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RACIAL DISCRIMINATION IN EMPLOYMENT: PROPOSALS FOR CORRECTIVE ACTION

DANIEL H. POLLITT*

I. INTRODUCTION

ITEM. In 1946 Jackie Robinson broke the color-bar in organized baseball and became the idol and inspiration of athletic-minded Negro youth. By 1962, eight of the top ten batters in the National League were members of the Negro race.

ITEM. On the centennial of the Emancipation Proclamation, Governor Terry Sanford announced the formation of the North Carolina Good Neighbor Council with a two-fold mission: (1) to encourage merit employment without regard to race; and (2) to urge youth to become better trained and qualified for employment. The Governor stated that "Reluctance to accept the Negro in employment is the greatest single block to his continued progress and to the full use of the human potential of the Nation and its States."¹

ITEM. The R. J. Reynolds Tobacco Company recently integrated its modern \$32,000,000 Winston-Salem plant. Negro forewomen supervise the work of white employees, and the only signs of segregation are the rest rooms, still kept separate under North Carolina law. Officials report that the workers at the 115-acre industrial complex "responded well to desegregation," and this comment is borne out by the remarks of white and Negro employees who work side by side on the same machine, share the cafeteria line "like salt and pepper," but generally, though not always, tend to segregate at the tables.²

ITEM. Negroes Step Up Use of Boycotts to Back Drive for Better Jobs. A & P Is Hit in Philadelphia; Campaigns Start in Detroit, Baltimore and New York. So reads the headline to an article summarizing the "selective patronage" technique originated by the Philadelphia Negro clergy nearly three years ago.³ A & P is the twentieth company directly affected by the Philadelphia program, all of whom ultimately have met the Negro demands. Some concede that in retrospect they are not entirely unhappy. An oil company reports that prior to the boycott there were few if any Negro job applicants because "No intelligent Negro will apply to a lily-white company because he doesn't want to get turned down. Since the boycott," continued the spokesman, "we're now getting some crackerjack Negro salesmen" and sales have been stronger. One Negro minister commented in explanation that "The Negro community speaks with its dollars to show it has no resentment."

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1. The initial reaction was very favorable. Only five of the first hundred letters were hostile, and three of these came from outside the state. Raleigh News and Observer, Jan. 21, 1963, p. 1, col. 3.

2. New York Times, Oct. 15, 1962, p. 1, col. 1.

3. Wall Street Journal, Jan. 8, 1963, p. 1, col. 6.

ITEM. Discrimination in Cook County (Chicago) can be conservatively computed to cost \$70 million per year. So testified the Director of the Cook County Department of Public Aid. This is the amount spent for the Aid to Dependent Children program, one designed to take care of children whose mothers have been deserted by their fathers. Almost all the recipients of the aid program in Chicago are Negro women who came to Chicago from the South some 15 or so years earlier, and who remain on the program for an average time of between two and three years. The director of the program testified to a Congressional Committee that the principal reason for this was the unavailability of employment for Negro girls and women:

The white woman whose husband dies or disappears usually finds work; the Negro woman in the same predicament is denied work; she has one and only one job possibility available and that is day-work—the dismal, grinding drudgery of finding, not one, but five or six different jobs, then accommodating herself to the diverse personalities of five or six different employers, and then dragging herself home with one of the lowest wages being paid in today's market. In addition, even before she considers the bleak prospect of day-work, she must contrive to make suitable arrangements for the care of her children.⁴

ITEM. Mayor Stan R. Brookshire of Charlotte, North Carolina recently called upon the business community to help the Negro help himself by providing better employment opportunities. "Second-class citizens," he said, "are a liability and a drain upon the resources of the community. Because of them our per capita income is low and our governmental and welfare costs are high." The *Raleigh News and Observer* editorialized favorably upon this call for action with the comment that "second-class citizens mean a second-class South for everybody in it."⁵

The above random-selected items illustrate the tragic waste of Negro potential, the community burden of job discrimination, the growing unrest within the Negro community, and a determination by thoughtful political and industrial leaders to rid America of its "second-class" heritage.

Despite encouraging but isolated "break-throughs"⁶ the Negro remains at the bottom of the economic pyramid. Used to the run-around, fearing rebuff, lacking incentive, denied fair union representation, closed from job and training opportunities, his is the job with the broom and shovel, with pay approximately half that of the white.⁷ The johnny-come-lately in most industries, he is the first

4. Testimony of Raymond M. Hilliard, *Equal Employment Opportunity, House Hearings before the Special Subcommittee on Labor of the House, Committee on Education and Labor*, 87 Cong., 1st Sess. 10, 13 (1961).

5. Jan., 8, 1963, p. 4, col. 2.

6. The State Department now has 35 Negroes in responsible posts and has named Carl T. Rowan, present deputy assistant Secretary of State, as ambassador to Finland. Mr. Rowan will be our third Negro ambassador. *The National Observer*, Jan. 15, 1963, p. 3, col. 1.

There are now 81,000 Chicago Negroes employed in professional, managerial, sales, and craft positions, up from 50,000 a decade earlier. *New York Times*, Dec. 8, 1962, p. 25, col. 1.

7. U.S. Department of Labor, Bull. 5-3, *The Economic Situation of Negroes in the United States*, 5-17 (1960).

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to be fired and he is the victim of every cyclical, seasonal, residual, technological, ethnic, and economic maladjustment of the economy.⁸ Moreover, his prospects are worsening, not getting better. Factory "automation" has resulted in one white man with a machine doing the work done a few years back by twenty, thirty, or forty blue-jeaned Negroes.⁹ Changes in working conditions have denied the Negro jobs which were once his exclusive province. The locomotive fireman that once shoveled coal was Negro; the fireman that now tends the diesel engine is usually white. Changes in social customs have also adversely hit the Negro. The Negro artisan once had a near monopoly in the Southern building trades, but more and more he is relegated to work in the "Negro" community. Census reports for ten Southern states reveal that from 1920 to 1950 Negro carpenters declined from 23% to 10% of the total; painters, from 25% to 13%; bricklayers, from 54% to 37%; and plasterers, from 66% to 57%.¹⁰ And the decline is accentuating with the decrease in apprenticeship opportunities.

The employment problem is not confined to any one region. In North Carolina, over 90% of all Negroes (but less than 30% of all whites) employed through the State Employment Security Commission in 1959 were placed in "service" or "unskilled" jobs.¹¹

In California, a Congressional Committee received undisputed testimony that Negroes were virtually excluded from all jobs as bellboys in Los Angeles and San Francisco hotels, from jobs as waiters, from the San Francisco bottling industry (except as strikebreakers), from all but the most menial jobs on the railroads, from the maritime industry (except in the "stewards department"), among the longshoremen, from the white-collar and craft jobs in the movie industry, from the printing, building and construction trades industries, from the petroleum industry (with few exceptions), from white-collar positions in the retail stores, and even from the better paying jobs in agriculture.¹²

Similar testimony was made about job discrimination in Illinois. William Karp, chairman of the Committee on Merit Employment in the Chicago Association of Commerce and Industry, testified that a study of over 100,000 job orders for white-collar jobs showed that 98% of them were "restricted" as to

8. In August, 1962, Bureau of Labor Statistics revealed 11.4 per cent of the Negro work force unemployed as compared with 4.6 per cent of white workers. In Detroit, 60 per cent of the workers currently unemployed are Negroes, although Negroes constitute only 20 per cent of the population. Randolph, *The Unfinished Revolution*, The Progressive, Dec. 1962, p. 24.

9. "The extent to which the Negro unemployment rate is traceable to automation is suggested in the statistics on chronic unemployment, most of which involves victims of technological displacement. At present, among those unemployed for more than fifteen weeks, 23.8 per cent are non-white." Randolph, *The Unfinished Revolution*, The Progressive, Dec. 1962, p. 24.

10. Statement of A. Philip Randolph, *Equal Opportunity in Apprenticeship Programs, Hearings before the Special Subcommittee on Labor of the House, Committee on Education and Labor*, 87th Cong., 1st Sess. 121 (1961).

11. N. Car. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Report on Operation of the North Carolina Employment Security Commission 2* (1960).

12. Statement of William E. Pollard, Chairman, Labor and Industry Committee, West Coast Region, NAACP. *Equal Employment Opportunity*, *supra* note 4, at 389, 392-94.

race.¹³ He further testified that top representatives of the Meat Packing Industry denied "pen" jobs to Negroes on the theory that they "laugh, sing, and dance and disturb the cattle."¹⁴ N.A.A.C.P. representatives cited job discrimination in Illinois by chapter and verse. The following typifies the testimony of Dr. Lucien H. Holman, State President of the Illinois Conference of the N.A.A.C.P.: "In Aurora a few manufacturing plants under UAW and other union contracts hire Negroes on a generally fair basis On the other hand, there are a number of companies that do not hire qualified Negroes. The Aurora Chamber of Commerce has passed the following resolution. . . . 'Resolved, that the Board of Directors . . . declare it to be a policy that all members are encouraged to voluntarily maintain merit employment practices. . . .'"¹⁵

The situation in New York is not much better. Professor Eli Ginzberg of Columbia University testified that the big employment opportunities for Negroes since 1940 have been in the semiskilled industrial jobs, the jobs hardest hit by automation.¹⁶ Representatives of the N.A.A.C.P. cited the specifics of job discrimination, for example: "In the city of New York, the major industry, as a matter of fact, the basic source of manufacturing in this city, is the garment industry. Negroes still work here on the lowest economic levels, unskilled jobs and the lowest paid jobs."¹⁷ Otis E. Finley, Jr., of the National Urban League, told of a survey in a slum area of 125,000 people, mostly Negro, where a sampling of the youth population showed that roughly 70% of the boys and girls aged 16 to 21 were out of school and unemployed. "Too many of these young people are able but frustrated. In other cases, the spark of ambition has been all but snuffed out."¹⁸

II. PROPOSALS FOR ACTION

This mass betrayal of the American Dream, the national denial of the individual's right to be, has been condemned from many a rostrum¹⁹ and pulpit,²⁰ from street-corners²¹ and from national political conventions.²² Remedial pro-

13. *Id.* at 77.

14. *Id.* at 78.

15. *Id.* at 138.

16. *Id.* at 611.

17. *Id.* at 635.

18. *Id.* at 713.

19. The AFL-CIO Fourth Constitutional Convention in 1961 proclaimed that: "A real democracy has no room for second-class citizenship When we as trade unionists seek equal opportunity for all Americans in employment, training, education, services and housing, we do so because we believe that America's good neighbor policy begins at home."

20. Representatives of the National Council of Churches of Christ, U.S.A., of the American Jewish Congress, and of the National Catholic Welfare Conference testified in January of 1962 on behalf of a fair employment practices law.

21. The Black Muslim movement makes capital out of the inability of Negro youth to secure suitable employment. "If our Government and the leaders of our communities will not give us the democratic tools to deal with these young people, and deal with them fairly, and honorably, I think the only thing that is left is Elijah Mohammed for them to go to. . . ." Statement of Edwin C. Berry, Executive Director, Chicago Urban League, *Equal Employment Opportunity*, *supra* note 4, at 178.

22. The Democratic Party platform of 1960 expressly pledged: "The new Democratic administration will support Federal legislation establishing a Fair Employment Practices

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posals have come to us from the city hall,²³ state houses,²⁴ and from the White House in Washington, D.C.²⁵ The national problem of racial job discrimination has been particularized, and the current situation in the various areas of racial discrimination are discussed below.

A. Federal Employment

The federal government maintains the nation's largest payroll, employing approximately 2.3 million civilian employees.²⁶ Since 1940 the appropriate Congressional statutes have mandated merit employment without regard to race, creed, or color,²⁷ and Negroes, denied private employment, have flocked to the government in disproportionate numbers. They are found, again in disproportionate number, clustered in the lower grades of the civil service. For example, in Los Angeles approximately 14% of the total population, but over 55% of the Postal employees, are Negro. The explanation given for this is simple: "Most of the Negroes come to the Post Office because it is hard for them to get employment anywhere else."²⁸ Yet only 14% of the supervisors in the Los Angeles Post Office are Negro (generally found in "Negro" sections of the city) and there are many complaints of discrimination in up-grading and promotion, viz.: "There is the case of a clerk of Japanese extraction who bid on the position of general clerk, foreign records unit, airport mail facility, a level 5 position. Placed No. 2 on the list according to the specifications of the job, and seniority, Clerk Tsukahira did not receive the courtesy of an interview. The No. 4 man was selected."²⁹

There is no question but that much remains to be done if the theory of "merit" employment is to become an everyday fact of governmental operation. The United States Commission on Civil Rights reported in 1961 that "patterns of Federal employment . . . do not differ significantly from local employment patterns," and further stated that recent improvements in the federal employ-

Commission to secure effectively for everyone the right to equal opportunity for employment."

The Republican Party platform of 1960 promised: "Continued support for legislation to establish a commission on equal job opportunity to make permanent and expand with legislative backing the excellent work being performed by the President's Committee on Government Contracts."

23. See, e.g., the testimony of New York City's Mayor Wagner: "We have established a city contract compliance policy under which all companies doing business with the city must adhere to our anti-discrimination laws. . . ." *Equal Employment Opportunity*, *supra* note 4, at 624.

24. A description of state fair employment practices laws is appended hereto.

25. Over twenty years ago President Roosevelt established a Fair Employment Practices Commission. See text at note 46 *infra*.

26. An additional 2.48 million persons are employed in the Armed Forces. U.S. Comm'n on Civil Rights, *Report on Employment* 19 (1961).

27. Congressman Ramspeck of Georgia fathered this bill. 54 Stat. 1211 (1940), 5 U.S.C. § 631(a) (1958).

28. Testimony of Perry C. Parks, Jr., Vice President, 10th District, National Alliance of Postal Employees, *Equal Employment Opportunity*, *supra* note 4, at 381.

29. *Id.* at 373.

ment situation were paralleled by similar improvements in the private employment situation.³⁰

Under the personal leadership of President Kennedy,³¹ the top governmental officials have made a determined effort to stamp out discrimination in federal employment.

All agencies made a survey of their own employment patterns to (1) spot discriminatory practices, and (2) serve as a bench-mark for future surveys.³² Each agency appointed a Deputy Employment Policy Officer with the fixed obligation to concern himself with minority employment problems.³³ A complaint procedure has been strengthened, and those complaining of job discrimination are sometimes provided with counsel from the Department's legal staff.³⁴ The Civil Service Commission and many of the agencies have sent high-ranking representatives to "sell" federal employment to the graduates of leading Negro colleges.³⁵ The agencies have barred discrimination in agency-sponsored recreational programs, and some of the agencies (Post Office and Veteran's Administration) have notified all field stations that management will not deal with employee unions maintaining segregated locals or which practice any other form of discrimination.³⁶ The Treasury Department appointed the first Negro professor at the Coast Guard Academy.³⁷ All agencies have made progress reports to the President's Committee, thereby ensuring that some action will be taken to further the President's Executive Order. The report of the Department of Justice, briefer than most, is representative of them all:

Shortly after taking office, the Attorney General reviewed the numbers of minority personnel employed by the Department. The statistics showed that a very small number of Negro lawyers had been employed by the Department in responsible positions.

Mr. Kennedy directed that a study be made to determine the causes. This disclosed that at least one major cause was a lack of applications particularly from qualified Negro lawyers.

In May 1961 the Attorney General wrote letters to the deans of approximately 50 leading law schools asking for the names of qualified Negro lawyers of their acquaintance, and of qualified Negro law students who would be interested in a career in the Department. The letter

30. *Employment*, *supra* note 26, at 38.

31. On March 6, 1961, shortly after inauguration, the President issued Exec. Order No. 10925 establishing the President's Committee on Equal Employment Opportunity, with jurisdiction "to promote and insure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on Government contracts. 26 Fed. Reg. 1977 (1961).

32. President's Comm. on Equal Employment Opportunity, Report on the First Nine Months (1962).

33. *Ibid.*

34. This is true, at least, within the Department of Labor. President's Comm. on Equal Employment Opportunity, Report on the First Nine Months 25 (1962).

35. *Id.* at 16.

36. *Id.* at 27, 31.

37. *Id.* at 29. There is no indication that the Departments of Army, Navy or Air Force have followed suit at their respective academies.

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stated that the Department did not employ on the basis of race but was seeking lawyers of ability to serve in it particularly as career employees; that the Attorney General was anxious to take some steps to break down the race barrier which had apparently existed. . . .

Affirmative steps were also taken with respect to the field offices of the United States Attorneys. . . . Two Negro United States Attorneys were appointed and a substantial number of Assistant United States Attorneys and Deputy Marshals who were Negroes.

. . . In early 1962 Maceo Hubbard, a career lawyer in the Department, was appointed as Employment Policy Officer. . . .

A new complaints procedure was recently instituted. . . .³⁸

The big problem lies in transmitting the spirit of Washington to the field offices. Within some areas of Government employment "racial discrimination is deeply entrenched and widely practiced."³⁹ Moreover, even a conscientious field director, especially one policing a statute—such as the minimum wage law or the National Labor Relations Act—unpopular with the vested community interests, might hesitate to risk the effectuation of his program by hiring Negroes to positions where they deal with the outside public.⁴⁰

Those who would resist the desegregation of federal employment find a handy justification in the "rule of three." Appropriate statutes require that the Civil Service Commission maintain a roster of eligible employees (resulting from an open examination) and that federal agencies fill their vacancies from among the highest three persons on this roster.⁴¹ An illustrative abuse of the "rule of three" was recently presented to a Congressional Committee:

In California, Negroes are discriminated against in civil service employment. One Negro female, after passing the test for clerk-stenographer, in San Francisco, with scores above 90 in shorthand, typing, and general clerical aptitude, was called in by nine different agencies for interviews and each time the job was given to another one of the "top three names" on the roster. The applicant had prior civil service experience and some 7 years of secretarial experience.

Several of the interviewers told the applicant that she was "over-qualified" for the job, inasmuch as she had a college degree in secretarial science. In one case the interviewers told applicant, "I just don't feel you would be happy in this job."⁴²

Discretion in employment, especially at high levels, is undoubtedly required when job efficiency demands an intense and intimate interchange of ideas, which interchange may be dammed by personality difficulties. It is doubtful that the "rule of three" provides this necessary discretion. In any event, the

38. *Id.* at 32.

39. *Employment*, *supra* note 26, at 177-78.

40. Secretary Goldberg announced that the Department of Labor hired its first Negro employee south of the Potomac River, a Wage and Hour Investigator working in Miami. *The First Nine Months*, *supra* note 32, at 25.

41. 58 Stat. 389 (1944), 5 U.S.C. § 857 (1958).

42. *Equal Employment Opportunity*, *supra* note 4, at 391.

necessity for a "rule of three" is dubious when the job effectuation does not require continued intimacy of intellectual exchange. Most federal employees can and do dictate a memo to anyone sent from the secretarial "pool," regardless of a potential personality conflict. Similarly, most federal employees can and do work in harmony, office-to-office or desk-to-desk, with persons they choose not to see after office hours.

It follows that there is much to commend in legislative action abolishing the "rule of three," the device which makes discriminatory employment practices possible. Lacking such legislative action, the Civil Service Commission could minimize its harmful potential by giving less weight to the "oral," as contrasted with the written, examination. Or, additionally, the Civil Service Commission could require a written explanation of why the agency selected the second or third person, rather than the applicant first on the list.

Recent innovations requiring only administrative determination—a periodic head count of minority group employees, the addition of Employment Policy Officers to look for trouble spots, an expedited complaint procedure, the permeation of a spirit from on high to make progress in this area—may make the Congressional mandate of "merit employment" a felt reality.

The United States Civil Rights Commission has recommended, in line with the 1960 Republican Party platform,⁴³ that "Congress grant statutory authority to the President's Committee on Equal Employment Opportunity."⁴⁴

B. *Federal Contract Employment*

The United States government is the world's largest purchaser. It contracts with mines for the purchase of metals; with manufacturers for the fabrication of airplanes, missiles, ships, clothing, shoes, and other munitions of war; with farmers for the food set before the soldier, the patients in the Veterans' Administration Hospitals, the school children who receive "hot lunches"; with universities for the supply of knowledge and skills; with utilities for the service of electric energy; and so on, almost ad infinitum. Lightbulbs, ink, books, automobiles, decks, new buildings, maintenance and repair services, telephones, radios, pocket knives, candy, chewing gum, and entertainment services, all are purchased in sizeable quantities by the federal government. In fiscal 1961 between \$25 and \$30 billions were expended for federal contracts; and ten million persons were employed by the 100 largest defense contractors and subcontractors alone.⁴⁵

Anxious that the money it spends not be utilized to perpetuate racial job discrimination, the federal government has, since 1941, adhered to a "fair employment" policy. In that year, President Roosevelt established a Fair Employment Practices Committee, with its initial assignment being to ensure "merit"

43. See note 22 *supra*.

44. *Employment*, *supra* note 26, at 161.

45. *Id.* at 55.

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employment in the "defense" industries.⁴⁶ The FEPC came under Congressional fire, and in 1944 an amendment offered by Georgia's Senator Russell was tacked on to the annual Independent Offices Appropriation Act, providing that no appropriation could be allotted to any agency established by executive order and in existence for more than one year "if the Congress has not appropriated any money specifically for such agency . . . or specifically authorized the expenditure of funds by it."⁴⁷ The next day, the FEPC was granted a specific appropriation for the current fiscal year, but in the following year, 1945, it was told to liquidate its affairs. It issued its final report and went out of business on June 28, 1946.⁴⁸

In 1951, following the outbreak of hostilities in Korea, President Truman issued a series of Executive Orders directing certain government agencies to include non-discrimination clauses in their procurement contracts. Truman also established a Committee on Government Contract Compliance, whose primary duty was to study and assess the effectiveness of the existing program. This committee began operations in April, 1952 and issued a report the following January with the change in administration. It noted that the "non-discrimination" clause was "almost forgotten, dead and buried under thousands of words of standard legal and technical language in government procurement contracts."⁴⁹

President Eisenhower, on August 13, 1953 declared the public policy to be one of promoting "equal employment opportunity for all qualified persons employed or entitled to employment on government contracts." He established a Committee on Government Contracts under the leadership of Vice President Nixon to keep an overall eye on the program operation: The committee concerned itself primarily with education and persuasion, and not much was achieved. A survey of representative cities in 1961 by the U.S. Commission on Civil Rights disclosed that "in most industries studied, patterns of Negro employment by federal contractors conformed to local industrial employment patterns. . . . In Atlanta, the two automobile assembly plants contacted employed no Negroes in assembly operations. Except for one driver of an inside power truck, all Negro employees observed were engaged in janitorial work—sweeping, mopping, or carrying away trash."⁵⁰ No company was ever placed on an "ineligible" list, or denied a contract, on the basis of its employment policies,⁵¹ no matter how flagrant the violation of the "non-discrimination" contractual provision. At times, there was outright defiance. Some public utility companies flatly refused to furnish the government with necessary services rather than adopt a policy of non-discriminatory employment. The government backed away from this challenge by "waiving" the non-discriminatory requirement. Similarly, in some

46. Exec. Order No. 8802, 6 Fed. Reg. 3109 (1941).

47. 58 Stat. 387 (1944), 31 U.S.C. § 696 (1958).

48. *Employment*, *supra* note 26, at 12.

49. *Id.* at 56.

50. *Id.* at 65.

51. *Id.* at 59.

industries, such as textile, where the percentage of government contract business is not large, the management would rather forego this business than change longstanding employment practices. Thus, shortly after the announcement of the new Kennedy executive order, the *Wall Street Journal* reported that "textile manufacturers have practically stopped bidding on military contracts for the past few weeks."⁵² It is ironic, and almost unbelievable, that public utilities, monopolies chartered by the public and regulated by the state, and the textile industry, hard hit and seeking additional tariff protection, should be able to defy an important government policy.

On March 6, 1961, President Kennedy issued Executive Order 10925 designed, like its predecessors, "to promote and ensure equal opportunity for all qualified persons, without regard to race . . . employed or seeking employment with the federal government and on government contracts."⁵³ The standard non-discrimination clause now requires all contractors to "take affirmative action to ensure that applicants are employed, and the employees are treated . . . without regard to their race, creed, color, or national origin." The "affirmative action" contemplates, as a minimal, that all "want ads" must specify that all qualified applicants will be considered without regard to race.⁵⁴ The President's Committee on Equal Employment Opportunity, under the leadership of Vice President Johnson, was established to monitor this program and given authority to enforce the program by use of these sanctions, some of which were denied its predecessors:

1. conference, conciliation, mediation, or persuasion;
2. publicizing the names of contractors or unions which have either complied, or failed to comply;
3. recommending action by the Department of Justice, including injunctions against individuals or groups interfering with compliance and criminal proceedings against those furnishing false information;
4. terminating all or part of any contract for failure of the contractor to comply; and
5. requiring that contracting agencies of the government refrain from entering into new contracts with any non-complying contractor until he complies.⁵⁵

The Johnson Committee has entered into a "Plans for Progress" program with many of the top industrial concerns of the nation. Typically, the ten point plan for progress initiated in the case of Lockheed Aircraft Co. binds the employer to:

1. provide all management levels with an up-to-date statement of its non-discrimination policy;

52. Apr. 28, 1961, p. 1, col. 1.

53. 26 Fed. Reg. 1977 (1961).

54. *Ibid.*

55. *Ibid.*

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2. "aggressively seek out more qualified minority group candidates" for many job categories, including engineering, technical, administrative and clerical positions, and factory operatives;
3. instruct State Employment Officers and other recruitment sources that job applicants are to be referred irrespective of race, creed, color or national origin;
4. re-analyze its available salaried jobs to be certain that all eligible minority group employees have been considered for placement and up-grading;
5. re-examine personnel records of minority group employees to determine whether those qualified and eligible can be used for filling job openings;
6. institute a program of familiarizing universities with employment needs and opportunities, to include hiring teachers who are members of minority groups for summer work and arranging plant tours for teachers and student counselors;
7. support the inclusion of minority group members in all its apprenticeship and other training programs including supervisory and pre-supervisory training classes;
8. encourage the establishment of vocational training programs and the participation of minority group employees in such programs;
9. maintaining eating facilities, rest rooms, and recreational facilities on a nonsegregated basis; and
10. institute periodic checks to insure that the policies and objectives of the plan are being carried out.

How well is the Kennedy program functioning? A study of North Carolina federal contractors, issued six months after the Kennedy program was initiated, indicates that the program got off to a very slow start indeed.⁵⁶ The survey concerned the recruitment, the employment, the promotion, the on-the-job training, and other personnel practices of 262 North Carolina firms holding government contracts. In essence, the employment patterns in these government-contract firms paralleled those in firms without government contracts. This is how the survey summarized its findings:

There appears to be a significant underutilization of Negro manpower in North Carolina firms holding contracts with the federal government. The patterns of under utilization are reflected in the significant number of firms that hire no Negroes, in the occupational levels at which Negroes are hired, in the narrow and limited representation of Negroes in white-collar positions, in the upgrading patterns, and in the use of Negro female resources.⁵⁷

The almost uniform refusal of North Carolina federal contractors to utilize

56. N. Car. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Report on Equal Protection of the Laws in Employment by Federal Contractors* (1961).

57. *Id.* at 8.

Negro manpower, either at all or at a level above the menial job, is significant for these reasons: (1) firms hiring Negroes reported in overwhelming number (77%) that their Negro employees were as efficient or better than their white employees; (2) those companies which utilized Negroes reported in overwhelming number (90%) that they had no difficulty because of this;⁵⁸ and (3) the largest proportion of firms indicated that they have no minimum educational requirement for hiring in the lower occupational categories, so the extent to which Negroes are wholly excluded is not a reflection on the lack of qualifications on the part of Negroes. Probably the most significant disclosure for present purposes is the following:

Twenty-one of the 22 firms without Negro employees indicated that they have never discussed the matter of employing Negroes with any federal agency. Eighty-seven of the 100 responding firms that do employ Negroes indicated that they had never discussed the problem with any federal agency.⁵⁹

Thus it would appear that six months after the Kennedy program was launched in Washington, it still remained a dead letter in North Carolina.

It is not fair to place all the blame on management. Unions must take the onus of sharing in and even initiating racial discrimination. Numerous unions have denied Negro employees a right to union membership, and thereby deprived them of a voice and a vote in the policy decisions which affect their wages, their hours, and other conditions of employment.⁶⁰ Many other unions have established separate and segregated locals for Negro employees where they have scant more voice than if totally excluded, and still others have negotiated contracts wherein Negro employees were relegated, as a class, to unskilled and unpromotable positions. These separate racial seniority lines in collective bargaining agreements are especially galling. Negroes are hired in classifications designated as "common laborer," or "yard labor," or "non-operating department," or "maintenance department," and limited to promotion within the departments. Thus, a Negro with 20 years seniority can look forward to being promoted from "toilet attendant" to "sweeper."⁶¹

These union practices violate the Supreme Court's requirement that unions

58. Only three firms reported difficulty arising from the refusal of their white employees to accept Negroes as fellow workers. Only three others indicated that their relationships with labor unions had an adverse effect on the utilization of Negro manpower.

59. *Equal Protection of the Laws in Employment by Federal Contractors*, *supra* note 56, at 25-26.

60. There is legislative history to support the conclusion that the Taft-Hartley Act intended to permit Negro exclusion from union membership, with the caveat that unions which take this course cannot then require their dismissal from employment pursuant to a "union security" agreement which requires all employees to join the union within 30 days of employment. Labor Management Relations Act (Taft-Hartley Act) § 8(a)(3), 61 Stat. 140 (1947), 29 U.S.C. § 158(a)(3) (1958).

The Courts, to date, have accepted this construction of the statute. See, e.g., *Oliphant v. Brotherhood of Locomotive Firemen and Enginemen*, 262 F.2d 359 (6th Cir. 1958), *cert. denied*, 359 U.S. 935 (1958).

61. Statement of Herbert Hill, Labor Secretary of the NAACP, before the Committee on Education and Labor, House of Representatives, Jan. 15, 1962.

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represent *all* employees "without hostile discrimination, fairly, impartially, and in good faith."⁶²

These union practices have been recently condemned by the AFL-CIO Executive Council: "Resolved, That racially segregated local unions be eliminated by national and international unions affiliated with the AFL-CIO"⁶³; and by the 1961 AFL-CIO Constitutional Convention: "We welcome the nationwide agreements entered into by the Bricklayers . . . the International Brotherhood of Electrical Workers, and other unions with respective national contractors' associations, to make non-discrimination on account of race, creed, color and national origin a standard to be observed in all apprenticeship training programs. Many of the major industrial unions have adopted Plans for Progress to eliminate these practices."⁶⁴

The National Labor Relations Board, which has original jurisdiction over these practices, recently indicated that it would countenance them no longer. Denying a discriminating union the normal protection against the necessity of participating in a representation election during a reasonable contractual period, the Labor Board, citing the Supreme Court school decision,⁶⁵ made this comment:

Consistent with clear court decisions in other contexts which condemn governmental sanctioning of racially separate groupings as inherently discriminatory, the Board will not permit its contract bar rules to be utilized to shield contracts such as those here involved from challenge or otherwise appropriate election petitions. We therefore hold that, where the bargaining representative of employees in an appropriate unit executes separate contracts, or even a single contract, discriminating between Negro and white employees on racial lines, the Board will not deem such contracts as a bar to an election.

We are not confronted in this proceeding with any attack on the validity of the Intervenor's (discriminating union's) outstanding certification in consequence of the separate contracts which it executed on the basis of race. Although the execution of such contracts is in patent derogation of the certification and would warrant revocation of the certification, we deem it unnecessary to take such action at this time in view of the impending election which we here direct.⁶⁶

In short, union discrimination in industrial employment opportunities seems on the wane. "It is unfair and inaccurate to leave the impression that President Kennedy's Committee has not made progress." Duane Greathouse, a vice president of the United Auto Workers, testified to a Congressional Committee:

Through the work of the Committee in these few months there are

62. This doctrine was announced in *Steele v. Louisville & N.R.R. Co.*, 323 U.S. 192, 204 (1944), and given further amplification in *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768 (1952); *Conley v. Gibson*, 355 U.S. 41 (1957); and *Syres v. Oil Workers*, 350 U.S. 892 (1955).

63. Statement of George Meany, *Equal Opportunity in Apprenticeship Programs*, *supra* note 10, at 11.

64. *The First Nine Months*, *supra* note 32, at 62.

65. *Brown v. Board of Education*, 349 U.S. 294 (1955).

66. *Pioneer Bus Company, Inc.*, 140 NLRB No. 18 (1963).

Negroes in technical skills in the oil industry in the St. Louis, Mo. area where there had been none before. There are minority group members now employed as seamstresses in a South Carolina textile plant for the first time. There are Negro tobacco workers in integrated production operations in North Carolina. Government contract facilities in Nashville, Tenn., and in Nevada, are employing integrated work forces because of the Committee's efforts. Negroes are now employed in skilled jobs on electronics in Dallas, Texas—jobs previously closed tight against them. The Committee opened government contract jobs for Negro carpenters in Miami, Fla.⁶⁷

The President's Committee on Equal Employment Opportunity now has the "tools."⁶⁸ If it can get the money and the staff, all it needs is determination to get the job done.

The United States Commission on Civil Rights correctly points out that the Committee on Equal Employment Opportunity, established only by executive action, is necessarily limited in budget and legal authority. Its jurisdiction over labor unions is indirect and tenuous. Therefore, the Commission recommends:

That Congress grant statutory authority to the President's Committee on Equal Employment Opportunity or establish a similar agency to encourage and enforce a policy of equal employment opportunity in all federal employment and all employment created or supported by government contracts and federal grant funds.⁶⁹

C. *Federal Grant-in-Aid Employment*

Grants-in-aid to state and local government, to public institutions, and to private nonprofit institutions are a method of federal subsidization of employment second in importance only to government contracts. In fiscal 1961 the federal grant-in-aid programs cost the taxpayers (white and Negro alike) some 7.5 billion dollars.⁷⁰ The largest expenditures went for the construction of hospitals (\$154 million), schools (\$63.3 million), public airports (\$83.3 million), highways (\$2.7 billion), and public housing, slum clearance, and urban development (over \$300 million).⁷¹

Thousands upon thousands of skilled construction jobs were thereby created, and by and large they were denied to Negroes. The U.S. Commission on Civil Rights made a field study of employment created by these grants-in-aid programs in the cities of Detroit, Baltimore, and Atlanta. The results of this study showed: (1) Negro employment was greatest at the unskilled level, in every case outnumbering white employment at that level on these jobs. (2) As the skill level increased, the percentage of Negro employment decreased. (3) There was little difference in Negro employment patterns among the three cities surveyed; although in Atlanta almost all the skilled Negroes worked in the trowel

67. *Equal Employment Opportunity*, *supra* note 4, at 156.

68. See text at note 55 *supra*.

69. *Employment*, *supra* note 26, at 161-62.

70. *Id.* at 55.

71. *Id.* at 84-88.

trades (cement finishers, bricklayers) while in Detroit and Baltimore skilled Negroes were working as carpenters, operating engineers, and labor foremen as well.⁷²

During the 1930's, the New Deal "pump-priming" make-work programs—the WPA, the PWA, the NYA, etc.—contained non-discriminatory clauses. The Unemployment Relief Act of 1933, for example, provided that "in employing citizens for the purpose of this Act no discrimination shall be made on account of race, color or creed"⁷³; and the Hatch Act of 1939 contained a proviso making it unlawful to deprive any persons of employment or other benefits made possible "by any Act of Congress appropriating funds for work relief or relief purposes, on account of race, creed, color, or any political activity."⁷⁴ When Congress failed to ban discriminatory hiring practices, as in the National Industrial Recovery Act of 1933, those administering the public works program issued regulations designed to end job discrimination, and punished the violators.⁷⁵

During the 1960's, we find no such general governmental policy in grant-in-aid employment. The Housing and Home Finance Agency and its constituent agencies which administer the Low Rent Housing and the Urban Redevelopment programs, construe grant project agreements to be government contracts within the meaning of Executive Order 10925 and accordingly require a "non-discriminatory" clause in all contracts.⁷⁶ The Urban Redevelopment Program has three steps: first, the local government, with federal financial assistance, acquires and clears slum areas; second, the local government, without federal assistance, then improves the site; and third, the cleared land is then sold to private contractors for redevelopment. The non-discriminatory clause applies only in the first process, *i.e.*, acquiring and clearing the land.

The Federal Aviation Agency has, since April 1961, required non-discrimination in employment created by airport grant projects,⁷⁷ but due to staff limitations leaves enforcement to the local sponsors.⁷⁸

The Bureau of Public Roads, within the Department of Commerce, which administers grants for highway construction has, since 1941, inserted a "short-form" non-discriminatory clause in all contracts. The Bureau has not adopted the more meaningful provisions of the Kennedy Executive Order "for fear that any change in the clause would call attention to it."⁷⁹ There is no machinery for its enforcement.

The Department of Health, Education and Welfare, which administers the hospital and impact-school construction programs, makes no requirement that employment on these projects be non-discriminatory.⁸⁰

72. *Id.* at 92.

73. 48 Stat. 22 (no longer in existence).

74. 62 Stat. 721 (1948), 18 U.S.C. § 601 (1955).

75. *Employment, supra* note 26, at 8.

76. *Id.* at 78.

77. 26 Fed. Reg. 3144 (1961).

78. *Employment, supra* note 26, at 86.

79. *Id.* at 87.

80. Both the Hill-Burton hospital construction program, and the impact-school con-

The federal grants-in-aid are conditioned upon compliance with specified standards, and certainly for purposes of equal protection have no different standing than the ordinary government contract.⁸¹

In 1961, Congressman William Fitts Ryan introduced a bill, H.R. 7143, to establish the Civil Rights Commission as a permanent agency with broad powers to end employment discrimination on federal grants-in-aid programs. The Civil Rights Commission has recommended that:

the President issue an Executive Order making clear that employment supported by federal grant funds is subject to the same non-discrimination policy and the same requirements as those set forth in Executive Order 10925 applicable to employment by government contractors

and that both the "federal contract" and "federal grant-in-aid" anti-discrimination programs be given congressional sanction and approval.⁸²

D. *The State Employment Services*

A special grant-in-aid program, created by the Wagner-Peyser Act of 1933⁸³ is the Federally subsidized "national system of public employment offices." The function of these offices is (1) to assist unemployed workers in finding jobs; and (2) to assist employers in securing qualified workers. In fiscal 1961, approximately \$107 million in Federal grants were spent for this purpose.⁸⁴

The persons in these local offices man the gates: they can open the door to "merit" employment, or, alternatively, they can bar Negro access to the better paying jobs. Indications are that they do the latter.

The North Carolina Employment Security Commission operated in 1960 on a budget of \$5,555,960.00, entirely paid for by the Federal government. The headquarters agency in Raleigh employed a total of 10 Negroes: one maid, two elevator operators, five janitors, and two janitor messengers. Some thirty-nine Negroes (and 681 whites) were employed in a professional capacity throughout the state to serve the Negro applicants for employment. When a job order is received, it is sent to the offices manned by whites if the order specifies white employees. If the order specifies Negro employees, it is handled by the Negro-manned divisional offices. If the order does not specify race, it is sent to either the white or Negro office according to "local knowledge of customary hiring requirements." In case of doubt, the employer is requested to indicate a prefer-

struction program, contain "nonintervention" provisions, i.e., no Federal Official shall exercise ". . . any direction, supervision, or control over the personnel, curriculum, or program of instruction of any school or school system of any local or state educational agency," but these prohibitions against intervention in "operation" seem to have no bearing on control over the composition of the work force used in construction. *Id.* at 58-59.

81. In a related context, the Supreme Court announced almost 100 years ago that "It is not doubted that the grant by the United States to the state upon conditions, and the acceptance of the grant by the State, constituted a contract." *McGee v. Mathis*, 71 U.S. 143, 155 (1866).

82. *Employment*, *supra* note 26, at 162.

83. 29 U.S.C. § 49 (1958).

84. *Employment*, *supra* note 26, at 115.

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ence. The result of this system is that in 1960, 95,576 whites were directed to employment, largely in professional, clerical, sales, skilled and semi-skilled jobs; and 73,473 Negroes were placed, largely in service and unskilled positions. By this system, the employer is denied both the opportunity and the responsibility to hire on the basis of merit.⁸⁵

The experience in North Carolina is not unique. "If a known Government contractor insists on a discriminatory job order in Atlanta, it will be honored, as will a discriminatory request from a Federal agency."⁸⁶ An employee of the Michigan Employment Security Commission explains: "I get rated by the number of people I place. If I don't place enough, I get called upstairs. Therefore, I send people to places where I think they will be employed, and this means that I send them by race."⁸⁷

When former Secretary Goldberg assumed office, the Department of Labor "determined that one objective in its relationship with state employment services, in line with the President's national policy, would be the making available of equal employment opportunities through the 1800 local employment offices. It therefore set about encouraging the states to review their staffs, giving greater understanding toward the national policy of equal employment opportunity." Additionally, the Department of Labor prohibited the processing of "discriminatory" job orders—not only from Federal agencies and Federal contractors as was formerly the rule—but from private employers as well.⁸⁸ But the basic cause for racial job assignment, *i.e.*, basing promotions and allocations of funds according to the number of job placements, has not been changed.

A basic policy of the United States Employment Service is to promote employment for all applicants "on the basis of their skills, abilities and job qualifications."⁸⁹ This policy would be better effectuated if promotions and the allocation of funds were based, at least in part, according to the number of Negro job applicants placed in "non-traditional" positions. This is one of the recommendations of the United States Commission on Civil Rights:

Recommendation 7.—That steps be taken, either by executive or congressional action, to reaffirm and strengthen the Bureau of Employment Security policy, in rendering recruitment and placement services, of encouraging merit employment and assisting minority group members in overcoming obstacles to employment and in obtaining equal job opportunities. In this connection, consideration should be given to changing the method utilized to determine Federal appropriations to State employment offices, presently keyed primarily to the number of job placements made, to reflect other factors (such as the greater degree of difficulty and time involved in placing qualified minority group workers), so that the budgetary formula used will encourage rather than

85. N. Car. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Report on Operation of the North Carolina Employment Security Commission 2* (1960).

86. *Employment*, *supra* note 26, at 117.

87. *Id.* at 118-19.

88. *The First Nine Months*, *supra* note 32, at 57-58.

89. 20 C.F.R. § 604.1(b) (1961).

discourage referral on a nondiscriminatory basis. In addition, regulations and statements of policy with respect to the operation of State employment offices should be reexamined to insure that such regulations and statements conform to the overall USES policy of discouraging employment discrimination and encouraging merit employment.

Recommendation 8.—That the President direct the Secretary of Labor to grant funds for the operation of State employment offices only to those offices which offer their services to all, on a nonsegregated basis, and which refuse to accept and/or process discriminatory job orders.⁹⁰

E. *Apprenticeship Programs*

A skilled trade is a must in today's job market. Technological changes and the replacement of new industries for old have been largely responsible for increased unemployment. But even in a "depressed" area like Detroit, "jobs . . . are going begging for lack of skilled workers to fill them."⁹¹ The demand for skilled workers will continue to grow. It is estimated that for every 100 skilled workers the nation had in 1955, it will need 122 in 1965, and 145 in 1975: "The New York State Department of Labor indicates, in a survey of jobs in 1960 to 1970, that 46,000 additional craftsmen will be needed annually if the State's needs for skilled workers in the 1960's are to be satisfied."⁹² Yet today the apprenticeship training programs are not even producing enough skilled workers to replace those who retire, and Negroes are experiencing "a major crisis in unemployment because it is almost impossible as a result of discrimination for them to make the jump from unskilled jobs being wiped out by automation to the skilled ones that the new technology creates."⁹³

1. *Discrimination in Building Trade Apprenticeship Programs*

Uncontradicted testimony bears this out.

Open access to plumbing and pipe-fitting apprenticeship controlled by the Plumbers Union is a very rare experience for young Negroes in the North as well as in the South

Among the most important of the building trades craft unions is the Carpenters Union which has severely limited the opportunities of colored craftsmen by organizing segregated Negro locals (in those instances where Negroes are permitted to join) and giving them jurisdiction over areas where there was little or no construction. . . .

A recent study made by the Council for Civic Unity of San Francisco revealed that Negroes are not participating in the electrical, plumbing, and carpentry apprenticeship training programs in that city and that only one Negro served as an apprentice in the metal trades.

A report made by the Michigan Fair Employment Practices Commission indicates the exclusion of Negro youth in the structural steel,

90. *Employment*, *supra* note 26, at 163-64.

91. *Time*, Mar. 10, 1961, p. 90.

92. Statement of A. Philip Randolph, *Equal Opportunity in Apprenticeship Programs*, *supra* note 10, at 123.

93. *New York Times*, Oct. 17, 1962, p. 22, col. 1 (quoting Herbert Hill, the NAACP's Labor Secretary).

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sheet metal, lathers, and tile setters apprenticeship programs in Kalamazoo, Grand Rapids, and Muskegon.

The Connecticut Commission on Civil Rights has published a study which concludes that a similar condition exists in virtually the entire State of Connecticut.

In a study entitled "Negro Employment Practices in the Chattanooga Area" it is found that there was an absolute ban on apprenticeship opportunities for Negroes in the building trades. . . .

In Newark, N.J., where there are 3,523 apprentices currently participating, not a single Negro apprentice is to be found in electrical installation, plumbing, painting, and other building trades apprenticeship programs. . . .

An examination of available data makes evident that less than 1 per cent of the apprentices in the building and construction industry throughout the United States are Negro.⁹⁴

The absence of Negroes from the construction crafts is not, as one official of an electrical union would have it, due to the fact that "Negroes fear electricity."⁹⁵ At the end of the Civil War, 100,000 of the 120,000 artisans in the South were Negroes.⁹⁶ In 1920, in 10 states of the old South, 23 per cent of the carpenters, 25 per cent of the painters, 54 per cent of the bricklayers, and 66 per cent of the plasterers were Negro.⁹⁷ Today, Negroes have a hard time getting a toehold in the apprenticeship programs. The reason for the total absence of Negro plumbers was explained by a Plumbers Union official, who said that the apprenticeship program—jointly administered by the union and management—gave priority to the sons and relatives of those in the trade:

MR. RHODES (Business Manager of Local No. 4 of the Plumbers Union): It is true our local union favors, gives preference to sons, employees' sons and members' sons, and the like of that, you know, kinfolks. . . .

CONGRESSMAN PUCINSKI: What is the reasoning—

MR. RHODES: What is the reason? Well, No. 1, your membership. You have got an 800-man membership. They all have boys that want to become plumbers. And they insist that the apprenticeship committee take care of their people, their own people. . . . After all, how could a committee tell a member that we are going to take somebody else other than his son before we take his son?

CONGRESSMAN ROOSEVELT: Will the gentleman yield? What you are saying, though, is that a plumbers' local is the same thing as a private club or a private school. . . . is it right to be able to make that union into what in essence tends to become pretty much a private club?

MR. RHODES: That is not what we are attempting to do, or not what we are doing. We take boys other than plumbers' sons. However, we give plumbers' sons preference.

94. Statement of Herbert Hill, *Equal Opportunity in Apprenticeship Programs*, *supra* note 10, at 89-91.

95. *Employment*, *supra* note 26, at 130.

96. Randolph, *The Unfinished Revolution*, *The Progressive*, Dec. 1962, p. 21.

97. See text at note 10 *supra*.

CONGRESSMAN ROOSEVELT: But only when you don't have enough sons?

MR. RHODES: Well, that has happened. There were a few years back when there were not enough plumbers' sons. . . .

CONGRESSMAN ROOSEVELT: If a Negro did apply, and was qualified, can you tell me honestly that you think he would be given a fair chance to enter the apprenticeship training?

MR. RHODES: He would be processed the same as any other candidate.

CONGRESSMAN ROOSEVELT: What is the total membership of your union?

MR. RHODES: 824.

CONGRESSMAN ROOSEVELT: Is this a mixed racial union, or are they all white?

MR. RHODES: As far as I know, they are all white.⁹⁸

President George Meany of the AFL-CIO testified that: "There is racial discrimination in apprenticeship and vocational training programs, and we in the AFL-CIO have opposed and do oppose it. We want it ended."⁹⁹ J. C. Haggerty, President of the AFL-CIO Building and Construction Trades Department, testified that "It would be fruitless to deny that discrimination exists in the building and construction industry."¹⁰⁰ Both gentlemen urged the enactment of H. R. 8219, introduced by Congressman Powell, which is designed to bar the Secretary of Labor from fostering discriminatory apprenticeship training programs. The proposed legislation has several facets.

FIRST. The Davis-Bacon and the Walsh-Healy Act require government contractors to pay "prevailing," and the Fair Labor Standards Act requires all employers in interstate commerce to pay "minimum," wages to their employees. Each statute, however, permits the Secretary of Labor to authorize "exemptions" from the wage requirements in the case of apprentices. The proposed legislation would prohibit the Secretary of Labor from "exempting" any apprenticeship program where discrimination is practiced. This proposal would have limited impact, as only sixty-six exemptions were issued in the United States last year¹⁰¹; and in any event, former Secretary of Labor Goldberg announced that "exemptions" will not be granted to apprentice programs that discriminate.¹⁰²

SECOND. The Bureau of Apprenticeship and Training, U.S. Department of Labor currently "certifies" apprenticeship programs which meet agreed-upon standards. The purpose is to upgrade the programs and assure uniformity of training. Certificates are awarded those graduating from these programs. Approximately half (160,000) the current apprentices are in a "certified" program.¹⁰³ The proposed legislation would bar the Secretary of Labor from certifying a program if it discriminates. The Secretary of Labor, by administrative action, has already taken this course.

98. *Equal Opportunity in Apprenticeship Programs*, *supra* note 10, at 139-41.

99. *Id.* at 127.

100. *Id.* at 127.

101. Statement of Assistant Secretary of Labor Jerry R. Holleman, *id.* at 28.

102. *Ibid.*

103. *Equal Opportunity in Apprenticeship Programs*, *supra* note 10, at 43.

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THIRD. Most apprenticeship programs involve both on-the-job training and class-room work. The class-room work is supported by federal funds; and the legislative proposal is to withhold these funds from the apprenticeship programs which discriminate. There is a question as to how effective this would be in achieving its objective. Prior to 1954, when Washington, D.C. schools were segregated, most of the major craft unions utilized public schools for the class-room aspects of their apprentice programs. Subsequent to the desegregation of the schools, "many of the unions set up their own separate training facilities,"¹⁰⁴ and this is a trend that is nationwide, "more so where the unions have the resources to do it."¹⁰⁵

A more direct approach has been taken to the problem of racial discrimination in on-the-job apprenticeship programs. The union, whose membership is closed to Negroes, is not permitted by the Courts to restrict employment opportunities to its members.¹⁰⁶ The Supreme Court has ruled that a union representing a majority of the employees in an appropriate craft or unit may not use its bargaining power to the detriment of minority Negro employees within the craft,¹⁰⁷ or to the detriment of Negro employees in a sister craft or unit. "Bargaining agents who enjoy the advantages of the Railway Labor Act's provisions must execute their trust without lawless invasion of the rights of other workers."¹⁰⁸ All these decisions concerned job restrictions by unions against Negroes then on the job. However, the National Labor Relations Act requires unions to give "fair representation" to "employees"; job applicants have come within the meaning of the term "employees" in other contexts; and a good case has been made for the proposition that it is an unfair labor practice for a union, controlling job access, to discriminate against job applicants on the basis of race.¹⁰⁹ The issue, however, has not yet been decided, although it is now pending before the National Labor Relations Board.¹¹⁰ Should the Labor Board deny statutory authority to rectify the situation, federal legislation modeled on the Ohio Code (making it unlawful for any labor organization to discriminate against any person, or *limit his employment opportunities*, on the basis of race, color, religion, national origin, or ancestry)¹¹¹ seems appropriate.

The Civil Rights Commission does not go this far. It recommends only that "Congress amend the Labor-Management and Disclosure Act of 1959 to include in title 1 thereof a provision that no labor organization shall refuse membership

104. *Id.* at 158.

105. *Id.* at 113.

106. *James v. Marinship Corp.*, 25 Cal. 2d 731, 155 P.2d 329 (1944).

107. *Steel v. Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944).

108. *Brotherhood of Railway Trainmen v. Howard*, 343 U.S. 768, 744 (1952).

109. See Sovern, *The National Labor Relations Act and Racial Discrimination*, 62 *Column L. Rev.* 563, 584-87 (1962).

110. *New York Times*, Oct. 17, 1962, p. 22, col. 1.

111. Section 4112.02 of the Ohio Revised Code (1959). Section 1777.6 of the Labor Code of California makes it unlawful "for an employer or a labor union to refuse to accept otherwise qualified employees as indentured apprentices on any public works, solely on the ground of the race, creed, or color of such employee."

to, segregate, or expel any person because of race, color, religion, or national origin."¹¹²

2. *Discrimination in Industrial Apprenticeship Programs*

Thus far, the discussion has concerned discrimination in the building craft apprenticeship programs administered (at least jointly) by the craft unions. But an equally invidious type of discrimination is found in the industrial apprenticeship programs administered by management.

"In industrial apprenticeship training programs the opportunities for Negroes appear to be no greater than in the construction crafts."¹¹³ Thus, a study of the auto industry's apprenticeship training program reveals that "Chrysler Corp. had 350 apprentices in its Detroit area plants, not one of whom was a Negro. General Motors Corp. showed a slight improvement in that they had one Negro apprentice out of the 289 apprentices in training in its Detroit area plants. However, at the General Motors Institute in Flint which enrolls 2,400 students in a five-year work and training program, there is not a single Negro student."¹¹⁴ "In the apprenticeship training program conducted jointly by the Automotive Tool & Die Manufacturers Association and the UAW, there are approximately 370 apprentices, all white. Only one Negro has ever participated in this program."¹¹⁵

Private employers who discriminate in industrial apprenticeship programs can be reached by the President's Committee on Equal Employment Opportunity if they have Government contract employment. The typical "Plan for Progress" requires the employer to "support the inclusion of minority group members in all its apprenticeship and other training programs."¹¹⁶ If the private employer does not have a government program, his discriminatory practices can be curbed only by enactment of a Fair Employment Practices Law.

F. *Vocational Education*

The greatest resources of any nation are the skill and know-how of its people. This philosophy has been embedded in federal law for many years. A subsidized program of vocational education was instituted in 1914 with the Smith-Hughes Act with the stated purposes: "To conserve and develop our national resources, to permit a productive and more prosperous agriculture, to prevent waste of human labor, to provide a supplement to apprenticeship; to increase wage earning power; to meet the increasing demand for trained workmen; to offset the increased cost of living; to serve as a wise business investment; and to promote our national security and economy."¹¹⁷

112. Employment, *supra* note 26, at 164.

113. *Id.* at 109.

114. Statement of Horace L. Sheffield, Vice President, Trade Union Leadership Council, Detroit, Michigan, *Equal Employment Opportunity, supra* note 4, at 218.

115. Employment, *supra* note 26, at 107.

116. See text following note 15 *supra*.

117. Statement of Francis A. Gregory, Assistant Superintendent of Education, Washington, D.C. *Equal Opportunity in Apprenticeship Programs, supra* note 10, at 111.

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The import of vocational education as it relates to the need for highly skilled and technically trained manpower for the space age, has been underscored by the enactment of title VIII of the National Defense Education Act of 1958 which makes provisions for area vocational educational programs "to train highly skilled technicians in fields necessary for national defense."¹¹⁸

The vocational education programs operate in the following manner: states willing to match federal funds and accept federal supervision receive grants from the federal government to help pay "the salaries of teachers, supervisors, and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects."¹¹⁹

The Office of Education within the Department of Health, Education and Welfare administers the programs. The long-time policy of the Office of Education was "to fit persons for useful employment and, hence, training would be offered only when it was evident that those trained could reasonably expect to find employment locally. Since Negroes were denied employment in certain occupations, . . . there was no use to train a Negro for an occupation in which he could not find employment; *i.e.*, to train Negroes as electricians in most States would have been a waste of money and the time of the persons so trained."¹²⁰ Since 1948, the Office of Education has adopted the policy that "in the administration of federally aided programs of vocational education there shall be no discrimination because of race, creed, or color." However, the present position of the Office of Education is that "the Commissioner does not have the power to withhold funds because schools are segregated."¹²¹ The result of this approach is as may be expected: Negroes are excluded, segregated, and usually placed in training for "Negro" jobs.

"In Louisiana, there are twenty-seven state supported trade and technical schools—twenty-three for whites—four for Negroes. . . . Recently I visited two trade schools in New Orleans, one for Negroes and the other for whites. The Orleans Area Vocational and Technical School, which is for Negroes, offers only seven courses. The other school . . . offers forty-seven."¹²²

In Atlanta, "the use of segregated public schools for vocational training produces a marked difference in the types of programs available to different racial groups. . . . At Carver School, Negroes are trained for 'jobs traditionally open to them.' These are the most menial, requiring the lowest level of skills. They are precisely the ones for which the national economy has less and less need."¹²³

118. *Integration in Public Education Programs*, House Report of the Subcommittee on Integration in Federally Assisted Public Education Programs of the Committee on Education and Labor, 87th Cong., 2d Sess. 92 (1962).

119. 20 U.S.C. § 11 (1958).

120. *Integration in Public Education Programs*, *supra* note 118, at 94.

121. *Ibid.*

122. Statement of Clarence A. Laws, Southwest Regional Secretary of the NAACP before the Special Subcommittee on Labor, U.S. House of Representatives, Jan. 16, 1962.

123. *Employment*, *supra* note 26, at 97.

In North Carolina, the situation is not so extreme. A survey of nine Industrial Education Centers reveals racial segregation in some: "in at least three this includes separate courses of study."¹²⁴ Instruction is available on the basis of job opportunities, and in some instances this is construed to mean job opportunities within the community. Thus, "if it was known not to be the custom for Negroes to be employed as upholsterers in the area served by the Center" then there was no job opportunity for Negroes and they were denied the training unless a "specific job" was assured.¹²⁵ Generally, however, the stated admission policy was to exclude race as a factor. The preponderance of white students (over 90 per cent) was explained by the lack of Negro interest and qualifications. One administrator stated that he had "recently shown forty-seven Negro men through the school and invited them to take courses; that only four applied, and of these only one completed the necessary examinations and he did so poorly that he was not admitted."¹²⁶

Lack of motivation and ability, of course, is itself the product of long-suffered discrimination. The vicious circle of discrimination in employment opportunities is clear; the Negro is denied, or fails to apply for training for jobs in which employment opportunities have traditionally been denied him; when jobs do become available, there are consequently few, if any, qualified Negroes available to fill them; and often, because of lack of knowledge of such newly opened opportunities, even the few who are qualified fail to apply.

The United States Civil Rights Commission has recommended that Congress and the President take appropriate measures to meet the manpower needs of the coming years by:

- (1) Providing that, as a condition of federal assistance, all such programs be administered on a nondiscriminatory, nonsegregated basis; and
- (2) Amending present regulations regarding admission to vocational classes; to provide that admission be based on present and probable future national occupational needs, rather than, as presently interpreted, on traditional and local needs and opportunities.

Additionally, of a more positive nature, the Commission recommended action:

- (3) Expanding and supplementing existing programs of federal assistance to vocational education;
- (4) Providing for retraining as well as training and for funds to enable jobless workers to move to areas where jobs are available and their skills in demand; and that Congress enact legislation to provide equality of training and employment opportunities for youths (aged 16 to 21),

124. N. Car. Advisory Comm. to the U.S. Comm'n on Civil Rights, *Report on Operation of Industrial Education Centers of North Carolina* 7 (1962).

125. *Id.* at 4.

126. *Id.* at 6.

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and particularly minority group youths, to assist them in obtaining employment and completing their education;

- (5) Through a system of federally subsidized employment and training made available on a nondiscriminatory basis; and
- (6) Through the provision of funds for special placement services in the schools in connection with part-time and cooperative vocational education programs.

Finally, the Commission recommended "That the President direct that appropriate measures be taken for the conduct, on a continuing basis, of an affirmative program of dissemination of information:

- (7) To make known the availability on a nondiscriminatory basis of jobs in the Federal Government and with Government contractors; and
- (8) To encourage all individuals to train for and apply for such jobs, and particularly those jobs where there is currently a shortage of qualified applicants."¹²⁷

G. *Private Employment*

All the above programs and proposals have no immediate and only indirect impact on private discriminatory employment practices. A national program—prohibiting discriminatory employment practices by employer and union alike—is needed. Federal legislation on this score has been introduced in each Congress since the 78th and supported by religious leaders of all persuasions, constitutional authorities, sociologists, economists, businessmen, and leaders of organized labor. Every report that has issued from a House or Senate Committee has recommended the enactment of fair employment legislation.

In the absence of final Congressional action, the states have moved in. New York first, under the leadership of Governor Thomas E. Dewey, next New Jersey, and today some twenty-four of the most populous states in the North, in the North Central, and in the West have enacted some type of fair employment practice legislation.¹²⁸ This, however, is not adequate to the occasion. First, there is some doubt that the Constitution permits the application of these state laws to "Interstate Commerce."¹²⁹

Second, these state laws have no applicability in the area of the country where the need for such laws is the greatest. Finally, the problem is national in scope as populations migrate from one section of the country to another.

National legislation is a must. As one witness put it: "FEPC is a workable, sound, tested instrumentality that is good for 110 million people in twenty states;

127. *Employment, supra* note 26, at 162-63.

128. The various laws, taken from the testimony of AFL-CIO President George Meany, are set forth in the appendix.

129. See, e.g., *Colorado Anti-Discrimination Comm. v. Continental Air Lines, Inc.*, 149 Colo. —, 368 P.2d 970 (1962), *rev'd and remanded*, 372 U.S. 714 (1963).

surely, gentlemen, it is good for 180 million people in fifty states."¹³⁰ Or, to quote George Meany:

I could speak at length about the physical loss of good brains and strong bodies we suffer because of those who judge a man by other standards than his abilities. That would be tragic enough in an era when we need every ounce of our strength, and the fullest development of our resources, to secure our nation against attack.

But the greatest loss to America is moral and spiritual. If a citizen of this country finds his way blocked, if he cannot achieve his highest degree of usefulness, only because he is a Negro or a Jew, a Catholic or an Asiatic; because he is an Italian or a Pole; because he is thirty-five or forty or forty-five, those who are responsible for blocking him are betraying the American ideal in the eyes of the world."¹³¹

III. SUMMARY AND CONCLUSION

Is this, the centennial of the Emancipation Proclamation, the year for an FEPC? The defeat of those who sought to amend Senate Rule 22 and thereby avert the threat of a filibuster is not a happy harbinger of civil rights legislation. But ours is a rapidly changing world. Six years ago, there was no sputnik, and the word "Astronaut" was unknown. Five years ago Governor Faubus was an obscure southern Governor, and a liberal one to boot. Martin Luther King, Jr., was a young and obscure southern minister, with no particular mark for greatness. Four years ago, the first Negro youth had yet to walk into a white lunch counter and ask for a cup of coffee. One year ago, no governor of South Carolina had ever asked for the peaceful acceptance of an integrated state university. A year ago, no governor of North Carolina had ever asked for a Good Neighbor Council to end employment discrimination. The segregationist may think he is fighting John Kennedy, Earl Warren, and the NAACP. Actually, he is fighting Marconi, macadam, and Henry Ford—in short, the Twentieth Century. The outcome of this unequal struggle is not for a moment in doubt. If FEPC legislation comes not this year, it comes soon. But much remains to be done, and on many fronts.

Within the federal civil service there are pockets of racism; aided and abetted by the use and abuse of the "rule of three." Energetic transmission of the Washington spirit to the field offices is necessary if federal employment and employment opportunities are to be based solely on factors of "merit." Periodic "headcounts," the addition of "minority specialists" to employment staffs, good communication, and Congressional approval and ratification of the guiding agency—the President's Committee on Equal Employment Opportunity will keep this program on sound footing.

The "fair and equal employment" clause in the standard government con-

130. Statement of Edward Howden, Executive Officer and Chief, California FEPC, *Equal Employment Opportunity*, *supra* note 4, at 302.

131. Statement before the Special Labor Subcommittee of the House Committee on Education and Labor on Equality of Employment Opportunity, Jan. 15, 1962.

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tract has for too long been forgotten, "dead and buried under thousands of words of standard legal and technical language." President Kennedy has unearthed this provision and appointed a Committee under Vice-President Johnson to enforce it. Sanctions are available, and the Plans for Progress, if implemented, give great hope of progress. The entire program would be strengthened by Congressional authorization, support, and appropriations.

The anti-discrimination clauses contained (and enforced) in the 1930 grant-in-aid programs are not present in today's programs. The consequence is that thousands of Negroes are denied good jobs on projects created by Federal funds. There is no valid Constitutional reason why Federally created job opportunities under grant-in-aid programs should be treated differently from Federally created job opportunities under Federal procurement contract programs. The Civil Rights Commission recommends that the grant-in-aid program be brought within the protection and requirements of the President's Committee on Equal Employment Opportunity.

The United States Government finances the world's largest employment agency; and this agency in turn often stands as a barrier between the Negro and better job opportunities. Operating through segregated offices, the state employment services, at least until lately, processed discriminatory job requests under the federal spur which based promotion and appropriations on the number of unemployed persons put back to work. The Civil Rights Commission has recommended that (1) consideration should be given to changing the method utilized to determine federal appropriations, presently keyed to the number of job placements made, to reflect other factors (such as the greater degree of difficulty and time involved in placing qualified minority group workers) so that the budgetary formula will encourage, rather than discourage, referral on a nondiscriminatory basis; and (2) that the President direct the Secretary of Labor to grant funds only to state employment services which offer their services on a non-segregated basis and which refuse to accept and/or process discriminatory job offers.

America suffers from a surplus of unskilled and a dearth of skilled employees. And thousands of youths, age 16 to 21, are out of school, out of work, on the streets headed for trouble, petty crimes, and ultimately to public relief. The federal government seeks to give skills, work, and hope to these citizens by training in federally sponsored apprenticeship programs and federally financed industrial training centers. Yet these programs are not only woefully inadequate in size and number; they also discriminate against the Negro entirely, or at best train him for "traditional" jobs which are rapidly passing from the industrial scene. The Civil Rights Commission recommends corrective action in the federally supported apprenticeship programs by withholding federal aid and support from those which discriminate. It recommends corrective action against federally supported industrial training programs through similar techniques. And it recommends a positive approach to the total problem of creating skills needed in the coming years, of rekindling belief in the sceptical youth, through a program of

guidance counseling, making the youth aware of state and federal contract employment opportunities; through a program of extensive training in useful and challenging skills; and through a program of mass training and retraining akin to that of the Civil Conservation Corps during the 1930s—a domestic Peace Corps if you will, permitting a simultaneous experience of education, skill gaining, and helping others to help themselves.

We find ourselves at another frontier. Do we retreat, vacillate, or press on? The problem is grave, the challenge a thrill, and the promise of solution a reward without measure.

ADDENDA

Ours is a rapidly changing society, and nowhere is this truism better illustrated than in the on-rush of events in the area of employment opportunities. Since this article was prepared, the continuing story unfolds in almost every edition of the daily newspaper. Front page headlines of the *New York Times* provide a glimpse of the urgency of the problem, and the necessity for immediate action. As the Birmingham Mother's Day riots probably fanned the embers of discontent into a flame of protest there and elsewhere throughout the nation, it is fitting to begin the recitation at that point.

May 4, 1963. "Dogs and Hoses Repulse Negroes at Birmingham." "3 Students Bitten in Second Day of Demonstrations Against Segregation. Dr. King Says Protests Will Be Intensified."

May 19, 1963. "Kennedy, in South, Hails Negro Drive for Civil Rights. It is in 'Highest Traditions' of U.S. Freedom, He Asserts at Vanderbilt Celebration."

June 8, 1963. "Army Plans to Hire Additional Negroes and Puerto Ricans." "Eighteen personnel officers . . . met with leaders of minority-group organizations to discover additional steps by which Army agencies can assure Negroes, Puerto Ricans and other persons of nondiscriminatory hiring and promotion."

June 12, 1963. "President Calls Negro-Job Talk. He Will Meet 300 Labor Leaders Tomorrow on Ending Barriers."

June 28, 1963. "Governor Speeds Projects To Open Jobs to Negroes. Acts on Construction Work Totaling 4 Billion—Union Pledge to Fight Bias."

June 28, 1963. "Rise in Negro Jobs Linked to Growth. (Secretary of Labor) Wirtz Tells House Unit End of Hiring Bias Hinges on Increase in Employment."

June 30, 1963. "Negroes' Job Plight Is Found Worsening."

July 19, 1963. "Governor, Mayor Take Steps To End Race Bias in Jobs. Unions and Contractors Are Told That Discrimination Will Cancel Contracts."

July 22, 1963. "AFL-CIO Maps Drive To Lessen Discrimination. Meany Will Lead Attack on Inequalities in Community Life as Well as Unions."

July 27, 1963. "New U.S. Directives Bar Discrimination in Apprentice Plan." "The move immediately provoked a storm among labor and Management leaders in the construction industry."

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August 21, 1963. "Kennedy Opposes Quotas for Jobs on Bias of Race. Says Education Is Greatest Need of Negroes—Doubts U.S. Can 'Repair Past'."

August 29, 1963. "200,000 March for Civil Rights in Orderly Washington Rally; President Sees Gain for Negro. . . . One hundred years and 240 days after Abraham Lincoln enjoined the emancipated slaves to 'labor faithfully for reasonable wages,' this vast throng proclaimed in march and song that they were still waiting for the freedom and the jobs."**

** The author, due to limitations of time and space as well as the conjectural nature of the material, has not mentioned or attempted to analyze bills presently before Congress which deal with discrimination in employment. See, *e.g.*, § 1210, 88th Cong., 1st Sess. (1963); § 1211, 88th Cong., 1st Sess. (1963); § 1212, 88th Cong., 1st Sess. (1963); § 1731, 88th Cong., 1st Sess. tit. VII (1963); § 1750, 88th Cong., 1st Sess. tit. II (1963). (Bd. of Editors.)

APPENDIX
STATE FAIR EMPLOYMENT PRACTICE LAWS

State	Statute	Kind of discrimination outlawed	Coverage	Exclusion from coverage	Enforcement	Agency
Alaska	Alaska Comp. Laws Ann., sec. 43-5-1 (supp. 1958)	RA, RE, CO, AN, NO	Employers of 1 or more; Labor organizations; Employment agencies	Non-profit enterprises; Domestic servants	Cease and desist orders enforceable by courts	Commissioner of Labor
California	Cal. Lab. Code sec. 1412	RA, RE, CO, AN, NO	Employers of 5 or more; Labor organizations; Employment agencies; The State and its political subdivisions	Non-profit, social, fraternal, charitable, educational or religious associations or corporations; Persons employed by family; Domestic servants; Agricultural workers residing on farms where employed;	By the Courts	Division of Fair Employment Practices
Colorado	Colo. Rev. Stat. Ann., sec. 80-24-1 (1953)	RA, RE, CO, AN, NO	Employers of 6 or more; Labor organizations; Employment Agencies; The State and its political subdivisions	Persons employed by family; Domestic servants; Educational Institutions and school districts	Cease and desist orders enforceable by courts	Colorado Anti-Discrimination Commission
Connecticut	Conn. Gen. Stat. Rev., sec. 31-122 (1958)	RA, RE, CO, AN, NO, AGE	All enterprises, including charitable and non-profit, employing 5 or more; Labor organizations; Employment agencies; The State and its political subdivisions	None	Cease and desist orders enforceable by courts	Commission on Civil Rights
Delaware	Laws of Delaware ch. 337, Vol. 52, 1960	RA, RE, CO, NO, AGE	All employers; Employment agencies; Labor organizations	(By Commission ruling) religious, fraternal, sectarian or charitable association, corporation or society, in re occupational qualifications as to race and creed	By courts: fine and imprisonment	Division Against Discrimination Labor Commission

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APPENDIX (continued)

State	Statute	Kind of discrimination outlawed	Coverage	Exclusion from coverage	Enforcement	Agency
District of Columbia	Commissioners' policy orders: Nov. 25, 1953 April 9, 1958 Amended: May 9, 1961	RA, RE, CO, NO	District of Columbia government employment; Employers holding D.C. contracts; On complaint, may investigate discrimination by private employers "Every person"	Not specified	Contract cancellation in case of contractors	D. C. Commissioners' Council on Human Relations
Idaho	Idaho Sess. Laws (1961) Ch. 309	RA, RE, CO, NO (including AN)			Misdemeanor No enforcement machinery	No Agency
Illinois	S.B. 609 (1961)	RA, RE, CO, AN, NO	1961-64: Employers of 100 or more; 1965 on: Employers of 50 or more; Labor organizations; Employment agencies	Not specified	Cease and desist orders enforceable by the courts	Fair Employment Practices Commission
Indiana	Indiana Ann. Stat., sec. 40-2307 (1956)	RA, RE, CO,	All enterprises conducted for profit, employing 6 or more; Labor organizations; Employment agencies	Non-profit enterprises; Persons employed by family; Domestic servants; Employers of less than 6	Agency has subpoena power but no other enforcement power	Division of Labor
Kansas	Kan. Gen. Stat., Ann., sec. 44-1001 (supp. 1959) Amended, April 14, 1961 Effective July 1, 1961	RA, RE, CO, AN, NO	Employers of 8 or more; All departments of state, county & municipal governments; Persons acting as employers; Employment agencies; Labor organizations		Cease and desist orders enforceable by courts	Anti-Discrimination Commission

Key: (Kind of Discrimination Outlawed)

RA == race
RE == religious creed
CO == color
AN == ancestry
NO == national origin

APPENDIX (continued)

State	Statute	Kind of discrimination outlawed	Coverage	Exclusion from coverage	Enforcement	Agency
Kentucky	Laws of 1960, ch. 76 (Also, July, 1961)	RA, Ethnic Group or members	"Any discrimination" State employment		None	Commission on Human Rights
Massachusetts	Mass. Ann. Laws, ch. 151B, sec. 1-10 (1957)	RA, RE, CO, AN, NO, AGE	Employers of 6 or more in all enterprises conducted for profit; Employment agencies; Labor organizations; The State and its political subdivisions	Non-profit enterprises; Persons employed by family; Domestic servants	By the courts	Massachusetts Commission Against Discrimination
Michigan	Mich Stat. Ann., sec. 17458(1) (1960)	RA, RE, CO, AN, NO	Employers of 8 or more; Employment agencies; Labor Organizations; The State and its political subdivisions; Contractors and subcontractors with the State or its political subdivisions	Domestic servants	Cease and desist orders enforceable by the courts	Michigan Fair Employment Practices Commission
Minnesota	Minn. Laws 1961, Ch. 428	RA, RE, CO, NO	Employers of 8 or more; Employment agencies; Labor organizations; The State and its political subdivisions	Persons employed by family; Domestic servants	Cease and desist orders enforceable by the courts	Minn. Fair Employment Practices Commission
Missouri	S.B. 257 (1961)	RA, RE, CO, NO	Employers of 50 or more; Employers holding state contracts; Employment agencies; Labor Unions; State agencies	Corporations & associations owned and operated by religious or sectarian groups	Commission orders, enforceable in the courts	Commission on Human Rights

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APPENDIX (continued)

State	Statute	Kind of discrimination outlawed	Coverage	Exclusion from coverage	Enforcement	Agency
New Jersey	N.J. Stat. Ann., sec. 18: 25-4 (supp. 1960)	RA, RE, CO, NA, Liability for military service	Employers in all enterprises employing 6 or more; The State and its political subdivisions; Labor organizations; Employment agencies	Non-profit enterprises; Persons employed by family; Domestic servants	Cease and desist orders enforceable by the courts	Division Against Discrimination, N.J. Department of Education
New Mexico	N.M. Stat. Ann., sec. 59-4-1 (supp. 1961)	RA, RE, CO, AN, NO	Employers of 4 or more; The State and its political subdivisions; Labor organizations; Employment agencies	Religious corporations or associations; Non-profit social of fraternal clubs; Persons employed by family; Domestic servants	None	Fair Employment Practice Commission
New York	N.Y. Executive Law, sec. 290	RA, RE, CO, NO, AGE	Employers in all enterprises conducted for profit and employing 6 or more; The State and its political subdivisions; Labor organizations; Employment agencies; Licensing agencies with respect to age qualifications	Non-profit enterprises; Persons employed by family; Domestic servants	Cease and desist orders enforceable by the courts	N.Y. State Commission for Human Rights
Ohio	Ohio Rev. Code Ann., Sec. 4112.01 (Page supp. 1959)	RA, RE, CO, AN, NO	Employers of 4 or more; The State and its political subdivisions; Labor organizations; Employment agencies	Religious, educational & charitable organizations; Domestic servants	Cease and desist orders enforceable by the courts	Ohio Civil Rights Commission

Key: (Kind of Discrimination Outlawed)

- RA == race
- RE == religious creed
- CO == color
- AN == ancestry
- NO == national origin

APPENDIX (continued)

State	Statute	Kind of discrimination outlawed	Coverage	Exclusion from coverage	Enforcement	Agency
Oregon	Ore. Rev. Stat., sec. 659.010 (1959)	RA, RE, CO, NO, AGE	Employers of 6 or more; Labor organizations; Employment agencies	Non-profit social, fraternal, charitable, educational or religious associations or corporations; Persons employed by family; Domestic servants	Cease and desist orders enforceable by the courts	Civil Rights Division Oregon Bureau of Labor
Pennsylvania	Penna Human Relations Act, Pa. Laws	RA, RE, CO, AN, NO, AGE	Employers of 12 or more; The state and its political subdivisions; Employment agencies; Labor organizations	Religious, fraternal, charitable or sectarian corporations or associations unless supported in whole or in part by public appropriation	Cease and desist orders enforceable by the courts	Pa. Fair Employment Practice Commission
Rhode Island	R.I. Gen. Laws, Ann., sec. 28-5-1 (1956)	RA, RE, CO, NO	Employers of 4 or more; Labor organizations; Employment agencies	Non-profit religious, charitable, fraternal, social, educational, sectarian	Cease and desist orders enforceable by the courts	R.I. Commission Against Discrimination
Washington	Wash. Rev. Code, sec. 49.60.030 (1959)	RA, RE, CO, AN, NO	Employers of 8 or more; The State and its political subdivisions; Labor organizations; Employment agencies	Non-profit religious or sectarian organizations; Persons employed by family; Domestic servants	Cease and desist orders enforceable by the courts	Washington State Board Against Discrimination
Wisconsin	Wis. Stat. Ann. sec. 111.31 (1957)	RA, RE, CO, AN, NO, AGE	All employers; Labor organizations; Employment agencies	Non-profit social clubs, fraternal or religious associations; Persons employed by family	Cease and desist orders enforceable by the courts	Wisconsin Fair Employment Practices Division, Industrial Commission

Key: (Kind of Discrimination Outlawed)

RA = race
 RE = religious creed
 CO = color
 AN = ancestry
 NO = national origin