE REL. L. REP. 605 (1962). By the beginning of 1963, 43 Negro doctors held 61 appointments in 31 of Chicago's 69 hospitals. CHICAGO COMM'N ON HUMAN REL., *supra*. By a similar process in Detroit the local commission secured in 1958 elimination of discrimination in admissions to medical and nursing training. DETROIT COMM'N ON HUMAN REL., *op. cit. supra* note 197, at 10. Between 1958 and 1961 the commission worked with a private hospital building fund organization and city officials to bring pressure to bear on private hospitals still not following the principle of equal accessibility to facilities and services for all persons. The private organization was asked to deny funds to hospitals which would not agree to follow this principle and the city was asked to refuse to approve redevelopment plans involving hospitals which would not similarly agree. The commission effort to obtain compliance with the principle was reasonably successful. Finally, the commission was granted in 1963 the jurisdiction to eliminate discrimination in all phases of the operations of hospitals and medical institutions. Ordinance 813 F, Oct. 8, 1963, 8 RACE REL. L. REP. 693 (1963).

201. 1963 CHICAGO COMM'N. ON HUMAN REL. ANN. REP. 13.

were also assisted in coping with problems of health, credit, language, and housing. In addition, volunteer tutors working under the auspices of the committee provided tutoring services for nearly 800 adults and 3,500 children.²⁰² The committee also helped to establish, in two public housing projects, credit unions similar to those already formed in New York City. These unions serve particularly important functions by counseling tenants on installment buying, income management, budgeting and saving, as well as by lending money at low interest rates.

Other commissions have extended some of the services rendered to newcomers by the Chicago commission to all members of minority groups. Under the New York City housing program, for example, one private organization concentrates on marshaling support for integrated living in communities where no minority group families now live.²⁰³ Another organization establishes contact with Negro and Puerto Rican families who, being financially able to do so, wish to purchase or rent housing in a presently integrated or all-white community. A third organization instructs family heads how and where to look for available integrated housing and provides housing aides to accompany the family in examining the premises. It also assists the family to verify discrimination in housing and to file a complaint with the city human rights commission should this prove necessary. A fourth civil rights organization conducts an educational campaign for integrated living through mass media and other means of communication. The local commission, in addition to organizing and coordinating this program, also acts as a consultant to the private organizations involved.

One additional assistance service rendered to individuals may be profitably noted. Despite the existence of vigorous civil rights and Negro organizations, there exists a paucity of leadership at the community level within Negro, Latin-American and other minority groups. Two kinds of leadership programs have emerged from the work of local commissions. One seeks the general development of community leaders among members of minority groups. The other seeks to prepare these community leaders for appointive office in local government or for membership in civil organizations.²⁰⁴ Typical of the first type of program are the leadership training institutes sponsored by the Pittsburgh commission since 1961.²⁰⁵ The purpose of these institutes is to prepare from three to five members of each participating church to become human relations consultants and to serve as members of their churches' human relations committees. The function of these consultants, when trained, is to assist members of the congregation in taking advantage of the new opportunities made possible by the operations of local and state human relations commissions. The

202. *Id.* at 17.

203. *The New York Times*, February 1, 1964, p. 26, col. 3.

204. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 2, 16; 1963 NEW YORK CITY COMM'N. ON HUMAN RIGHTS ANN. REP. 26.

205. Pittsburgh Commission on Human Relations, Report on Civil Rights Leadership Training Institutes (Mimeo., 1962).

consultants also refer to the local commission people who have encountered discrimination, problems of group tension or conflict, or other similar human relations problems.

The last major function of local human relations agencies to be enumerated is to secure and assist talented leaders throughout a city's population. We speak here of leaders within the business community and its major commercial and industrial segments, professional groups, churches, civic organizations, labor organizations, civil rights organizations, minority groups, neighborhoods, communities and finally the entire city itself. A major commission service of this type is rendered to communities undergoing a process of ethnic transition to help them maintain or bring about stability and order. The usual technique employed is to organize a community council or intergroup relations committee capable of reaching the leadership structure of a wide geographic area surrounding the specific neighborhood which has received its first minority group families. After organization of a council, the next task of the commission is to provide council members with the assistance, information and training necessary for performing their leadership function in their community. To accomplish a major portion of this task the commission assigns a staff consultant to each council it organizes.²⁰⁶ The consultant arranges programs, exhibits films, and generally seeks to inform the council he serves concerning current human relations problems. In addition, he provides the council with expert advice and assistance in planning remedial action for community problems.²⁰⁷ To provide community council members with the basic knowledge and training they require in order to perform their leadership function, some commissions have organized study courses and institutes. The function of the community council itself is to promote a harmonious and productive democratic process in the community in which persons of all racial, religious and nationality groups may freely participate, to promote widespread participation in activities that contribute to the improvement and general welfare of the community, and to obtain the enactment and observance of city ordinances bearing closely upon the stabilization and improvement of the community.²⁰⁸

An excellent example of specific council functions is provided by the KABB Community Council,²⁰⁹ organized by the Pittsburgh commission in early

206. Los Angeles County Commission on Human Relations — Notes on the History and Activities of the Human Relations Commission 5 (Mimeo., July, 1963).

207. Experience has demonstrated that most community councils rely heavily upon the consultant assigned to them. The Los Angeles commission estimates that servicing an active community council requires one week per month of its consultant's time. *Ibid.*

208. 6 PITTSBURGH HUMAN RELATIONS REV. No. 4, pp. 2-3 (1963).

209. The KABB Comm. Council was organized to deal with problems of community stabilization in four neighborhoods in South Pittsburgh. As an example, one of these neighborhoods, Beltzhoover, was one of two neighborhoods and three larger areas of high non-white concentration in Pittsburgh in which more than 100,000 Negroes live. 6 PITTSBURGH HUMAN RELATIONS REV. No. 4, pp. 2-3 (1963); No. 6, pp. 3-4 (1963); 7 *Id.*, No. 3, p. 3 (1964). As in other areas occupied by Negroes in any great number, most of the dwellings and buildings in Beltzhoover were much older than in other sections of the city,

1962.²¹⁰ At the present time the council has about 115 members representing either themselves or one of thirty-three agencies, institutions and civic or social groups in the community. The council, with the assistance of the local commission, has provided vital services in working to resolve tension incidents in the community. It has sponsored a program for painting buildings and cleaning up the area. It has obtained a number of public improvements such as the installation of needed traffic lights at critical points. It has studied the extent of juvenile misbehavior and the need for establishing special programs for juveniles. It has met with the Department of City Planning to determine the needs and resources of the community and to devise a long-term plan for its renewal. It is the judgment of council members that they have provided, with the assistance of the local commission, a channel of communication through which residents and community groups can make known to others in the community their views on public issues. As a result of the discussion it makes possible, the council is able to develop and direct unified efforts to solve community problems.

In addition to organizing and assisting community councils, each year the local commissions in New York, Philadelphia, Pittsburgh, Detroit, Baltimore, Chicago, and Los Angeles conduct literally scores of conferences, institutes, and workshops for different interest groups. However much these meetings may differ in length, depth of coverage, or type of program, their purpose remains the same — to stimulate the participants to think about the human relations problems presently existing in each of their fields and then, in returning to their work, to provide the requisite leadership for solving these problems, with commission assistance whenever needed.

It is difficult to single out any one group as peculiarly important in providing local leadership on human relations problems. Nevertheless, in terms of the good and evil that they can do, no group is more important than the executives of mass media organizations. The success of most of the educational, informational and action programs of a local human relations commission depends heavily upon the mass media. In order to perform most of its basic functions the local commission must create lines for systematic communication

PENNSYLVANIA DEPT. OF LABOR AND INDUSTRY, REPORT OF GOVERNOR'S COMMITTEE ON DISCRIMINATION IN HOUSING 8 (1959), and less than 50 per cent of the total housing units could be classified as "sound, non-defective" in 1960 as compared with the average of 80 per cent in census tracts having less than 1 per cent of its housing units occupied by non-whites. PITTSBURGH COMMISSION ON HUMAN RELATIONS, REPORT ON THE STATUS OF HOUSING OF NEGROES IN PITTSBURGH 7 (May, 1962). A process of both physical and social deterioration was likely to engulf Beltzhoover and to spread to adjacent neighborhoods in light of the prior experience that as a receiving neighborhood is hard-pressed by new nonwhite families seeking better living conditions than in their central city ghettos, many of the older homes are converted into smaller units causing conditions of overcrowding similar to those in areas from which the immigrants had come.

210. PITTSBURGH COMMISSION ON HUMAN RELATIONS, REPORT ON THE STATUS OF HOUSING OF NEGROES IN PITTSBURGH 7 (May, 1962). Much of the statistical information which follows was drawn from this report.

between government and the citizenry as well as between the various ethnic groups in the community; it must build intergroup understanding and goodwill, and elicit specific responses to commission programs. Due to the importance of mass media in accomplishing these three objectives, the local commission through its public relations or information division, usually makes special efforts to establish and strengthen personal contacts with representatives of all mass media. The commission seeks to help them to understand its work and the vital dependence of its work upon their interpretation and presentation to the public of the commission's programs and positions. In 1961, the Philadelphia commission held the first seminar for executives of the press, radio and television stations and intergroup agencies.²¹¹ The purpose of the seminar was to create more direct and productive communication between the agencies and the mass media. One result of the seminar was the adoption of a code or set of guidelines governing the handling of news relevant to commission activities. Over the years, most local commissions have held regular conferences with mass media with the same objective in mind. By and large, these conferences, as in Chicago, have resulted in the responsible handling of stories of racial tension.²¹² They have also resulted in commissions' being given broadcast time in which to discuss problems in employment, housing, and other areas.

The performance of all of the above functions is a prerequisite to any feasible solution to the civil rights problem. Local commissions alone have proved themselves capable of so acting. Consequently, state civil rights legislation ought to designate local rather than state commissions as the primary administrative bodies at the local level.

7. STATE CIVIL RIGHTS LEGISLATION: A NEW FUNCTION

In order to achieve localized administration of civil rights legislation, certain modifications of or additions to state law are necessary. States should explicitly impose upon state commissions the duty both to promote the creation of local human relations commissions and to provide them with appropriate training, assistance and supervision.²¹³ No more than twelve well-established local commissions presently exist, and some of these have too narrow a jurisdiction and lack adequate staffing and financial support. Experience indicates that cities and counties the population of which includes 1000 or more non-whites generally have serious human relations problems.²¹⁴ Commissions

211. 1962 PHILADELPHIA COMM'N. ON HUMAN REL. ANN. REP. 15.

212. 1962 CHICAGO COMM'N ON HUMAN REL. ANN. REP. 23.

213. In other northern and western states the state commissions have been slow to recognize the exceptional value of local commissions. Prior to 1964, only the Pennsylvania state commission had actively urged local governments to organize commissions. 6 PA. HUMAN REL. COMM'N ANN. REP. 19; 7 *id.* 32, 3-6 (1963); 5 PITTSBURGH HUMAN RELATIONS REV., No. 5, p. 4 (1962). In May 1964, the Connecticut commission adopted the same policy. NEW HAVEN HUMAN RIGHTS COMMITTEE, REPORT TO MAYOR OF NEW HAVEN, CONNECTICUT 3437 (1964).

214. PENNSYLVANIA DEPARTMENT OF LABOR AND INDUSTRY, REPORT OF THE GOVERNOR'S COMMITTEE ON DISCRIMINATION IN HOUSING 4 (1959): ". . . at least thirty cities of the

should be established in 425 out of the 675 cities with a population of 25,000 or more, in 535 counties having a population of less than 25,000 and in 400 cities, located in large counties, with a population of less than 25,000.²¹⁵ Moreover, even the 250 cities with populations of 25,000 or more in which fewer than 1,000 non-whites reside should begin now to deal with their human relations problems.²¹⁶

Statutes creating state commissions in some northern and western states have resulted either in state occupation of the field of civil rights regulation, to the exclusion of local governments, or, with equal effect, in doubt whether local governments can exercise regulatory powers in areas the same as or related to those within the jurisdiction of the state commission. It is essential to remove any such statutory preclusion, real or questionable.

Another problem remains to be mentioned: that of coordinating the work of local and state commissions. To accomplish this objective, it is necessary that all states take legislative action. Only one state, Pennsylvania, has a civil rights statute expressly reserving to local government authority to protect, concurrently with the state commission, the civil rights of minorities.²¹⁷ The statute also seeks to coordinate the operation of the state commission with that of local commissions. The Pennsylvania provision reads:

Nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or any law of this Commonwealth relating to discrimination because of race, color, religious creed, ancestry, age, or national origin, but as to acts declared unlawful by section five of this act the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this act, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance.²¹⁸

In reliance upon this provision the Pennsylvania commission has entered into cooperative agreements with various city commissions.²¹⁹ Its agreement with the Pittsburgh commission provides that the latter process complaints of discrimination in employment and housing, over which both have jurisdiction,

Commonwealth now have over 1,000 nonwhite citizens. And the evidence gathered by the Committee indicates that patterns of discrimination and segregation are no less severe in the smaller cities than in the largest. In some respects, the smaller cities are even more restrictive."

215. U.S. DEPARTMENT OF COMMERCE, BUREAU OF THE CENSUS, COUNTY AND CITY DATA BOOK (1962). These totals were obtained by author's count from tables included in this book.

216. *Ibid.*

217. PA. STAT. ANN. tit. 43 § 962(b) (1964).

218. *Ibid.*

219. 6 PA. HUMAN REL. COMM'N ANN. REP. 19 (1962); 7 *id.* 35-36 (1963).

and, where necessary, issue cease and desist orders.²²⁰ The Pittsburgh commission also processes complaints of discrimination in public accommodations. Since it has no jurisdiction to enforce compliance in this area, it must refer cases not closed through conciliation to the state commission, which may then conduct a public hearing and issue a cease and desist order. This working relationship is illustrative of the Pennsylvania commission's policy of allocating the full work to city agencies in areas of concurrent jurisdiction and allocating the functions of investigation and conciliation alone in areas in which the state commission has exclusive jurisdiction to compel the elimination of discrimination.²²¹

The Pennsylvania statute appropriately restricts complainants to either the city or state administrative remedy. Moreover, the statute secures a basic conformity between the substantive provisions of the state civil rights law and of municipal ordinances, while retaining the educative and social values of allowing a local community to enact its own civil rights laws. Despite its good qualities, the Pennsylvania statutory provision seems faulty in certain respects. It fails to speak expressly to the use of cooperative agreements between the state and local commissions. Section 709(b) of the Federal Civil Rights Act of 1964, on the other hand, provides that the Federal Equal Employment Opportunity Commission may enter into written agreements with state or local agencies.²²² Under these agreements the Federal Commission is permitted to stipulate that it will refrain from processing a charge in any specified case or class of cases, or that it will relieve any person or class of persons from the requirements of section 706 of the Act, relating to commission action against discrimination in employment. The Federal Commission is directed to rescind any cooperative agreement whenever it determines that the agreement no longer serves federal interests. A provision of this sort, appropriately modified to take account of the state-local government relationship, should be included in all state civil rights statutes administered by state human relations commissions.

The Pennsylvania statutory provision is also inadequate because it fails to recognize that not only cities but also counties or other local governments may wish to deal with their civil rights problems. No local government should be precluded by a state statute from exercising the authority it would otherwise have to create a local human relations commission. Although the Pennsylvania statute specifies that cities may administer civil rights legislation despite the existence of overlapping state legislation, it permits complainants to bypass local remedies and to file a complaint with the state commission. There is little justification for this result which undercuts the whole purpose of cooperative agreements. Local commissions are normally at least as effective as the state commission in processing complaints. Moreover, the ability of a local commission to exercise its admitted jurisdiction in all cases is likely to strengthen its

220. 5 PITTSBURGH HUMAN RELATIONS REV., No. 5, p. 4 (1962).

221. PA. HUMAN RELATIONS COMM'N *op. cit. supra* note 215 at 19.

222. 78 Stat. 241 (1964), 42 U.S.C.A. §§ 2000e-8(b) (1964).

position. State civil rights statutes should provide that the state commission, once entering into a cooperative agreement with a local commission, must first refer to that body all complaints subject to local jurisdiction.

Despite the existence of a cooperative agreement, there will be individual cases which for a variety of reasons should be handled by the state agency. These reasons may be evident at the time the complaint is filed or discoverable only after initial investigation and processing. Under the Pennsylvania statute, if such a complaint is filed with a city commission of competent jurisdiction, the state commission may not act on the complaint. A local commission should have authority, on the determination of its chairman or a majority of its members, to refer any complaint to the state commission. A local commission should also be required to refer to the state commission any complaint which the latter has by a special order or general rule demanded to be so referred. Referral should be permitted either before or after the local commission has rendered its decision on the complaint.²²³

223. The following is a suggested provision incorporating the best features of the Pennsylvania statutory provision and the modifications advocated in the text:

"Nothing contained in this Act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted law of this state or of any of its political subdivisions relating to discrimination because of race, color, creed, age, or national origin. The Commission may cooperate with agencies established by any political subdivisions to administer laws dealing with this form of discrimination. In furtherance of these cooperative efforts and to achieve more adequate administration of civil rights law, the Commission may enter into written agreements with these local agencies and these agreements may include provisions under which the Commission will refrain from processing a complaint in any cases or class of cases specified in these agreements. Any complaint filed with or by the Commission or a local agency falling within the coverage of a cooperative agreement shall be processed by the local agency with which the agreement was made unless the chairman or a majority of the local agency request the Commission to process it or unless the Commission directs that the complaint be retained by or referred to it. The request or direction that a complaint be processed by the Commission may be made after the local agency has rendered its decision, and, in this event, the Commission shall, except as it may limit the issues upon notice or by rule, have all the authority it would have in making the initial decision. The Commission shall rescind a cooperative agreement whenever it determines that the agreement no longer serves the interest of promoting effective achievement of the purposes of this Act. In the absence of a cooperative agreement with a local agency, the procedure provided by this law shall, when invoked by a complainant relative to discrimination covered by this Act, be exclusive and the final determination of the case shall exclude any other action, civil or criminal, based upon the same matter of which complaint has been made. If a person institutes an action relative to discrimination covered by this Act without resorting to the procedure provided by it, he may not subsequently resort to that procedure. The Commission may, however, direct a local agency receiving or filing a complaint alleging discrimination covered by this Act to refer the complaint to it for initial decision or a review of the decision of that agency in a similar manner to the procedure for complaints covered by cooperative agreements. In the event of an alleged conflict between the interpretation of a provision of this Act and the interpretation of a similar provision contained in the law of any political subdivision, the interpretation of the provision in this Act shall apply to the latter law."

There are, of course, problems of human relations at the state level which continue to call for action primarily by state commissions. Moreover, there are cities and other local governments which will not live up to their responsibility to create and effectively maintain local commissions. In these localities, the state commission will be called upon to perform, or to create institutions to perform, the role of local commissions. Most state statutes, however, limit the activities of state commissions to complaint processing and educational and cooperative functions in one or more specific areas of discrimination. These statutes must be amended to enable state commissions to perform the broad functions of local commissions where a political subdivision does not establish a local commission in response to persuasion by the state commission, or to establish, as part of its overall structure, a state-local human relations commission empowered to perform all functions appropriate for a local commission. At the present time all state commissions have authority to create advisory agencies and conciliation councils on a local, regional, or state wide basis. By and large, state commissions have not permitted the local or regional institutions created under this authority to operate as a local human relations commission. Under existing provisions state commissions probably could not delegate to these institutions authority to issue cease and desist orders.²²⁴

224. A suggested statutory provision for accomplishing the objectives just discussed, which may also replace similar provisions contained in existing state statutes such as Section 295(8) of the New York Executive Law, Article 15, is set out below:

The commission shall have the following functions, power and duties:

* * *

(a)(1) To promote the creation by political subdivisions of human relations commissions with effective authority for dealing with problems of relations between ethnic groups in those subdivisions or, where a political subdivision fails to create one of these commissions within a reasonable time following the effort of the commission to persuade it to do this, to create as part of the commission structure a state-local human relations commission for the purpose of operating within that subdivision and to delegate to it all appropriate functions for solving problems of relations between ethnic groups in that subdivision that it is itself authorized to perform. In establishing a state-local commission, the Commission may delegate to it the authority to operate in two or more political subdivisions that are adjacent to or located in the same metropolitan area. The commission may as an initial and temporary expedient perform the functions it is authorized to delegate to a state-local human relations commission.

(2) The authority that the commission is to urge political subdivisions to grant to human relations commissions created by them or should, in the alternative, delegate to a state-local human relations commission created by it, includes that which it is authorized to perform itself.

(3) The state-local human relations commission shall be composed of representative citizens who either live or work in the area in which the commission operates. Its members shall serve without pay, but with reimbursement for actual and necessary travelling expenses. The commission shall provide and maintain offices and an appropriate staff for the state-local commission.

(b) To create advisory agencies and conciliation councils, local, regional, or state-wide, when it judges these will aid in effectuating the purposes of this Act. The commission may itself or it may empower these agencies and councils to (1) study the problems of discrimination in all or specific fields of human relationships when based on race, color,

Another step essential to achieving localized administration of civil rights legislation is the enactment of state statutes authorizing and regulating local human relations commissions. Local governments, other than those enjoying "home rule" status, are usually considered to have only such regulatory authority as the state has expressly granted to them, including that deemed necessary to carrying out granted powers.²²⁵ This regulatory authority does not comprehend authority to create human relations commissions with enforcement powers.²²⁶ In addition to granting such authority, this legislation will prepare the way for coordination of the work of all local commissions with that of any state and other local commissions. Only three states, Kentucky,²²⁷ New York,²²⁸ and Wisconsin,²²⁹ have enacted laws authorizing the establishment of local human relations commissions. The New York statute, enacted in 1963, falls far short of granting the needed authority. Rather, the New York statute maintains the unconditional primacy of the state in dealing with local human relations problems in all but home rule governments.²³⁰ Even as to these the basic civil rights law has clouded the issue of their authority to act. As a result, home rule cities in New York do not generally administer civil rights legislation.

The Wisconsin statute,²³¹ by contrast, has authorized local governments both to create human relations commissions and to enact prohibitions of discrimination enforceable by these commissions. Nonetheless, the statute embodies several policies that dampen its effectiveness. One major deficiency is that it undercuts the principle of local responsibility. For several decades,

creed, ancestry, age or national origin, and (2) foster, through community effort or otherwise, good will among the groups and elements of the population of the State. These agencies and councils may make recommendations to the commission for the development of policies and procedure in general. These agencies and councils shall be composed of representative citizens, serving without pay, but with reimbursements for actual and necessary travelling expenses; and the commission may make provision for technical and clerical assistance to them and for the expense of this assistance.

225. Such legislation is as essential in local "home rule" states as in other states, since even in states authorizing municipal "home rule," many cities do not elect this status. See, MOTT, *HOME RULE FOR AMERICA'S CITIES* 62 (1949); Hagensick, *Wisconsin Home Rule*, 50 NAT. CIV. REV. 349 (1961). Moreover, even in these states, counties are not usually granted "home rule." REYNE, *MUNICIPAL FEW* 18 (1957). Such legislation will be significant in informing these cities and other local governments with "home rule" of the state interest in local civil rights legislation, removing any doubts about their authority, urging them to act, and providing guidelines for local legislation.

226. See, e.g., Attorney General of State of Kansas, *Opinion of February 19, 1957*, 2 RACE REL. L. REP. 557 (1957).

227. KY. REV. STAT. §§ 82.210-82.250 (1963).

228. N.Y. GEN. MUN. LAW, §§ 239-o-239-r (1965).

229. WIS. LAWS 1963, ch. 543.

230. Thus, in New York City, which has created a local commission with enforcement authority only in the housing field, the state commission has continued to exercise substantial jurisdiction over local housing discrimination over which the local commission would otherwise be exercising its own jurisdiction.

231. See note 228 *supra*.

cities and villages in Wisconsin have enjoyed home rule.²³² Counties, among other local governments, lack this status and thus should have been the logical focus of a statute creating new local authority to deal with the civil rights problem. Instead, the statute applies equally to home rule cities and villages, and to counties and other local governments without this status. As a result, the authority of the former to legislate in the civil rights field has been curtailed, while an inadequate grant of initial authority has been made to the latter. In light of the current need for local administration of civil rights law by larger cities, the careless drafting of the Wisconsin effort represents a backward step.

The Wisconsin statute suffers from a number of additional defects. It fails to confer on local commissions created under the act the full range of "non-regulatory" authority essential for adequate local resolution of the civil rights problem. This type of authority is certainly as important as the usual types of regulatory authority exercised by local commissions. The statute, for example, does not specify authority to process and control incidents of group tension and conflict or to deal with peripheral problems, such as police brutality. Furthermore, the statute does not authorize the local commission to issue subpoenas or hold public hearings to investigate general adverse conditions. Nor is a local commission authorized to provide assistance services to minority groups to ease their adjustment to a new community. Finally the Wisconsin statute does not coordinate the work of the local commission with the work of similar state and federal commissions. The Kentucky statute,²³³ enacted in 1962, is designed for a state which does not permit its local governments to attain home-rule status. It shares most of the weaknesses of the Wisconsin statute, is applicable only to cities, and grants them authority only to forbid discrimination in public accommodations.

8. FEDERAL CIVIL RIGHTS LEGISLATION: A NEW FUNCTION

Federal efforts to implement the civil rights of minority groups have so far proved inadequate.²³⁴ The federal government should seek to induce states that now have state commissions to make the necessary changes in statutes and commission practices. It should also encourage other states to establish similar state commissions. Also, the federal government should encourage the formation in all states of local human relations commissions to serve as the primary operating agency at the local level. To this end, the federal government should institute a federal-local human relations program similar, in its institutional aspects, to the federal urban renewal²³⁵ and civil defense²³⁶ programs. Each of these programs provides for a federal agency to supervise the making of loans, capital grants and financial contributions to cities or states in order to

232. See Brugger, Note, *Municipal Corporations — Home Rule in Wisconsin*, 1955 WIS. L. REV. 145; WIS. CONST. art. XI, § 3; WIS. STAT. §§ 61.34(1), 62.11(5) (1955).

233. KY. REV. STAT. §§ 82.219-82.250 (1963).

234. See notes 1-7 *supra* and accompanying text.

235. 63 Stat. 413 (1949), 42 U.S.C.A. § 1441 (1964).

236. 64 Stat. 1245 (1951), 50 App. U.S.C.A. § 2251 (1964).

encourage the development and operation of programs of interest to both the grantor and grantee governments. Indeed, financial contributions to states participating in the civil defense program are conditioned upon each state's providing, by state law, that the plan agreed upon shall be mandatory in all political subdivisions of the state.²³⁷ Financial contributions under this program are also available for increasing the staff of the agencies,²³⁸ the major need of local human relations commissions. The federal agency administering the Civil Defense Program is authorized to provide for training or instruction of local and state officials in the organization and techniques of civil defense.²³⁹ It is also authorized to create a national civil defense college and three civil defense technical schools.²⁴⁰ Under the Urban Renewal Program, the administrator of the federal agency is authorized to assist local governments, at their request, in planning and developing local urban renewal programs.²⁴¹ Aid in planning operations and assignment of federal personnel to local and state governments are likely to be invaluable to a federal-local human relations program. Such assistance would assure that new commissions will put their best foot forward and avoid initial mistakes prejudicial to their later effectiveness.

A federal-local program of this sort would undoubtedly be effective in northern and western states. It would not be effective, however, in southern states unwilling to establish state commissions or in communities, throughout the country, unwilling to establish local commissions. Even with the carrot of federal financial contribution, it is unlikely that state and local governments in many parts of the South will soon establish their own human relations commissions. Moreover, the first commissions established are likely to be rather ineffective, milk-toastish institutions. To meet this dilemma, the proposed federal-local human relations program should provide that the administering federal agency may establish local commissions with authority to administer and enforce the Civil Rights Acts of 1964, 1957 and 1960. In addition, these commissions should have authority to process complaints of discrimination in all areas subject to federal regulatory jurisdiction and to perform the basic functions of local commissions, including conciliation of justified complaints of discrimination not specifically proscribed by federal law. The most important function of a federal-local human relations commission is to provide local leadership in getting the community to confront and solve its human relations problems.²⁴²

237. 72 Stat. 533 (1958), 50 App. U.S.C.A. § 2286(a) (1) (1964).

238. 72 Stat. 534 (1958), 50 App. U.S.C.A. § 2286(d) (1964).

239. 64 Stat. 1249 (1951), 50 App. U.S.C.A. § 2281(e) (1964).

240. *Ibid.*

241. 63 Stat. 414 (1949), as amended 78 Stat. 785, 42 U.S.C.A. § 1451(d) (1964). A similar provision is contained in the Public Health Service Act of 1944 under which the Public Health Service details its officers or employees to a local or state government for the purpose of assisting the latter in work related to the functions of the Service. 1963 PHILADELPHIA POLICE ADVISORY Bd. ANN. REP. STATUS OF CASES 1.

242. Due to the nonregulatory nature of most of its functions, no serious constitutional law problem would be presented. And insofar as they are regulatory, a federal-local com-

There exist today many examples analogous to a federal-local human relations commission whose members are drawn from the locality served by the commission. One is the local Selective Service Board, which consists of three or more members appointed by the President on the basis of recommendations by the governor of the state for which they are appointed.²⁴³ Another analogy is provided by the local, county and state committees used by the Secretary of Agriculture to administer the federal agricultural adjustment and soil conservation programs.²⁴⁴ While members of the state and local review committees used in these programs are appointed to their positions, members of the local and county committees are elected to their positions by interested farmers within local administrative areas.²⁴⁵ Still another analogy is the federal jury commissioner, who alternates with the clerk of the federal district court in selecting qualified citizens for potential jury service.²⁴⁶ This commissioner, who is required to be a citizen of good standing residing in the district in which he functions, serves to ensure local participation in the jury selection process. The proposed federal-local human relations commission would, like the federal-local agencies just noted, depend heavily for its effectiveness upon participation of the local citizenry. Members would be selected, either by the President or by the head of the supervising federal agency, from those citizens in each community capable of providing leadership if given proper backing and authority. Given time, these commissions would probably lead to local and state governments assuming the responsibility which they previously have refused to shoulder.

CONCLUSION

Since the close of the second world war, state and local governments have, with varying degrees of effort, imagination and success, sought legislative solutions to the pressing problems of civil rights. The creation of human relations commissions as a means of reforming community behavior where ordinary forms of law and administration cease to be effective is an example of the potential of administrative process. Exercising a non-regulatory authority in addition to the traditional functions of an administrative agency, these commissions are demonstrating the ability of local and state government to secure the civil rights of all people. Moreover, because of the very nature of the civil rights problem, state and local human relations commissions can accomplish considerably more than federal efforts to the same end. In those localities or states where governing authorities lack a sincere desire to solve the problems of civil rights, the state or federal government must act. Only if this action is designed to encourage the assumption of responsibility on the state and local level will it meet with measurable success. Continued local exploitation of the administrative process can alone provide a long-term solution.

mission could perform these functions as validly as a federal commission located in Washington, D. C.

243. 62 Stat. 619 (1948), 50 App. U.S.C.A. § 460(b) (3) (1964).

244. 49 Stat. 1149 (1935), as amended 52 Stat. 68, (1938), 7 U.S.C.A. § 1383 (1964).

245. *Ibid.*

246. 28 U.S.C. § 1864 (1958).

APPENDIX A

SUGGESTED STATE ACT CONCERNING LOCAL HUMAN
RELATIONS COMMISSIONS

AN ACT concerning the establishment of local commissions on human relations, their authority and procedures, and review of their determinations.

Section 1. *Title.* This statute shall be known as the Local Human Relations Commission Act.

Section 2. *Findings and Purposes.*

(a) The population of this state consists of people of many races, colors, religions, national origins and ancestries. It is essential to the public health, safety, welfare, and peace of the state and of each community within it that this diversity serve to strengthen individual and collective efforts to achieve man's enduring goals and not be used to weaken these efforts through the maintenance of discrimination, segregation, and unequal opportunity for minority groups in any phase of state and community life. These latter conditions undermine the foundation of the free and just democratic society by preventing full utilization of the productive capacities of individuals, causing widespread unemployment and underemployment, depriving many people of earnings necessary to maintain decent standards of living and requiring them to resort to public relief; producing overcrowded, segregated areas under substandard, unsafe, and unsanitary living conditions; and causing embarrassment and inconvenience to citizens and visitors in their attempts to use public accommodations. These conditions also cause or intensify intergroup tensions and conflicts, crime, juvenile delinquency, disease, fire, higher welfare costs, deficiencies in the public education system, and loss of tax revenues.

(b) It is the policy of this state that all persons enjoy the full benefits of citizenship or residence and be afforded equal opportunity to participate, on the basis of personal merit, in the social, cultural, economic, political and all other phases of public life in each community and in the state, free from any restriction because of race, color, religion, national origin or ancestry and from any restrictions because of sex or age that are unreasonable. Government initiative to repair the consequences of past denials of equal opportunities, to prevent these denials in the future, and to control and to eliminate the underlying causes of intergroup tensions and conflicts promotes this public policy. Government initiative in the field of human relations is needed at all levels, especially at the local level. Human relations problems cannot be adequately solved until the government and citizenry of each community throughout the state honestly face these problems and with good will and industry work together for their solution.

(c) It is the purpose of this statute to create, because of doubt as to its existence, the full and necessary authority in each local government of this state, to deal adequately with its human relations problems and to supplement

through official local action the implementation of state policy relative to promoting and assuring equality of opportunity for all residents of each community.

(d) It is not the purpose of this statute to limit the existing authority of any local government to enact substantive legislation addressed to human relations problems.

Section 3. *Definitions.*

(a) The term "person" includes one or more individuals, partnerships, associations, corporations, trustees, receivers, or other fiduciaries, or the agent or employee of one of the foregoing.

(b) The term "local agency" means a political subdivision; any authority, department, board, or commission of a political subdivision; and any agent or employee of one of the foregoing.

(c) The term "governing board" means the governing board of a political subdivision.

(d) The term "political subdivision" means any county, city, . . . of this state.¹

(e) The term "commission," unless a different meaning appears from the context, means a human relations commission established by a political subdivision pursuant to this Act.

(f) The term "commissioner" means a commissioner of a commission on human relations established by a local government pursuant to this Act.

(g) The term "local civil rights law" means any legislation enacted by the governing board of a political subdivision pursuant to Section 5 and the authority granted a local human relations commission by Section 7.²

(h) The term "discrimination" means any difference of treatment because of race, color, religion, national origin or ancestry relating to access to any thing, activity, or facility necessary or appropriate to a person's full participation in the shared life and processes of the community.

1. The principle for including any form of political subdivision within this definition should be its performance of a substantial regulatory role within the state.

2. Section 5 authorizes the governing board of a political subdivision to regulate or prohibit a number of activities adversely affecting human relations. Section 7 grants authority of a "non-regulatory" nature to a local human relations commission, whether or not the governing board of the political subdivision elects to enact local legislation under § 5. The suggested statute thus speaks to an important problem of state legislation authorizing and regulating the creation of local human relations commissions: the levels at which local governments will be ready to deal with the civil rights problem.

Some communities will be ready to undertake comprehensive regulation. Others will be unwilling to make much more than a token effort. The suggested statute takes cognizance both of the initial variety of situations to which it is likely to be addressed and of the subsequent uneven growth in local responsibility that is likely to take place. Its central approach in this respect is to provide local governments with full authority to deal effectively with the civil rights problem without, however, requiring them to act in any way. A local government may elect merely to create a commission without giving it any regulatory authority. Even if this alone is done, however, § 7 grants the commission a number of important "non-regulatory" powers and duties.

- (i) The term "education" includes apprentice training programs.
- (j) The term "employment" means employment of individuals, other than as domestic servants or in a personal or confidential capacity by a person employing one or more employees, exclusive of parents, spouse, or children, but excluding any fraternal, sectarian, charitable or religious group.³ A person engaging in this activity is an employer.
- (k) The term "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer, or place employees.
- (l) The term "labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in employment.
- (m) The term "housing accommodations" includes any building, structure or portion thereof which is used or occupied, or is intended, arranged or designed to be used or occupied, as the home, residence, or sleeping place of one or more human beings.
- (n) The term "commercial space" means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied (i) for the manufacture, sale, resale, processing, reprocessing, displaying, handling, garaging, or distributing of personal property or (ii) as a separate business or professional unit or office.
- (o) The term "public accommodations" means any facility, service, or operation, including the offering for sale of goods or services, of any place of business or of rendering professional services, which is open to, accepts, or solicits the patronage of the general public. This term does not include any facility, service, or operation of an organization that is in its nature distinctly private and which, relative to that facility, service, or operation, is so conducted in good faith.⁴

Section 4. *Creation, Appointment, and Terms.*

- (a) The governing board of any political subdivision may by appropriate legislative action create a human relations commission for the purpose of administering local civil rights law.
- (b) The governing board shall determine the number of members of the commission at any figure not less than six; the terms, manner of appointment of and compensation, if any, to be paid members; and the mode of selection of a chairman.
- (c) The establishment of a commission by one political subdivision shall not preclude establishment of a commission by another. A county commission shall not, however, exercise its jurisdiction in a political subdivision located in the same county if the latter has established a commission pursuant to this act with similar jurisdiction. The governing board of two or more political subdivisions which are adjoining or located in a metropolitan area may agree to establish

3. See *infra* note 6.

4. See *infra* note 6.

one commission with jurisdiction extending over the area of the agreeing governments.⁵

Section 5. *Local Civil Rights Law.*

(a) The governing board is authorized by appropriate legislative action:

(1) to prohibit discrimination by any person or local government agency based upon race, color, religion, national origin or ancestry in education, employment, labor organization activities, employment agency activities, provision of public accommodations, affording of governmental services and facilities, and control of access to any other thing, activity or facility necessary or appropriate to a person's full participation in the shared life and processes of the community;

(2) to prohibit discrimination based upon age or sex that is unreasonable;

(3) to prohibit police department maladministration including but not limited to acts of brutality, unreasonable arrests, unreasonable searches or seizures, and acts of harassment;

(4) to prohibit the acts of soliciting for or inducing the sale, lease, or listing for sale or lease of real property by representing that a change has occurred or will or may occur in the racial, religious, or ethnic composition of the block, neighborhood, or area in which the property is located or by representing that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of the schools serving the area;

(5) to prohibit or regulate activities that unreasonably affect relations between groups or unreasonably restrict the right and opportunity of persons of any race, color, religion, national origin or ancestry to participate in all phases of the life of the community.

(b) The governing board may exercise in its discretion all or a portion of each authority granted in subsection (a) and it may incorporate by reference into local civil rights law any state law administered by a state agency performing a function comparable to a local human relations commission.⁶

5. The suggested statute permits local governments to create human relations commissions although located within the geographical confines of another local government. To avoid the problem of overlap this subsection provides that a county commission shall not exercise its jurisdiction in a political subdivision located in the same county if the latter has established a commission with similar jurisdiction. A county commission might have more extensive regulatory authority under local law than a city commission within the same county. If this is the case, the county commission may exercise its more extensive authority in that city. On the other hand, two or more political subdivisions may wish to work as a unit. There are many human relations problems facing large cities that require them to deal with situations taking place beyond their geographic boundaries. Section 4(c) therefore provides that two or more political subdivisions adjacent to or located in a metropolitan area may establish one commission with jurisdiction extending over the area of the agreeing governments.

6. The state may consider some policies more important than that of guaranteeing civil rights. The definitions provisions of § 3 were used to resolve this potential conflict

Section 6. *Commission Officers and Employees.*

(a) The commission is authorized to employ an executive director and any other personnel necessary to assist the commission in carrying out its duties, within the amount and authorization established by the governing board.⁷

(b) The commission is authorized, upon the approval of the governing board, to accept outside funds, gifts, or bequests, public or private, to help finance its activities.⁸

(c) The governing board of a political subdivision is authorized to make appropriations for the salaries of staff and members of the commission and for other expenses of operation.

Section 7. *Powers and Duties of Local Commission.*

The commission is authorized, through its own action or the action of designated commissioners or staff members,

(a) to foster mutual respect and understanding among all racial, religious and nationality groups;

(b) to encourage equality of treatment for, and prevent discrimination against, any racial, religious, or nationality group;

(c) to make or arrange for studies in any field of human relationship that in its judgment will aid in promoting the purposes of this statute;

with local commissions. Thus most state statutes have exempted certain employers from the state prohibition of employment discrimination. One example is the employer of his own spouse, parent, or child. Another is the employer of domestic servants. These exemptions seek to protect an interest in privacy and free choice. To protect such a policy, § 5 has been modified by the definition of employment set forth in § 3. Similarly, in defining public accommodations, § 3 excludes any facility, service, or operation of an organization that is in its nature distinctly private. On the other hand, § 5 grants vast power to regulate public accommodations.

If a commission uses the powers of § 5 to regulate or prohibit activities bearing adversely upon human relations, additional legal effects will follow. Section 7(a) provides that a local human relations commission has the duty, when complaints are filed, to employ certain procedures set out in § 8 of the Act. Section 3 defines local civil rights law as including any legislation enacted by the governing body of a political subdivision pursuant to § 5 of the Act. When a local government elects to prohibit certain conduct under the authority of this section, therefore, it is required to follow the uniform procedure detailed in § 8 for the processing of complaints. Requiring such a uniform procedure, which ought to parallel state procedures, is important since there will be a movement of cases between the state and the local commissions.

7. This provision will serve mainly as a strong suggestion to local authorities to provide adequate staffs and budgets for their commissions.

8. This provision will enable the commission to accept funds from the federal government. As previously noted, the Federal Equal Employment Opportunity Commission is authorized to use the services of state and local commissions and to reimburse them for services rendered. The federal commission is also authorized to enter into cooperative agreements with state and local commissions and thereby to relinquish federal jurisdiction over employment discrimination to these agencies. Presumably, the provision previously noted would permit the federal commission to reimburse a state or local commission for processing cases that the former could process but has elected to turn over to the latter.

(d) to investigate by means of public hearings or otherwise any particular or general conditions having an adverse effect on intergroup relations, including alleged violations of the law of the state or of the political subdivision;

(e) to publish the results of research, studies, and investigations and other materials that in its judgment will aid in promoting the purposes of this Act;

(f) to conduct and recommend educational programs that, in its judgment will increase goodwill among inhabitants of the community and open new opportunities into all phases of community life for all inhabitants;

(g) to inquire into incidents of tension and conflict, including those occurring among or between members of various racial, religious, and nationality groups, and to take action, in cooperation with public and private agencies, designed to prevent the immediate tension or conflict and to alleviate the underlying causes;

(h) to aid any group or member of it in adjusting to living in a community and in resolving human relations problems;

(i) to work with interested citizens; federal, state, and local agencies; and civic, community, racial, religious, ethnic, business, industrial, labor, and civil rights organizations in developing and conducting programs to help members of minority groups enjoy equality of opportunity in all phases of community life and to promote harmonious intergroup relations;

(j) to aid the political subdivision in solving problems of human relations by recommending to its governing board and local agencies the adoption of general policies and procedures for this purpose and by assisting the board and agencies in the planning and execution of any program dealing with these problems;⁹

(k) to establish advisory agencies when in its judgment this will aid in effectuating the purposes of this Act and to authorize them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of race, color, religion, national origin or ancestry; to foster, through community effort or otherwise, goodwill and cooperation among the groups and elements of the population; and to make recommendations to the commission for the development of policies and procedures;

(l) to initiate or receive, investigate, and pass upon complaints of alleged discrimination, whether or not specifically prohibited by the governing body as an unlawful practice, and complaints of violation of local civil rights law;

(m) to enter into cooperative working arrangements with state and federal agencies having related responsibilities when these agreements will aid in carrying out the purposes and provisions of this law and of local civil rights laws;¹⁰

9. This power is an important one. Some of the ideas generated by the commission will involve the action of government itself, others will involve the action of private persons and groups. This provision is bolstered by the power granted in subsection (i) to work with citizens, federal, state and local agencies, and civic organizations in developing and conducting programs to help members of minority groups enjoy equality of opportunity.

10. This subsection deals with the vital problem of correlating the work of the various local, state and federal agencies. A state human relations commission is authorized

(n) to refer to a state or federal agency any complaints specified for that reference in a cooperative working arrangement with that agency or otherwise specifically directed by that agency to be referred to it as well as any complaint that the commission determines should be referred to that agency for initial action or review of its decision;

(o) in processing any complaint, as appropriate, to utilize methods of persuasion, conciliation, and mediation or informal adjustment of grievances; to hold public hearings; and, in the case of complaints of alleged violation of local civil rights law, make findings of fact, issue orders, and publish its findings of fact and orders in accordance with this Act and local civil rights law;

(p) in holding public hearings for the purpose of investigation or for processing complaints of discrimination or of violation of local civil rights law, to subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection with this to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to issuance of subpoenas by individual commissioners;

(q) to adopt and publish reasonable procedural rules to carry out the provisions of this Act;

(r) to obtain upon request and use the services of all departments and agencies of the local and state government;

(s) to submit at least once a year a written report to the governing board concerning its activities and recommendations.¹¹

under the suggested statute to enter into cooperative working agreements enabling local commissions to handle certain cases. The state commission may of course direct a local commission to refer to it any cases which are not covered by a working agreement and which demand processing at the state level. The local human relations commission statute must make a similar provision for coordinating local and state work. Thus § 7(m) authorizes local commissions to enter into cooperative working arrangements with state and federal agencies. And § 7(n) directs the local agency to refer to a state or federal agency complaints specified either by such agency or in a cooperative working arrangement. It also permits the local agency to refer any complaint to a state or federal agency either for initial action or for review of its decision. The operation of the two statutes with the Civil Rights Act of 1964 should assure an appropriate yet flexible allocation of responsibility between local, state, and federal human relations commissions.

11. In the event that a local government simply creates a commission without giving it regulatory authority, § 7 guarantees the commission authority to process complaints of discrimination and to seek to resolve grievances through the use of conciliation. As a result of the all-encompassing definition of discrimination in § 3, § 7 operates to ensure that each community which begins to act at all in the field of human relations will have a commission with authority to confront all of the community's current problems of discrimination however weak its weapons.

Lack of authority to enforce prohibition of discrimination, however, will obviously vastly weaken its effectiveness. Both "non-regulatory" and "regulatory" authority must be possessed in their fullness by a local commission in order for it to achieve the degree of effectiveness necessary to assure that a community may achieve substantial progress in mastering its human relations problems. When both exist together, a kind of third authority emerges. It is the authority to reason with officials and private persons from

Section 8. *Procedures.*

(a) Any person claiming to be aggrieved by discrimination or a violation of a local civil rights law and any commissioner who has reason to believe that discrimination or a violation of this kind has occurred may file with the commission of the political subdivision in which the act allegedly occurred a complaint in writing which shall state the name and address of the person or local government agency alleged to have committed the act of which complaint is made and shall set forth the particulars concerning that act and any other information that may be required by the commission.¹² In order to be considered by the commission, a complaint must be filed with the commission within six months after the alleged act was committed.¹³

(b) (1) The chairman of the commission, upon the filing of the complaint, shall designate one of the commissioners to make an investigation of the subject matter of the complaint.¹⁴ This investigating commissioner shall make, with the aid of the staff of the commission, a prompt investigation and may issue subpoenas to any person charged with discrimination or an unlawful

a strong position. With the backing of "regulatory" authority, a local commission's "non-regulatory" authority to conduct an investigation through the technique of a public hearing takes new dimensions, as does its authority to approach private persons and institutions to suggest programs for providing equal opportunities.

12. All human relations commissions with enforcement authority now have the authority to receive complaints filed by persons claiming to be aggrieved by a violation of the civil rights law administered by the commission. Some local and state commissions also have the authority to file a complaint. In a few states a specified state official, *e.g.*, the attorney general in New York, has the authority to file a complaint with the state commission. In Section 8(a) this function has been allocated to any one of the commissioners. There seems to be little reason for insisting upon complete commission participation in the performance of this function. On the other hand, it is obvious that expeditious filing of complaints is of great importance.

13. There is obviously considerable merit in a shorter period of limitation in this field than in others. The principal sanction for violation is a cease and desist order and a central purpose of the Act is to bring existing discrimination effectively to an end. For this reason it is the current status of a respondent's treatment of minorities that is of chief significance. On the other hand, some violations of civil rights law are not immediately evident to the person aggrieved. A reasonable time should be allowed the complainant in which to ascertain that a violation has probably occurred. Six months would seem appropriate.

14. Experience has shown that a single commissioner with the aid of the commission staff can handle this function well. It is clear that a panel of commissioners or the entire commission would prove considerably less effective than a single commissioner, particularly in the conduct of the conciliation process. On the other hand, the function should be the responsibility of a commissioner rather than a member of the commission staff in order to demonstrate to a respondent the weight the commission gives to the initial complaint, investigation, probable cause determination, and effort at conciliation.

To satisfy objections as to the combination of prosecutory and adjudicative functions, the person who conducts an investigation, finds justifiable cause and engages in conciliation is barred by § 8(d) from sitting in any subsequent hearing of the matter by the commission. This follows the procedure required by § 5(c) of the Federal Administrative Procedure Act. 5 U.S.C. § 1004(c) (1958).

practice to furnish information, records, or other documents relating to the matter under investigation. If the investigating commissioner determines after investigation that no probable cause exists for crediting the allegations of the complaint, he shall within ten (10) days of this determination, cause to be issued and served upon the private complainant or person aggrieved by the matters complained of written notice of the determination. The notice shall also state that the complaint will be dismissed unless within ten (10) days after the service the complainant or aggrieved person file with the commission a request for a review hearing. The commission shall upon request for this hearing provide the complainant or aggrieved person an opportunity to appear before the commission, or a member or staff representative of it, at the election of the chairman, to present any additional information that may be available to support the allegations of the complaint.¹⁵ If after this review hearing the commission or its review hearing officer determine that there is no probable cause for crediting the allegations of the complaint, the complaint shall be dismissed subject to appeal as in the case of other orders of the commission.

(2) The term "probable cause" means the existence of prima facie evidence of discrimination or a violation in the sense that when considered by itself and without regard to evidence to the contrary, that evidence would be sufficient to require a court, in a jury case, to submit the case to the jury.

(3) The determination relative to probable cause to credit the allegations of a complaint is not to be made by weighing all the evidence gathered in the investigation.

(c) (1) If the investigating commissioner, commission or its review hearing officer determines, after investigation or a review hearing, that probable cause exists for crediting the allegations of the complaint, the investigating commissioner shall immediately endeavor by persuasion, conciliation, and mediation to reach a satisfactory adjustment of the matter of which complaint has been made.

(2) At any time after the filing of a complaint under subsections (a) or (d) alleging a violation of local civil rights law any party respondent may request a reasonable time within which to permit negotiation of an agreement containing a consent cease and desist order disposing of the whole or any part of the proceeding. The allowance of deferment, and its duration, subject to subsection d(2), shall be in the discretion of the official or officials designated to

15. The main purpose of this provision is to insure that the determinations of "no probable cause" are carefully made. Although the combination of functions in a single commissioner involves little danger to a respondent who is innocent of a violation since he can insist upon a public hearing, this same combination of functions involves great danger for private complainants. If the investigating commissioner concludes that probable cause does not exist for crediting the allegations of a private complainant or, in case the complaint was filed by a single commissioner, of the person aggrieved by an alleged violation, the private complainant or aggrieved person has no recourse unless specific provision is made for a review of this determination. Section 7(b) spells out the procedure for this review. Moreover, the person aggrieved may seek judicial review of the dismissal in a court of competent jurisdiction. See § 9(a).

process or hear a complaint. Every agreement containing a consent cease and desist order shall include also: an admission by all respondent parties joining in it of jurisdictional facts; a provision that the complaint may be used in construing the terms of the order; a provision that the order shall have the same force and effect as if entered after a full hearing and that the agreement shall not become a part of the official record of the proceeding unless and until it becomes a part of the decision of the commission; a provision that the entire record on which any cease and desist order may be based shall consist solely of the complaint and the agreement; a waiver of the requirement that the decision must contain a statement of findings of fact and conclusions of law; a waiver of further procedural steps before a hearing panel of commissioners or the commission; and a provision that the order may be altered, modified, or set aside in the manner provided by law for other orders. The agreement shall also contain a waiver by the respondents of any right to challenge or contest the validity of the order entered in accordance with the agreement, and may contain a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that they have violated the law as alleged in the complaint.

(3) On or before the expiration of the time granted for negotiation, the parties or their counsel may submit the proposed agreement to or request a conference for discussion of an agreement before the proper authority. If an agreement containing a consent cease and desist order is submitted within the time allowed, the proper authority shall either accept the agreement or reject it by a notice of rejection. His decision shall become the decision of the commission thirty (30) days after its service upon the complainant and the respondent unless the commission by order stays the effective date of the decision or issues an order placing the case on its own docket for review.

(d) (1) If the commissioner who has credited the complaint of an unlawful practice fails to obtain a satisfactory adjustment of it by conciliation, or if at any time subsequent to this crediting he judges the circumstances warrant, he may cause to be issued and served upon the person or agency of which complaint is made, as the respondent, a formal complaint, in the name of the commission, setting forth the matters required in subsection (a) and a notice of hearing stating the place, time and hearing officer or officers before whom the respondent is required to appear to answer the charges of the complaint. No complaint may be issued under this subsection unless it is issued within one (1) year after the alleged unlawful practice was committed. The chairman may designate one or more commissioners to hear any case, who shall sit as the commission in that case.¹⁶ The commission may, at its election, conduct the

16. The functioning of a commission through separate panels is a salutary device for a busy commission. It means that a commission can spread itself thinly enough to keep fairly abreast of its docket. As human relations commissions begin to emphasize the public hearing in certain cases, *e.g.*, those involving housing discrimination, this device will become an essential one. Moreover, even though a commission does not hold many public hearings, its commissioners have to perform many functions in addition to

hearing en banc. The commissioner who conducts the investigation of a complaint and determines that probable cause exists to credit its allegations may neither participate in the hearing of the case except as a witness nor in the decision of the case. Rules stated below as applicable to the commission apply to commissioners designated to hear a particular case.

(2) If the commissioner who has credited the complaint of an unlawful practice has not obtained a satisfactory adjustment of it by conciliation or filed a complaint under subsection (c)(3) within thirty (30) days after crediting the complaint, the complainant shall upon request, be granted a public hearing on his charges. This complaint and a notice of hearing shall be served upon the respondent and the procedure shall be followed as set forth in paragraph (1).

(e) After the investigating commissioner, the commission or its review hearing officer determines that probable cause exists for crediting the allegations of a complaint or at any subsequent point in the processing of a complaint, the commission may direct its attorney to commence an action in a court of competent jurisdiction seeking appropriate injunctive relief against the person complained of in order to prevent any conduct tending to render ineffectual any steps that the commission or courts may take in order to eliminate or remedy the violation, and in this action to seek orders restraining and enjoining that person from disposing to another or otherwise making unavailable to the person allegedly discriminated against the job, housing accommodation, or other thing with respect to which the complaint is made, and the court shall grant temporary relief or restraining orders upon terms and conditions that it deems just and proper, pending the final determination of the proceedings under this Act. Within thirty (30) days from the effective date of the court order, the commission shall render its decision in the case unless the time for rendering this decision is extended by the court upon terms and conditions that it deems just and proper.

(f) The commission may direct that the case in support of the complaint be presented before the commission by its attorney or a member of its staff. The respondent may file a written verified answer to the complaint and appear at the hearing in person or with counsel. A person claiming to be aggrieved by the alleged unlawful practice may appear at the hearing in person or by counsel. The commission may amend the complaint and the respondent may amend his answer. The commission is not bound by the strict rules of evidence prevailing in courts of law or equity. Any oral or documentary evidence may be received, but the commission shall as a matter of policy provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence. Every party shall have the right to present his case by oral or documentary evidence, to submit rebuttal evidence, and to conduct whatever cross-examination may be required for a full and true disclosure of the facts. The commission may subpoena witnesses, compel their attendance, administer oaths, take testimony unadjudicating controversies. It is essential that some commissioners be free at all times to perform such other functions. This provision serves both of these purposes.

der oath, and receive or require the production of documentary evidence relating to the matter in question before it.¹⁷ The commission shall issue subpoenas to any party upon request and as may be required by rules of procedure upon a showing of general relevance and reasonable scope of the evidence sought. The testimony taken at the hearing, which shall be public, shall be under oath and shall be transcribed.

(g) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision and, upon payment of lawfully prescribed costs, shall be made available to the respondent and any other person or agency named or admitted as a party in the proceeding. Where decision rests upon official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

(h) After the hearing is completed, the commission shall afford the parties a reasonable opportunity to submit for the consideration of the commission proposed findings of fact and conclusions and supporting reasons for the proposals. The commission shall then make a tentative decision which shall contain its findings of fact and conclusions upon the issues in the proceeding. A copy of the decision shall be served on the parties to the proceeding. Any party, within twenty (20) days thereafter, may file with the board exceptions to the findings of fact and conclusions, with a brief in support thereof, or may file a brief in support of such finding of fact and conclusions. The commission shall then make its final decision. No decision shall be made, nor any order issued pursuant to this subsection, except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence.

(i) (1) If the commission in its final decision determines that the respondent has engaged in an unlawful practice, it shall state its findings of fact and conclusions and, except in a case of police maladministration, issue an order requiring the respondent to cease and desist from this unlawful practice, and to take such affirmative action, including the filing of a report of the manner of compliance as will effectuate the purposes of this Act and be just and proper. Affirmative action that may be directed in an order includes, but is not limited to, hiring; reinstatement or upgrading of employees, with or without back pay; restoration or admission to membership in any respondent labor organization; restitution for losses suffered by a complainant as a result of the unlawful practice; or the extension of full, equal, and unsegregated accommodations, advantages, facilities and privileges to all persons.

(2) In a case of police maladministration the commission shall issue an order recommending to the governing board one of the following actions with respect to the respondent:

(aa) dismissal from the police department;

17. This right is an important one. Its formulation here follows that contained in § 6(c) of the Federal Administrative Procedure Act. 5 U.S.C. § 1005(c).

- (bb) suspension from active duty without pay for not more than thirty (30) days;
- (cc) reprimand;
- (dd) any other disciplinary action that might be taken by the police department itself.¹⁸

In a case of police maladministration, the commission may also recommend to the governing board that the criminal record made concerning the person aggrieved by the respondent's action as a result of the latter be expunged and destroyed. Copies of the order in a case of police maladministration shall be sent to the Police Commissioner of the political subdivision.

(3) If the commission determines that the respondent has not engaged in any unlawful practice, the commission shall state its findings of fact and conclusions and shall issue and cause to be served upon the respondent or any party to the proceedings a copy of these findings of fact and conclusions and an order dismissing the complaint as to the respondent.

Section 9. *Judicial Review and Enforcement.*

(a) Any respondent or other party to the proceedings or any persons aggrieved by an order of the commission may seek judicial review of it in a court of competent jurisdiction.

(b) If it appears to the commission that a person subject to one of its orders has failed to comply with it, the commission shall request the attorney of the political subdivision to seek judicial enforcement of the order and shall make its file in the case available to the attorney for his examination. If it appears to that attorney upon examination of the file that the person subject to the order in the case has not complied with it, he shall invoke the aid of a court of competent jurisdiction to secure enforcement of the order or to impose lawful penalties or both.

Section 10. *Penalty.*

Any person who shall violate any order of the commission or a civil rights law of the political subdivision shall be subject to a fine of not more than or imprisonment for a period not exceeding or both in addition to such order or decree as may be issued by any court.

18. Section 8(i)(2) applies only to commissions having the authority to deal with violations of local law prohibiting police maladministration. The limited experience of commissions having this type of jurisdiction indicates that an authority to recommend specified types of disciplinary action against a police officer has worked out well. A governing board is not likely to disregard commission recommendations formulated after the holding of a public hearing on a charge of police maladministration. This approach has the psychological advantage of assuaging the sensitiveness of police departments to control of the performance of police functions by an outside agency.

APPENDIX B

STATE AND LOCAL HUMAN RELATIONS COMMISSIONS

I. State Human Relations Commissions

- A. State statutes establishing human relations commissions (or designating other agencies) and empowering them to enforce civil rights law against private action.
1. Alaska: State Commission for Human Rights, established, 1963. 1964 budget: \$30,616.
State Human Rights Commission — ALASKA STAT. §§ 18.80.010-160 (Supp. 1963) (creating State Commission for Human Rights with jurisd. over any discriminatory conduct prohibited by A.S. 11.60.230, 11.60.240, 23.10.155,* 23.10.190 & 23.10.255). (*Wage discrim. against women.)
Employment: ALASKA STAT. §§ 23.10.190-235 (1962).
Publ. Accom.: ALASKA STAT. §§ 11.60.230-240 (1962).
 2. California: California Fair Employment Practice Commission, established 1959. 1960 budget: \$203,000.
Employment: CAL. LABOR CODE §§ 1410-32 (Supp. 1964).
 3. Colorado: Colorado Anti-Discrimination Commission; established, 1951, reconstituted in 1955. 1964 budget: \$97,217.
Employment: COLO. REV. STAT. ANN. §§ 80-21-1—8 (1963).
Publ. Accom.: COLO. REV. STAT. ANN. §§ 25-1-1—25-3-6 (1963).
Housing: COLO. REV. STAT. ANN. §§ 69-7-1—69-7-7 (1963).
 4. Connecticut: Connecticut Commission on Civil Rights, established 1947. 1964 budget: \$108,000.
Employment: CONN. GEN. STAT. REV. §§ 31-122—31-128 (1961), as amended, CONN. GEN. STAT. REV. (Supp. 1963). §§ 31-126, 31-128.
Publ. Accom. & Housing: CONN. GEN. STAT. REV. §§ 53-35, 53-36 (Supp. 1963).
 5. Delaware: Del. State Human Relations Commission, established 1962. 1963 budget: \$10,500.
Publ. Accom.: DEL. CODE ANN. ch. 30, §§ 3001-4 (1962), as amended, DEL. CODE ANN. tit. 6, §§ 4501-4516 (Supp. 1964).
Employment: DEL. CODE ANN. tit. 19, §§ 710-13 (Supp. 1964), administered by State Division against Discrimination, established 1960.
 6. Hawaii: Hawaii Department of Labor and Industrial Relations, established 1963.
Employment: HAWAII REV. LAWS § 90a-1 (Supp. 1963).
 7. Illinois: Illinois Fair Employment Practices Commission, established 1961. 1962 expenditures: \$34,250.
Employment: ILL. STAT. ANN. ch. 48, §§ 851-66 (Supp. 1963).
Educ.: ILL. STAT. ANN. ch. 144, §§ 138, 151 (II) (1964). Applies only to Business Schools. Refusal to admit applicants solely on account of race, color or creed is grounds for refusal to issue or renew or for

revocation of certificates or permits by the Private Business Schools State Board (in the Office of the Superintendent of Public Instruction).

8. Indiana: Indiana Civil Rights Commission, established 1961. 1964 budget: \$58,930.

Employment, Publ. Accom., & Educ.: IND. STAT. ANN. §§ 40-2307—2317 (Supp. 1964).

9. Kansas: Kansas Commission on Civil Rights, established 1953. 1965 budget: \$59,593.

Employment & Publ. Accom.: KAN. GEN. STAT. ANN. §§ 44-1001—44-1014 (Supp. 1961), as amended, Laws of Kansas 1963, ch. 279.

10. Maryland: Maryland Commission on Interracial Problems & Relations, established 1951.

Publ. Accom.: MD. ANN. CODE art. 49B, §§ 1-3 (1957), §§ 11-16 (Supp. 1964).

11. Massachusetts: Massachusetts Commission against Discrimination, established 1946. 1965 budget: \$169,651.

Employment & Housing: MASS. GEN. LAWS ANN. ch. 151B, §§ 1-10 (1957), as amended (Supp. 1964).

Publ. Accom.: MASS. GEN. LAWS ANN. ch. 272, §§ 92A, 98 (1957), as enforced under MASS. GEN. LAWS ANN. ch. 151B, §§ 1-5 (1957), as amended (Supp. 1964).

Educ.: MASS. GEN. LAWS ANN. ch. 151C, §§ 1-5 (1957).

12. Michigan: Michigan Civil Rights Commission, established: 1955; reconstituted: 1963. 1960 budget: \$390,000. This is a constitutional commission. See MICH. CONST. art. V, § 29 and art. I, § 2 (1963).

Employment: MICH. STAT. ANN. §§ 17.458(1)-(11) (1960).

Publ. Accom.: MICH. STAT. ANN. §§ 28.343-44 (1962).

Housing: MICH. STAT. ANN. §§ 5.3011-56(2) (1958), as amended (Supp. 1963).

13. Minnesota: Minnesota State Commission Against Discrimination; established 1955; reconstituted 1961.

Employment & Housing: MINN. STAT. ANN. §§ 363.01-13 (1957), as amended (Supp. 1964).

14. Missouri: Missouri Commission on Human Rights, established 1961.

Employment: MO. ANN. STAT. §§ 296.010-070 (Supp. 1964).

15. New Jersey: New Jersey State Division on Civil Rights, established 1945.

Employment, Publ. Accom., Housing & Educ.: N.J. STAT. ANN. §§ 18.25-1—25-8 (Supp. 1964).

16. New Mexico: New Mexico Fair Employment Practices Commission, established 1949.

Employment: N.M. STAT. ANN. §§ 59-4-1—4-14 (1960), as amended (Supp. 1963).

17. New York: New York State Commission for Human Rights, established 1945. 1963 budget: \$1,537,000.
Employment, Publ. Accom., & Housing: N.Y. EXEC. LAW §§ 290-301.
Educ.: N.Y. EDUC. LAW § 313, as amended (McKinney Supp. 1964), enforced by the Commissioner and the Board of Regents who are empowered to issue cease and desist orders and "such other orders as they deem just and proper." Also within jurisdiction of New York State Commission.
18. Ohio: Ohio Civil Rights Commission, established 1959. 1965 budget: \$205,000.
Employment, Publ. Accom.: OHIO REV. CODE ANN. tit. 41, §§ 4112.01—4112.99 (Page 1965).
19. Oregon: Oregon Bureau of Labor, Civil Rights Division, established 1949. 1963 budget: \$100,000.
Employment & Housing: ORE. REV. STAT. tit. 51, §§ 659.010-659.990 (1963).
Publ. Accom.: ORE. REV. STAT. tit. 3, §§ 30.670-30.680 (1963), as enforced through tit. 51, §§ 659.045-659.090 (1963).
Educ.: ORE. REV. STAT. tit. 30, §§ 345.240-345.250 (1957), as enforced through tit. 51, §§ 659.045-659.090 (1963).
20. Pennsylvania: Pennsylvania Human Relations Commission, established 1955. 1964 budget: \$655,878.
Employment, Publ. Accom., & Housing: PA. STAT. ANN. tit. 43, §§ 951-963 (Supp. 1963).
Educ.: PA. STAT. ANN. tit. 24, §§ 5001-5010 (1962).
21. Rhode Island: Rhode Island Commission Against Discrimination, established 1949. 1964 budget: \$35,119.
Publ. Accom. & Housing: R.I. GEN. LAWS ANN. §§ 11.24.1-8 (1956).
Employment: R.I. GEN. LAWS ANN. §§ 28.5.1-39, 28.6.1-21 (1956), as amended (Supp. 1963). Enforced by the Director of Labor who is empowered to issue cease and desist orders and "to take such further affirmative or other action as will effectuate [the purpose of the act]".
22. Washington: Washington State Board Against Discrimination, established 1949.
Employment, Publ. Accom., Housing & Educ.: WASH. REV. CODE §§ 49.60.010-320 (1959), as amended (Supp. 1963).
23. Wisconsin: Fair Employment Practices Division, established 1945. 1964 budget: \$45,470.
Employment: WISC. STAT. §§ 111.31-37 (1957), as amended (Supp. 1965).
- Note: Governor's Commission on Human Rights was set up under Wisc. Stat. §§ 15.85-855 (1957), and has the duty "to disseminate information and to attempt by means of discussion as well as other proper means to educate the people of the state to a greater understanding.

appreciation and practice of human rights for all people, of whatever race, creed, color or national origin, to the end that Wisconsin will be a better place in which to live". It regularly processes complaints of discrimination in public accommodations and housing.

B. State statutes establishing human relations commissions and empowering them to deal with governmental discrimination

Oklahoma: Oklahoma Human Relations Commission, established 1963. (Administers only state employment practices law.)

Pub. Employment: OKLA. STAT. ANN. tit. 74, §§ 951-954 (1965), as enforced through tit. 44, § 818 (Page Supp. 1963). The sanction is to discharge the employee practicing discrimination.

II. Local Human Relations Commissions

A. Selected List — Local ordinances or laws establishing human relations commissions with authority to enforce civil rights law.

1. Baltimore, Maryland: Baltimore Community Relations Commission, established 1956. Reconstituted, 1964. 1964 budget: \$64,672.

Employment, Publ. Accom., & Educ.: 9 Race Rel. L. Rep. 354 (1964).

2. Cleveland, Ohio: Community Relations Board, established May 1945. 1964 budget: \$68,696.

Employment: 25 Lab. Rel. Ref. Man. 1260 (1950).

3. Corpus Christi, Texas: Human Relations Committee, established 1963.

Publ. Accom.: Ordinance No. 7421 (1964). 9 Race Rel. L. Rep. 1897 (1964).

4. Erie, Pennsylvania: Community Relations Commission, established: 1954. 1964 budget: \$25,645.

Employment, Publ. Accom., & Housing: 33 Lab. Rel. Ref. Man. 3013 (1954). 8 Race Rel. L. Rep. 1666 (1964).

5. Gary, Indiana: Gary Fair Employment Practices Commission, established 1951.

Employment: 27 Lab. Rel. Ref. Man. 3033 (1951).

6. Kansas City, Missouri: Commission on Human Relations, established 1960. 1964 budget: \$25,609.

Publ. Accom.: 5 Race Rel. L. Rep. 248 (1960); 8 Race Rel. L. Rep. 1684 (1963).

7. Louisville, Kentucky: The Louisville Commission on Human Relations, established 1962. 1964 budget: \$29,987.

Publ. Accom.: 8 Race Rel. L. Rep. 719 (1963).

8. Minneapolis, Minnesota: (1) Fair Employment Practices Commission, established 1947. 1964 budget: \$20,000.

Employment: 28 Lab. Rel. Ref. Man. 3087 (1947). (2) Mayor's Commission on Human Relations.

Publ. Accom.: 8 Race Rel. L. Rep. 1651 (1963).

9. Montgomery Co., Maryland: Montgomery Co. Human Relations Commission, established 1962.

Publ. Accom.: 7 Race Rel. L. Rep. 263 (1962).

10. Omaha, Nebraska: Omaha Human Relations Board, established 1962. 1964 budget: \$15,000.

Employment: 7 Race Rel. L. Rep. 600 (1962).

11. New York City, New York: City of New York Commission on Human Rights, established 1955; 1964 budget: \$586,205.

Housing: 3 Race Rel. L. Rep. 92 (1958).

12. Philadelphia, Pennsylvania: City of Philadelphia Commission on Human Relations, established 1948. 1964 budget: \$343,346.

Employment, Publ. Accom., & Housing: 8 Race Rel. L. Rep. 1203 (1963).

13. Pittsburgh, Pennsylvania: Commission on Human Relations, established 1946. 1964 budget: \$99,018.

Employment: 1 Race Rel. L. Rep. 746 (1956).

Housing: 4 Race Rel. L. Rep. 195 (1958).

14. San Francisco, California: Human Rights Commission, established 1964. Unkind neighborhood practices: all discrimination except that covered by State Fair Employment Practices Commission.

Employment: 9 Race Rel. L. Rep. 1489 (1964).

15. St. Louis, Missouri: Council on Human Relations, established 1960. 1964 budget: \$46,000.

Employment: 7 Race Rel. L. Rep. 1257 (1962).

Publ. Accom.: 6 Race Rel. L. Rep. 881 (1961).

Housing: 9 Race Rel. L. Rep. 372 (1964).

16. St. Paul, Minnesota: Human and Civil Rights Commission, established 1955. Reconstituted, 1964. Budget: \$29,000.

Employment, Publ. Accom., Housing, & Publ. Services: 2 Race Rel. L. Rep. 702 (1957); 9 Race Rel. L. Rep. 1481 (1964).

17. Toledo, Ohio: Board of Community Relations, established 1955. 1964 budget: \$25,949.

Employment: 35 Lab. Rel. Ref. Man. 137 (1955).

18. Youngstown, Ohio: Fair Employment Practice Commission, established 1950.

Employment: 27 Lab. Rel. Ref. Man. 3039 (1950).

B. Selected List — Human Relations Agencies which have principally operated without enforcement authority: See Rhyne & Rhyne, *Civil Rights Ordinances*, NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS REPORT No. 148, 1963 and Shermer, *Guidelines: A Manual for Bi-Racial Committees*, ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH 1964 for examples of the ordinances employed by these cities.

1. Buffalo, New York: Board of Community Relations, established 1945. 1964 budget: \$30,000.

2. Chicago, Illinois: Commission on Human Relations, established 1943, reconstituted 1947. 1964 budget: \$376,553.

3. Cincinnati, Ohio: Mayor's Friendly Relations Committee, established 1945. 1964 budget: \$37,850.

4. Dade County, Florida: Community Relations Board, established 1963. 1964 budget: \$33,130.
5. Denver, Colorado: Commission on Community Relations, established ante 1951. 1964 budget: \$43,400.
6. Detroit, Michigan: Commission on Community Relations, established 1944, reconstituted 1953. 1964 budget: \$158,873.
7. Des Moines, Iowa: Commission on Human Rights & Job Discrimination, established 1951, reconstituted 1954. 1964 budget: \$29,571.
8. Hartford, Connecticut: Commission on Civil Rights, established 1944.
9. Kalamazoo, Michigan: Community Relations Board, established 1957. 1964 budget: \$12,334.
10. Kansas City, Kansas: Human Relations Commission, established 1962. 1964 budget: \$13,500.
11. Los Angeles County, California: County Commission on Human Relations, established 1944. 1964 budget: \$164,011.
12. Milwaukee, Wisconsin: Commission on Human Relations, established 1960. 1964 budget: \$30,022.
13. Monroe County, New York: Commission on Human Rights, established 1960. 1964 budget: \$44,307.
14. Newark, New Jersey: Human Rights Commission, established 1956. 1964 budget: \$61,424.
15. Patterson, New Jersey: Commission on Human Relations, established 1949. 1964 budget: \$20,451.
16. San Francisco, California: Human Rights Commission, established 1964. 1964 budget: \$17,000.
17. Seattle, Washington: Human Rights Commission, established 1963. 1964 budget: \$29,940.
18. Springfield, Massachusetts: Mayor's Commission on Human Relations, established 1963.
19. Topeka, Kansas: Human Relations Commission, established 1963. 1964 budget: \$15,292.