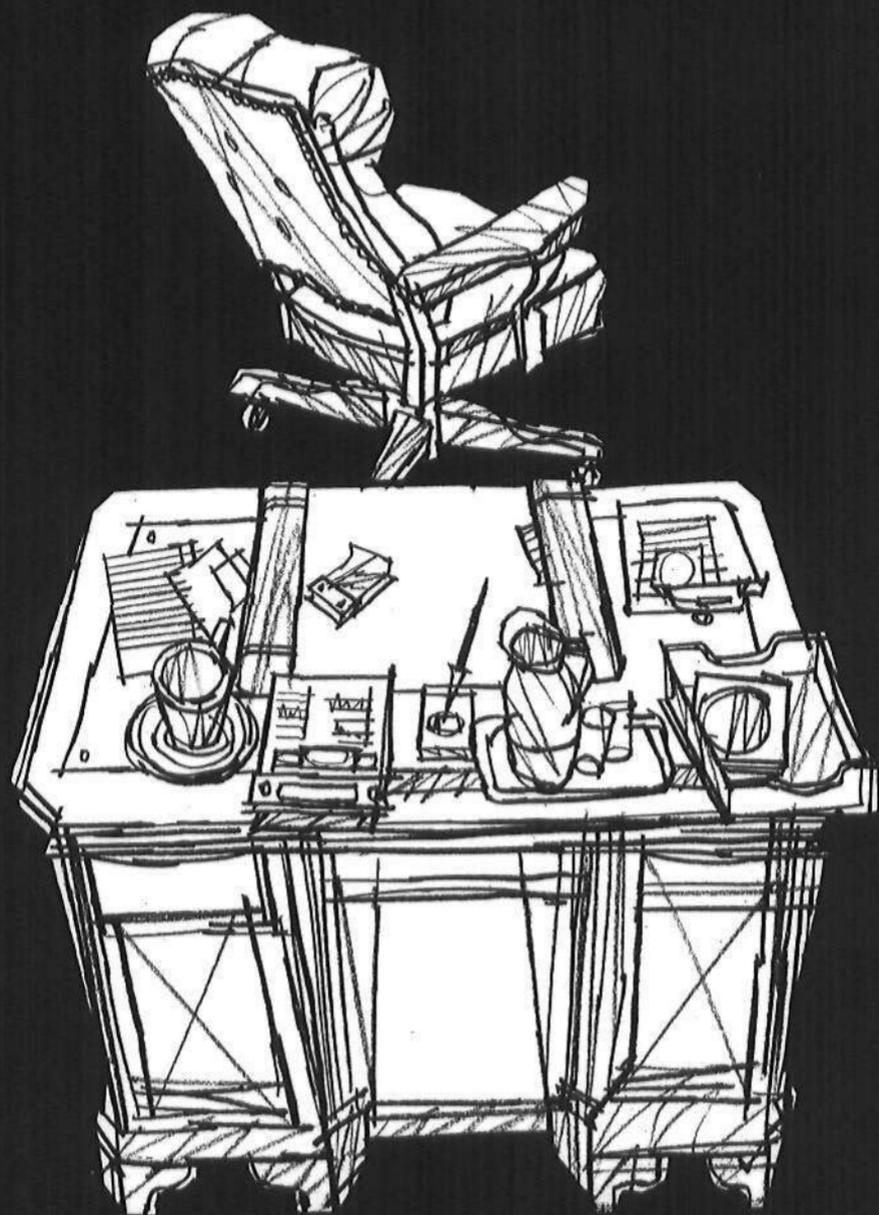


# EMPLOYMENT

1961 United States Commission on Civil Rights Report

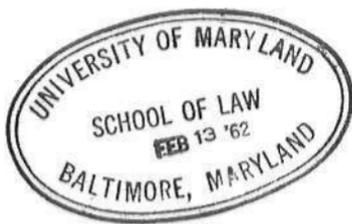
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UNIVERSITY OF MARYLAND  
SCHOOL OF LAW  
FEB 13 1954  
BALTIMORE, MARYLAND

# EMPLOYMENT

1961 Commission on Civil Rights Report



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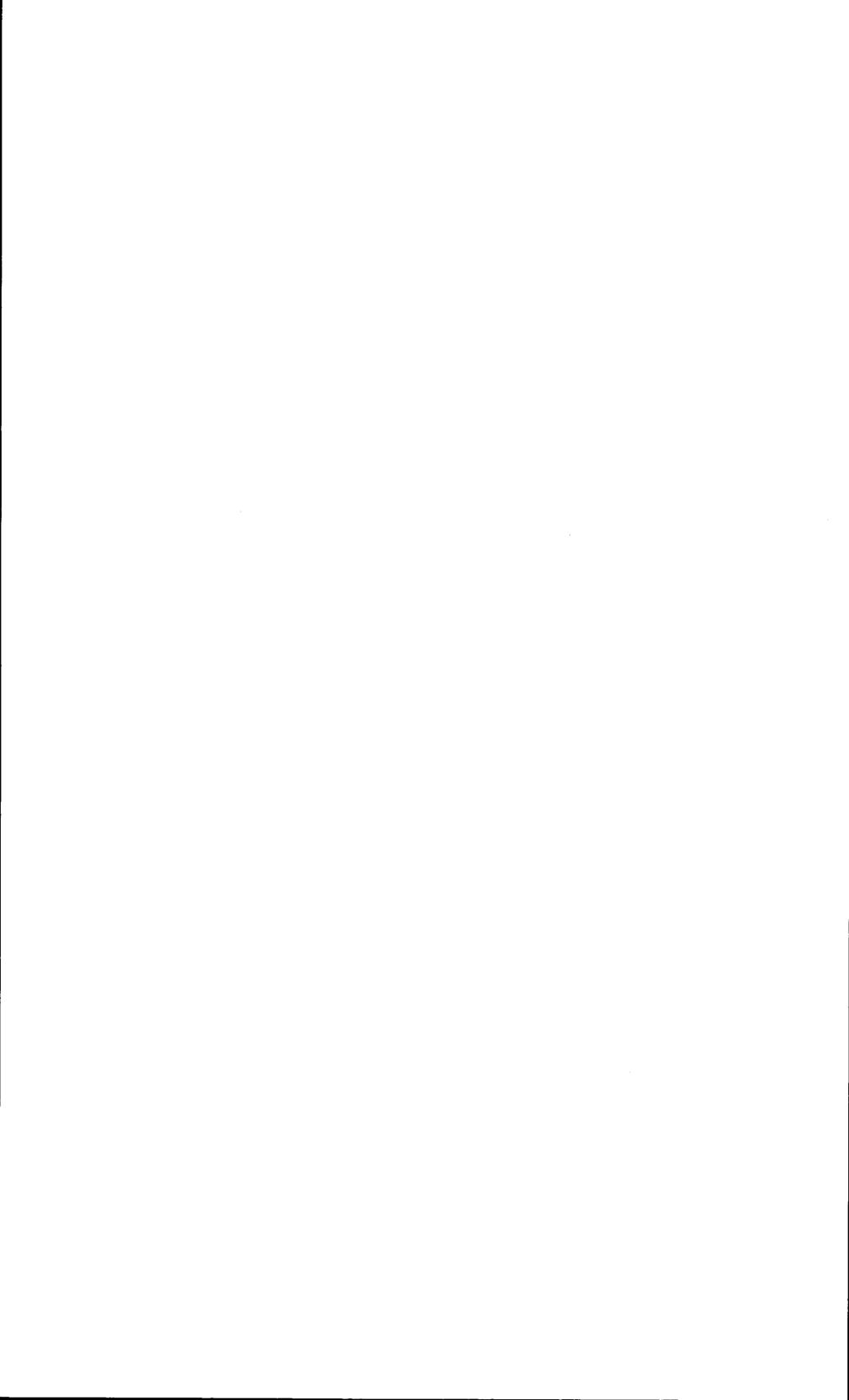
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# Foreword

The United States Commission on Civil Rights was created by the Civil Rights Act of 1957 as a bipartisan agency to study civil rights problems and report to the President and Congress. Originally created for a 2-year term, it issued its first comprehensive report on September 8, 1959.

On September 14, 1959, Congress extended the Commission's life for another 2 years. This is the third of five volumes of the Commission's second statutory report.

Briefly stated, the Commission's function is to advise the President and Congress on conditions that may deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin. The Commission has no power to enforce laws or correct any individual wrong. Basically, its task is to collect, study, and appraise information relating to civil rights throughout the country, and to make appropriate recommendations to the President and Congress for corrective action. The Supreme Court has described the Commission's statutory duties in this way:

. . . its function is purely investigative and factfinding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions. It does not make determinations depriving anyone of his life, liberty, or property. In short, the Commission does not and cannot take any affirmative action which will affect an individual's legal rights. The only purpose of its existence is to find facts which may subsequently be used as the basis for legislative or executive action.

Specifically, the Civil Rights Act of 1957, as amended, directs the Commission to:

- Investigate formal allegations that citizens are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, or national origin;
- Study and collect information concerning legal developments which constitute a denial of equal protection of the laws under the Constitution;

- Appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution;
- Prepare and submit interim reports to the President and the Congress and a final and comprehensive report of its activities, findings, and recommendations by September 9, 1961.

The Commission's 1959 *Report* included 14 specific recommendations for executive or legislative action in the field of civil rights. On January 13, 1961, an interim report, *Equal Protection of the Laws in Public Higher Education*, containing three additional recommendations for executive or legislative action, was presented for the consideration of the new President and Congress. This was a broad study of the problems of segregation in higher education.

The material on which the Commission's reports are based has been obtained in various ways. In addition to its own hearings, conferences, investigations, surveys and related research, the Commission has had the cooperation of numerous Federal, State, and local agencies. Private organizations have also been of immeasurable assistance. Another source of information has been the State Advisory Committees which, under the Civil Rights Act of 1957, the Commission has established in all 50 States. In creating these committees, the Commission recognized the great value of local opinion and advice. About 360 citizens are now serving as committee members without compensation.

The *first statutory duty* of the Commission indicates its major field of study—discrimination with regard to voting. Pursuant to its statutory obligations, the Commission has undertaken field investigations of formal allegations of discrimination at the polls. In addition, the Commission held public hearings on this subject in New Orleans on September 27 and 28, 1960, and May 5 and 6, 1961.

The Commission's *second statutory duty* is to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution." This takes in studies of Federal, State, and local action or inaction which the courts may be expected to treat as denials of equal protection. Since the constitutional right to equal protection is not limited to groups identified by color, race, religion, or national origin, the jurisdiction of the Commission is not strictly limited to discrimination on these four grounds. However, the overriding concern of Congress with such discrimination (expressed in congressional debates and in the first subsection of the statute) has underscored the need for concentrated study in this area.

Cases of action or inaction discussed in this report constitute "legal developments" as well as denials of equal protection. Such cases may have been evidenced by statutes, ordinances, regulations, judicial decisions, acts of administrative bodies, or of officials acting under color of law. They may also have been expressed in the discriminatory applica-

tion of nondiscriminatory statutes, ordinances or regulations. Inaction of government officials having a duty to act may have been indicated, for example, by the failure of an officer to comply with a court order or the regulation of a governmental body authorized to direct his activities.

In discharging its *third statutory duty* to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution," the Commission evaluates the effectiveness of measures which by their terms or in their application either aid or hinder "equal protection" by Federal, State, or local government. Absence of Federal laws and policies that might prevent discrimination where it exists falls in this area. In appraising laws and policies, the Commission has considered the reasons for their adoption as well as their effectiveness in providing or denying equal protection.

The *1959 Report* embraced discrimination in public education and housing as well as at the polls. When the Commission's term was extended in 1959, it continued its studies in these areas and added two major fields of inquiry: Government-connected employment and the administration of justice. A preliminary study looked into the civil rights problems of Indians.

In the public education field, the problems of transition from segregation to desegregation continued to command attention. To collect facts and opinion in this area, the Commission's Second Annual Conference on Problems of Schools in Transition was held March 21 and 22, 1960, at Gatlinburg, Tenn. A third annual conference on the same subject was held February 25 and 26, 1961, at Williamsburg, Va.

To supplement its information on housing, education, employment, and administration of justice the Commission conducted public hearings covering all of these subjects in California and Michigan. On January 25 and 26, 1960, such a hearing was held at Los Angeles; and on January 27 and 28, 1960, in San Francisco. A Detroit hearing took place on December 14 and 15, 1960.

### *Commission membership*

Upon the extension of the Commission's life in 1959, and at the request of President Eisenhower, five of the Commissioners consented to remain in office: John A. Hannah, Chairman, president of Michigan State University; Robert G. Storey, Vice Chairman, head of Southwestern Legal Center and former dean of Southern Methodist University Law School; Doyle E. Carlton, former Governor of Florida; Rev. Theodore M. Hesburgh, C.S.C., president of the University of Notre Dame; and George M. Johnson, professor of law and former dean of Howard University School of Law.

John S. Battle, former Governor of Virginia, resigned. To replace him the President nominated Robert S. Rankin, chairman of the depart-

ment of political science, Duke University. This nomination was confirmed by the Senate on July 2, 1960.

On March 16, 1961, President Kennedy accepted the resignations of Doyle E. Carlton and George M. Johnson. A few weeks later he nominated Erwin N. Griswold, dean of Harvard University Law School, and Spottswood W. Robinson, III, dean of the Howard University School of Law, to fill the two vacancies. The Senate confirmed these nominations on July 27, 1961.

Gordon M. Tiffany, Staff Director for the Commission from its inception, resigned on January 1, 1961. To replace him, President Eisenhower appointed Berl I. Bernhard to be Acting Staff Director on January 7, 1961. He had been Deputy Staff Director since September 25, 1959. On March 15, 1961, President Kennedy nominated him as Staff Director. The Senate confirmed his nomination on July 27, 1961.

## *Part V.* **Employment**

# **1. Introduction**

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

The recent recession underlined two fundamental challenges to the the Nation's economy. One of these was unemployment—acute in a recession, but still a chronic national problem. Although economic recovery now appears to be under way, the President has declared that “the task of abating unemployment and achieving a full use of our resources remains a serious challenge.”<sup>1</sup> The other problem, paradoxically intertwined with that of chronic unemployment, was a shortage of skilled workers. Even in a “depressed area” like Detroit, “jobs . . . [were] going begging for lack of skilled workers to fill them.”<sup>2</sup> The same situation existed in many other cities.<sup>3</sup> Technological changes and replacement of old industries by new ones have been largely responsible for increased unemployment. At the same time, they have increased the demand for skilled craftsmen and technical workers. This demand will continue to grow. It is estimated, for instance, that for every 100 skilled workers the Nation had in 1955, it will need 122 in 1965 and 145 in 1975.<sup>4</sup> Yet today our vocational education and apprenticeship training programs are not producing even enough skilled workers to replace those who retire.<sup>5</sup>

These twin problems, serious as they are for the Nation as a whole, are magnified for minority groups that are subject to discrimination. The rate of unemployment for Negroes, for instance, was twice that of the white population during the recent recession.<sup>6</sup> In some cities more than one-third of the Negro work force was unemployed.<sup>7</sup> The old adage that Negroes are the last hired and the first fired was all too clearly demonstrated. One of the reasons for this is that, despite a dramatic

increase in types of employment available to Negroes during the past 20 years, the mass of Negro workers are still confined largely to the less skilled jobs.<sup>8</sup> This concentration in the ranks of the unskilled and semi-skilled, the areas most severely affected not only by economic layoffs but by technological change, means that Negroes will be in a poor position to fill the future needs of our constantly changing economy.

The problem of cyclical and structural unemployment is in one sense no different for members of minority groups than for others—the price to both society and the individual affected is the same. There is the human cost of slums, broken homes, illness, school dropouts, juvenile delinquency, and crime. There are the material costs of increased unemployment and welfare benefits and decreased purchasing power. The waste of human resources resulting from the lack of needed skills is a serious obstacle to full realization of the Nation's capabilities.

In another sense, however, these problems have a special dimension for the minority groups who bear more than their share of the economic, social, and human ills. For part of their burden is the result of discrimination. To the extent that it is, the country's interest in reducing the costs of unemployment and in developing our human resources to the full is reinforced by constitutional command and a declared national policy of equal opportunity for all.

Not all of the unemployment of minority groups can be blamed on employment discrimination. On some occasions when new opportunities are thrown open to Negroes, few, if any, appear who are interested or can qualify.<sup>9</sup> The disproportionate layoffs that they suffer in an economic downturn are due in considerable part to lack of seniority and concentration in unskilled jobs. Yet all of these problems may themselves be the result of discrimination, such as a past pattern of outright refusal to hire Negroes or refusal to hire them for any but the most menial types of work.

Unfortunately, many members of minority groups do not equip themselves with the skills that are demanded by changing industrial techniques. This is certainly due in part to lack of motivation<sup>10</sup> which may itself result from a life ringed in by discrimination.<sup>11</sup> It is, however, too often a result of discrimination in education and training. For example, the variety and type of vocational education courses offered at Negro schools are often quite different from those offered at white schools—Negro students being offered training only for those jobs in which they have traditionally been employed, such as semiskilled and service occupations, rather than for those more highly skilled jobs where openings exist and continue to increase.<sup>12</sup> Indeed, as more fully discussed in other sections of this Report,<sup>13</sup> the quality of the general education and training offered to Negroes in some sections of the country is inferior to that provided white students. Similarly, discrimination against them with respect to apprenticeship training pro-

grams often results in absolute exclusion. Moreover, in those areas where restrictions are the most severe—in the building trades and machinists' crafts—employment opportunities are expected to increase most rapidly.<sup>14</sup>

With such discrimination, insofar as it is forbidden by the Constitution or inconsistent with national policy, the following pages are concerned. The Commission's efforts in this area are based in part on the statutory mandate to "study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution."<sup>15</sup> Discrimination on grounds of race, color, religion, or national origin by a State or local government is a denial of equal protection of the laws.<sup>16</sup> The Federal Government is also prohibited by the Constitution from such discriminatory employment practices.<sup>17</sup>

The principal basis of the Commission's jurisdiction in this field is its duty to "appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution."<sup>18</sup> The Federal Government plays a major role in the total employment picture. In its civilian and military branches it is by far the largest employer in the country. Moreover, through the expenditure of billions of dollars a year on contracts and grants-in-aid, it creates innumerable other employment opportunities. It subsidizes a system of public employment offices and helps to finance vocational education and other training programs administered by State and local governments. Finally, the Federal Government regulates certain activities of labor unions, which may have an important influence on employment opportunities. In all these aspects of its pervasive involvement in employment, its laws and policies affect, or have the power to affect, equality of opportunity.

In view of its limited time and staff, the Commission decided to confine its study to these federally connected areas of discrimination in employment. The following chapter, therefore, gives an account of the uneven development of national policy with regard to equality of opportunity in each aspect of Federal involvement in employment. Then we turn to the Federal Government's own employment policies and practices; its actions in the role of a creator of employment through contracts and grants-in-aid; its relationship to training programs which it sponsors and placement services which it subsidizes; and its relationship to labor organizations and their practices respecting equal employment opportunities.

Not every Federal program could be covered, nor could all those chosen be treated in detail. A complete analysis even of employment in the Federal establishment in every part of the country would be a larger undertaking than the Commission's means permit. Information, however, was obtained—by hearing, field investigation, questionnaire, and inquiry to various Federal agencies—from widely scattered localities; and fairly extensive data were collected from the northern city of Detroit, the border State city of Baltimore, and the southern city of

Atlanta. While the Commission's interest extends to discrimination against all racial, religious, and ethnic minority groups, the information it has obtained has principally concerned Negroes, who constitute the largest minority and the one most generally subject to discriminatory treatment.

Finally, it should be noted that reliable information in this field is difficult to obtain for statistical information on employment in terms of race is not generally available. To the extent that it is, it cannot be considered in a vacuum. The mere establishment of a racial pattern in employment of itself does not establish the existence or absence of discrimination. The degree of employment of minority group members must be considered in relation to many other factors, including the available source of manpower among minority group members, availability of training opportunities, and methods of recruitment, to name but a few. These factors, of course, may be related to more subtle forms of discrimination, or to discrimination in education and other areas besides employment. Moreover, the entire employment relationship is fraught with immeasurable, subjective factors, such as the personality of an employee or his ability to get along with his fellow workers. For these reasons, throughout this part of its report, the Commission has hesitated to draw conclusions as to the existence of discrimination except where the evidence has overwhelmingly supported such a conclusion. In most instances the Commission has merely stated the facts as it has found them.

## 2. Emergence of a Policy

I have dedicated my Administration to the cause of equal opportunity in employment by the Government or its contractors. The Vice President, the Secretary of Labor and the other members of this committee share my dedication. I have no doubt that the vigorous enforcement of this order will mean the end of such discrimination.

This statement was made by President Kennedy on March 6, 1961, when he announced the issuance of Executive Order 10925<sup>1</sup> "to ensure that Americans of all colors and beliefs will have equal access to employment within the government, and with those who do business with the government."<sup>2</sup> The order provided for establishment of the President's Committee on Equal Employment Opportunity with responsibility for eliminating discrimination in employment both by the Federal Government and by Government contractors, and for obtaining cooperation in the implementation of a nondiscriminatory employment policy from those labor organizations whose members are engaged in work on Government contracts. Thus, for the first time in 15 years responsibility with respect to employment by the Federal Government, employment by Government contractors, and the practices and policies of labor organizations has been centralized in a single committee, and this committee has been provided with machinery to enable it to effectuate a policy of equal employment opportunity. To this extent Executive Order 10925 is, as many officials have declared,<sup>3</sup> a landmark in the history of efforts of the Federal Government to eliminate discrimination in employment financed, in whole or in part, by Federal funds.

Significant as it is, the order appears to have limited application. As is discussed more fully elsewhere in this report,<sup>4</sup> equality of employment opportunity cannot be achieved merely by eliminating discrimination in hiring. To be considered for jobs on a nondiscriminatory basis members of minority groups must first have equal opportunities to obtain training and to apply for jobs. Yet Executive Order 10925 does not on its face purport to affect training and recruitment services provided through the use of Federal funds. Nor does it explicitly apply to all federally-financed employment.

One of the major methods of Federal subsidization of employment is through the grant of Federal funds to State and local governments, to public institutions, and to private nonprofit institutions for specific programs or activities.<sup>5</sup> Yet employment so created does not appear within the scope of Executive Order 10925. Nor has there been any recent, overall Federal policy with respect to discrimination in employment created by grant-in-aid programs. Despite the clear authority of the Federal Government to attach nondiscriminatory conditions to the use of these funds—approximately \$7.5 billion in fiscal 1961<sup>6</sup>—such action has been taken only on a piecemeal basis. As a result the present Federal policy with respect to nondiscrimination in employment varies considerably from one grant program to another.<sup>7</sup> By the same token there has been no recent uniform Federal policy with respect to nondiscriminatory administration of training and recruitment services that are undertaken with Federal grants.<sup>8</sup>

Although there now exists no overall Federal policy with respect to nondiscrimination in recruitment, training, and in all employment supported by Federal funds, this has not always been so. In fact, until June 28, 1946, when the Second Fair Employment Practices Committee<sup>9</sup> terminated its activities, there had been developing a rather well-defined pattern of Federal action, both legislative and executive, aimed at achieving the goal of equal employment opportunity. Such action was not only directed at all those Federal programs which create employment opportunities, including the Federal Civil Service, the Armed Forces, Government contracts, and grant-in-aid programs, but also affected labor organizations and federally-financed training and recruitment programs. Underlying all such action were two basic concepts: the right to equal treatment, and the necessity of avoiding the economic and social waste of human resources resulting from discrimination in employment.

## FEDERAL EMPLOYMENT POLICY

*To 1933*

It was primarily in the interest of governmental efficiency, in fact, that Congress first adopted the principle of "merit employment" in the Civil Service Act of 1883.<sup>10</sup> By prohibiting discrimination based on political affiliation, Congress hoped to eliminate the "spoils system" and the concomitant confusion and inefficiency resulting from the wholesale dismissal of trained and competent civil servants with each change of administration. One of the first regulations issued pursuant to this

act outlawed religious discrimination.<sup>11</sup> A 1940 Civil Service rule prohibited racial discrimination as well.<sup>12</sup> By 1940, when the Ramspeck Act<sup>13</sup> was passed, extending the coverage of the Civil Service Act and amending the Classification Act of 1923, Congress had adopted the philosophy of "equal rights for all" in Federal Classification Act employment:<sup>14</sup>

In carrying out the provisions of this title, and the provisions of the Classification Act of 1923, as amended, there shall be no discrimination against any person, or with respect to the position held by any person, on account of race, creed, or color.

### *The New Deal period*

The origin of the policy of equal opportunity in employment and training created through Federal funds lies, however, in action taken by the executive and legislative branches of the Federal Government during the early New Deal period. And this policy extended not only to direct Federal employment and employment by Government contractors, but to employment and training opportunities provided by grant-in-aid programs as well. When President Roosevelt took office on March 4, 1933, the country was in the depths of the great depression. Previous recovery efforts had been confined largely to "credit expansion measures."<sup>15</sup> These were of limited effect. By March 1933, unemployment had increased from 10 million in early 1932 to almost 15 million,<sup>16</sup> and the index of industrial production had dropped from 64 in December 1932, to an all-time low of 56.<sup>17</sup> One-third of the Nation's railroad mileage was in bankruptcy, farm and home mortgage foreclosures were widespread, and by Inauguration Day almost every bank in the country had closed.<sup>18</sup>

Among the problems confronting the new administration, widespread unemployment—particularly among Negro workers—and a generally "sick" economy required immediate attention. The New Deal plan was to stimulate recovery by "pump priming," that is, by creating jobs which in turn would expand purchasing power. Accordingly, much of the early New Deal legislation was enacted for the express purpose of creating work, whether by direct Federal employment, employment by Government contractors, or by Federal grants to States and other public bodies.<sup>19</sup> And provisions were made, either by legislative or executive mandate, that such opportunities would be available without regard to race, color, or creed.

*Congressional action.*—Thus, the first congressional enunciation of the principle of equal job opportunity appeared in the Unemployment Relief Act of 1933, which provided: "That in employing citizens for the purpose of this Act no discrimination shall be made on account of

race, color or creed.”<sup>20</sup> Similar provisions for nondiscriminatory employment or training were included in much of the legislation of the thirties and early forties.<sup>21</sup>

*Executive action.*—The first executive measures in the same direction can also be found in the work relief programs of the early New Deal. Although the National Industrial Recovery Act of 1933,<sup>22</sup> which provided for a substantial emergency public works program, contained no provision with respect to employment discrimination, the Administrator of NIRA issued regulations designed to end discrimination in employment<sup>23</sup> and applied sanctions to violators.<sup>24</sup> Other administrators barred discrimination in employment in the construction of projects under the public low-rent housing and defense housing programs of 1937<sup>25</sup> and 1940,<sup>26</sup> and in connection with other public works programs undertaken to absorb the needy unemployed.<sup>27</sup>

In 1939, Congress passed the Hatch Act.<sup>28</sup> Although it was aimed primarily at preventing solicitation or acceptance of political contributions from work relief employees and the use of official authority or favors to influence political activity, it contained the following provision: <sup>29</sup>

SEC. 4 . . . it shall be unlawful for any person to deprive, attempt to deprive, or threaten to deprive, by any means, any person of any employment, position, work, compensation, or other benefit provided for or 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.* . . .

Thus the right to share equally in employment and training provided through Federal funds, so clearly enunciated by a series of executive and legislative pronouncements during this era, was further bolstered by the criminal sanctions of the Hatch Act.<sup>30</sup>

The principle of nondiscriminatory employment was soon extended to other programs which were not undertaken solely or even primarily to “make work” or to provide training opportunities, as, for example, the Tennessee Valley Authority<sup>31</sup> and public low-rent housing programs.<sup>32</sup> Perhaps the explanation lies in the fact that unemployment continued to be a national problem until the outbreak of war in Europe.<sup>33</sup> Accordingly, all such programs were viewed, at least incidentally, as a means of creating jobs for the unemployed and Negroes constituted a large portion of this group.

Negro workers, hit hardest by the unemployment of the depression and postdepression years,<sup>34</sup> were also becoming a significant political force. As Negroes continued to move north from the time of World War I,<sup>35</sup> they began to vote and to organize to assert their rights.<sup>36</sup> Eventually other organizations also joined in pressing for equal job rights for

Negroes.<sup>37</sup> Thus, in passing legislation designed either primarily or incidentally to alleviate unemployment, Congress could hardly overlook the problems of the great masses of unemployed Negroes. And where Congress did fail to provide expressly for nondiscriminatory employment, the executive branch could be expected to do so.

These unequivocal declarations of policy by the legislative and executive branches of the Federal Government were, however, of limited effect in most instances because they amounted to little more than expressions of policy. No criteria were established by which "discrimination" might be determined and rarely was there any administrative machinery or effective sanctions for enforcement. As a result, slight progress was made in providing additional employment opportunities for members of minority groups.<sup>38</sup>

### *1941-46: The demands of war*

The outbreak of World War II brought about a complete, if not immediate, change in the Nation's economy. Unemployment dropped and, by the time the United States entered the war, the country's main concern was with a shortage rather than a surplus of manpower. Thus, it was largely to make the most effective utilization of our manpower resources that nondiscrimination provisions were included in the recruiting and training programs undertaken during this period.<sup>39</sup> The country had not only entered upon an era of defense production, but was also faced with the problem of rapidly training a greatly increased armed force. Thus, the Civilian Pilot Training Act of 1939,<sup>40</sup> the Selective Training and Service Act of 1940,<sup>41</sup> the Act of October 9, 1940, providing for the training and education of defense workers,<sup>42</sup> and the Nurses Training Act of 1943<sup>43</sup> all contained nondiscrimination provisions.

Even at the outbreak of World War II, however, when the demands of defense and war production were absorbing much of the Nation's available labor supply, the Negro was still "only on the sidelines of American industrial life."<sup>44</sup> Commenting on this situation, the Fair Employment Practices Committee later reported: <sup>45</sup>

The percentage of Negroes in manufacturing was lower than it had been 30 years before. Although every tenth American is a Negro, only 1 Negro in 20 was in defense industry. Every seventh white American was a skilled craftsman; only 1 Negro in 22 had a skilled rating. Many trade unions had constitutional barriers to Negro membership. . . .

Moreover, Negroes were being discriminatorily denied federally-financed training for defense jobs in direct contravention of the expressed congressional policy.<sup>46</sup>

Against this backdrop of discrimination in time of national emergency, pressures for action to ensure equality of job opportunity were brought by leaders of both the Negro and white communities.<sup>47</sup> Following the threat of a Negro march on Washington, which would have revealed to the world a divided country at a time when national unity was essential, President Roosevelt issued Executive Order 8802, on June 25, 1941.<sup>48</sup>

This was in many respects a landmark. It marked the creation of the first Government-wide administrative machinery designed to implement a national policy of nondiscriminatory employment and training. It also represented the culmination of more than 10 years of joint legislative and executive efforts. As this era ended, so began a new era in which continued efforts to secure equality of employment opportunity have been made almost exclusively by the Chief Executive. Earlier Congress had led the way.

Executive Order 8802 established a five-man Fair Employment Practices Committee (FEPC) as an independent agency responsible solely to the President. In issuing this order, President Roosevelt clearly was concerned with the necessity of making full use of the country's manpower, as well as with the demands for equal employment opportunity made by the leaders of the Negro community. Thus, the order declared it to be the policy of the Government "to encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin, in the firm belief that the democratic way of life within the Nation can be defended successfully only with the help and support of all groups within its borders."<sup>49</sup> It imposed upon both employers and labor organizations "the duty . . . to provide for the full and equitable participation of all workers in defense industries, without discrimination because of race, creed, color, or national origin."<sup>50</sup> The order was broad in scope, applying to all defense contracts, to employment by the Federal Government,<sup>51</sup> and to vocational and training programs administered by Federal agencies.

The FEPC was authorized to receive and investigate complaints, to take "appropriate steps" to redress valid grievances, and to recommend to Federal agencies and to the President whatever measures it deemed necessary and proper to carry out the purposes of the order. Lacking funds to operate regional offices and with a staff of only eight members, the committee was of limited effectiveness, particularly with respect to investigating complaints. It therefore concentrated on drafting policies and conducting public hearings throughout the country.

Lacking direct enforcement powers, the FEPC had to rely on publicity, moral suasion, and negotiation to effectuate any recommendations

it might make. If these failed, the Committee's only resource was to refer the case to the President for appropriate action. But it was the FEPC's loss of autonomy after its transfer from the Office of Production Management to the War Manpower Commission that was the immediate cause of its demise. Following a dispute with the Chairman of the War Manpower Commission over the scheduling of public hearings concerning complaints filed against a group of railroads and railroad unions, several members resigned and the FEPC, in effect, suspended operations early in 1943.

On May 27, 1943, the President issued Executive Order 9346,<sup>52</sup> establishing a new FEPC and declaring a policy of promoting the fullest utilization of manpower and eliminating employment discrimination. The new Committee was an autonomous agency in the Executive Office of the President, with a full-time paid chairman and six part-time members selected from the ranks of labor, industry, and the public. Its jurisdiction included all employment by Government contractors (not merely in "defense" industries) as well as recruitment and training for war production and employment by the Federal Government. Its authority with respect to labor organizations was extended to include discrimination in union membership as well as discrimination in employment. Its enforcement powers were enlarged to allow it to take appropriate measures to eliminate discrimination (not merely to redress individual grievances). Most important of all, perhaps, was the increased budget, which enabled it to employ a staff of nearly 120 and to open 15 field offices. During the 3 years that followed, the FEPC processed approximately 8,000 complaints and conducted 30 public hearings. The Committee still lacked power, however, to enforce its decisions except by negotiation, moral suasion, or the pressure of public opinion, and its success was often impeded by lack of cooperation on the part of Government contracting agencies. Its role was well appraised in its own Final Report: <sup>53</sup>

The Federal Government's FEPC was never given final authority to end discrimination. Nevertheless, the existence of a clear national policy, and the constant efforts to make it effective, produced two important results. The conscience of the Nation was aroused against the maintenance of underprivileged racial and religious groups within our own borders; the use of minority group war workers was greatly advanced.

Credit for keying minority group workers into war industry belongs primarily to the establishment of a strong national policy to which all Government services and all war contractors must give heed. Government agencies were committed against discrimination in their own personnel policies. The war labor recruiting services and war contractors were equally bound. Yet everybody's

business is nobody's business, and there still was required an independent arm of Government with the duty to deal with discrimination directly and not as a subordinate phase of other war endeavors. This was the role of FEPC.

During the FEPC's existence, several abortive attempts were made to secure congressional support for the program in order to endow the Committee with the enforcement powers so necessary to its effectiveness. From 1942 to the present, bills proposing the establishment of some sort of permanent governmental agency to deal with problems of employment discrimination have been introduced in each session of Congress; only one, which provided for the establishment of an educational FEPC with no enforcement powers,<sup>54</sup> has ever been able to pass either House.

The FEPC not only failed to rally affirmative congressional support for its program, but was under constant attack in Congress. On June 27, 1944, the Russell Amendment was passed, providing that no appropriation could be allotted to any agency established by executive order and in existence for more than 1 year, "if the Congress has not appropriated any money specifically for such agency . . . or specifically authorized the expenditure of funds by it."<sup>55</sup> The next day, the FEPC was granted a specific appropriation of \$500,000 for the fiscal year beginning July 1, 1944.<sup>56</sup> On July 17, 1945, it received an appropriation of \$250,000 to liquidate its affairs.<sup>57</sup> It remained in existence until June 28, 1946, when it issued its Final Report.<sup>58</sup>

#### *1946-61: Infirmity of purpose—limited advance*

The termination of the FEPC signaled the end, at least temporarily, of coordinated, Government-wide efforts to effectuate a policy of equal employment opportunity. Until March 1961, when Executive Order 10925<sup>59</sup> was issued, only piecemeal efforts were made to eliminate discrimination in employment by the Federal Civil Service, the Armed Services, Government contractors, and grant-in-aid recipients. Since June 1946, in fact, not a single piece of grant-in-aid legislation has included a provision for nondiscriminatory training, recruitment, or employment. At least one program enacted after this date—that providing for airport facilities construction under the Federal Airport Act of 1946<sup>60</sup>—requires nondiscriminatory employment pursuant to a regulation issued by the Federal Aviation Administrator on April 5, 1961.<sup>61</sup>

In 1947, President Truman's Committee on Civil Rights<sup>62</sup> recommended an Executive order against discrimination in Government employment and establishment of adequate enforcement machinery.<sup>63</sup> Acting on this recommendation, President Truman, on July 26, 1948, issued Executive Order 9980.<sup>64</sup> This order proclaimed the "long-established

policy" of "fair employment throughout the Federal establishment, without discrimination because of race, color, religion, or national origin" <sup>65</sup> and established a Fair Employment Board within the Civil Service Commission to carry out this policy with respect to civilian employment in the executive branch. The Board was given authority to review the decisions of department heads on complaints alleging discrimination and to refer to the President those cases in which its recommendations were not carried out. The initial review of complaints was to be made by a Fair Employment Officer within each executive agency, who would also be initially responsible for the maintenance of nondiscriminatory practices within his jurisdiction. During its first 3 years of existence 52 cases of alleged discrimination were appealed to the Fair Employment Board. In 13 of these the Board found discrimination and recommended corrective action by the departments concerned. In no case did the Board find it necessary to request the President to intervene.<sup>66</sup>

President Truman also instituted action to remove discrimination in the Armed Forces when, on July 26, 1948, he issued Executive Order 9981,<sup>67</sup> to provide "equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion, or national origin." Although the Selective Training and Service Act of 1940 <sup>68</sup> had barred racial discrimination against men drafted into the Armed Forces, "separate but equal" facilities and training had been viewed as nondiscriminatory. Accordingly, at the time of the issuance of Executive Order 9981, segregation in the Armed Forces was almost universal.

The Executive order established a seven-man advisory committee, known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services, to investigate and report to the President. In May 1950, the Committee issued its report recommending the elimination of segregated units and of the then-existing quota system in all branches of the armed services.<sup>69</sup> By 1955, according to the Secretary of Defense, integration of the Armed Forces was an accomplished fact.<sup>70</sup>

As indicated more fully below,<sup>71</sup> there is much evidence that in the Armed Forces Reserves, the National Guard, the ROTC, and the National Defense Cadet Corps, segregation, or even complete exclusion of Negroes still exists. The policy announced in Executive Order 9981 is applicable to the Armed Forces Reserves. With respect to the National Guard and the college and high school training programs, the "civilian components" of the Armed Forces, neither the President nor the Secretary of Defense has taken any action, primarily because of their alleged lack of authority. As a result of studies recently conducted within the Department of Defense, however, executive action to eliminate discrimination in these programs may be forthcoming.

By issuance of the two separate Executive orders mentioned above, President Truman had taken action to effectuate a policy of equality of opportunity in employment, both civilian<sup>72</sup> and military,<sup>73</sup> throughout the Federal establishment. It was not until February 1951, however, almost 5 years after the termination of the second FEPC, that any action was taken with respect to employment by Government contractors.<sup>74</sup> Following the outbreak of the Korean crisis and during the period from February until November 1951, President Truman issued a series of Executive orders directing certain Government agencies to include non-discrimination clauses in their procurement contracts.<sup>75</sup> These efforts to revitalize the nondiscrimination clause in Government contracts culminated in the issuance, on December 3, 1951, of Executive Order 10308,<sup>76</sup> which created the Committee on Government Contract Compliance, an 11-member group composed of representatives of industry, the public, and the 5 principal Government contracting agencies.

The Committee, which was charged primarily with studying and assessing the effectiveness of the existing program, began operations in April 1952. The change in administration compelled it to submit its terminal report to President Truman and to resign the following January. On the basis of a detailed study of the nondiscrimination clause in Government contracts since 1941, the Committee made more than 20 specific recommendations, among which were the following: <sup>77</sup>

1. That a Government agency be designated to receive, investigate, and conciliate complaints and, where necessary, to recommend appropriate action to the contracting agency;
2. That each agency establish administrative procedures to obtain compliance;
3. That the nondiscrimination provision required in Government contracts and subcontracts list the specific acts prohibited and require the posting of notices on contractors' premises informing employees of their rights;
4. That where conciliation failed, the contracting agency enforce the nondiscrimination clause by termination of contract, injunction, or debarment from further contracts, and, if these were ineffective, that legislation be enacted providing for arbitration and liquidated damages to secure compliance;
5. That Congress include provisions for nondiscrimination in employment in all Federal grant-in-aid programs;
6. That Congress require State public employment offices to operate on a nondiscriminatory basis.

As will be indicated more fully below,<sup>78</sup> some of these recommendations have not yet been adopted. But the groundwork was laid for adopting several of them when President Eisenhower issued Executive

Order 10479 on August 13, 1953.<sup>79</sup> This established the President's Committee on Government Contracts,<sup>80</sup> a 15-member group composed of representatives of industry, labor, Government, and the public, which was authorized to receive complaints alleging violations of the non-discrimination provision. It was directed to recommend to contracting agencies improvements in the Government-contract nondiscrimination provision, and the head of each contracting agency was ordered to establish compliance procedures. The Committee, headed by Vice President Nixon, was charged also with overall responsibility for effectuating the national nondiscrimination policy. The primary responsibility for investigating complaints and for taking appropriate measures to obtain compliance rested, however, with the individual contracting agencies. Thus, the Committee functioned primarily in an advisory and consultative capacity. Its work and accomplishments were not insubstantial. They are discussed in detail below.<sup>81</sup>

On January 18, 1955, because of the "urgent need to develop the maximum potential of the Nation's manpower" and "to guarantee fair treatment to all employees serving in the executive branch of the U.S. Government and all seeking such employment,"<sup>82</sup> President Eisenhower issued Executive Order 10590.<sup>83</sup> Pursuant to this order the Fair Employment Board of the Civil Service Commission, which had been established during the Truman administration, was replaced by the newly created President's Committee on Government Employment Policy, established as an interdepartmental agency outside the realm of the Civil Service Commission. The order provided for the appointment of an Employment Policy Officer by the head of each executive agency. He was to be assigned outside the personnel section of the agency and to be directly responsible to the agency head. As in the previous program, this officer had the initial responsibility for ensuring that the agency's practices and actions complied with the Federal nondiscrimination policy and for receiving and investigating complaints of discrimination. Decisions on such complaints could be appealed directly to the President's Committee, which was limited, however, to rendering advisory opinions to department heads. Pursuant to regulations later promulgated by the Committee,<sup>84</sup> segregation of minority groups was prohibited and each department head was required to submit to the Committee for review regulations dealing with the administration of the fair employment policy program within his jurisdiction.

Despite the quasi-autonomous status<sup>85</sup> of the new Committee, it suffered from the same infirmities as its predecessor: It had no enforcement powers and the basic responsibility for securing compliance rested with the heads of the executive agencies. Thus, the role of the President's Committee, like that of its predecessors, was fundamentally advisory. It could provide only leadership, advice, and technical assistance. This is not to say, however, that the Committee was ineffectual. As more

fully shown below,<sup>86</sup> it reviewed a substantial number of complaints during its six years' existence, and conducted vigorous educational and research programs, including two extensive surveys of minority group employment within the Federal Government.

On March 6, 1961, President Kennedy issued Executive Order 10925,<sup>87</sup> abolishing both the President's Committee on Government Employment Policy and the President's Committee on Government Contracts and establishing in their stead the President's Committee on Equal Employment Opportunity. The purposes and objectives of the order are set forth in its preamble: <sup>88</sup>

Whereas discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and

Whereas it is the plain and positive obligation of the United States Government to promote and ensure 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; and

Whereas it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

Whereas it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; and

Whereas a review and analysis of existing Executive orders, practices, and government agency procedures relating to government employment and compliance with existing non-discrimination contract provisions reveal an urgent need for expansion and strengthening of efforts to promote full equality of employment opportunity, and

Whereas a single governmental committee should be charged with the responsibility for accomplishing these objectives.

Thus, for the first time in 15 years, a single executive committee has been charged with the responsibility for effectuating a policy of equal opportunity in employment both by the Federal Government and by Government contractors. Unlike President Roosevelt's FEPC, however, this new Committee apparently has no jurisdiction over training and recruitment services and employment provided by Federal grant-in-aid and loan programs. The purposes and objectives set forth in Executive Order 10925 are equally applicable to employment and training opportunities created indirectly by Federal funds. Indeed, these are the same purposes which underlay all the legislative and executive pronounce-

ments of equal employment opportunity which culminated in the national policy established by President Roosevelt's Executive order of June 25, 1941.<sup>89</sup>

Perhaps the time is ripe for reestablishing machinery to effectuate a Government-wide policy of equal opportunity in training, recruitment, and employment supported by Federal funds. The two economic factors which, successively, were responsible for the institution of overall programs for equal employment opportunity—substantial unemployment and a scarcity of skilled manpower—now exist side by side. Moreover, by consolidating the functions of the former Committee on Government Contracts and the Committee on Government Employment Policy, President Kennedy has laid the groundwork for renewed efforts to effectuate a coordinated policy applicable to all Federal employment programs.



# 3. Government as Employer

The Federal Government is the Nation's largest employer. Almost 10 percent of the country's work force, about 6 million persons, are on the Federal payroll: 2.3 million civilian employees;<sup>1</sup> 2.48 million full-time members of the Armed Forces;<sup>2</sup> and 1.08 million part-time members of the Armed Forces, serving in the Active Reserves or in the National Guard.<sup>3</sup> The total annual payroll exceeds \$24 billion, including over \$13.5 billion for civilian employment,<sup>4</sup> and almost \$11 billion for the military.<sup>5</sup> Obviously the Federal Government's impact on the national economy and overall employment is enormous. By adopting and enforcing a policy of equal employment opportunity, it may open up employment and training opportunities for minority group members. In so doing and by setting an example for the rest of the Nation, it may also affect employment opportunities throughout the country.

## A. FEDERAL CIVILIAN EMPLOYMENT

As mentioned in chapter 2, attempts of the Federal Government to eliminate discrimination in Federal employment originated with the Civil Service Act of 1883<sup>6</sup> and culminated in the proscription of discrimination based on race, creed, or color in the Ramspeck Act of 1940.<sup>7</sup> Administrative machinery to implement this policy had its inception in the first FEPC (1941), which was concerned not only with equality of opportunity in Government employment but with effectuating the national policy of equal employment opportunity. The demise of the second FEPC in 1946, following enactment of the Russell Amendment,<sup>8</sup> saw the end, at least temporarily, of this overall, uniform administrative approach. From that date until March 6, 1961, when President Kennedy established the Committee on Equal Employment Opportunity,<sup>9</sup> separate machinery was created to effectuate the Federal policy in Government employment.

No discussion of the problems involved in the implementation of this policy can be complete without a consideration of section 213 of the

Independent Offices Appropriation Act, 1945,<sup>10</sup> commonly known as the Russell Amendment. This provided that no funds could be used to pay the expenses of any agency, including those established by Executive order, after it had been in existence for more than 1 year unless Congress had specifically appropriated funds for it. Moreover, any such agency was to be considered as having been in existence during the existence of any other agency established by a prior Executive order "if the principal functions of both of such agencies. . . . [were] substantially the same or similar."<sup>11</sup>

These provisions were aimed directly at the FEPC, which had been operating with funds drawn from the President's emergency fund, thus obviating the necessity of congressional approval.<sup>12</sup> Thereafter, without specific congressional appropriations, the Committee could not continue to function.<sup>13</sup> In the following year, however, in order to clarify the effect of the Russell Amendment on interdepartmental committees,<sup>14</sup> section 214 of the Independent Offices Appropriation Act, 1946,<sup>15</sup> was passed:

Hereafter appropriations of the executive departments and independent establishments of the Government shall be available for the expenses of committees, boards, or other interagency groups engaged in *authorized activities of common interest* to such departments and establishments and *composed in whole or in part of representatives thereof who receive no additional compensation* by virtue of such membership: *Provided, That employees of such departments and establishments rendering service for such committees, boards, or other groups, other than as representatives, shall receive no additional compensation by virtue of such service.*

This is the framework within which all new machinery to implement a national equal-job-opportunity policy has been established. In view of the inability of successive administrations to obtain statutory authority<sup>16</sup> or specific appropriations<sup>17</sup> for machinery to implement this policy, all such instrumentalities since 1946 have been created by Executive order and—to avoid the barrier of the Russell Amendment—all but one have been established as interagency committees. Apparently there has been some concern about limiting the functions of these agencies to make them narrower than—and therefore not "substantially the same or similar" to—the functions performed by the FEPC. It would appear, however, that if interagency committees perform functions of common interest to all the agencies represented, if these activities are "authorized in the basic law, or in the appropriation act,"<sup>18</sup> and if no additional funds are required, they are outside the scope of the Russell Amendment.<sup>19</sup> The fact that they perform functions "substantially the same or similar" to those of the former FEPC would therefore appear to be irrelevant.

The only machinery established since 1946 which was not created as an "interagency committee" was President Truman's Fair Employment Board, created by Executive Order 9980 in 1948 as part of the Civil Service Commission. Since it could and did use funds and personnel of the Commission, it did not require any separate appropriation. President Eisenhower's Committee on Government Employment Policy, which replaced the Fair Employment Board in 1955, was established as an independent, interdepartmental committee within the meaning of section 214, quoted above. No additional funds were required for the Committee, as its entire budget (never more than \$40,000 a year), its personnel,<sup>20</sup> and its office space were furnished by the Civil Service Commission.

## COMMITTEE ON GOVERNMENTAL EMPLOYMENT POLICY

In studying and evaluating Federal machinery established to provide equality of opportunity in Federal civilian employment, this Commission has concerned itself primarily with the functions and operations of President Eisenhower's Committee on Government Employment Policy and to a limited extent with its successor agency, the Committee on Equal Employment Opportunity. The latter, created by President Kennedy's Executive Order 10925, effective April 6, 1961, has not been in operation long enough to permit any adequate evaluation of its effectiveness.

Executive Order 10590, issued by President Eisenhower on January 18, 1955, declared it to be the policy of the U.S. Government "that equal opportunity be afforded all qualified persons consistent with law, for employment in the Federal Government; and . . . this policy necessarily excludes and prohibits discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin. . . ." <sup>21</sup> To implement this policy, the order, as later amended,<sup>22</sup> made two main provisions: it placed direct responsibility for the nondiscrimination program, including final responsibility for settling complaints of discrimination, in the head of each executive department or agency; and it created the Committee on Government Employment Policy, a seven-member group composed of representatives of Government and the public, to advise and assist the executive agencies in meeting their responsibilities under the order. In short, the Committee was created to provide "leadership, advice, guidance, and recommendations." <sup>23</sup> More specifically, it was required to <sup>24</sup>—

(a) Report to the President periodically concerning the progress of the nondiscrimination program, and make necessary or

desirable recommendations for assuring uniformity in personnel practices.

(b) Consult with and advise departments and agencies concerning their procedures and responsibilities under the order.

(c) Consult with and advise the Civil Service Commission with respect to civil-service regulations relating to nondiscrimination practices.

(d) Review cases of alleged discrimination referred to it under the order, and render advisory opinions on the disposition of such cases to the heads of the departments and agencies concerned.

(e) Make such inquiries and investigations as may be necessary to discharge its responsibilities.

As "the first Committee created at White House level to assist the Federal Establishment in putting its own house in order,"<sup>25</sup> the Committee, responsible only to the President, enjoyed considerable prestige. Although its staff was small—only three persons—it had available the resources of all the executive agencies of the Federal Government. Early in its existence, the Committee decided to concentrate on two major objectives:<sup>26</sup>

(1) To provide simple and readily accessible channels for investigation and adjudication of any complaint of discrimination on account of race, color, religion, or national origin made by any Government employee, or applicant for Government employment.

(2) To inaugurate a long-range program of education and persuasion designed to eliminate practices of discrimination and to invoke policies of equal treatment throughout the Government.

### *Complaints of discrimination*

In addition to cases filed with the Committee for full review and advisory opinion, either upon the request of the complainant or on the part of the agency concerned, the Committee (pursuant to its regulations) received and examined reports of *all* cases after they had been closed. It was therefore able to assist executive agencies not only by rendering advisory opinions but by advising as to the manner in which investigative methods and complaint procedures might be improved.

To make the complaint process as effective as possible, the Committee developed filing and processing procedures<sup>27</sup> and, by requiring the posting of agency and Committee regulations and procedures, undertook a campaign to inform all employees and applicants for employment of the nondiscrimination policy and of the procedures for filing complaints.<sup>28</sup>

The Executive order required the head of each department and agency to "designate an . . . Employment Policy Officer, and . . .

such Deputy Employment Policy Officers as may be necessary . . . to effectively carry out the policy of this order.”<sup>29</sup> These officers were to be under the immediate supervision of the head of the department or agency and were to be assigned outside the personnel division of the department or agency concerned. The order further provided that each Employment Policy Officer should “[receive] and investigate complaints of alleged discrimination in personnel matters within his department or agency and make recommendations . . . for such corrective measures as he may deem necessary.”<sup>30</sup> All complaints were thus investigated initially by the appropriate employment policy officer, who could conduct hearings and issue findings of fact. Thereafter he could refer the case to the Committee for an advisory opinion or he could make a recommendation for resolution of the case, informing the complainant of such proposed resolution and of his right to have the case referred to the Committee. If the complainant did not request referral, final decision was made by the employment policy officer. In cases referred to the Committee final decision was made by the head of the department or agency after receipt of the Committee’s advisory opinion.

From January 18, 1955, through December 31, 1960, 1,053 complaints of discrimination by Federal agencies were filed. Of these, only 225 (or 21.3 percent) were referred for review and advisory opinion, the remainder having been settled at the department or agency level. In 33 of these 225 referrals, the Committee disagreed with the findings of the departments or agencies and recommended corrective action either with or without formal findings of discrimination.<sup>31</sup> Although the opinions of the Committee were advisory only, in no case did an agency fail to carry out the recommended action. The fact that failure to cooperate “could and would have been referred to the President for final decision”<sup>32</sup> undoubtedly contributed to the complete cooperation received from all executive departments and agencies.

Of the 1,053 complaints filed, only 173 (or slightly more than 15 percent) resulted in findings of discrimination or corrective action without such findings.<sup>33</sup> In many instances, although the Committee or the agencies felt that the evidence did not support a finding of discrimination, investigation disclosed discriminatory practices which needed correction. Of the total complaints filed during this 6-year period, 88.7 percent were filed by Negroes.<sup>34</sup>

In summing up its own experiences,<sup>35</sup> the Committee made two recommendations related to the complaint procedure: (1) that the time of processing complaints be shortened, and (2) that full-time employment policy officers be appointed in departments and agencies with substantial field establishments rather than imposing the responsibility for the non-discrimination program as a part-time or “extra” duty. In assessing its own work, the Committee said:<sup>36</sup>

In appraising the effectiveness of the complaint procedure, the Committee has kept in mind the limited role which complaints can play in the total program. There is no doubt that many [complaints] have been withheld because of reluctance on the part of [complainants] to become identified as troublemakers or risk reprisal, and even with complaints at hand, discrimination is often elusive and difficult to pin down. But where complaints do result in positive findings, they can be an extremely effective means of correcting discriminatory practices.

One of the main problems confronting the Committee in its attempts to take corrective action was that of determining discriminatory acts and practices in the absence of specific complaints. The employment surveys conducted by the Committee, discussed below, represented one attempt to meet this problem.

### *Information, education, and persuasion*

From its inception the Committee realized that in addition to correcting existing discriminatory practices through the processing of complaints, "[the] causes of complaints would have to be attacked and broken down to achieve permanent results."<sup>87</sup> Thus a program of information, education, and persuasion was instituted to make the Committee's complaint procedure effective, and to convince those who were responsible for implementing the nondiscrimination policy of its advantages.

As mentioned above, the Committee's first task was to distribute to all concerned basic information on the meaning and purposes of the nondiscrimination policy and the complaint machinery to implement it. Thus the Committee issued regulations and suggested procedures to guide employment policy officers and their deputies in developing their own procedures. In addition to requiring posting of procedure information on employee bulletin boards, the Committee also issued several booklets to inform employees and applicants for employment of the Federal nondiscrimination policy. Under the guidance of the Committee many departments and agencies soon developed their own information programs.<sup>88</sup>

The Committee's next task was to sell the idea of merit employment to Federal officials responsible for implementing the policy—the top-level administrators and line supervisors in the various agencies. This was done by training programs and conferences. To acquaint top administrators in Washington with the program, periodic meetings were held with employment policy officers, personnel officers, and other management officials of all departments and agencies. To acquaint supervisors with the policy, the Committee developed a training program guide with the idea that training in the nondiscrimination policy would be made a part of agency supervisory training programs. By the fall of

1959, as a result of the Committee's leadership and advice, 46 departments or agencies reported that they were conducting some sort of training in the nondiscrimination policy.<sup>39</sup>

For an organization as large and as complex as the Federal Government, the problems of making a policy known to all who must implement it, and of making sure that it is effectuated, are vast. Even in those agencies where top-level administrators in Washington wholeheartedly accept the principle of nondiscriminatory employment, field offices all too often conform to local employment patterns rather than to Federal policies.

The Committee was well aware of the difficulty and the importance of effective communication with the field establishments, where approximately 90 percent of all Federal employees are located.<sup>40</sup> It therefore decided to meet with the heads of all Federal agencies in various cities to explain the meaning of, and the need for, the program and to permit discussion of problems involved. The first of such area conferences was held in Charleston, W. Va., in November 1955. It was so successful that the Committee conducted such conferences throughout its existence—a total of 33, attended by about 4,000 officials.<sup>41</sup> The Committee also conducted conferences with representatives of private organizations concerned with problems of minority groups. These acquainted local community organizations with the nondiscrimination program and often provided the Committee with valuable information on local employment patterns. The same techniques were used in conducting supervisors' conferences both in Washington and in the field. Groups of 40 to 50 line supervisors employed at various grade levels within a particular Federal department or agency were called together for discussions led by members of the Committee. Six such meetings were held.<sup>42</sup>

It is difficult to assess the effectiveness of the Committee's educational program. Looking back over its 6-year program, the Committee concluded that "the conference technique for strengthening and clarifying the [nondiscrimination] policy" was "one of its lasting contributions to the advancement of the fair employment program."<sup>43</sup> In its final report the Committee recommended continuance of the educational and training program, and particularly of the area and supervisory conferences, which had been "most effective in establishing rapport with Government officials and in winning support."<sup>44</sup>

### *Committee surveys*

One of the major problems confronting the Committee was the difficulty of knowing the extent of discriminatory employment and of measuring the effectiveness of its program. Because of the gradual elimination of all racial and religious data from Federal personnel records since 1940,<sup>45</sup> information on current or past employment patterns was not readily available.

Handicapped by lack of information as to the size and character of the problem with which it was dealing, but aware of the practical difficulties involved in conducting a survey of all Federal civilian employees, the Committee arrived at a compromise solution. Since 87 percent of all complaints filed with the Fair Employment Board had been based on race or color,<sup>46</sup> the Committee decided upon a survey limited to Negro employees. This, it was thought, would provide a reasonably accurate picture of the problem of discrimination in Federal employment. Moreover, Negroes could generally be identified by a visual count. It was also decided to limit the survey to a representative sample rather than to attempt a survey of all Federal employment. Initial resistance to this project from some of the executive departments and agencies was overcome through a White House conference held on November 30, 1955, at which it was agreed that the individual agency returns would remain confidential.

Early in 1956 the Committee requested all departments and agencies to conduct a survey of their Negro employees in five cities: <sup>47</sup> Chicago, Los Angeles, Mobile, St. Louis, and Washington, D.C. These were selected on the basis of their geographical locations, their substantial Negro populations, and their large incidence of Federal employment. (Approximately 17 percent of all Federal employees worked in these cities.)

There are three broad categories of Federal employment. Under the Classification Act of 1949,<sup>48</sup> the so-called "white collar" or salary positions are organized in a general schedule of 18 grades, each of which reflects the degree of difficulty and responsibility involved. Grade 1 represents the lowest level and grade 18 the highest. There are standard pay rates for each grade and series code numbers that identify the nature of the work performed. As of June 30, 1960, 43 percent of all Federal civilian employees were in Classification Act positions.<sup>49</sup> Another large category of Federal employment is denominated "Wage Board." This embraces the "blue collar" positions. Pay is at an hourly rate, but skilled Wage Board positions pay as well as or better than the "white collar" positions at the lower grade levels. Most Wage Board employment is of the laboring or custodial type. Certain Federal jobs are excluded from the Classification Act. Many of these are of a highly specialized or technical nature, but the vast majority are in the field service of the Post Office Department. In the surveys of the Committee and in this Commission's own survey, they were simply labeled "Other."

The Federal agencies in the five metropolitan areas were asked to count their Negro employees in each of these three categories of Federal employment; to break down their figures to reflect grade levels and job descriptions of Classification Act employees; and to indicate the number of Negroes who held supervisory jobs. The survey reflected the status of Negro employment on March 31, 1956.

The major findings of this survey may be summarized as follows: <sup>50</sup>

(1) In the five cities as a whole, 23.4 percent of Federal employees were Negroes; 24.4 percent in Washington, D.C.; 28.5 percent in Chicago; 17.9 percent in Los Angeles; 18.2 percent in St. Louis; and 15.5 percent in Mobile.

(2) 42.7 percent of all Negro employees in the five cities were in Classification Act positions; 31.1 percent were in Wage Board positions; and 26.2 percent were in "Other" positions, primarily in the Post Office Department.

(3) Of Negro employees in Classification Act positions, 85.4 percent were in grades 1 through 4; 14.3 percent in grades 5 through 11; and 0.3 percent in grades 12 through 15.

(4) 5.2 percent of the total Negro employees were in supervisory positions.

The Committee viewed the survey as confirming the charge that Negroes in the classified service were largely confined to the lower grades. On the positive side it noted that Negroes were employed in large numbers by the Federal Government and, contrary to general belief, a substantial percentage were employed in "white collar" or Classification Act positions. Matters that remained to be examined included the length of Government service of Negro employees, especially those at the lower grade levels, their educational background, and their record of promotion as compared to white employees of similar educational background and service. It would also be necessary to determine whether Negroes were applying for Government employment in certain areas of the country; whether significant numbers were taking and passing the Civil Service examinations; whether their names were being placed on the Civil Service registers; and whether, when their names were at the top of the registers, they were being given unbiased consideration for available jobs. [All positions in the competitive Civil Service, almost 90 percent of Federal jobs,<sup>51</sup> are filled from Civil Service registers maintained by the Civil Service Commission as a result of open competitive examinations, or by selection of present or former employees through transfers, reassignments, reinstatements, promotions, or demotions. Federal law<sup>52</sup> requires that selection from a register be made from among the highest three available for each vacancy. When a Federal agency fills a position, it may ask the Civil Service Commission for a certificate of eligibles, which lists the names of the top persons—at least three—on the appropriate Civil Service register.] Unfortunately, the Committee did not have the resources to pursue these questions in depth.

Early in 1960 the Committee decided to conduct a followup survey in the same five cities, limited to Negro employment in grades 5 through

15 of the Classification Act. The purpose was to determine the progress, if any, in the employment and upgrading of Negroes to grade levels in which the 1956 survey had revealed relatively few nonwhite employees. The new study reflected the status of such employment as of March 31, 1960.<sup>53</sup>

A rather striking increase in Negro employment at these grade levels was found. For the five cities there was an 86 percent improvement over the 1956 figure. The percentage of Negroes to total employment at grades 5 through 15 increased from 3.7 percent to 5.9 percent. Although 42.9 percent of the increase was at grade 5 level, and although almost 90 percent of it occurred in Washington and Chicago, the change was impressive. The percentage increases in Washington and Chicago, however, were the lowest among the cities: 75 percent and 128 percent, respectively. Although numerically small, the increase in St. Louis represented a 168-percent improvement; in Los Angeles, 175 percent; and in Mobile, 466 percent. The Committee's conclusions were as follows:<sup>54</sup>

1. A substantial increase of Negroes appeared in grades 5 through 15.
2. There had been a significant increase in the proportion of Negroes to total employees in these grades.
3. A wider distribution and diffusion of Negroes had occurred in grades 6 and above.

In July 1960 the Committee undertook a survey of Federal employment in Atlanta, similar to the one conducted in the five cities in 1956. This revealed that Negroes constituted 14.6 percent of the employees in 28 Federal agencies in Atlanta,<sup>55</sup> nearly half of whom—49.1 percent—were employed in the Post Office Department. Forty-one percent of all Negro employees were in Wage Board or "blue collar" jobs; only 9.5 percent were in Classification Act positions; and 49.5 percent, including those employed at the Post Office Department, were in "Other" positions. The 9.5 percent, or 226 Negroes, in Classification Act positions were employed in only 12 of the 27 agencies that had such positions. Of these, 85.8 percent were employed in grades 1 through 4; 14.2 percent (32) were employed in grades 5 and above.

Of the 32 Negroes in grades 5 and above, 7 were employed at grade 5, 3 at grade 6, and 19 at grade 7. There were only 3 Negroes employed above grade 7—1 grade 10 social worker employed at the Federal Prison and 2 grade 12 "race relations advisers." Of the 19 employed at grade 7, most were in social work; 1 was a medical technologist, and 1 a soil conservationist. There was one biologist at grade 5, and several biology-technicians. Other Negroes in "white collar" positions were nurses' aides, biological aides, laboratory helpers, mail and file clerks,

tabulating machine operators, messengers, and clerk-typists. Significant was the relative scarcity of Negroes—only eight—in stenographic and clerk-typist positions.<sup>56</sup> Inadequate training facilities for Negroes in secretarial skills in the Atlanta area may explain this in part. The fairly substantial proportion of Negroes working in jobs requiring some knowledge of the natural sciences is interesting in view of the common comment that higher education of Negroes in the South is largely confined to the social sciences.<sup>57</sup>

Although these employment surveys provided valuable information regarding employment patterns, the Committee was well aware that they did not provide a reliable indication of discrimination in any given locality. Further information—almost impossible to obtain in the absence of racial records—would be needed to determine the causes of racial employment patterns. It would be necessary to know the number of Negroes on Civil Service registers who were available for job openings in the particular area, and the number who actually took Civil Service examinations and attempted to qualify for Government employment.

In an attempt to obtain information on the number of eligible Negro applicants in Atlanta, a 2-week study of Civil Service certificates was made 4 months before the Atlanta employment survey. By examining all certificates of eligibles sent by the Civil Service Commission to Atlanta agencies for filling job openings and the applications attached to the certificates, which permitted identification of Negroes by schools attended, the Committee discovered that less than 5 percent of the applications—7 out of 156—were filed by Negroes. Thus, it concluded that, while discrimination might be one factor resulting in the small number of Negroes in white collar jobs, the dearth of Negroes on the Civil Service certifications was another.<sup>58</sup>

At the end of 1960 the Committee conducted another survey, similar to the 5-city study made in 1956, of all Negro employees in all Federal departments and agencies located in New York City, Detroit, and in Dallas-Fort Worth.<sup>59</sup> The results were received too late to be included in the Committee's final report to the President.

The significant findings of this survey were: <sup>60</sup>

(1) In the three cities as a whole, 16.8 percent of Federal employment was Negro; 30.1 percent in Detroit; 15.6 percent in New York; and 6.95 percent in Dallas-Fort Worth.

(2) Almost 32.5 percent of all Negro employees in the three cities were in Classification Act positions; 18.6 percent were in Wage Board positions; and 48.9 percent were in "other" positions.

(3) Of Negro employees in Classification Act positions, 75 percent were in grades 1 through 4; almost 24.4 percent in grades 5 through 11; and .64 percent in grades 12 through 15.

(4) 4.5 percent of the total Negro employees were in supervisory positions.

Although a comparison of these findings with those of the 1956 five-city survey may not be statistically valid, it is interesting to note the differences in the results of the surveys, as shown in table 1. Since the later survey included two large northern cities, the smaller representation of Negroes is somewhat surprising. Perhaps the fact that both New York and Detroit are located in States with fair employment practice laws, where private employment opportunities for Negroes may be more readily available, is a partial explanation. This is consistent with the fact that, where Negroes were employed in Federal agencies in these three cities, they were employed in higher grades on the average than those in the five cities surveyed in 1956.

TABLE 1.—*Results of surveys by President's Committee on Government Employment Policy*

|  | <i>5-city survey,<br/>March 1956<br/>(percent)</i> | <i>3-city survey<br/>December 1960<br/>(percent)</i> |
|--|--|--|
| Percentage of Negro employment to total Federal employment.....                      | 23.4   | 16.8   |
| Percentage of Negroes in Classification Act positions to total Negroes employed..... | 42.7   | 32.5   |
| Percentage of Negro supervisors to total Negroes employed.....                       | 5.2  | 4.5  |
| Of Negroes employed in Classification Act positions:                                 |  |  |
| (1) Percentage employed in grades 1 through 4.....                                   | 85.4   | 75   |
| (2) Percentage employed in grades 5 through 11.....                                  | 14.3   | 24.4   |
| (3) Percentage employed in grades 12 through 15.....                                 | .3   | .6   |

## SURVEY FOR THE COMMISSION ON CIVIL RIGHTS

At the start of its employment study in the spring of 1960, the Commission found itself in much the same position as the President's Committee had in 1955. To fulfill its function—"to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution" and, more particularly, to study and appraise the policies and programs of the President's Committee—the Commission needed information on current patterns of minority group employment in the Federal Government. This was not available. The findings obtained from the Committee's 1956 survey were over 4 years old and even they were not complete as they failed to supply information on

minority groups other than Negroes and did not contain other relevant information, such as the number of white supervisors and the number of Negroes who supervised persons other than Negroes. Although the Committee had recently completed a resurvey of Federal employees in the same five cities, this was limited to employees in grades GS-5 and above.

The Commission on Civil Rights selected eight cities for intensive field investigations concerning all aspects of federally related employment.<sup>61</sup> These eight included four of the five surveyed by the Committee in 1956, and resurveyed in 1960, plus Atlanta, where the Committee was at that time preparing to conduct a survey. In view of the possible duplication involved, the President's Committee was reluctant to cooperate with the Commission in the conduct of any new surveys in these cities. Eventually, after negotiation with the President's Committee, the Commission decided to limit its survey of Federal employment to the employees of four Federal agencies located in the eight cities<sup>62</sup> originally selected. Through the assistance of the Committee's Executive Director, four agencies, two relatively large and two relatively small, were selected and representatives of these agencies agreed to participate in such a survey. The consent of these agencies removed to some degree the objections of the President's Committee to any further surveys in cities which it had recently studied. Moreover, with only four agencies involved, the Commission was able to request information of a more detailed nature than any previously obtained by Committee surveys. The fact that the studies would be conducted among employees of those agencies which readily agreed to cooperate suggested the possibility that the employment patterns in these agencies might not be representative of Federal employment in the cities studied. In fact, the results of the Commission's survey indicate that this fear was well founded; in three of the four cities Negroes appear to be employed in substantially larger proportions in these agencies than in other Federal agencies in the same location.

In devising forms or questionnaires to be used in its study the Commission attempted to obtain certain basic information through a head count of employees:

(1) Numbers of whites, Negroes, and other significant minority group members<sup>63</sup> employed in Classification Act, Wage Board, and "other" positions, including the job classifications or job descriptions and grade levels or wage rates for all such employees.

(2) Numbers of white, Negro, and other minority group supervisors, and numbers of those minority group supervisors who supervise persons not members of their own race or nationality.

In addition, both the President's Committee and the Commission were particularly anxious to obtain information regarding recruitment and

training. As mentioned above, head counts alone can indicate the existence of an employment pattern, but are of limited value in determining the existence of discriminatory employment practices. Further information is needed—particularly the number of qualified minority group members who apply for jobs. In the absence of racial or other identification on Civil Service certificates, this information is extremely difficult to obtain. Although the Commission realized that it could not obtain such information through its survey, it felt that it could at least obtain information with respect to the recruitment practices of the agencies to indicate what proportion of all jobs filled by Federal agencies are actually filled by hiring from a Civil Service register. A form was therefore devised to provide the Commission with information of this nature. Each agency participating in the survey was asked to record on a daily basis<sup>64</sup> how each position was filled—whether from a register, by outside recruitment, or by reinstatement, transfer, or promotion—and whether the job was filled by a white person, a Negro, or other minority group member.

The opportunity of minority group members to participate in training programs conducted by Federal agencies, particularly where such training can lead to promotion, is basic to equality of employment opportunity. The Commission was particularly anxious to obtain information regarding such training programs in view of the fact that most complaints filed with the President's Committee involved alleged discrimination in promotions.<sup>65</sup> A form was therefore devised to supply the Commission with information on all such training programs conducted by the agencies involved, and the number of whites, Negroes, and other minority group members participating therein.

In summary, the Commission's survey consisted of the following:

- (1) Head count of all employees as of December 31, 1960.
- (2) Recruitment information for a 4-month period, from January 1, 1961, through April 30, 1961, to be recorded on a daily basis and submitted monthly to the Commission.
- (3) Training information for a 3-month period, from January 1, 1961, through March 31, 1961.

The surveys were to be conducted by the four agencies in each of the following cities: Atlanta, Ga., Chicago, Ill., Dallas-Fort Worth, Tex., Detroit, Mich., Los Angeles, Calif., New York, N.Y., St. Louis, Mo., and Washington, D.C. In view of the survey conducted by the President's Committee in Atlanta on July 31, 1960, it was agreed that no new head counts would be made there, but that the agencies would submit training and recruitment information for their Atlanta establishments. It was further agreed that the President's Committee would supply the Commission with the results of surveys of Federal employ-

ment it planned to conduct in Dallas-Forth Worth, Detroit, and New York as of December 31, 1960. Since this information would be based on total Federal employment in these cities, it would afford some measure of the representative nature of the information the Commission obtained from the four agencies in those cities.

After meetings and negotiations with representatives of the President's Committee, the Bureau of the Budget, the White House staff, the Civil Service Commission, and the four participating agencies extending over a 2-month period, Bureau of the Budget approval for the conduct of the Commission survey was obtained in December 1960.<sup>66</sup> Copies of the forms approved for use in the survey are included in the appendix.

### *Head counts as of December 31, 1960*

In the cities studied,<sup>67</sup> 27.5 percent of the approximately 65,000 employees of the 4 agencies were Negroes. Table 2 shows the percentage of minority group employment in each city.

TABLE 2.—*Percentage, minority group employment to total employment in four Federal agencies*

|                        | <i>Negro<br/>(percent)</i> | <i>Oriental<br/>(percent)</i> | <i>Puerto Rican<br/>(percent)</i> |
|------------------------|----------------------------|-------------------------------|-----------------------------------|
| Washington, D.C. ....  | 20                         | .....                         | .....                             |
| Atlanta.....           | 10.8                       | .....                         | .....                             |
| Baltimore.....         | 26.4                       | .....                         | .....                             |
| Chicago.....           | 38.1                       | .....                         | .....                             |
| Dallas-Fort Worth..... | 11.5                       | .....                         | .....                             |
| Detroit.....           | 38.8                       | .....                         | .....                             |
| Los Angeles.....       | 29.6                       | 1.9                           | .....                             |
| New York.....          | 26.7                       | .....                         | 3.8                               |
| St. Louis.....         | 33.4                       | .....                         | .....                             |

Sixty-five percent of all Negro employees were in Classification Act positions, 32.9 percent in Wage Board, and 2.1 percent in "other" positions. Since the Post Office Department (where most "other" positions are used) was not included among the four agencies studied, relatively few "other" positions were reported in the Commission survey, and all of these were professional. Thus the percentages of Negroes in Classification Act and Wage Board positions appear abnormally high when compared to the results of the President's Committee's surveys. A more accurate measure of Negro participation in Classification Act and Wage Board positions can be obtained by comparing the percentage of Negro employees in classification positions to total Classification Act employees, 23.1 percent for the cities as a whole, and the percentage of Negro Wage Board employees to total Wage Board employees in all the cities studied—56.8 percent. Similar percentages for each city are given in table 3.

TABLE 3.—*Minority employment to total in Wage Board and Classified Positions*

|                        | Classification Act |  | Wage board         |  |
|------------------------|--------------------|--|--------------------|--|
|                        | Negro<br>(percent) | Oriental or<br>Puerto Rican<br>(percent) | Negro<br>(percent) | Oriental or<br>Puerto Rican<br>(percent) |
| Washington, D.C. ....  | 18.5               | .....                                    | 73                 | .....                                    |
| Atlanta.....           | 3.8                | .....                                    | 68.2               | .....                                    |
| Baltimore.....         | 20.9               | .....                                    | 56.3               | .....                                    |
| Chicago.....           | 32.6               | .....                                    | 65.4               | .....                                    |
| Dallas-Fort Worth..... | 4.5                | .....                                    | 46                 | .....                                    |
| Detroit.....           | 34.8               | .....                                    | 70.7               | .....                                    |
| Los Angeles.....       | 26.8               | 2.0                                      | 51                 | 1.5                                      |
| New York.....          | 23.8               | 2.3                                      | 45.4               | 11.3                                     |
| St. Louis.....         | 26.1               | .....                                    | 67.5               | .....                                    |

Of Negro employees in Classification Act positions in these cities, 83.6 percent were in grades 1-4; 14.6 percent in grades 5-9; and 1.8 percent in grades 10-18.<sup>68</sup> Of white employees in Classification Act positions, 31.5 percent were in grades 1-4; 37.5 percent in grades 5-9; and 31 percent in grades 10-18. Data on each city are shown in table 4.

TABLE 4.—*Distribution of employees by grade levels*

|                       | Percentage, all white<br>employees in grades— |      |       | Percentage, all Negro<br>employees in grades— |      |       | Percentage, Oriental<br>and Puerto Rican<br>employees in grades— |       |       |
|-----------------------|---|------|-------|---|------|-------|--|-------|-------|
|                       | 1-4   | 5-9  | 10-18 | 1-4   | 5-9  | 10-18 | 1-4  | 5-9   | 10-18 |
| Washington, D.C. .... | 14.2  | 38.7 | 47.1  | 76.0  | 22.4 | 1.6   | .....  | ..... | ..... |
| Atlanta.....          | 37.5  | 34.5 | 28.0  | 97.4  | 1.3  | 1.3   | .....  | ..... | ..... |
| Baltimore.....        | 40.6  | 38.7 | 20.7  | 90.1  | 9.0  | .9    | .....  | ..... | ..... |
| Chicago.....          | 37.0  | 37.9 | 25.1  | 82.4  | 14.4 | 3.2   | .....  | ..... | ..... |
| Dallas-Fort Worth.... | 40.9  | 34.3 | 24.8  | 93.3  | 6.7  | ..... | .....  | ..... | ..... |
| Detroit.....          | 30.5  | 42.0 | 27.5  | 80.5  | 17.2 | 2.3   | .....  | ..... | ..... |
| Los Angeles.....      | 39.8  | 38.8 | 21.4  | 90.2  | 8.8  | 1.0   | 37.2   | 53.3  | 9.5   |
| New York.....         | 33.3  | 36.5 | 30.2  | 83.1  | 15.3 | 1.6   | 82.9   | 15.9  | 1.2   |
| St. Louis.....        | 47.0  | 32.6 | 20.4  | 92.1  | 6.8  | 1.1   | .....  | ..... | ..... |

In attempting to ascertain possible differences in agency hiring practices, the Commission compared Negro Classification Act employment to total Classification Act employment in each of the four agencies in each city studied. This comparison was limited to Classification Act employment in an attempt to equate, as nearly as possible, the types of jobs in each agency. Since one agency employed a large number of professional employees while the other three reported none, and two employed a relatively high proportion of Wage Board employees while the other two reported very few, the Commission felt that a comparison based on total employment in each agency would not be valid. The percentage of Negro Classification Act employees to total Classification Act employees is shown in table 5.

TABLE 5.—*Negro Classification Act employment to total by agency*

|                        | <i>Agency 1</i><br>(percent) | <i>Agency 2</i><br>(percent) | <i>Agency 3</i><br>(percent) | <i>Agency 4</i><br>(percent) |
|------------------------|------------------------------|------------------------------|------------------------------|------------------------------|
| Washington, D.C.....   | 21.8                         | 9.0                          | 15.5                         | 30.4                         |
| Atlanta.....           | 8.7                          | .9                           | .7                           | 1.9                          |
| Baltimore.....         | 26.2                         | { No<br>survey }             | 11.9                         | None                         |
| Chicago.....           | 39.2                         |                              | 18.6                         | 24.8                         |
| Dallas-Fort Worth..... | 10.3                         | 1.0                          | None                         | 1.3                          |
| Detroit.....           | 45.6                         | 20.4                         | 27.1                         | 9.4                          |
| Los Angeles.....       | 33.8                         | 18.7                         | 13.1                         | 12.5                         |
| New York.....          | 38.3                         | 16.0                         | 13.4                         | 4.2                          |
| St. Louis.....         | 35.6                         | 27.9                         | 7.6                          | 3.2                          |

For all the cities studied, 7.7 percent of Negro employees were in supervisory positions and almost 6.2 percent supervised employees other than Negroes. Of all white employees, 20.9 percent were supervisors.

In connection with the results of this survey it should be pointed out that the sample used in each city was relatively small—only four Federal agencies (three in Baltimore)—and may not have been completely representative. Some measure of the representative nature of the sample may be had by comparing data obtained from the Commission survey with that obtained in surveys conducted in the same cities by the President's Committee, which surveyed *all* Federal employment in each city. In Dallas-Fort Worth, Detroit, and New York, Negro employment was substantially greater in the four agencies surveyed by the Commission than in all Federal agencies in the same cities; <sup>69</sup> in Atlanta, the percentage of Negro employment to total employment was somewhat less <sup>70</sup> than in the 28 agencies surveyed by the President's Committee.<sup>71</sup> On the basis of these comparisons the Commission has concluded that the data revealed by its study cannot be viewed as completely representative of either total Federal employment or of Federal employment in the cities surveyed. Certain significant conclusions do emerge, however:

(1) There is wide variation among the percentages of Classification Act positions—"white collar" jobs—filled by Negroes in the cities studied. These range from lows of 3.8 percent in Atlanta and 4.5 percent in Dallas-Fort Worth to highs of 32.6 percent in Chicago and 34.8 percent in Detroit.

(2) Where Negroes are employed in Classification Act positions, a large majority are concentrated in the lowest four grades. The same is true of Puerto Ricans. Most Orientals, on the other hand, appear—on the basis of an exceedingly small sample—to be concentrated in the middle-level jobs (grades 5-9), with 9.5 percent employed at grade 10 or above.

(3) Negroes are employed in substantial proportions in Wage Board, or "blue collar," jobs.

(4) A substantial proportion of all Wage Board jobs—ranging in different cities from 45.4 percent to 73 percent—are held by Negroes. Two of the agencies surveyed had a large complement of Wage Board employees, permitting the Commission to evaluate the types of Wage Board jobs held by Negroes. The positions included a number of skilled craft jobs such as those found in the construction and printing industries and a number of skilled mechanics' jobs. Most of these were held by white employees. Although white employees constituted only 45 percent of the total Wage Board employees in the two agencies, they occupied 85 percent of the skilled Wage Board jobs. On the other hand, of approximately 3,200 kitchen workers, 75 percent were Negro, Oriental, and Puerto Rican. Negroes were concentrated in all the unskilled labor jobs, occupying 64 percent of the warehousing and common labor jobs. Despite the fact that Wage Board positions afford substantial minority employment in these agencies, it would appear that in Government, as in private employment, there are white and Negro jobs and the Negro is frequently relegated to the unskilled or semiskilled level. Table 6 indicates the employment of white, Negro, Oriental, and Puerto Rican employees in Wage Board positions in each of the cities surveyed.<sup>72</sup>

TABLE 6.—*Employment in Wage Board positions in two agencies*

| City                   | Total Wage Board |       |                                 | Skilled Wage Board |       |                                 |
|------------------------|------------------|-------|---------------------------------|--------------------|-------|---------------------------------|
|                        | Negro            | White | Oriental or<br>Puerto<br>Ricans | Negro              | White | Oriental or<br>Puerto<br>Ricans |
| Atlanta.....           | 77               | 32    | .....                           | 1                  | 16    | .....                           |
| Baltimore.....         | 382              | 297   | .....                           | 8                  | 130   | .....                           |
| Chicago.....           | 1566             | 826   | .....                           | 92                 | 337   | .....                           |
| Dallas-Fort Worth..... | 274              | 320   | .....                           | 19                 | 120   | .....                           |
| Detroit.....           | 435              | 188   | .....                           | 35                 | 65    | .....                           |
| Los Angeles.....       | 1138             | 1061  | 34                              | 41                 | 332   | .....                           |
| New York.....          | 1082             | 1009  | 271                             | 50                 | 458   | 15                              |
| St. Louis.....         | 458              | 220   | .....                           | 24                 | 129   | .....                           |

(5) The percentage of white supervisors to white employees was almost three times that of Negro supervisors to Negro employees. Where Negroes did have supervisory authority, the majority supervised a mixed group, or at least supervised some white employees.

(6) There appear to be some significant variations in employment practices as between different agencies. Thus, Agency 1 employed considerably more Negroes in Classification Act positions in every city surveyed except Washington. Agency 4 employed considerably more Negroes in Washington, but relatively few in the eight other cities. Agency 1 is apparently one in which a real effort has been made to communicate its policy of nondiscriminatory employment to its field establishments. Agency 4—despite its excellent implementation of this policy in Washington—has apparently failed to implement the policy in its field offices.

## Recruitment

In all cities studied, only 21 percent of the jobs filled by all four agencies during the 4-month period (January 1, 1961, to May 1, 1961) were filled by hiring from Civil Service registers. Whereas Negroes constituted 25.6 percent of all persons selected, they constituted almost 38 percent of persons hired from the Civil Service registers. Similar percentages are shown in table 7 for the individual agencies.<sup>73</sup>

TABLE 7.—Total job placements in nine cities, Jan. 1, 1961–May 1, 1961

|                                 | Total jobs filled from register to total jobs filled (percent) | Jobs filled by Negroes to total jobs filled (percent) | Negroes hired from register to total hired from register (percent) |
|---------------------------------|--|---|--|
| Agency 1 . . . . .              | 28.6   | 36.8  | 49.7   |
| Agency 2 . . . . .              | 15.0   | 15.6  | 30.1   |
| Agency 3 . . . . .              | 16.1   | 17.5  | 19.8   |
| Agency 4 <sup>1</sup> . . . . . | 8.6  | 17.6  | 13.6   |

<sup>1</sup> This is the only agency in which the percentage of Negroes hired from registers is less than the percentage of Negroes hired to total hired. Of 45 Negroes hired during this period, however, 39 were hired in Washington. This is the same agency that showed a very high percentage of Negroes employed in Washington in Classification Act positions—30.4 percent—but a relatively low percentage in its field offices.

## Training information

Because of the limited time period covered (January 1, 1961, to April 1, 1961) and the small sample used, results of the Commission's survey of minority group participation in agency training programs are probably not representative of all such programs or even of those training programs ordinarily conducted by the four participating agencies.<sup>74</sup> Although the information obtained<sup>75</sup> tends to show that Negroes are not generally participating in career development and non-Federal facilities programs to the same extent that they are represented in overall agency employment, no consistent pattern, either on an agency or a city basis, is apparent. Further study would be required—using a larger sample and a longer period of time—before any conclusions could be drawn as to whether Negro employees are being denied training opportunities and thus foreclosed from promotion to higher jobs.

## LOOKING BACK

What are the opportunities for Negroes or other minority group members for employment in the Federal Government as compared to private enterprise in the same location? If the policy so clearly enunciated by

Executive Order 10590 were being implemented, opportunities for Federal employment should be considerably greater than those ordinarily available in the community, particularly in the South, where private discriminatory hiring practices prevail. Yet the results of the Commission's survey, limited though it was, tend to show that patterns of Federal employment in the cities studied do not differ significantly from local employment patterns. Although the President's Committee's 1960 resurvey showed some improvements in the levels of jobs held by Negro employees since its earlier study, this is not necessarily indicative of the effectiveness of the Federal nondiscrimination program, for similar improvements have occurred in private enterprise in recent years.<sup>76</sup>

As indicated above, racial patterns of employment do not necessarily prove discrimination. In southern cities, for instance, where there is a much smaller proportion of Negro Government employment and at lower grade levels than in northern cities, there is also a smaller reservoir of trained Negroes, at least with respect to certain skills. Even a comparison of Federal to private employment in the same location can do no more than raise suspicions of discrimination. There may be an ample supply of qualified, well-trained Negroes, yet they may not apply for Federal employment either because they feel it is futile to apply or because available private employment is more attractive. Some indication of this was found in Atlanta, where several well-educated and apparently qualified Negroes informed members of the Commission staff that they had never applied for employment with the Federal Government because they felt they would not be hired. This reluctance was confirmed by a Department of Labor official on the basis of discussions at 18 Negro colleges in Virginia, the Carolinas, Georgia, and Florida.<sup>77</sup> He found that southern Negroes were not inclined to take Civil Service examinations; some did not know the procedure, some were skeptical of opportunities for employment, and others felt they should enter the teaching, ministry, or social work professions, which traditionally have offered Negro college graduates "almost their only opportunity for white collar employment in the South."<sup>78</sup>

If "there [was unquestionably] discrimination in Federal employment," as the President's Committee found,<sup>79</sup> what were the weaknesses of the Federal Government's nondiscrimination program? First, of course, was the magnitude of the task of eliminating all discrimination in a large and complex establishment. Even if every Federal agency in Washington fully endorsed the nondiscrimination policy, this would not necessarily affect the 90 percent of Federal employees who work in the field. As the Commission's survey showed, the agency that hired the largest proportion of Negroes in Washington had almost the worst record of Negro employment in its field establishments. The former President's Committee recognized the problem. As one member observed to a member of the Commission staff, the task could not be

accomplished from behind a desk in Washington. Despite its small staff of three, the Committee took its program to the field offices; by education and persuasion, it attempted to "sell" the program to local administrators. Although this undoubtedly had some effect, it seems clear that more was, and is, required. Administrators in Washington must be informed constantly of employment practices in their field offices. Local administrators must be informed of Federal employment policy and of the fact that it is mandatory.

Even among Federal agencies in Washington there has been a substantial difference in patterns of Negro employment. Some have had few, if any, Negro employees;<sup>80</sup> others have had a reputation for discrimination which discouraged Negro applicants and the referral of Negroes for jobs. Since the final responsibility for implementing the Federal nondiscrimination policy was placed with the heads of these agencies, the Committee—a purely advisory group—could take only "educational" action. Aggressive directives from the White House might have been more effective.

Another weakness of the program was the relatively slight use of the complaint procedure. In almost 6 years only 1,053 complaints of discrimination were filed (in 173, corrective action was taken). Although, as already mentioned, the complaint procedure is of limited effect in eliminating discrimination, it often served to uncover discriminatory practices which could be corrected even though the complaint was dismissed. There were several possible reasons for the paucity of complaints in addition to the general reluctance of many individuals to file them for fear of being viewed as "troublemakers." Despite the efforts of the Committee to expedite the processing of complaints, the procedure was slow. The self-investigative process also discouraged complaints; it seemed futile to complain to an agency which had allegedly discriminated. Moreover, discrimination is difficult to prove, especially in promotion cases (the largest number filed), where intangible factors such as personality may be involved. Another difficulty is that Civil Service regulations permit Federal administrators to avoid hiring Negroes without "discriminating." Almost 90 percent of all Federal jobs are in the competitive civil service. With few exceptions hiring for these jobs must be done from civil service registers or by other permissible actions, such as transfers, promotions, or reinstatements. After applicants take and pass competitive examinations, their names are placed on registers. When an agency has a job to fill, it may request a certificate of eligibles from the Civil Service Commission, transfer or promote a current employee, or reinstate a former employee. A certificate contains the names of the highest candidates on the register, usually from four to six. Civil Service regulations provide that selection must be made from among the highest three eligibles available for appointment,<sup>81</sup> the so-called "rule of three." If the hiring agency discovers that one is a Negro, it may hire

one of the others. If all are Negroes, it may return the certificate and, under certain circumstances request more names or fill the job by transfer, reinstatement, or promotion. The Executive Director of the former President's Committee discovered one instance of this in his study of certificates in connection with the Committee's Atlanta survey.<sup>82</sup> Finally, jobs may be filled on a temporary basis without use of a register. Thus, there are many loopholes for the unscrupulous.

This Commission's survey revealed that, in the four agencies studied, hiring from a register occurred with respect to only 21 percent of all jobs filled in nine cities during a 4-month period. Admittedly this may not be representative of all agency practices as the sample used was small and hiring was not frequent during the period in question. It is interesting to note, however, that where Negroes were hired, most were hired from registers rather than by outside recruitment, reinstatement, transfer, or promotion. This was particularly so in Atlanta.<sup>83</sup>

The President's Committee was aware of the weaknesses of the non-discrimination program. One of its major problems was to discover discrimination in the absence of specific complaints. The survey procedure was designed in part to meet the problem of obtaining information on employment patterns in various locations and in various agencies. Where minimal Negro employment was revealed, investigation was called for, but a limited staff made this almost impossible. Lack of racial or religious identification made the tasks of conducting surveys and of inquiring into applications for Federal employment even more difficult. As indicated by the Committee's study of certificates in Atlanta and its work with various local community organizations, it was aware of the need for further information regarding applications for employment by Negroes. It also recognized the need for encouraging qualified minority group members to apply, and for making adequate training available to them.

In its final report to the President, the Committee made the following recommendations, several of which have already been adopted by the new administration: <sup>84</sup>

1. The complaint procedure must be maintained and improved and the time of processing complaints shortened.
2. The educational and training phase of the program ought [to] be continued and increased in emphasis. In the long run, such training will pay positive dividends in the effectiveness of the policy.
3. There is a need to continue the search for an effective method of determining the availability of minority-group eligibles on civil service registers, and of determining what consideration they are given for Federal employment.
4. Surveys of Negro employment should be continued on a spot basis. They provide valuable information, and serve as "benchmarks" for determining future gains.

5. Area and supervisory conferences should be continued and improved. The Committee found these to be most effective in establishing rapport with Government officials and in winning support.

6. An increased effort should be made to inform minority-group persons and their organizations on all aspects of the policy and of the rights to which they are entitled under its provisions.

7. There is a need to continue the cultivation of professionals in intergroup relations who, in various sections of the country, might serve as liaison personnel between the program in Washington and minority-group communities in the field. A number of such contacts have already been made, and they have proven to be invaluable.

8. Finally, the entire program could be greatly strengthened by the appointment of full-time employment policy officers in those departments and agencies which have substantial field establishments. At present, the handling and nurturing of the policy is but one of many responsibilities which these officials carry; given full time to devote to the policy, particularly as it applies to field establishments, such officials could strengthen their programs in a great many ways.

## LOOKING AHEAD

On March 6, 1961, Executive Order 10925 established 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." Part II of the order, relating to Government employment, provides, in part: <sup>85</sup>

**SECTION 201.** The President's Committee on Equal Employment Opportunity established by this order is directed immediately to scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government.

**SECTION 202.** All executive departments and agencies are directed to initiate forthwith studies of current Government employment practices within their responsibility. The studies shall be in such form as the Committee may prescribe and shall include statistics on

current employment patterns, a review of current procedures, and the recommendation of positive measures for the elimination of any discrimination, direct or indirect, which now exists. Reports and recommendations shall be submitted to the Executive Vice Chairman of the Committee no later than 60 days from the effective date of this order, and the Committee, after considering such reports and recommendations, shall report to the President on the current situation and recommend positive measures to accomplish the objectives of this order.

The remainder of part II reaffirms the nondiscrimination policy set forth in Executive Order 10590; abolishes the President's Committee on Government Employment Policy; and transfers to the new Committee the powers, functions, and duties of the former President's Committee.

Pursuant to the order all executive departments and agencies initiated employment surveys to obtain information on employment of Negroes and other minority groups, such as Puerto Ricans, Orientals, and Spanish-Americans.<sup>86</sup> Since the studies were to be conducted "forthwith," and the Committee had not yet developed forms for use in such surveys, there is some doubt as to the uniformity of the type of information that will be obtained. According to the provisions of the order, all such reports should have been submitted on or before June 5, 1961. The Executive Director of the Committee has informed the Commission, however, that the Department of Defense was granted additional time because of its tremendous civilian staff and the fact that many of its employees are located outside the country. At the time of this writing, the complete results of the survey had not yet been obtained by the Committee.

In view of the desirability of such studies and the difficulties encountered in conducting them, the Committee is giving serious consideration to devising a method of maintaining racial, religious, and other data that would facilitate the survey process in the future without being amenable to discriminatory use.

Almost immediately after the issuance of Executive Order 10925, the executive departments and agencies instituted a three-pronged program of affirmative action. Most of the top administrators in Washington issued directives reaffirming the nondiscrimination policy announced by the President.<sup>87</sup> Several agencies undertook programs of active recruitment of Negroes by sending representatives to southern Negro colleges to acquaint students with the need for qualified persons and the opportunities available in Federal employment.<sup>88</sup> Many agencies hired Negroes for top executive positions, often in posts higher than any ever before filled by Negroes.<sup>89</sup>

One of the most significant steps taken was the creation of a new post in the Civil Service Commission—special assistant for minority

group matters—and the appointment of the former Executive Director of the President's Committee on Government Employment Policy to that post. His function, among others, is to encourage recruitment of minority group members for Federal employment. As the first phase of this program, he recently undertook a 6-week tour of predominantly Negro southern colleges in an attempt to encourage qualified students to apply for Federal employment.<sup>90</sup>

In addition to these programs, several Federal agencies have adopted the recommendation made by the former President's Committee and have appointed full-time employment policy officers.<sup>91</sup> On May 25, 1961, the Civil Service Commission issued changes in the Federal Personnel Manual to reemphasize the importance of nondiscrimination in promotion plans.<sup>92</sup>

On July 22, 1961, the President's Committee on Equal Employment Opportunity issued rules and regulations to implement the policy of nondiscrimination in Government employment set forth in part II of Executive Order 10925.<sup>93</sup> Although many of the regulations are similar to the provisions of Executive Order 10590 and to regulations prescribed by the President's Committee on Government Employment Policy, the increased authority of the new Committee is apparent. Thus, although the heads of all executive departments and agencies were directed by Executive Order 10590 to prescribe regulations for the administration of employment policies and to file copies with the Committee, the new regulations provide that the head of an agency *may* prescribe regulations "subject to the prior approval of the [Committee] Executive Vice Chairman." Employment policy officers and their deputies are still to be assigned outside the divisions handling personnel matters, but exceptions are allowed upon the prior approval of the Executive Vice Chairman of the new Committee. The major changes reflected in the regulations, however, relate to the processing of complaints.

### *Time limitations*

Under former regulations, a person was allowed 45 days from the time of the action complained of in which to file a complaint, or 10 days in the case of an alleged discriminatory discharge. The new regulations allow 90 days unless the time for filing is extended by the agency concerned or the Executive Vice Chairman. Former regulations provided that, if final settlement of a complaint was not made within 90 days, a brief summary of the case and the reasons for the delay were to be forwarded to the Committee. In cases of unreasonable delay the Committee could assert jurisdiction and render an advisory opinion to the head of the department or agency concerned. The new regulations provide that an agency *must* process a complaint and report on its disposition to the Executive Vice Chairman within 30 days from its receipt, or within 60 days when a hearing is requested, unless

additional time is granted by the Executive Vice Chairman of the Committee.

### *Investigation of complaints*

Except in cases of unreasonable delay, under the former procedure, the Committee could investigate only those complaints referred to it by the head of an agency or on the specific request of a complainant. The new regulations provide that copies of all complaints filed with the employment policy officers must be transmitted to the Executive Vice Chairman. Complaints filed initially with the Committee may either be referred to the appropriate employment policy officer or processed by the Executive Vice Chairman. Thus the Committee may assume jurisdiction over any complaint filed with it, conduct investigations, make findings, and issue "such recommendations and orders as may be necessary or appropriate to achieve the purposes of Part II of the Order." As the Executive Vice Chairman receives copies of all complaints filed, he may assume jurisdiction over any case pending before an agency and issue recommendations and orders. The Executive Vice Chairman has authority to review all cases reported after disposition (as had the former Committee), but he may also, at the direction of the Chairman, recommend or order the head of an agency to reconsider a case.

### *Final decisions*

Under the former procedure final decisions were rendered by employment policy officers, except where cases had been referred to the President's Committee for review and advisory opinion (in such cases the heads of the departments or agencies rendered final decisions). Under the new regulations all final decisions must be rendered by the heads of departments or agencies. Where complaints have been referred to the Executive Vice Chairman for review and advisory opinion, final decision can be made (as formerly) only after the receipt of his recommendations. As mentioned above, the Executive Vice Chairman may recommend or order an agency to reconsider any "final" decision.

The new administration apparently is attempting to overcome many of the difficulties encountered by its predecessor. One problem—lack of knowledge of discriminatory practices in the absence of specific complaints—should be solved, at least partially, by periodic employment surveys and by the authority given the new Committee "to scrutinize and study employment practices." Its authority to investigate complaints, issue recommendations and orders, and require reconsideration of final decisions should assure more impartial decisions and (along with attempts to expedite the complaint procedure) should result in the filing of more complaints. Some indication of this has already appeared. Although

the Committee was unable to indicate the number of complaints received by the time this report was prepared, a representative of the Committee observed that it was receiving many more complaints than its predecessor.

Action by the executive departments and agencies and by the Civil Service Commission is a necessary part of any nondiscriminatory employment program. By encouraging minority group members to take the necessary training, by informing them of the opportunities available in Federal employment, and by appointing Negroes and other minority group members to positions of importance in the Federal Government, the problem of "lack of qualified minority group applicants" may be overcome.<sup>94</sup> It must be recognized, of course, that the effect of executive pronouncements and actions is often shortlived; to be truly effective, an affirmative program must be continuously maintained.

## B. THE ARMED FORCES

The Armed Forces of the United States offer work opportunities second in quantity only to the civilian establishment of the Federal Government. In breadth of training opportunities they are second to none, offering training in almost every type of skill and learning either through their own facilities or through reimbursement to private institutions. To the Negro, who is often discriminatorily denied such opportunities as a civilian, enlistment in the Armed Forces is particularly attractive. Thus many Negroes have elected to become military career men. Others have acquired skills through military training which have enabled them to qualify for civilian jobs—particularly those requiring technical skills—which would not otherwise have been open to them.<sup>95</sup>

## DESEGREGATION

Although, as a result of the Federal Government's announced policy of equal opportunity, greater opportunities for Negroes now exist within the Armed Forces than without, this has not always been so. At the beginning of World War II the Armed Forces were completely segregated. Negroes were assigned primarily to construction and transportation units; this limited their opportunities for training and advancement to these relatively unskilled jobs. The Selective Training and Service Act of 1940<sup>96</sup> barred racial discrimination against draftees, but the Armed Forces interpreted this to require merely "separate but equal"

facilities and training. In 1940 a delegation of prominent Negroes met with the President and requested an end of segregation in the military. In response to a Presidential request for its views on the matter, the Army said: <sup>97</sup>

It [segregation] has proven satisfactory over a long period of years and to make changes would produce situations destructive to morale and detrimental to the preparation for national defense.

Perhaps the position of the military at the time was best expressed by a statement of a War Department representative: <sup>98</sup>

The Army did not create the problem. Military order, fiat, or dicta will not change these [racial] viewpoints. The Army . . . cannot be made the means of engendering conflict among the mass of people because of a stand which is not compatible with the position attained by the Negro in civilian life. . . . The Army is not a sociological laboratory.

Some progress nonetheless occurred during the war. Benjamin O. Davis became a brigadier general, the first Negro to attain that rank. Judge William Hastie, then dean of Howard University Law School, was appointed civilian aide to the Secretary of War. Officers' candidate schools were integrated. Still, almost total segregation continued in the Armed Forces throughout the war.

After the war, the War Department appointed a three-man board headed by Lt. Gen. Alvan C. Gillem to study the role of Negro troops. On the basis of the board's recommendations the Army adopted the following policy: <sup>99</sup>

- (1) The Negro was assured a continuing place in the Army.
- (2) The number of Negroes in service was to be based on the ratio of Negroes to the total population.
- (3) Negro and white units of smaller size were to be grouped in composite organizations.

Later, the Army adopted the remainder of the Gillem report: <sup>100</sup>

- (4) "All Negro" units were to be abolished.
- (5) In the event of another war all personnel assignments should be made without regard to race.

The beginning of the end of military segregation did not come, however, until July 26, 1948, when President Truman, as Commander in Chief of the Armed Forces, issued Executive Order 9981 to promote "the highest standards of democracy" in the Armed Forces: <sup>101</sup>

It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or na-

tional origin. This policy shall be put into effect as rapidly as possible.

The legal effect of this was to nullify "separate but equal" recruitment, training, and service.<sup>102</sup>

The order established a seven-man advisory committee (known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services) to advise the President as to the manner in which the new policy should be carried out. Judge Charles Fahy, formerly U.S. Solicitor General, was named Chairman. In May 1950 the Committee issued its report to the President recommending integration in the Armed Forces without any racial quotas.<sup>103</sup>

The Korean crisis brought an immediate swelling of the Armed Forces. This, plus the policy of replacing troops in Korea by regular rotation, made integration a practical necessity.<sup>104</sup> Yet, even with this impetus, integration took about 6 years to accomplish. In 1955 the Department of Defense announced that integration in the regular Armed Forces had been achieved in accordance with the Executive order, and with a minimum of incidents.<sup>105</sup> The Office of the Assistant Secretary of Defense reported that—<sup>106</sup>

The full integration of Negro personnel, which had been achieved by the opening of the fiscal year, also contributed to improved utilization of personnel. Overconcentration of Negroes in certain specialties and shortages in others tended to disappear as full advantage was taken of the equality of opportunity to attend service schools and to advance on the basis of experience and ability. . . .

Prior to 1948 the vast majority of Negro servicemen were assigned to segregated units with specialized tasks. Acceptance of Negroes in the Armed Forces was limited by the number of men needed to man these units. Today, with all branches in each service open to Negroes, the number employed in the Armed Forces is apparently limited only by the number of Negroes qualified for service. Some measure of the effect of the dropping of racial quotas may be seen in the figures presented in table 8.<sup>107</sup>

TABLE 8.—*Negro personnel as percentage of total personnel in military services*

|                                     | 1949<br>(percent) | 1954<br>(percent) | 1956<br>(percent) | 1961<br>(percent) |
|-------------------------------------|-------------------|-------------------|-------------------|-------------------|
| Army officers . . . . .             | 1.8               | 2.9               | 2.9               | 2.8               |
| Army enlisted men . . . . .         | 12.4              | 13.7              | 12.8              | 11.4              |
| Navy officers . . . . .             | . . . . .         | .1                | .1                | . . . . .         |
| Navy enlisted men . . . . .         | 4.7               | 3.6               | 6.3               | . . . . .         |
| Air Force officers . . . . .        | .6                | 1.1               | 1.1               | . . . . .         |
| Air Force enlisted men . . . . .    | 5.1               | 8.6               | 10.4              | . . . . .         |
| Marine Corps officers . . . . .     | . . . . .         | .1                | .1                | . . . . .         |
| Marine Corps enlisted men . . . . . | 2.1               | 6.5               | 6.5               | . . . . .         |

Unfortunately current figures showing the distribution of Negroes in the Armed Forces are available only for the Army, which appears to have the best record in opening opportunities to Negroes. Since 1955 the Department of Defense has taken the position that integration is an accomplished fact and therefore no public interest could be served by further reports on the subject.<sup>108</sup> Repeated attempts to obtain factual information regarding the racial composition of various components of the Armed Forces—under both the present administration and its predecessor—have been largely unsuccessful. For this reason the Commission has concentrated on the Armed Forces Reserves and the National Guard. Here, too, the facts available from the Department of Defense were few, although some assistance was obtained from the Commission's State Advisory Committees and miscellaneous secondary sources.

## THE RESERVE COMPONENTS

The Armed Forces Reserves total 4,387,601 men<sup>109</sup> of whom 1,077,656 are in pay status.<sup>110</sup> Reserve units fall broadly into three categories: Reserve units attached to educational institutions; the National Guard; and the Reserves proper. While none of these affords full-time service, the last two afford pay which may be particularly helpful to people with low incomes.<sup>111</sup> All three offer educational and training opportunities to qualify individuals for higher grades or ranks in the regular Armed Forces.

### *Reserve units at educational institutions*

There are three reserve programs connected with civilian educational institutions: The Reserve Officers' Training Corps (ROTC), available in many universities and colleges; the Junior ROTC; and the National Defense Cadet Corps.<sup>112</sup> The last two programs are conducted in secondary schools. In fiscal 1959 the Federal Government spent \$87,969,567 on ROTC, \$6,163,000 for junior ROTC, and \$60,000 for the National Defense Cadet Corps.<sup>113</sup>

Men who successfully complete ROTC college programs are eligible for Reserve commissions in the branch of service in which they have received their training. The Junior ROTC program is offered in lieu of physical education in some high schools, while the National Defense Cadet Corps is an extracurricular activity in some secondary schools. Students who successfully complete either of the secondary school programs receive no advance standing in the Reserves or the regular Armed Forces. The principal reasons for these programs appear to be to interest young men in professional military careers and to give them some training in the rudiments of military knowledge. Students who have

participated in either of these programs should have a better opportunity for promotion than men who have not had this advantage.

Neither the Cadet Corps nor the ROTC programs appear in themselves to involve segregation or discrimination. But a prerequisite to each of them is admission as a student to a participating civilian educational institution—and segregated, as well as integrated, institutions participate. In Georgia, Mississippi, and Arkansas, according to the Department of Labor, “the qualified Negro college student cannot enroll in any ROTC unit.”<sup>114</sup> Still the Defense Department reports that there is no known instance in which a student admitted to a participating educational institution has been denied admission to the ROTC program because of his race.<sup>115</sup> Obviously, where a segregated institution participates, the student personnel are all of one race.

### *The National Guard*

The National Guard consists of those parts of the organized land and air militia of the several States, Puerto Rico, the Canal Zone, and the District of Columbia that are federally recognized. The Federal Government’s financial contribution to their support for fiscal year 1961 is estimated to be \$278,830,000 for personnel costs alone,<sup>116</sup> constituting a substantial portion of the total cost of the Guard in each State.<sup>117</sup> Much of this money goes into the wages of National Guardsmen: \$154,860,000 in fiscal 1961.<sup>118</sup>

The 1948 Executive order did not by its terms apply to the National Guard,<sup>119</sup> and has not since been extended to do so. The reason given is the President’s alleged lack of authority over the National Guard when it is not actually in Federal service. This reasoning is based on two constitutional provisions: <sup>120</sup>

The Congress shall have power . . . To provide for organizing, arming, and disciplining, the Militia [National Guard], and *for governing such Part of them as may be employed in the Service of the United States*, reserving to the States respectively, the appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

\* \* \* \* \*

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, *when called into the actual Service of the United States.*

As a spokesman for the Department of Defense put it: “Where . . . [segregation or discrimination] does occur in the National Guard, it is because of State law, while the National Guard is under the State’s jurisdiction.”<sup>121</sup> This does not explain why the National Guard of the

District of Columbia, under direct Federal control, still has segregated units.<sup>122</sup>

Nor does the argument that the Federal Government lacks appropriate power over the National Guard when it is not in Federal service appear incontrovertible. In 1820 the Supreme Court of the United States declared: <sup>123</sup>

. . . so long as the militia [National Guard] are acting under the military jurisdiction of the State to which they belong, the powers of legislation over them are concurrent in the general and state government. Congress has power to provide for organizing, arming, and disciplining them; and this power is unlimited, except in two particulars of officering and training them, according to the discipline to be prescribed by congress, *it may be exercised to any extent that may be deemed necessary by congress*. But as state militia, the power of the state governments to legislate on the same subjects, having existed prior to the formation of the constitution, and not having been prohibited by that instrument, *it remains with the states, subordinate nevertheless [sic] to the paramount law of the general government, operating upon the same subject*.

Congress, moreover, “exercised” that power as follows in 1956: <sup>124</sup>

Except as otherwise specifically provided in this title, the organization of the Army National Guard and the composition of its units shall be the same as those prescribed for the Army, subject, in time of peace, to such general exceptions as the Secretary of the Army may authorize; and the organization of the Air National Guard and the composition of its units shall be the same as those prescribed for the Air Force, subject, in time of peace, to such general exceptions as the Secretary of the Air Force may authorize.

Since Congress has thus prescribed that the organization of the National Guard and the composition of its units shall be the same as those prescribed for the Regular Armed Forces, and has further delegated to the President authority to prescribe regulations “necessary to organize, discipline, and govern the National Guard,” <sup>125</sup> it can fairly be contended that the President presently has power to issue regulations ordering the desegregation of National Guard units not currently in Federal service. Congress has given the President a very important sanction to enforce such a policy: <sup>126</sup>

If within a time to be fixed by the President, a State does not comply with or enforce a requirement of, or regulation prescribed under, this title its National Guard is barred, wholly or partly as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law.

This sanction is a very real one. In addition to the loss of Federal funds and Federal recognition, many members of the National Guard would lose their preferential treatment under the Universal Military Training and Service Act.<sup>127</sup> Members of federally recognized Guard units otherwise subject to Selective Service are either exempt from the draft or must put in 6 months of active duty in the Armed Forces as opposed to 24 months for men not in the National Guard.<sup>128</sup>

Although the Guard is largely financed by the Federal Government,<sup>129</sup> and trains under the direction of the Department of Defense (National Guard Bureau), that Department has told the Commission that it does not know which States, if any, have segregated Guard units and which exclude Negroes or other racial minorities.<sup>130</sup>

Partial responses to questionnaires sent out by the Commission's State Advisory Committees<sup>131</sup> indicate that North Carolina, Florida, and Tennessee do not have any Negroes in their National Guards, while Missouri and Nevada have some units that are segregated. A 1960 report of the Department of Labor indicates that as of 1955, Virginia, North Carolina, Kentucky, Tennessee, and Texas had segregated Guard units, while South Carolina, Georgia, Mississippi, Arkansas, and Louisiana excluded Negroes from their Guard units.<sup>132</sup>

The American Veterans Committee charged in 1961 that<sup>133</sup>—

Unequal treatment and opportunity are standard in the following states: Alabama, Arkansas, Florida, Georgia, Idaho, Louisiana, Missouri, Mississippi, Texas, North Carolina, Oklahoma, South Carolina, Tennessee, Virginia, West Virginia and Wyoming.

Inconsistencies in data obtained from these secondary sources suggest that no one is sure which States have segregated units, and which exclude Negroes from the National Guard. But it is apparent that there are some States that exclude Negroes, either by law or custom, and there are others that have Negroes in segregated units only, while the Government of the United States continues to pay a substantial portion of the cost.

Discrimination in the National Guard has at least one dimension not present in the other military organizations. When not on Federal duty, the Guard is a State law enforcement agency. It has proved particularly important in the flammable area of race relations—as shown in the use of the Arkansas Guard to retard the desegregation of Central High School in Little Rock,<sup>134</sup> and the Alabama Guard to quell disorders resulting from the Freedom Riders in Montgomery.<sup>135</sup> Addressing itself to this problem, the Commission's North Carolina Advisory Committee has observed that<sup>136</sup>—

In times of racial tension, if the guard should be called out, it would be reassuring to Negro citizens to observe that members of

their race were on duty. Thereby would be implanted the justified conviction that the sole mission of the guard is to uphold the law. Forty-three North Carolina cities which employ Negro policemen feel that such employment is a distinct contribution to fair enforcement of the law.

### *The Reserves*

While the federally recognized National Guard is part of the Reserve components,<sup>137</sup> there is another major segment of the Armed Forces known only as "The Reserves." Of the 4,387,601 men in all Reserve components of the Armed Forces, 2,486,803 fall into this latter group.<sup>138</sup> In fiscal 1961 the Government spent an estimated \$1.2 billion on all reserve programs;<sup>139</sup> \$380,111,000 of this went directly to the Reserves in personnel costs.<sup>140</sup> In fiscal 1961, 606,000 men drew salaries from the U.S. Government for this part-time service.<sup>141</sup> In theory the 1948 Executive order applies to this group just as it applies to the Regular Armed Forces,<sup>142</sup> because the Reserves are a national force created by Congress and intimately connected with the Regular Armed Forces.<sup>143</sup>

The Department of Defense has told this Commission that it knows of no State in which Negroes are excluded from the Reserves, and that it is unable to supply estimates of the number of Negroes, on a State-by-State basis, in reserve units. Again, however, unlike the Department of Defense, the Army does maintain this information, as shown in table 9.<sup>144</sup>

TABLE 9.—*Negroes in the U.S. Army Reserves, June 1961*

|                                    | <i>Negro</i> | <i>Total</i> | <i>Percent Negro</i> |
|------------------------------------|--------------|--------------|----------------------|
| Army Reserve officers. . . . .     | 5, 904       | 164, 315     | 3. 6                 |
| Army Reserve enlisted men. . . . . | 60, 498      | 879, 444     | 6. 9                 |
| Army Reserve total. . . . .        | 66, 402      | 1, 043, 759  | 6. 4                 |

There is a wide difference in the percentage of Negroes in the Regular Army (10.4 percent) and the Army Reserves (6.4 percent). The Commission has too little information to allow it to reach any conclusion as to the cause of this difference, but one commentator has said:<sup>145</sup>

With their reviews, dances, picnics, as well as military exercises, Reserve units often serve a clublike social purpose, and this is one reason why some whites, who would not welcome Negroes at their social functions, discourage Negro participation in their reserve units.

The Commission's Mississippi State Advisory Committee reported that an "official" at the Jackson Air Force Reserve unit stated that Negroes had been asked to get out; an Army Reserve "official" said no Negroes

and whites are in the same Reserve unit in Mississippi; and a Naval Reserve "official" indicated fear of pressure if it were known that his unit was integrated.<sup>146</sup> The American Veterans Committee's recent *Audit of Negro Veterans and Servicemen* makes this statement: "Evidence of segregation was found in reserve units of all the armed services."<sup>147</sup> The position of the Department of Defense has remained the same. It "does not have any knowledge of any discrimination because of a person's race, color, national origin, or religion—where because of the discrimination a man has been barred from affiliation with a Reserve component."<sup>148</sup> Yet, in a letter received by the Commission as this report was being prepared, an Assistant Secretary of Defense stated that a Virginia Negro "was referred to the United States Army Reserve" and "It is understood that he was told that there was no provision in the unit for Negro troops."<sup>149</sup>

Although the Negro, on the whole, has enjoyed greater opportunities in the military than he has in civilian employment, complete equality of opportunity in the military has not yet been achieved. Currently, qualified Negroes in three States are excluded from participating in ROTC training programs. A number of States either exclude Negroes entirely or segregate them in the National Guard. There have been accusations that the Reserves are segregated in some areas. And even where Negroes are admitted to units of the Armed Forces without regard to their race, they often find it difficult to advance. For, "Young men who are unskilled, or who have received an inferior education, as is still the case with many Negroes, find it as hard to advance in the armed services as in civilian life."<sup>150</sup>



## 4. Government: Creator of Employment

Directly or indirectly, Federal funds affect a large part of the country's work force. In addition to the 6 million persons on the Federal payroll—in the Civil Service and in the Armed Forces—millions<sup>1</sup> are employed by Government contractors or recipients of Federal grants-in-aid. Ten million persons work for the 100 largest defense contractors and sub-contractors alone.<sup>2</sup> In fiscal 1961 between \$25 and \$30 billion were expended for Federal contracts<sup>3</sup> and about \$7.5 billion for Federal grant-in-aid programs.<sup>4</sup> In view of the fact that the Federal Government helps create these employment opportunities, the Commission is concerned that they be made available on a nondiscriminatory basis.

As mentioned in chapter 2, attempts to assure equality of opportunity in jobs created by Government contracts and by grants-in-aid, as part of an overall Federal effort to assure full equal employment opportunity, date back to the early 1930's. Administrative machinery to implement this policy began with the first FEPC in 1941. Since 1946, when the second FEPC was forced to terminate its activities as a result of the enactment of the Russell Amendment,<sup>5</sup> separate provisions have been made by Executive order or by administrative regulation to eliminate discrimination in employment by Government contractors and on grant-in-aid projects. Accordingly, this chapter treats the two matters separately.

### A. GOVERNMENT CONTRACTS

“The nondiscrimination clause . . . is the means by which Federal contracting agencies direct that the millions of American workers in private industry whose skills are paid for wholly or in part by Federal funds be recruited, hired, trained, and promoted in accordance with their merit—without regard to the color of their skin, their race, their religion,

or their ancestry.”<sup>6</sup> Although a nondiscrimination clause has been required in all Government contracts since 1943, when President Roosevelt issued Executive Order 9346,<sup>7</sup> the administrative machinery established to effectuate the provision was abolished in 1946, when the second FEPC terminated its activities. The adoption of the Russell Amendment in June 1944 (discussed more fully in ch. 3)<sup>8</sup> presented a real barrier to the establishment by Executive order of any new machinery to implement a policy of equal job opportunity. However, the Independent Offices Appropriation Act of 1946 authorized the establishment of inter-agency committees without specific congressional appropriations, and thereby offered a way to bypass the Russell Amendment roadblock.<sup>9</sup> Yet, it was not until December 1951, when President Truman established the Committee on Government Contract Compliance,<sup>10</sup> that any such action was taken.

The Committee on Government Contract Compliance spent most of its one-year existence studying the effectiveness of the nondiscrimination clause in Government contracts. It “found the provision almost forgotten, dead and buried under thousands of words of standard legal and technical language in Government procurement contracts.”<sup>11</sup> Most contracting agencies, it appeared, lacked the machinery, the administrative personnel, or even the will to enforce the clause. Enforcement was usually restricted to investigation of complaints and inadequate procedures rendered even this of limited effect. Moreover, as most employees or applicants for employment were unaware of the nondiscrimination requirement, few complaints had been filed—only 40 between July 1, 1950, and June 6, 1952.<sup>12</sup> The Committee’s terminal report contained more than 20 specific recommendations, relating to training and recruitment as well as to the effectiveness of the nondiscrimination provision. Several of them were directed to the President.<sup>13</sup>

1. . . . take appropriate measures to designate an established department or agency of the Government to receive and investigate complaints of violations of the nondiscrimination provision in Government contracts. The designated department or agency should be responsible for the preliminary efforts at conciliation, mediation, and persuasion to effect compliance by contractors and should recommend necessary action by the contracting agencies.

\* \* \* \* \*

3. . . . [require] a revision of the nondiscrimination provision and . . . by Executive order require that the revised provision be adopted by all Government agencies for use in contracts for supplies, services, and construction.

\* \* \* \* \*

6. . . . assign responsibility and commensurate authority for the planning, coordination, and execution of an educational program

designed to promote national awareness, understanding, and acceptance of the national policy of equal opportunity in employment.

These recommendations were only partially adopted in 1953, when President Eisenhower established the President's Committee on Government Contracts,<sup>14</sup> the principal focus of this Commission's study. Although the Committee was replaced in April 1961 by the President's Committee on Equal Employment Opportunity, the latter has not been in operation long enough to permit definitive assessment.

## COMMITTEE ON GOVERNMENT CONTRACTS

Executive Order 10479, issued by President Eisenhower on August 13, 1953, declared it to be "the policy of the U.S. Government to promote equal employment opportunity for all qualified persons employed or seeking employment on Government contracts because such persons are entitled to fair and equitable treatment in all aspects of employment on work paid for from public funds . . ." <sup>15</sup> To implement this policy the order had three main provisions: it placed with the head of each Government contracting agency direct and primary responsibility for obtaining compliance with the nondiscrimination provision in all Government contracts; it directed the head of each contracting agency to take appropriate measures, including the establishment of compliance machinery, to carry out this responsibility; and it created the Committee on Government Contracts, a 15-member group composed of representatives of Government and the public <sup>16</sup> to—

(1) assist and make recommendations to the contracting agencies for improving and strengthening the nondiscrimination provisions of Government contracts;

(2) receive complaints of alleged discrimination and transmit them to the appropriate contracting agencies for processing. Each contracting agency was to submit reports of action taken on all complaints received, which the Committee was directed to review and analyze;

(3) encourage the furtherance of an educational program by employer, labor, civic, and other nongovernmental groups "in order to eliminate or reduce the basic causes and costs of discrimination in employment;" and

(4) establish and maintain cooperative relationships with agencies of state and local governments and with nongovernmental bodies to help achieve the purposes of the order.

Vice President Nixon served as Chairman. Although it lacked authority to investigate and settle complaints (as recommended by the

Committee on Government Contract Compliance), it did provide the administration with a single agency to receive and refer such complaints, and to conduct an educational program to promote acceptance of the national policy of equal employment opportunity.

The Committee's functions were primarily advisory, but it interpreted its authority broadly, particularly in the area of education, and eventually took an active role in processing and settling complaints and fostering acceptance of equal job opportunity.

### *Enforcement of the nondiscrimination clause*

The Committee attempted to give effect to the long-dormant nondiscrimination clause by: (1) clarifying and strengthening the nondiscrimination clause itself; (2) developing complaint procedures; (3) recommending the appointment of and training compliance officers; and (4) recommending the broadening of compliance procedures to include more than the processing of specific complaints.

*Revision of the clause.*—One of the first acts of the new Committee, adopting the recommendation of its predecessor, was to revise the nondiscrimination clause. This was effectuated by Executive Order 10557 (September 3, 1954), which provided: <sup>17</sup>

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

The revision served two purposes. It specifically applied the nondiscrimination requirement to all aspects of the employment relationship, including recruitment and training. By requiring the posting of notices, it sought to inform employees and applicants for employment of the existence of the provision, of the fact that the company was subject to it, and of the existence of an agency to which inquiries and complaints could be sent.

The Executive order made the clause mandatory in all but two groups of Government contracts: those to be performed outside the country where no employees were recruited in the United States, and subcontracts for standard commercial supplies or raw materials. The Committee was authorized to grant further exemptions to meet "special requirements or emergencies."<sup>18</sup>

In practice, the Committee granted few exemptions. It authorized the head of each contracting agency to grant exemptions from the notice-posting requirement in instances where contracts did not exceed \$5,000 in value.<sup>19</sup> In addition 15 partial and 2 full exemptions were allowed.<sup>20</sup> For the most part they were granted to contractors enjoying a peculiarly strong bargaining position, e.g., where a scarce product was involved, or where the contractor would derive little financial benefit from its Government contract. As the former Committee on Government Contract Compliance had found, public utility companies often refused to furnish services rather than adopt a policy of nondiscriminatory employment.<sup>21</sup> (Public utilities accounted for one of the full exemptions, and all 15 of the partial exemptions granted.) Since these companies are usually the sole source of supply in a particular area, the contracting agency was faced with the choice of doing without the services or seeking an exemption from the nondiscrimination requirement. In many instances such services were undoubtedly obtained without the execution of a contract. (A ruling of the Comptroller General permitted this procedure when a utility company's rates were fixed by Federal, State, or other regulatory body.)<sup>22</sup> The problem of recalcitrant utility companies continues to plague the Committee on Equal Employment Opportunity today.<sup>23</sup>

*Development of complaint procedures.*—Soon after issuance of Executive Order 10479, in 1953, the Committee undertook studies to determine the most effective procedures for handling complaints. It developed standards for the processing and analyzing of complaints which the contracting agencies later adopted and embodied in their regular administrative procurement machinery.<sup>24</sup> The Committee also improved and standardized investigative procedures. Because many of the early complaints filed lacked information essential for processing, the Committee developed a guide which it made available to the contracting agencies and to the Bureau of Employment Security for use in local public employment offices.

To make the complaint process as effective as possible the Committee urged contracting agencies to concentrate on the development of broad employment policies as well as on the specific allegations of the complaints received.<sup>25</sup> Thus, where investigation revealed a general lack of compliance with the nondiscrimination clause, the complaint file was kept active even after the settlement of specific grievances, and periodic followup examinations were made of the contractor's employment practices. Similarly when investigation revealed industrywide patterns of

discrimination, the Committee itself negotiated with employer representatives to eliminate such practices. Although these procedures brought some benefits, they apparently also slowed down the complaint process. It was months or even years before some complaints were settled.<sup>26</sup>

The Executive order gave the heads of the contracting agencies responsibility for processing complaints. The Committee was authorized to "review and analyze" reports filed by the contracting agencies on disposition of complaints; it had no explicit authority either to investigate complaints or to render advisory opinions. Nonetheless, it gradually took a more active role. In July 1957 it established procedures requiring all executive agencies and departments to inform the Committee promptly of all complaints filed, and to report on their disposition.<sup>27</sup> The contracting agencies were also directed to refer to the Committee all complaints which they were unable to settle through negotiation and conciliation.<sup>28</sup> After an agency disposed of a case, the Committee not only reviewed and analyzed the report, but often recommended additional action.

During the period from August 13, 1953, to October 31, 1960, 1,042 complaints were filed with the Committee. It closed approximately one-third of these—372—by approval of agency action. The majority of closed cases—449—were apparently closed after little or no investigation, because of lack of jurisdiction, inadequate information, or withdrawal of complaints.<sup>29</sup> There is no indication as to the number of cases in which the Committee recommended that the contracting agency take additional action. Apparently the agencies adopted all such recommendations.

A large majority of the complaints alleged discrimination because of race. A sample suggested that slightly more than half the complaints filed in 1955, 1956, and 1957 involved alleged "on-the-job" discrimination related to transfers, promotions, and training rather than to initial employment or discharge.<sup>30</sup> On the basis of a 25 percent random sample of complaints filed with the Committee during 1957-59, it concluded that most of the complainants did not meet minimum qualifications for the specific jobs they sought.<sup>31</sup>

*Appointment and training of compliance officers.*—Because compliance machinery is only as effective as "the intensity of the desire and efforts of the men behind the clause to require adherence to its standards",<sup>32</sup> the Committee urged the appointment of and developed methods to train personnel responsible for implementing the nondiscrimination provision in each contracting agency. By the Committee's second year all the major contracting agencies had appointed compliance officers.<sup>33</sup> Eventually, about 1,000 employees of contracting agencies were engaged in compliance activities.<sup>34</sup>

The officers selected, often the same individuals responsible for obtaining compliance with other contractual provisions, generally had little

or no experience in handling discrimination. Thus, beginning in April 1955, the Committee conducted training conferences in Washington.<sup>35</sup> Approximately 30 (each attended by about 200 agency representatives) were held.<sup>36</sup>

To train compliance officers in the field installations of the contracting agencies the Committee also conducted sessions in Chicago, Los Angeles, St. Louis, and Boston beginning in 1957. Approximately 300 compliance officers attended each of these meetings. In 1956 the Committee issued a "Manual for the Guidance of Compliance Officers."

*Broadening the compliance process.*—Because of the paucity of complaints filed and the fact that complaints alone are not a completely reliable indication of the extent of employment discrimination, the Committee urged contracting agencies "to make a positive effort to obtain compliance with the nondiscrimination program rather than to rely entirely on complaints."<sup>37</sup> A "General Agreement" reached in 1955 between the Committee and the contracting agencies provided for:<sup>38</sup>

1. Precontractual discussions with clear instructions to contractors regarding their obligations under the nondiscrimination provisions;
2. Inspections or field checks for compliance conducted on a sample basis and, where feasible, incorporated into normal contract administration procedures of the Federal agencies;
3. Investigation and conciliation of complaints; and
4. Reporting systems to keep the Committee informed of action taken and progress made by the agencies.

Most of the contracting agencies incorporated the requirements of the General Agreement into their regulations and directives.<sup>39</sup>

One of the most significant aspects of the new compliance program was the institution in May 1955 of compliance reviews and surveys—examinations of the employment policies and practices of the principal Government contractors. In the major contracting agencies, such as the Department of Defense, compliance reviews were made a part of existing regular inspections for contract compliance. Other agencies agreed to review major contractors on a spot check basis. By 1957, when the program of compliance surveys actually got underway, the concept had been further broadened in depth and scope. Although originally intended primarily to provide information as to the effectiveness of the nondiscrimination program, the survey process was later viewed as an enforcement tool as well.

In connection with the compliance survey program, compliance officers were directed to use "every means of persuasion, conciliation and mediation" to have contractors:<sup>40</sup>

- a. Issue a written statement of a nondiscriminatory employment policy to be furnished to rank and file employees and to employment sources.

b. Recruit qualified minority group employees for positions in the professional, technical, supervisory, clerical and skilled work categories.

c. Discontinue discriminatory codes or references found in pre-employment forms and job orders.

d. Recruit qualified personnel through minority group agencies, and training institutions.

e. Select qualified minority group personnel for apprenticeship and on-the-job training.

f. Provide equal advancement opportunities for minority group employees.

g. Check compliance with the nondiscrimination clause by sub-contractors.

Contracting agencies were directed to submit reports of compliance surveys to the Committee for evaluation and, where appropriate, recommendations for further action. As a matter of practice, Committee representatives often engaged in direct negotiations with Government contractors through the survey program and actively attempted to influence Government contractors to hire minority group employees.<sup>41</sup> Thus, administration of the compliance program was designed not only to provide a measure of the effectiveness of the nondiscrimination program and to permit corrective action in the absence of specific complaints, but to foster fuller utilization of minority group manpower.

From 1957 through 1960 surveys were conducted continually. Industry as well as area studies—in metropolitan areas with Negro populations of 50,000 or more—were made. Thus the Committee could estimate the progress in particular areas and industries, ascertain where continued efforts were needed, and identify the impediments to implementation of the nondiscrimination policy.<sup>42</sup>

During the period from 1957 through 1959, 821 initial compliance surveys and 601 resurveys were conducted. In 1960 there were 1,022 compliance surveys. These revealed an increase in the number of plants employing Negroes in higher-skilled, professional and technical, clerical, and supervisory positions and a decrease in the number of plants having no Negro employees.<sup>43</sup>

In addition to the institution of compliance surveys, the Committee took another significant step by recommending sanctions for non-compliance. Executive Order 10479 provided that the head of each contracting agency "shall take appropriate measures to bring about . . . compliance," but neither the order nor any rules issued by the Committee until mid-1957 specified the measures to be taken. Of course, ordinary common-law contract remedies were available, and legislation authorized another remedy—disqualification from further Government contracts.<sup>44</sup> The contracting agencies however, relied solely on "persuasion, conciliation, and mediation"<sup>45</sup> to obtain compliance with the

nondiscrimination program. Often these are the most effective methods of promoting the policy of equal employment opportunity.

In 1957 the Committee determined that more forceful measures were warranted. As its predecessor noted, "weapons of last resort, even though not brought into use, have a valuable persuasive influence."<sup>46</sup> Chairman Nixon wrote to the head of each Government contracting agency in May requesting the adoption of "a firmer approach" in cases "where education, conciliation, mediation and persuasion do not bring proper results."<sup>47</sup> The agencies were asked to (1) deny new contract awards where there was convincing evidence of past noncompliance, and (2) examine the employment practices of firms not previously under Government contract to determine whether employment records indicated whether they were following a nondiscriminatory employment policy. This letter was later implemented by General Instruction No. 2, issued by the Committee to the heads of all executive agencies on October 14, 1957, which set forth the procedures for reporting agency findings of ineligibility for contract awards to the Committee.<sup>48</sup> There is no indication, however, that any contracting agency ever denied a contract to a company on the basis of its employment policies. Certainly no company's name was ever placed on an "ineligible" list in accordance with the Committee's General Instruction procedures.<sup>49</sup>

The Committee never specifically recommended any sanctions other than the declaration of ineligibility. No contract was ever terminated during the Committee's existence for failure to comply with the nondiscrimination clause. The Committee, itself, and some contracting agencies occasionally used the threat of termination, however, which proved effective in bringing some change in contractors' employment practices.<sup>50</sup>

### *Education and persuasion*

Undoubtedly the Committee's major role was in the area of education and cooperation pursuant to its authority to "encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other voluntary nongovernmental groups . . . to eliminate or reduce the basic causes . . . of discrimination in employment" and "to establish and maintain cooperative relationships with agencies of State and local governments, as well as with nongovernmental bodies, to assist in achieving the purposes of this order." In view of its lack of enforcement authority, and its tenuous authority to recommend action to obtain compliance, the Committee concentrated its early efforts on education.

One of its first tasks was to explain the nondiscrimination provision and to sell the policy of merit employment to industry and labor as well as to the compliance officers of the Federal contracting agencies. Thus

the Committee promulgated the notice that Executive Order 10557 required to be posted; issued leaflets, pamphlets, posters, and films; published manuals regarding complaints and compliance procedures; and conducted conferences with representatives of industry, labor, State and local antidiscrimination agencies, and private agencies.

Early in its history the Committee found that a lack of qualified applicants often was largely responsible for the paucity of minority group employment in certain jobs. It therefore planned a long-range educational program with emphasis on measures to motivate minority group youth to train for nontraditional jobs. In 1957 the Committee sponsored a Youth Training-Incentives Conference which brought together leaders of business and labor and representatives of schools from 16 cities with large minority populations<sup>51</sup> to discuss methods of encouraging more minority group youth to continue and diversify their education and training. One of the problems stressed at the Conference was the need to stimulate young Negroes to train for skilled employment and other jobs that had not formerly been available to them. As a result of this and similar conferences, and of direct negotiations by the Committee, several communities undertook local programs to increase apprenticeship and educational opportunities for Negroes.<sup>52</sup>

In conducting its educational program the Committee worked closely with management and labor, public and private organizations, State, local and Federal contracting and other agencies, such as the Bureau of Employment Security<sup>53</sup> and the Bureau of Apprenticeship and Training<sup>54</sup> of the Department of Labor, and the Office of Education of the Department of Health, Education, and Welfare.<sup>55</sup>

Throughout the Committee's existence it increasingly emphasized the only areas in which the Executive order gave it the power to act on its own initiative—education and cooperative activity. It was in furtherance of these functions, broadly interpreted, that the Committee undertook direct negotiations with Government contractors and others to foster minority group employment. Indeed, it used this authority as a basis for entering into such negotiations to obtain compliance—either as the result of a specific complaint or in connection with compliance surveys—despite the fact that it had no express authority to engage directly in compliance activities. As a result of such negotiations with company representatives, employment opportunities were opened to Negroes at white collar, technical, and professional levels in several industries.<sup>56</sup>

The Committee also used its “educational” and “cooperative” authority to negotiate directly with firms *not* subject to the Executive order, such as noncontractors. Adopting a recommendation of its predecessor, it obtained agreement from the District of Columbia, effective November 16, 1953, to insert and enforce the standard nondiscrimination clause in all District Government contracts. Beginning in November 1955, it

conducted a series of meetings with representatives of the major airlines (not under contract with the Federal Government), as a result of which certain job classifications—reservation agents, ticket sales agents, clerical, and mechanical—were opened to Negroes for the first time. On several occasions, when continued negotiations with Government contractors seemed fruitless, the Committee met directly with representatives of the labor organizations concerned, or negotiated with both the unions and the companies in efforts to settle complaints of racial or religious discrimination in employment.

Thus, despite its limited authority, the Committee gradually took an increasingly active role in complaint processing, compliance surveys, educational activities, direct negotiation, and related matters. Its staff and budget were correspondingly enlarged. Starting with 1 Washington office, a staff of 9, and a budget of \$125,000 for fiscal 1954, the Committee terminated its activities with 2 regional offices—1 in Chicago and 1 in Los Angeles, a staff of 25, and a budget of \$375,000.<sup>57</sup>

### *1953 to 1961: An appraisal*

When the President's Committee terminated activities, despite its many accomplishments, the goal of equal opportunity in employment by Government contractors was far from attainment. This Commission's investigations in three cities—Atlanta, Baltimore, and Detroit—and a Commission hearing in Detroit revealed that in most industries studied, patterns of Negro employment by Federal contractors conformed to local industrial employment patterns.<sup>58</sup> In the automotive industry, for example, even though each of the three manufacturers contacted had adopted a companywide policy of nondiscrimination, employment patterns varied from city to city. In Detroit, Negroes constituted a substantial proportion—from 20 to 30 percent—of the total work force. Although their representation in "nontraditional" jobs was slight, all companies employed them in all classifications other than management positions, and one company employed Negroes in administrative and management jobs as well. In Baltimore, each of the companies employed Negroes only in production work and not above the semiskilled level—as assemblers, repairmen, inspectors, and material handlers. 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. Lack of qualified applicants cannot account for the absence of Negroes from automotive assembly jobs in Atlanta. Wage rates are relatively high for the locality and the jobs are in great demand. The work is at most semiskilled and educational requirements are extremely low (present employees averaging a third-grade education).

Although all three automotive companies are Government contractors which the President's Committee had contacted following a 1957 industry compliance survey, there are significant differences in the degree to which they attempt to implement the nondiscrimination policy. Two of the three conduct annual audits of individual plant employment practices to ensure that such practices comply with company employment policies. The third company, which has a smaller proportion of Negro professional and white collar employees than the others, does not conduct internal audits and allows its constituent divisions some discretion in establishing their own employment practices; of 2,400 students in a company-administered training program, there is not one Negro.

There are indications too that, in the same geographic location, patterns of Negro employment are substantially the same in plants of Government contractors as in plants of noncontractors. The Commission mailed questionnaires to a 5-percent sample of all manufacturing and assembly plants in Atlanta, Baltimore, and Detroit.<sup>59</sup> While the returns were limited, they showed no appreciable difference between Federal contractors and noncontractors in the proportion of Negroes employed or in the types of positions in which Negroes were working.<sup>60</sup> A similar conclusion was drawn on the basis of questionnaire surveys of Federal Government contractors by the Commission's State Advisory Committees in six Southern States—Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and West Virginia.<sup>61</sup>

Although the Federal nondiscrimination program may not have been effective in substantially increasing the overall employment of Negroes, or the numbers employed above unskilled or semiskilled levels, the President's Committee did lay the groundwork for some advances. It established the machinery necessary for implementation of the nondiscrimination provision. It also publicized and, through education and persuasion, made some headway in selling the program to those responsible for its implementation. Through direct negotiation with Government contractors, the Committee often brought about the opening of new job opportunities for Negroes, particularly in office and clerical, technical, and professional positions, and occasionally it opened new training opportunities as well.<sup>62</sup> As a direct result of such negotiations, the automotive industry in Detroit first hired Negro office clerical employees about 3 years ago. Similarly, persuasion by Committee representatives resulted last year in the employment of Negroes for the first time by a large chemical company located in an all-white community near Detroit.

But such efforts were not always successful. The Committee lacked authority, it had only a vague charter, and its program was replete with weaknesses and loopholes. One of the most commonly voiced criticisms of the program concerned the inability of the applicant for employment to ascertain whether a company discriminating against him was a Gov-

ernment contractor. The required notices "in conspicuous places," were not always helpful. Applicants often do not apply for employment at a plant, but go instead to a local public employment office, a recruitment source commonly used by Government contractors.<sup>63</sup> Such offices were often unable to determine which companies were current Government contractors as no current and comprehensive list of such contractors was available. Thus employment offices could not effectively discharge their obligation "to cooperate with . . . appropriate agencies of the Government in their efforts to secure compliance with nondiscrimination clauses in Government contracts,"<sup>64</sup>—though they might refer to the President's Committee any complaints they received of discrimination on the part of Government contractors.

The complaint process suffered to some extent from a lack of uniform procedures among the contracting agencies in spite of the Committee's efforts at "standardization."<sup>65</sup> More serious was the fact that the complaint process itself was exceedingly slow. As a result, by the time a complaint was settled, a job discriminatorily denied might well have ceased to exist. This was common in the construction industry. Perhaps this was inevitable since the Committee was concerned more with developing broad employment policies than with specific discriminatory acts, since it lacked enforcement powers, and since "negotiation, conciliation, and persuasion" are by their nature slow. Another difficulty was the division of authority between the contracting agencies and the Committee which occasionally led to buckpassing and to the shuttling back and forth of a case "for further action."

The institution of compliance checks and surveys in 1955 permitted corrective action in the absence of complaints. But this had basic weaknesses too. Many of the contracting agencies had compliance officers responsible for all types of compliance—contract specifications and wage and hour requirements, as well as nondiscriminatory employment. Often they lacked the required experience or training. Thus, in the Department of Defense compliance officers may have been trained in law, engineering, personnel, or industrial relations, but seldom in problems of minority employment. The Commission encountered an example of this functional weakness in Atlanta—involving a firm which had previously manufactured weapons for the Department of Defense. Despite the fact that job requisition forms, employment application forms, and personnel records which had been in use for at least 12 years all contained racial designations, the compliance officer had twice indicated in his report to the President's Committee that no racial designations or codes were used on such forms.

Another weakness of the compliance surveys was that they were conducted primarily among the principal Government contractors—the largest companies. Although the great bulk of Federal contract funds is concentrated there,<sup>66</sup> most Government contractors are small

companies.<sup>67</sup> Recent surveys indicate that at least in certain areas most of them have never been contacted by any Federal agency with respect to their employment policies.<sup>68</sup> Unless complaints were filed against them, there would have been little occasion for the contracting agencies, or the President's Committee, to examine or attempt to correct their employment practices.

The Committee often attempted to foster minority group employment by urging the hiring of Negroes on a limited preferential basis, i.e., of giving preference to a Negro applicant where he and a white applicant were equally qualified.<sup>69</sup> Although several contractors resisted this policy,<sup>70</sup> others adopted it. Where the Committee was successful in securing Negro employment in nontraditional jobs such as clerical, technical, professional, and supervisory positions, it was generally only of a "token" nature. In the Lockheed plant in Marietta, Ga., for example, two Negro secretaries were hired several years ago. One left shortly afterwards to take another position; the other was later laid off. When Commission representatives visited the plant in February 1961, there were no Negro clericals employed. (Often, however, the fact that Negro employment in nontraditional positions was of a token nature was due not so much to the company's reluctance to hire additional Negroes in these positions as to the lack of qualified Negro applicants.)

Aside from the infirmities of complaint and compliance procedures, the Federal nondiscrimination program had several overall weaknesses. First was the Committee's lack of authority to investigate complaints and to take—or even recommend—final action on them. The Committee nonetheless did make recommendations. Although the contracting agencies accepted those on the disposition of particular complaints, there were certain areas where cooperation was lacking. For instance, contracting agencies did not adopt the "firmer approach" recommended by Chairman Nixon with respect to disqualifying Government contractors. Nor did the Committee receive full cooperation from other Federal agencies. The Bureau of Employment Security, for example, refused to require State employment offices to notify the Committee of discriminatory job orders placed by Government contractors.<sup>71</sup> Here, as with the President's Committee on Government Employment Policy,<sup>72</sup> stronger support from the White House was needed.

Further, the Committee was hampered by its lack of jurisdiction with respect to labor organizations. In the construction trades, for example, labor unions, are the main—if not the sole—source of recruitment, and the unions in effect, do the hiring. Accordingly, attempts to negotiate changes in employment practices, or to force such changes by threats of legal action, with the contractors alone were generally ineffective. Building contractors sometimes preferred to lose the financial benefits of Government contracts rather than alienate their source of labor by hiring nonunion employees or those not "cleared" by the unions. And

few pressures could be brought on all-white labor organizations to persuade them to refer nonmembers.<sup>73</sup> Where the bulk of commercial construction is unionized, even the threat of contract termination is a weak one, since most companies performing work under the contract would have to hire through the union. Often the pressure of public opinion was the only one available to the Committee, and this was rarely effective.<sup>74</sup>

In many industries, such as the manufacture of aircraft, work performed under Government contracts constitutes a substantial part of total business performed. Companies in these industries rely heavily on the award of Government contracts, particularly in times of economic recession. Thus, for example, the recent \$1 billion contract awarded to Lockheed Aircraft Corp. to be performed at its Marietta, Ga., plant will be a significant factor in the economic recovery of the plant and of the community. In order to obtain the contract, the Company agreed to make substantial changes in its employment practices, as set forth in detail below.<sup>75</sup> In other industries, however, such as the manufacture of textiles, profits derived from Government contracts constitute a relatively small proportion of total profits. In view of the slight financial benefit derived from such contracts, manufacturers in these industries often prefer to forego doing business with the Federal Government rather than institute any substantial changes in their longstanding employment practices.<sup>76</sup> A similar situation exists with respect to public utility companies, which are usually the sole source of supply of services in a particular area.<sup>77</sup> The problems presented in industries such as these, where the potential Government contractor enjoys a stronger bargaining position than that of the contracting agency, are inherent in any program in which the requirement of nondiscriminatory employment is conditioned upon the award of Government contracts.

Perhaps the major weakness of the program established by Executive Order 10479 was the limited jurisdiction it gave the Committee. Although provisions were made to eliminate discrimination in employment—including recruitment and training—by Government contractors, no general authority existed to ensure the nondiscriminatory recruitment or training of employees even where recruitment services and training were supported by Federal funds. Through the Committee's broad interpretation of its functions in the areas of education and cooperative activities, it attempted to negotiate increased opportunities for minority group workers in training and recruitment services. Its attempts were largely ineffective.

The Committee's most significant contribution may well have been its concentration, during the last few years of its existence, on the problems of motivation and training of minority group youth. In the surveys conducted by this Commission and by State Advisory Committees in several States as well as in the Committee's compliance surveys, one

fact stands out: when new employment opportunities are opened to Negroes, there is often a dearth of qualified Negro applicants. Similarly, the Commission's survey of Government contractors, conducted during the recent recession, found the contractors taking on employees only in hard-to-fill categories such as technical employees and engineers; but even those companies which had adopted a policy of specifically recruiting Negro employees found it difficult to obtain qualified Negroes for these positions. A similar problem was encountered by companies seeking to hire Negro women in office clerical positions. Although one large automobile manufacturer in Detroit originally hired Negro women as office clericals about three years ago (through a program of affirmative recruitment) and expressed willingness to employ more, company representatives stated that there were few qualified Negro applicants for these jobs.

Part of the problem is sometimes an unwillingness on the part of Negroes to apply for jobs that have always been closed to them, coupled with lack of information as to jobs that have in fact been opened on a nondiscriminatory basis. Affirmative recruitment may be necessary during a transitional period to overcome past discriminatory employment practices. But even this initial recruitment may not be sufficient to counteract the feeling on the part of many Negroes that it is futile to apply for nontraditional jobs.

Another facet of the problem is the lack of adequately trained minority group members. Some Negro youth lack the motivation to continue their education and training. Others, particularly in the South, have limited their education to training in the social sciences (which, in the past, offered almost the only opportunities for Negro white collar employment). Where Southern Negro youth do attempt to acquire training in the natural and physical sciences, they find the opportunities for such training severely limited.<sup>78</sup> Moreover, in the North as well as the South, training for Negroes under federally assisted vocational education programs is still geared almost exclusively to those jobs which have been traditionally open to them.<sup>79</sup>

The Committee undertook a broad program in attempting to overcome the problem of lack of qualified applicants. It worked with local community groups to locate qualified applicants for newly opened employment and training opportunities.<sup>80</sup> It also attempted to overcome lack of motivation by working toward increased counseling services in the schools and increased training opportunities for Negro youth, and by fostering the employment of Negroes—even though this often resulted only in token employment—in nontraditional job categories. In these activities, particularly in the areas of motivation and training, the work of the President's Committee on Government Contracts often duplicated similar efforts undertaken by the Committee on Government Employment Policy.<sup>81</sup>

In its final report to the President, the Committee made the following recommendations, stressing again the importance of the motivation and training of minority group youth: <sup>82</sup>

The Committee recommends that the Federal Government, through legislation, Executive order, or administrative ruling, as may be appropriate, extend the principle of equal opportunity:

(1) To grant-in-aid programs with particular reference to those involving education, training, recruitment or referral;

(2) To programs where Federal subsidies are involved in housing;

(3) To agreements under which the Federal Government contributes monies to State and local programs.

In addition, the Committee urges that all who are enlisted in the cause of equal job opportunity, including the Federal Government, continue the Committee's program, with increased effort, for the opening of greater training and education opportunities for minority group people. This effort also should be aimed toward continued encouragement of such people to take advantage of every opportunity that is presented to obtain training in skills and crafts leading toward employment above the unskilled levels.

The Committee again recommends the enactment of legislation by Congress which would create a permanent commission to advance the cause of equal job opportunity for workers engaged in the performance of contracts or subcontracts which provide the Government with goods or services.

## COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

On March 6, 1961, President Kennedy issued Executive Order 10925 establishing the President's Committee on Equal Employment Opportunity. Its purpose was "to promote and ensure 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." <sup>83</sup> Thus, it avoided at least one of the weaknesses of previous programs—two committees with overlapping authority, particularly in the areas of education and "cooperation." There are indications, from the provisions of the order and the measures thus far taken by the Committee to implement them, that many of the other previous weaknesses will also be overcome.

## *Increased authority and stature*

A primary impediment to the previous Committee's effectiveness was its lack of any clearly defined authority in enforcement procedures. The Committee often made recommendations to the contracting agencies, for instance, or negotiated directly with Government contractors, but it had no clearly defined authority to do so. As a result, the contracting agencies were sometimes "slow" in adopting Committee recommendations.<sup>84</sup> Moreover, the agencies and, to a lesser extent, the Committee itself were disinclined to utilize sanctions and penalties, further hampering the program's effectiveness.

The present Committee, on the other hand, has been given broad authority to enforce and implement its program. The contracting agencies still have primary responsibility for obtaining compliance, but overall responsibility and authority are clearly vested in the Committee. The increased powers of the new Committee with respect to both complaints and compliance surveys are brought sharply into focus by a comparison with those of its predecessor:

(1) *Complaints*: Under the former program there was no time limitation on filing complaints. The Committee neither investigated nor took action on complaints, even those filed directly with it. This was left to the contracting agencies and although the Committee could review and analyze the action taken by the agencies, it had no specific authority to recommend further action. The complainant had no right of appeal to the Committee.

Under the new procedures, complaints must be filed within 90 days from the date of alleged discrimination<sup>85</sup> either with the contracting agency or with the Committee. Complaints filed with the Committee may be retained or referred to the agency for processing.

When a complaint is filed with the contracting agency, the Contracts Compliance Officer must transmit a copy to the Committee within 10 days and proceed with a "prompt investigation." Within 30 days after it is processed, the record and summary report, including a statement of findings and disposition, are transmitted to the Executive Vice Chairman of the Committee. If the contracting agency has found no violation, the Committee may disagree and either undertake further investigation or request that the agency do so.

The Committee is authorized to assume jurisdiction over any complaint filed with it, conduct investigations, hold hearings, make findings, and "issue such recommendations and orders as may be necessary or appropriate."<sup>86</sup> It may also assume jurisdiction over any case pending before an agency and process it to completion. After the Committee has processed a case, it is to notify the contracting agency promptly of any corrective action to be taken or sanctions to be imposed. The agency must then take such action and report the results thereof to the

Committee within the time specified. The Committee has indicated that when corrective action is taken, it will be directly related to the complaint's allegations. This is in favorable contrast to the previous practice wherein cases were sometimes closed because of concessions made by Government contractors which bore little, if any, relation to the discriminatory employment practices alleged.

(2) *Compliance review*: Under the former procedures, only the contracting agencies could institute checks or comprehensive surveys to determine whether contractors were abiding by nondiscrimination requirements. The Committee could recommend that the agency take additional action, however, and often conducted its own negotiations with Government contractors to obtain compliance.

Executive Order 10925 specifically authorizes the new Committee to institute investigations of the employment practices of Government contractors; it may itself conduct such investigations or require that the appropriate contracting agency do so. The Committee's rules provide that "routine compliance reviews" are to be considered "a normal part of contract administration" and are to be conducted by the contracting agencies.<sup>87</sup> The Committee is directed to carry out comprehensive "special compliance reviews," as are contracting agencies "(1) from time to time, (2) when special circumstances, including complaints . . . warrant, or (3) when requested by the [Committee] Executive Vice Chairman."<sup>88</sup> Results of special compliance reviews are to be reported to the Executive Vice Chairman.

The requirement that *all* Government contractors and subcontractors file compliance reports within 30 days after the award of a contract and at regular prescribed intervals thereafter<sup>89</sup> will provide the Committee with a source of specific useful information on all contractors subject to the order. Under the previous program, information on employment practices was obtained only from those Government contractors that were the subject of complaints or compliance surveys. Compliance surveys were conducted primarily among the largest companies and were therefore not necessarily a reliable indication of the overall effectiveness of the nondiscrimination program. Moreover, this Commission's investigations revealed that complaints were not a reliable measure of the extent of compliance. Often no complaints were filed against companies with the most discriminatory hiring practices, including those who flatly refused to hire Negroes. On the other hand, many companies with "relatively good" employment practices had a large number of complaints filed against them.<sup>90</sup>

The former Committee was hampered, in connection with complaint or compliance investigations, by the refusal of some contractors to supply detailed employment information on the grounds that their records did not show the race of employees.<sup>91</sup> The new compliance reports, however, must "contain such information as to the practices,

policies, programs, and employment statistics of the contractor and each subcontractor”<sup>92</sup> as the Committee may prescribe. Information regarding labor organization policies and practices must also be included where relevant. In addition, contractors must now permit access to their books, records, and accounts when the Committee or contracting agency is conducting a compliance investigation. These new sources of data will be of great assistance to the Committee in assessing the effectiveness of the equal job opportunity program and in initiating further investigation or action where needed.

Compliance machinery of the contracting agencies has also been strengthened. Each agency must appoint a Contracts Compliance Officer, under the immediate supervision of the head of the agency, and may also designate Deputy Contracts Compliance Officers where appropriate. Although neither the order nor the rules so provide, several of the larger agencies have appointed full-time Compliance Officers who have no other duties to perform. The Committee is now considering training programs to instruct Compliance Officers in the objectives of the program and techniques for attaining them.

(3) *Sanctions*: Even more significant, perhaps, is the provision for the first time of specific sanctions and penalties for use by the Committee or the appropriate contracting agency in enforcing the Federal nondiscrimination program. Although most, if not all, of the sanctions and penalties were available to previous Federal nondiscrimination agencies, they have never been applied.

Both the order and the rules provide that compliance with the non-discrimination provisions of Government contracts should be achieved by “informal means”<sup>93</sup> wherever possible—by “conference, conciliation, mediation, or persuasion.”<sup>94</sup> But, if these fail, all the following sanctions are specified:<sup>95</sup>

1. publicizing the names of contractors or unions which have complied or which have failed to comply;
2. recommending action by the Department of Justice, including injunctions against individuals or groups interfering with compliance;
3. recommending to the Department of Justice that criminal proceedings be brought for furnishing false information;
4. terminating all or part of any contract for failure of the contractor or subcontractor to comply; and
5. requiring that contracting agencies not enter into further contracts, or extensions or modifications of existing contracts, with any noncomplying contractor until he complies.

The Committee has final authority on imposing these sanctions and penalties. Thus, no contracting agency may impose any sanction or penalty except contract termination without prior Committee approval. In cases of proposed ineligibility (debarment), opportunity for hearing must be granted by the contracting agency or the Committee but the

Committee must give final approval to the decisions. Any disqualified contractor may be reinstated by the Executive Vice Chairman upon submission of a program of compliance or a showing that it has complied.

(4) *Nondiscrimination clause*: The standard nondiscrimination clause has been substantially revised. It is to be included in all Government contracts and subcontracts, except those specifically exempted or included within the blanket exemptions of the Committee's rules. In addition to setting forth in some detail the contractor's obligations under Executive Order 10925, the nondiscrimination provisions set forth in the order require the contractor to "take affirmative action to ensure that applicants are employed, and that employees are treated . . . without regard to their race, creed, color, or national origin."<sup>96</sup> The "affirmative action" includes an affirmative indication when soliciting or advertising for employees<sup>97</sup> that all qualified applicants will be considered without regard to race, creed, color, or national origin. The need for affirmative action to overcome past discriminatory employment practices was well recognized by the former Committee on Government Contracts. As mentioned above, the Committee often urged Government contractors to take affirmative steps to hire Negroes, but sometimes met the objection that this policy gave preference to Negroes and therefore violated the nondiscrimination clause as much as preferential hiring of whites. The express requirement of "affirmative action" in Executive Order 10925 should overcome such objections.

(5) *Labor unions*: The new Committee has some powers which can elicit cooperation from labor unions. Only the pressure of public opinion was available to the former Committee, and its effectiveness was definitely hampered by uncooperative unions, particularly in the building trades.<sup>98</sup> Even now there is no direct jurisdiction over unions, but contractors must furnish the Committee with information regarding any practices and policies of labor unions which might affect compliance, and the Committee has specific authority to utilize its powers against noncomplying unions. Thus, the Committee may hold public or private hearings and may notify any appropriate Federal, State, or local agency of its conclusions and recommendations. The Committee is also required to submit reports to the President on discriminatory union practices and policies and may recommend remedial action. Moreover, certain sanctions and penalties are applicable to labor organizations—the names of those which have complied or failed to comply may be published, and recommendation may be made to the Department of Justice that it bring proceedings to enjoin action which prevents or is designed to prevent compliance with nondiscrimination provisions.

Despite the possible limitations to the Committee's authority to affect the discriminatory practices and policies of labor unions, discussed in chapter 6, the Committee is clearly endowed with greater power in this

area than any executive agency since the second FEPC. Moreover, the mere existence of these provisions may have a salutary effect on discriminatory practices of both unions and employers. As mentioned in chapter 6, both are sometimes reluctant to alter discriminatory practices—the employer because of anticipated reaction from its white employees and the union because of a similar fear of opposition from white members. But if they can explain that there is “a legal obligation” to adopt a non-discriminatory policy, each can escape responsibility for the change. In at least one case involving a Government contractor since the effective date of the new order, Negro employees were hired—without opposition—in this manner.<sup>99</sup>

Shortly after the effective date of the order,<sup>100</sup> the President’s Committee met separately with representatives of trade unions<sup>101</sup> and of the largest Government contractors<sup>102</sup> to explain the provisions and objectives of the new order, to discover what problems might be involved in carrying it out, and to obtain their cooperation in achieving the goal of nondiscriminatory employment on Government contracts—“a matter of [the] very highest government policy.”<sup>103</sup> President Kennedy, Vice President Johnson (Chairman of the new Committee), and Secretary of Labor Goldberg (Vice Chairman) addressed both groups.

Several of the largest Government contracting agencies, including the Department of Defense, have indicated their firm support of the policy of equality of opportunity in work performed on Government contracts. Similarly, Secretary of Labor Goldberg has indicated that Federal policies with respect to recruitment and training programs administered by his Department are currently being reexamined to bring them into conformance with the Federal nondiscriminatory employment policy. Firm leadership from the White House and a clearly expressed determination by President Kennedy to effectuate this policy have undoubtedly been largely responsible for the cooperation of the contracting agencies with the President’s Committee.

Thus, it can be seen that many of the obstacles to effective enforcement of a nondiscriminatory employment program have already been overcome. Part III of Executive Order 10925 and the rules and regulations issued thereunder do, in fact, embody all of the recommendations relating to employment by Government contractors made by President Truman’s Committee on Government Contract Compliance.<sup>104</sup> Recommendations which have not been specifically adopted involve employment in Federal grant-in-aid and loan programs, and the administration of federally financed recruitment and training facilities. It is questionable whether even an agency as strongly endowed with authority and prestige as the President’s Committee can effectively implement an equal employment opportunity program unless its authority extends to these other areas as well.

Despite the lack of specific authority, the Committee may well take action in these areas. As discussed in section B of this chapter, Federal grants to the States for the purpose of undertaking certain projects or services may very well be contracts.<sup>105</sup> If so, control can be exercised over the recipient in the same way as it is exercised over a Government contractor.

Recruitment and training programs present a slightly different problem. They are so closely related to hiring that any attempt at a non-discriminatory policy must include these preemployment programs.<sup>106</sup> Recruitment and training are clearly within the scope of the order to the extent that they are controlled by Government contractors. To the extent that they are not within the direct control of the contractor, the President's Committee will apparently, on behalf of the contractor, seek the assistance of public and private agencies to eliminate discrimination in these services. Such action has already been undertaken in connection with the Committee's disposition of the Lockheed case. This attempt to affect discrimination in training programs and referral services beyond the control of the Government contractor and the great emphasis placed on affirmative action by the contractor are both significant elements of the agreement reached in the first case settled by the new Committee.

#### *The Lockheed case—Plan for Progress*

One of the most publicized achievements of the new Committee to date has been its settlement of complaints against Lockheed Aircraft Corporation. On April 6, 1961, the effective date of Executive Order 10925, complaints were filed with the President's Committee alleging discrimination in employment at Lockheed's Marietta, Ga., plant. Complaints had been filed with the previous Committee in 1956 and, since that time, the Department of Defense and the former Committee had been attempting to effect compliance. Approximately a week after President Kennedy issued Executive Order 10925, the Administration announced the proposed award of a \$1 billion contract for Lockheed's Marietta plant. This announcement, following so closely the announcement of the Administration's new equal employment opportunity program, and coupled with Lockheed's long history of alleged noncompliance with the previous nondiscrimination program, brought cries of protest from some groups. Thus the filing of the complaints with the new Committee was attended by much publicity as was the settlement of these complaints on May 25, 1961.

The Marietta plant is owned by the Federal Government. It is located on Dobbins Air Force Base, and has been manufacturing aircraft for the government since it opened in 1951. The plant has employed Negroes since it opened, but originally only in certain segregated departments and at the lowest job grades. The complaints filed in 1956,

when the plant was at peak employment, alleged discrimination against Negroes by denying opportunity for promotion to jobs outside the all-Negro departments and by denying equal training opportunities. At this time, there was a total of 20,000 employees; 1,200 were Negroes who were employed in only 20 of the approximately 500 job classifications.

In early 1958, a series of layoffs began. Thus, in February 1961, when this Commission conducted its investigation of employment practices at the plant, there were approximately 10,500 employees, including about 500 Negroes. There were 4,500 employees on layoff with recall rights. Working conditions for Negroes had improved somewhat: Negroes were employed in 37 of 315 production job classifications, many at higher grade rates; several plant departments were integrated; and 2 Negroes were employed as supervisors over white as well as Negro employees. On the other hand, many Negro college graduates were working on the assembly line.<sup>107</sup> Several were qualified for better jobs outside the production departments in which they worked by virtue of technical training acquired in the Armed Forces, but, almost without exception, these jobs were denied them.<sup>108</sup> Recreational and plant facilities—rest rooms, water fountains, and cafeterias—were segregated. The company openly maintained racial records and insisted that employees punch separate time clocks.<sup>109</sup> Vocational training programs which were sponsored jointly with the Cobb County Board of Education and financed partly with Federal funds were segregated. Negro employees were members of a separate all-Negro local of the International Association of Machinists.

Integration of plant departments had been accomplished largely as a result of massive layoffs of employees occurring since early 1958. Rather than face unemployment, many white employees exercised their "bumping" rights under the collective bargaining agreement and were temporarily demoted to lower-paid jobs in Negro departments. Under the bargaining agreement, too, most of these employees have a right to be retransferred to their former jobs as employees are recalled from layoff status. Accordingly, one of the primary concerns of the Negro employees has been the possible reinstatement of segregated departments with limited promotional opportunities as employees with recall rights are called back to work. With the announcement of the \$1 billion contract and of the fact that 3,300 additional employees would be needed within the next 2 years in connection with this contract, Negro employees saw this fear materializing.

Immediately upon receipt of the new complaints on April 6, the Committee and the Department of the Air Force began an investigation. The case was settled on May 25 with the much-publicized "Plan for Progress." This agreement not only reflects many of the changes in the new program, particularly the requirement for "affirmative ac-

tion," but the greatly expedited procedures permitting settlement of a case in less than three months.

Under the plan, Lockheed will:

(1) provide all management levels with an up-to-date statement of its nondiscrimination policy;

(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 Offices and other recruitment sources that job applicants are to be referred irrespective of race, creed, color, or national origin;

(4) reanalyze its available salaried jobs to be certain that all eligible minority group employees have been considered for placement and upgrading;

(5) reexamine 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) maintain 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.

The Committee, for its part, will:

(1) "request the U.S. Department of Labor to assign personnel to work with the appropriate State Employment Services to review and intensify efforts to obtain applicants for referral to Lockheed without regard to race, creed, color, or national origin;" and

(2) solicit the support of community groups in recruiting minority group employees.

With respect to training in general, the Committee has agreed:

(1) to request the Bureau of Apprenticeship and Training to encourage and promote the selection of apprentices on a nondiscriminatory basis; and

(2) to request the Department of Health, Education, and Welfare to assign personnel to encourage participation of minority group members in vocational education programs, and to develop new programs

aimed at encouraging cooperation between educational facilities and employers.

The Committee will also work with the International Association of Machinists and other appropriate unions on problems related to apprenticeship training, transfer procedures and seniority rights where union action may be helpful.<sup>110</sup>

The Committee declared the case closed, subject to periodic review by the Air Force (the contracting agency) of progress being made at the plant. Progress has been made since the filing of the complaints: work areas, plant facilities, time clocks, and company-sponsored recreational activities have been desegregated; assignment, transfer, and upgrading policies have been reexamined, and an analysis has been made of the qualifications of all present Negro employees so they may be considered for transfer and promotion on a merit basis. The company has begun intensive recruiting efforts among minority groups, and even before the case was closed, a Negro stenographer and a Negro engineer had been hired. Two Negro professors had been hired for summer work as part of the program to familiarize universities with the employment needs and opportunities at Lockheed. Negroes had also been included in the company's cooperative training program and all company training programs had been desegregated. The International Association of Machinists had taken action to merge the segregated Negro and white locals.

President Kennedy referred to the Plan for Progress as "a milestone in the history of civil rights in this country."<sup>111</sup> Its significance cannot be doubted but it is also true that contractors took similar affirmative action after negotiation with the former Committee. The present Committee's undertakings, too, are similar to those made by the previous Committee in its efforts to cooperate—sometimes unsuccessfully—with other Federal agencies and public and private bodies. The real distinction between the effectiveness of the present program and that of its predecessor will lie in the authority and prestige of the Committee and its ability to attain continuing cooperation from other Federal agencies, other public and private agencies, labor organizations, and Government contractors. The speed with which the Lockheed case was settled, the fact that eight other large Government contractors have recently signed similar "Plans for Progress,"<sup>112</sup> and cooperation already in evidence from Federal agencies all indicate that the Committee, with its strong Presidential support, will prove effective.

The limitations of the present program cannot be overlooked, however. Congressional adoption of the program would not only provide a permanent Federal agency to effectuate the equal employment opportunity program but would add considerably to the prestige and stature of the agency. Any doubts as to the authority of the present Committee<sup>113</sup> would be removed. Moreover, until any such agency is en-

dowed with authority to affect discrimination in training and recruitment facilities and in the practices and policies of labor organizations, it will not be adequately equipped to achieve the goal of equal employment opportunity.

## B. GRANTS-IN-AID

Grants-in-aid to State and local governments, to public institutions, and to private nonprofit institutions are a method of Federal subsidization of employment second in importance only to Government contracts. For many years Congress has exercised a measure of control over essentially local activities by granting money or land for specific programs or projects which are locally administered but in a manner prescribed by Congress. As mentioned in chapter 2, many grant programs have been established for the express purpose of creating employment opportunities.<sup>114</sup> Others do so only incidentally.

Historically, aid from the National Government to State and local governments antedates the adoption of the Constitution. In 1785, Congress dedicated  $\frac{1}{36}$  of the land in each township of the then Northwest Territory to public education.<sup>115</sup> In 1787, when the Northwest Ordinance provided the legislative base for admitting this new territory into the Nation as equal sovereign States, the land provisions of the Act of 1785 were included.<sup>116</sup> While the principle of Federal aid had its inception in pre-Constitution days, the next permanent major development of the concept did not occur until almost a century later when the Morrill Act of 1862<sup>117</sup> established the land-grant colleges. Later, Federal aid was granted for agriculture, forestry, highways, public health, vocational education, and rehabilitation, and with the depression of the 1930's, it was extended to meet the need for economic security and social welfare.<sup>118</sup> The device is now being used to grant financial assistance to the States for school construction and operation.

The policy of Federal grant-in-aid assistance has been constantly extended to a wide range of programs. The current budget lists appropriations for over 60 distinct grant programs, bringing the total of Federal financial participation in programs administered by State and local governments to approximately \$7.5 billion in fiscal 1961.<sup>119</sup> This amount alone is sufficient to create many jobs. When added to State funds and, under some grant programs, to private funds, the effect on the economy and on employment throughout the nation is significant. A partial listing of grant programs indicates the scope of the Federal aid program. Federal money is used: to build local hospitals,<sup>120</sup> airports,<sup>121</sup> and public

housing projects;<sup>122</sup> to operate the nation's largest employment agency;<sup>123</sup> to administer unemployment compensation;<sup>124</sup> to give research and scholarship grants to scholars and students;<sup>125</sup> to provide milk and lunches for children at school;<sup>126</sup> for water and waste treatment facilities;<sup>127</sup> for maternal and child welfare clinics;<sup>128</sup> to assist in slum clearance and urban renewal;<sup>129</sup> and to build<sup>130</sup> and operate<sup>131</sup> some local public schools.

The administration of these grant programs raises two questions of primary concern to the Commission: (1) Are the services or facilities provided with the assistance of Federal funds made available without regard to race, color, religion, or national origin? (2) Are the employment opportunities created made available on a nondiscriminatory basis? Other chapters of this Report,<sup>132</sup> including chapter 5 of this part, deal with the first question—the availability of services or facilities provided—as to some of these grant-in-aid programs. This chapter is concerned solely with the equal availability of employment opportunities created by grant-in-aid programs.

In view of the large number and variety of such programs, the Commission's study has necessarily been limited to a selected few. This selection was made upon two bases: The size of the program in terms of its impact on employment, and the nature and effectiveness of the policy of equal opportunity governing the program. Six programs were thus chosen for study: Federal aid to schools in impacted areas (Public Law 874), Federal aid for school construction in impacted areas (Public Law 815), the Hill-Burton hospital construction program, all administered by the Department of Health, Education, and Welfare (HEW); grants for the construction of public airports, administered by the Federal Aviation Agency; grants for highway construction, administered by the Bureau of Public Roads, in the Department of Commerce; and grants for public low-rent housing and slum clearance, administered by the Housing and Home Finance Agency (HHFA). All of these programs create substantial employment opportunities. They vary considerably, however, in the extent and manner in which attempts have been made to provide equality of opportunity in employment created by the programs. Thus, they illustrate the lack of any overall Federal policy with respect to equal employment opportunity in grant-in-aid programs.

The lack of such a policy has in the past turned on a distinction drawn between grants-in-aid and Government contracts. Adopting this distinction, the President's Committee on Government Contract Compliance and the Committee on Government Contracts did not assert jurisdiction over employment created by grants-in-aid; and the jurisdiction of their successor, the Committee on Equal Employment Opportunity, may thus be subject to question on the same point since Executive Order 10925 specifies "contracts."<sup>133</sup>

Yet grants-in-aid and Government contracts have many elements in common. Both are agreements with the Federal Government to furnish goods or services in accordance with certain specifications or conditions. In each, the Federal Government undertakes to make payment—either by grant funds or by contract price—for the goods or services provided. In the case of a grant, the other party to the agreement may be a State or local government or a public or private nonprofit organization. In the case of a contract, the other party is usually a private business enterprise—but it may also be a State or local government or public or private nonprofit institution. Although most grant programs are concerned with the provision of services for individuals or for the general public rather than for the Federal Government itself, some grants are made to provide services directly to the Federal Government. As long ago as 1866, the United States Supreme Court, in *McGee v. Mathis*,<sup>134</sup> decided that a grant to a State, not unlike present grants-in-aid, was in law an enforceable contract. Chief Justice Chase, speaking for a unanimous court, stated: <sup>135</sup>

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. All the elements of a contract met in the transaction—competent parties, proper subject-matter, sufficient consideration, and consent of minds. This contract was binding upon the State, and could not be violated by its legislation without infringement of the Constitution.

Despite this precedent, which has stood unchallenged, most Federal agencies administering grant programs have viewed grant agreements as not within the purview of Executive orders specifying a nondiscrimination policy for employment on Government contracts. The view here apparently is that grants are gifts rather than contracts—that the conditions imposed upon the grantees by Congress and the administrators of the grants are not enforceable in the courts, and that the only real sanction available to the Federal Government for nonperformance of the grantee's promises is to refuse to make another gift. Although there is much confusion and disagreement regarding the legal classification of a grant agreement, the Attorney General has never issued an official opinion regarding this matter.

However, Vice President Nixon, as Chairman of the President's Committee on Government Contracts, issued an Interpretation of Executive Orders 10479 and 10557 on February 15, 1956, which included the following: <sup>136</sup>

6. The obligation to include the nondiscrimination provision exists even though the contract is between a Federal Government agency and a State agency or subdivision of a State.

Although certainly not responsive to the basic question of whether grants-in-aid are contracts within the meaning of the Executive orders this regulation made it clear that State agencies were to be considered Government contractors under circumstances in which private agencies would be so considered.

## VARYING POLICIES

### *Grants for hospital construction*

The primary purpose of the Hill Burton Act is to assist in the construction of public and other nonprofit hospitals and public health centers through a grant-in-aid program administered by the States. From the inception of the grant program in 1946 until the end of 1960 the Federal Government has contributed to the construction of 5,390 projects under this grant. Three thousand seven hundred and twenty-two of these projects are hospitals, while the remaining 1,668 are public health centers.<sup>137</sup> In fiscal 1961, the Federal expenditures on this program alone are estimated to be \$154 million.<sup>138</sup> The act, which was passed in 1946, 8 years before the Supreme Court decided the *School Segregation Cases*<sup>139</sup> forbids racial discrimination in the use of facilities constructed under the act, but expressly provides that "separate but equal" hospital facilities will satisfy this prohibition.<sup>140</sup> A total of 90 separate segregated facilities had been erected under the act through 1960. Seventy-one of these facilities with 4,514 beds have been for whites, while 19 facilities and 1221 beds have been for Negroes.<sup>141</sup> The act also contains a so-called "nonintervention" provision, which reads:<sup>142</sup>

. . . nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any hospital, diagnostic or treatment center, rehabilitation facility, or nursing home with respect to which any funds have been expended under this subchapter.

Because of this section of the act, a spokesman for the previous Secretary of HEW has stated that ". . . no policies have been adopted regarding standards for professional, administrative, or nonprofessional employment in Hill-Burton projects."<sup>143</sup> While this interpretation may be made regarding employment in the facility when completed, no provision of the act could be so construed regarding employment opportunities created during its construction. Nevertheless, HEW has not

issued a regulation requiring that employment opportunities on their projects be available to all on a nondiscriminatory basis.

### *Grants for schools in impacted areas*

Two grant programs provide Federal aid to impacted local areas for the operation (Public Law 874) and construction (Public Law 815) of schools. Both are administered by HEW. Their purpose is to provide financial assistance to local communities where large Federal establishments in the community have caused financial hardship. For example, when the Federal Government takes over a large area of land for use as a military base, that land goes off the local tax rolls; and the increased population involved in the Federal activity may add substantially to the local school population. In fiscal 1961, the Federal Government spent an estimated \$181 million to assist schools in such impacted areas, and another \$63.3 million to aid in the construction of schools in these areas.<sup>144</sup>

As in the case of the Hill-Burton Act, both of these programs have "nonintervention" provisions. The statutes prohibit any Federal official from exercising ". . . 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."<sup>145</sup> Although one interpretation of this provision may be that it prohibits a regulation requiring nondiscrimination in the hiring of school personnel, it is clear that no statutory provision could be construed as prohibiting such a regulation in respect to employment opportunities created by the construction itself. Nonetheless, HEW has imposed no such nondiscriminatory employment requirement on either of the impacted area school programs.

### *Grants for public airports*

The Federal Airport Act of 1946 created this grant program to give financial assistance to States, local governments, and public agencies for the construction of public airports.<sup>146</sup> The Federal Government contributed approximately \$83.3 million to this grant program in fiscal 1961.<sup>147</sup> From 1946 until last April 5, both the statute and regulations governing this grant were silent on the issue of nondiscrimination in employment. However, the program has long had a nondiscrimination and nonsegregation regulation applicable to the use of accommodations at the airports constructed. This regulation prohibits the use of Federal funds to develop terminal passenger facilities that are or will be racially segregated.<sup>148</sup> The regulation does not go so far as to bar Federal funds from an airport project that will have segregated facilities, but only from that portion of the project that will have segregated facilities. This policy became moot, however, when on

October 28, 1960, the FAA went out of the business of financing terminal facilities under this grant.<sup>149</sup> The FAA has proposed legislation, now pending, which would remove terminal facilities from the grant program entirely.<sup>150</sup>

In April 1961, The Federal Aviation Agency (FAA), which administers the program, adopted a regulation requiring nondiscrimination in employment created by airport grant projects.<sup>151</sup> The newly announced regulation appears identical in coverage with the one formerly required for use in Government contracts,<sup>152</sup> except for the absence of posting requirements. It reads:<sup>153</sup>

In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

The FAA eliminated the posting provision because it lacks the funds for posters. It does not plan any enforcement procedure for the anti-discrimination clause. Because of staff limitations, it has delegated responsibility for securing compliance with labor requirements, including the nondiscrimination requirement, to the local sponsors of the airport development programs.<sup>154</sup>

### *Grants for highway construction*

The largest single grant program in dollar value is administered by the Bureau of Public Roads to assist the States in building highways. The Federal Government allocated a total of \$2.7 billion to the program in fiscal 1961.<sup>155</sup> The amount of Federal contributions for highway construction by the States varies from 50 percent to 90 percent of the project costs, depending on the particular highway program involved, and the amount of federally controlled tax-free land in the State.<sup>156</sup>

The Bureau has the additional responsibility of acting as the Federal contracting agency for the construction of highways in National Parks and Forests, Indian Lands, and other lands in the public domain.<sup>157</sup> In the western part of the country, where the largest tracts of Government-owned lands are located, only Federal funds are expended to build roads on federally controlled land. The Bureau acts as contracting agency and requires the insertion of the standard Government contract nondiscrimination clause in all construction contracts and subcon-

tracts.<sup>158</sup> Violations of the clause's equal employment requirements are properly within the jurisdiction of the Bureau and the President's Committee on Equal Employment Opportunity. In the East, on the other hand, where Federal land ownership is considerably less extensive, the Bureau usually enters into an agreement with a State agency to act as the Bureau's agent in constructing these roads. Where the State acts as an intermediary, the standard nondiscrimination clause is not used, although a briefer, less comprehensive clause is required in the construction contracts. This substitute clause reads:<sup>159</sup>

In the performance of this contract, the contractor shall not discriminate against any worker because of race, creed, color, or national origin.

In the West, then, the Federal highway construction program is executed through contracts requiring all the standard Government contract clauses, providing for an eight-hour workday, payment of prevailing wages, and nondiscrimination. In the East, the same program is accomplished by grants, under which the construction contracts do not have these standard Government contract clauses. A representative of the Bureau of Public Roads has stated to the Commission that the Bureau's policy of handling these items as grants rather than contracts has never been challenged by the Department of Labor,<sup>160</sup> the Federal agency charged with the responsibility of enforcing labor requirements in Government contracts.<sup>161</sup>

The Bureau has required the insertion of its own modified nondiscrimination clause, quoted above, in all grant-in-aid construction contracts since Executive Order 8802 was issued in 1941.<sup>162</sup> The reason given by the Bureau for maintaining this shorter clause, rather than adopting the standard clause, is its fear that any change in the clause would call attention to it. In view of the Bureau's expressed doubts as to its authority to impose any nondiscriminatory employment requirement, it hesitates to focus attention on the present clause.<sup>163</sup>

The policy expressed in the shorter clause is of course one of nondiscrimination. The clause is, however, considerably less inclusive than the standard nondiscrimination clause used in Government contracts.<sup>164</sup> Moreover, unlike the standard Government clause, it does not require posting. Nor is it effectively enforced: There are no provisions for enforcement beyond periodic inspection of job sites by engineers in the field offices of the Bureau to assure compliance with the terms of the contract. These inspections, however, are primarily concerned with assuring compliance with the construction and engineering terms of the contract. Since the insertion of the clause in 1941, no inspection has ever revealed discrimination in employment in any program administered by the Bureau, and only one unsubstantiated complaint has ever been received.<sup>165</sup>

## *Grants for public housing and slum clearance*

The Housing and Home Finance Agency (HHFA) and its constituent agencies are responsible for the administration of a variety of Federal programs designed to aid in the construction of adequate housing facilities. (The housing aspects of these programs are discussed in detail in part VI of this Report.) Among these are two very large Federal grant programs: the Urban Renewal Program,<sup>166</sup> which had \$152.3 million committed to its use in fiscal 1961;<sup>167</sup> and the Low Rent Housing Program,<sup>168</sup> which had \$148.2 million committed in fiscal 1961.<sup>169</sup> In addition to providing Federal funds for slum clearance and low rent housing, Congress intended these programs to help "to alleviate present and recurring unemployment,"<sup>170</sup> and to have "the housing industry . . . make its full contribution toward an economy of maximum employment, production, and purchasing power."<sup>171</sup>

HHFA construes grant project agreements to be Government contracts within the meaning of Executive Order 10925 and its predecessor orders.<sup>172</sup> It is the only Federal agency to do so. Because of this interpretation it requires the insertion of the following provision in all grant agreements under both programs:<sup>173</sup>

In the carrying out of the Project, there shall be no discrimination against any employee or applicant for employment on Project work because of race, religion, color or national origin. This provision shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The local Public Agency will insert the foregoing provision of this paragraph . . . in all of its contracts for Project Work and will require all of its contractors for such work to insert a similar provision in all subcontracts for Project work: *Provided*, that the foregoing provisions of this paragraph shall not apply to contracts or subcontracts for standard commercial supplies or raw materials. The Local Public Agency will cause to be posted, in conspicuous places available for employees and applicants for employment for Project work, notices to be provided by the Administrator setting forth the applicable provisions of this paragraph.

Although the requirement of this clause in all project agreements is uniform, the enforcement policies of the HHFA and its two constituent agencies administering these programs are not. The Public Housing Administration (PHA), which administers the Low Rent Housing Program, has had a plan for aggressive enforcement of this policy; the Urban Renewal Administration (URA), which administers the Urban Renewal Program, has not. However, even as administered by URA,

the nondiscrimination clause is more aggressively enforced than is the case with most other grant programs.

Under the Urban Renewal Program, the Federal Government provides two-thirds and the local government one-third of the cost of acquiring and clearing slum areas for urban redevelopment.<sup>174</sup> The program operates in three steps: (1) Once approved by URA, the local government, with Federal financial assistance, acquires and clears slum areas; (2) in addition to clearing the land, the local government may undertake site improvements; (3) once the land is cleared, it is then sold to a private contractor for redevelopment.<sup>175</sup>

The nondiscrimination clause quoted above applies only to work undertaken by the local public agency in clearing the land once it has been condemned. It does not apply to work undertaken by the local agency in improving the site, nor does it apply to the work of the private redeveloper<sup>176</sup> because, the agency says, the function of the grants is to provide cleared land and no more.<sup>177</sup> While Federal money is involved only in the acquisition and clearance of land, the other two stages—site improvement and redevelopment are made possible by the initial Federal funds. Therefore, a nondiscriminatory employment requirement could undoubtedly be imposed to apply to all phases of the grant program, including the work undertaken by the private redeveloper who often acquires prime real estate at a great saving because of the grant program.

URA enforces its nondiscrimination provision through its site inspectors, who regularly inspect projects for labor compliance. The inspector is required to report, among other things, any violations of nondiscrimination provisions, either in the basic project agreement or in third party contracts; whether nondiscrimination posters are properly posted; and whether previously noted violations have been corrected.<sup>178</sup> While there have been complaints of discrimination in employment, and inspectors have reported violations, the URA cannot cite any instances in which sanctions have been applied to violators.<sup>179</sup>

The Low Rent Housing Program is designed to provide low rent public housing under the administration of a local public agency. After PHA approves the project, the buildings are constructed under the control of the local agency, which acts as the contracting agency with the private contractors. But the Federal Government provides a significant portion of the funds.<sup>180</sup>

In contrast to URA, PHA's enforcement of its nondiscrimination clause for work in the construction of these projects had been most vigorous until 1958. Its program of nondiscrimination should have been the most effective in the Federal Government. To enforce its nondiscrimination requirement in the construction projects financed under this grant PHA set quotas "based upon the number of Negro skilled and unskilled workers, respectively, employed in construction

work in the locality of the Projects in relation to the total number of skilled and unskilled workers so employed, as reflected by the latest Federal Census and other relevant data.”<sup>181</sup> And to insure that these quotas are respected, the following clause is required to be inserted in all contracts between local public agencies and private contractors:<sup>182</sup>

For the purpose of determining whether there has been discrimination in regard to Negro labor in violation of the provision contained in the General Conditions, titled “Qualifications for Employment,” it is hereby provided that if the Contractor pays to the Negro skilled labor at least ---- percent of the total amount paid in any period of 4 weeks for all skilled labor under the Contract (irrespective of individual trades), and pays Negro unskilled labor at least ---- percent of the total amount paid in any period of 4 weeks for all unskilled labor under the Contract, it shall be considered as prima facie evidence that the Contractor has not discriminated against Negro labor.

Originally, the quota provisions were enforced in the following manner: The local housing authority was required to keep pay records with racial designations. Regional PHA minority group advisors, whose sole task was to assure compliance with this policy, inspected these records. If a contractor was found to be violating the clause, PHA immediately put pressure on the local agency to have the contractor conform with the contract.<sup>183</sup>

In 1958, PHA changed its procedure. Until then, the payrolls of each project were consolidated every 4 weeks and the PHA minority group advisor reviewed them. Since then, the local public agency sponsoring the housing project has been responsible for keeping the records, and PHA engineers, primarily concerned with inspecting a project's engineering specifications, periodically review the records for compliance. Unless the engineers spot a violation, or a complaint is received, there is no way of enforcing or even checking compliance. For the local public agency keeps the payroll records until the project is completed. Once completed, the records are forwarded to the PHA Regional Office, and then transferred to a warehouse without inspection.<sup>184</sup> Thus, the net effect of the change in procedure in 1958 was to end serious enforcement procedures. Without a specific complaint it is almost impossible for PHA to know whether the contractors are maintaining accurate payroll records, or, if accurate, whether they meet the quota provisions of the contract. Even if PHA were to review the records when received from the local public agency, it would do no good for the project has been completed by the time these records arrive at PHA.

Moreover, even if PHA were to find the funds and the manpower to return to its former method of policing its quota provisions, it might find that its quotas contribute to, rather than diminish, discrimination in employment. Currently, for example, the existing quotas used for PHA project contracts in Atlanta and Baltimore are based to a large extent on 1951-53 Negro employment figures. Unless PHA sets up a method of constantly reviewing and revising these quota figures, the increasing number and proportion of Negroes in the work force will soon render the quota provisions obsolete. Furthermore, at this point in history, serious doubt may be cast upon the propriety and indeed the legality of any such racial quota system.

## EFFECTIVENESS OF NONDISCRIMINATION CLAUSES

The six programs discussed above amply illustrate the current inconsistencies in the policies of the Federal Government with regard to discrimination in employment created with the aid of Federal funds. The policies extend from complete avoidance of Federal "interference," as in the Impacted Area Grants and Hill-Burton grants for hospitals, through the silence that existed in airport grants until April of this year, through the 20-year-old expression of principle by the Bureau of Public Roads, to the firm policies proclaimed by HHFA, where one of the grant programs requires quota provisions. Enforcement procedures are equally haphazard. Mere statements of policies—pronouncements of good intentions though they be—do not end discrimination. Indeed, unenforced policies may even be harmful. If many firms feel that the nondiscrimination clauses in these contracts are mere verbiage to be avoided, then when an honest attempt at enforcement is made, it may very well run into stronger resistance than it would have if enforced from the outset.<sup>185</sup>

The Commission conducted field studies of employment created by these grant-in-aid programs to determine the impact of nondiscrimination clauses on the amount and type of minority group employment. The material gathered by the Commission's staff was based on interviews and head counts conducted at various construction sites in Atlanta, Baltimore, and Detroit. Head counts in the construction industry are sometimes deceptive for neither the number nor the classifications of employees on the job remain constant. At different stages of construction, different crafts are employed. If the count were made while electricians and plumbers (areas traditionally barring Negroes) were working on the project, the percentage of Negro employment would be exceedingly

low. If the count were made while cement finishers and bricklayers (areas traditionally open to Negroes) were working on the project, the percentage of Negro employment would be exceedingly high. The counts made by the Commission staff were made at all stages of construction.

Although the interview sample was not large enough to justify any definitive conclusions, some clear general patterns emerged: (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. Approximately the same proportion of Negroes worked in skilled jobs in Atlanta, as in Detroit and Baltimore.<sup>186</sup> The difference that did exist, was in the type of skilled jobs Negroes held. In Atlanta almost all the skilled Negroes worked in the trowel trades (i.e., cement finishers, bricklayers), while in Detroit and Baltimore skilled Negroes were found working as carpenters, operating engineers, and labor foremen as well. Finally, (4) the data showed that nondiscrimination clauses per se had no bearing on the ratio of skilled Negroes employed.

The last generalization, tentative though it is, reinforces another field study generalization, that there is little awareness of the nondiscrimination requirement among the men who do the actual hiring on these projects. Usually hiring is done through unions or by construction supervisors or foremen. Generally, these people are unaware of the distinctions in contract obligations under the various grant programs and tend to treat them all alike.<sup>187</sup>

Since agency administrators are concerned primarily with carrying out their particular programs—building roads or schools or hospitals, or providing low rent housing—achieving nondiscriminatory employment in grant-in-aid programs on an agency by agency basis presents many problems. Moreover, there is a fear that nondiscriminatory employment requirements made on an agency basis will jeopardize appropriations for these programs.<sup>188</sup> As a result, many administrators have failed to take any action with respect to the nondiscriminatory employment of personnel engaged in grant-in-aid programs. Although all agency representatives interviewed by members of the Commission staff indicated that they would readily comply with a governmentwide policy of nondiscriminatory employment if one were in effect, all expressed a reluctance to “go it alone.”

This same fear of jeopardizing agency appropriations has caused an anomalous situation. Agencies, such as the Bureau of Public Roads, which have required nondiscriminatory employment provisions often keep them so quiet that nobody knows about them. In many instances, because of fear of publicity, posting of notices is not required. Thus, even where administrators have declared a policy of nondiscriminatory

employment, it is often a closely guarded secret, and hence, inoperative. Other hurdles to the effective enforcement of such administrative requirements are the lack of funds and lack of staff to enforce such regulations. As suggested above, too often compliance inspections are left to engineers or other personnel whose primary responsibility is to see that the projects meet technical and other specifications unrelated to non-discriminatory employment. In some cases, there has been no attempt to enforce the nondiscrimination provision, which is viewed as a mere declaration of policy.

In short, uniformity of policy as well as funds and machinery for enforcement and a vigorous and sustained impetus from the top are necessary if equal opportunity to employment created by grants-in-aid is to be assured. Recommendations along these lines were made in the final reports issued by both the President's Committee on Government Contract Compliance<sup>189</sup> and the recently abolished Committee on Government Contracts.<sup>190</sup>

If it were made clear that grant agreements are, in fact, contracts, in accord with the Supreme Court's long-standing interpretation, employment under these grant programs would be subject to the national policy of equal employment opportunity declared in Executive Order 10925 and would come within the jurisdiction of the President's Committee. If, on the other hand, Federal grants are viewed as gifts and not contracts, then further executive orders or legislation directed toward providing equal opportunity in employment under all Federal grant programs appear necessary.



# 5. Training and Placement

The Nation has been plagued recently by the paradox of a constantly enlarging number of unemployed and an increasing shortage of skilled workers. Even in those areas with the highest unemployment, there has been a shortage of trained personnel to fill jobs requiring specialized skills.<sup>1</sup> To a large extent technological change and the obsolescence of some industries have swelled our unemployment rolls. Old skills are constantly becoming obsolete. New industries and new techniques demand new skills. The Department of Labor's projection of labor needs for the next decade indicates that the increasing demand for skilled labor will accelerate—an estimated 5 million more craftsmen must be trained by 1970,<sup>2</sup> while the demand for unskilled labor will continue to shrink.<sup>3</sup> Minority group workers traditionally have been limited to unskilled or low skilled jobs. Our increasing reliance on skill presents the possibility that they will receive less and less of the Nation's economic bounties unless they can obtain the necessary training and then get jobs for which they are qualified.

Through the grant of substantial funds—almost \$300 million in fiscal 1961<sup>4</sup>—the Federal Government participates in a number of programs to train and place individuals seeking employment. These could have an important impact on employment opportunities for minority group members. Both President Truman's Committee on Government Contract Compliance<sup>5</sup> and President Eisenhower's Committee on Government Contracts<sup>6</sup> recommended a requirement that such training, recruitment, and referral programs be administered on a nondiscriminatory basis. Apparently, President Kennedy's Committee on Equal Employment Opportunity is attempting to assure the nondiscriminatory administration of federally assisted training.<sup>7</sup>

To assess the actual and potential impact of these programs on equal employment opportunity, four of them are analyzed in this chapter. Three are concerned with training. They are: vocational education, administered by the Department of Health, Education, and Welfare (Hew); apprenticeship training, administered by the Department of Labor; and vocational rehabilitation, administered by HEW. The fourth is designed to facilitate recruitment and placement by subsidizing a system of State public employment offices, and is also administered by the Department of Labor.

## TRAINING

### *Vocational education*

According to HEW, "The Federal-State program of cooperation for the development of vocational education is based upon two fundamental ideas: (1) That vocational education is in the national interest and indeed is essential to the national welfare; and (2) that Federal funds are necessary to stimulate and assist the States in making adequate provisions for such training."<sup>8</sup> The primary purpose of vocational education "is to assist persons in securing the abilities, information, attitudes, and understanding which will enable them to enter employment in a given occupation or field of work, or to make advancement in that occupation after they have encountered it."<sup>9</sup> The program operates in the following manner: States willing to match Federal funds<sup>10</sup> and accept Federal supervision<sup>11</sup> 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, and in the preparation of teachers."<sup>12</sup>

Since its inception in the Smith-Hughes Vocational Education Act of 1917,<sup>13</sup> the program has been in continuous operation. Later statutes have broadened its scope.<sup>14</sup> Federal, State, and local contributions have grown steadily until today they amount to over \$228 million annually.<sup>15</sup> Over 3¾ million students<sup>16</sup> and almost 90,000 teachers participate.<sup>17</sup> Training is given to full-time and part-time secondary school students and to students in evening courses. Many of the latter are adults who are either learning new skills, or keeping current in skills already acquired.

Federal money supports courses in agricultural, distributive, home economics, trade and industrial, practical nursing, and area vocational education programs. Distributive education is designed to train students for salesmanship and other marketing activities.<sup>18</sup> The program in trade and industrial education is designed to teach basic trade and industry skills.<sup>19</sup> "Among groups served are the following: Journeymen, technicians, and other industrial workers; apprentices and other learners; out-of-school youth and in-school youth. . . ."<sup>20</sup> The area vocational education program has two basic objectives: To provide training for occupations in science and technology that are of particular importance to national defense;<sup>21</sup> and to extend vocational education opportunities to areas whose residents are not otherwise adequately served.<sup>22</sup> Distributive and trades and industrial programs can operate on a cooperative part-time basis for high school students who spend part time in school and part time at work.<sup>23</sup> The principle of cooperative educa-

tion has been extended by many of the States to provide business education without the aid of Federal grants.

Vocational training received through the public schools, and made possible by Federal grant funds, is the principal means of acquiring many of the basic industrial skills. Therefore the ability of members of minority groups to obtain employment in skilled jobs is often limited by the availability of these programs. To the extent that minority group members are denied the opportunity to receive such training, they are deprived of equal opportunity in employment.

No statutes explicitly outline Federal policy regarding the availability of training for members of minority groups. A regulation issued in 1948, however, does provide that: <sup>24</sup> "In the expenditure of Federal funds and in the administration of federally aided programs of vocational education, there shall be no discrimination because of race, creed, or color." As construed and applied by HEW, this does not preclude the granting of funds to segregated schools or for programs which provide more subjects and better qualified teachers for white than for Negro schools.<sup>25</sup>

In Atlanta, for example, the use of segregated public schools for vocational training produces a marked difference in the types of programs available to different racial groups. As shown in table 1, the course of study available to whites is not the same as the one available to Negroes. 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 as it turns to new techniques and new industries. Smith-Hughes, the corresponding white school, offers training in many of the newer skills in increasing demand today. It offers three programs in technology; none is offered to Negroes. It offers eight programs of apprenticeship training; one is available to Negroes. It offers seven programs in adult trade extension; two are available to Negroes. While it is true that the Negro school offers 15 trade preparatory courses for high school students as opposed to only 6 at the white school, even here most of those open to Negroes teach only low level skills.

The curriculum of the Negro vocational high school in Atlanta was set up to provide training in "those occupations that Negroes could get employment in, in this community."<sup>26</sup> This standard, approved by HEW, is hardly conducive to equal opportunity to either education or employment.<sup>27</sup> Its effect is to perpetuate the rigid racial employment patterns of the past and project them into the future. For even if jobs traditionally closed on racial grounds were suddenly opened, few, if any, Negroes would have had enough training to qualify for them. Nor, under a

system in which teachers and students must be members of the same race, could such training be readily provided. For few, if any, Negroes have the occupational experience needed to teach in vocational schools.<sup>28</sup> In many trades it would be years before an adequate corps of Negro teachers could be built up.

TABLE I.—*Trade and industrial education courses offered at the two vocational schools in Atlanta, Ga.*

| <i>Smith-Hughes (White)</i>                 | <i>Carver (Negro)</i>           |
|---|---------------------------------|
| <i>A. Technology:</i>                       |                                 |
| Electronics (preparatory)-----              |                                 |
| Tool and die design (extension)---          |                                 |
| Instrumentation (extension)-----            |                                 |
| <i>B. Trade preparatory:</i>                |                                 |
| Radio and television servicing----          | Radio and television servicing. |
| Machine shop-----                           |                                 |
| Refrigeration and air condition-            |                                 |
| ing-----                                    |                                 |
| Beauty culture-----                         | Beauty culture.                 |
| Industrial power sewing-----                | Industrial power sewing.        |
| Practical nursing-----                      | Practical nursing.              |
| -----                                       | Commercial cooking.             |
| -----                                       | Woodworking.                    |
| -----                                       | Short order cooking.            |
| -----                                       | Shoe repairing.                 |
| -----                                       | Auto mechanic.                  |
| -----                                       | Tailoring.                      |
| -----                                       | Bricklaying.                    |
| -----                                       | Lathing and plastering.         |
| -----                                       | Furniture repairing.            |
| -----                                       | Landscape gardening.            |
| -----                                       | Drycleaning.                    |
| <i>C. Trade extension (apprenticeship):</i> |                                 |
| Electricity-----                            |                                 |
| Ironworking-----                            |                                 |
| Tool and die making-----                    |                                 |
| Steamfitting-----                           |                                 |
| Plumbing-----                               |                                 |
| Sheet metal-----                            |                                 |
| Painting and decorating-----                |                                 |
| Carpentry-----                              |                                 |
| -----                                       | Bricklaying.                    |

TABLE I.—*Trade and industrial education courses offered at the two vocational schools in Atlanta, Ga.—Continued*

| <i>Smith-Hughes (White)</i>        | <i>Carver (Negro)</i> |
|------------------------------------|-----------------------|
| <b>D. Trade extension:</b>         |                       |
| Radio and television servicing---- |                       |
| Blueprint reading and drafting---  |                       |
| Gasfitting-----                    |                       |
| Practical nursing-----             | Practical nursing.    |
| Pipe welding-----                  |                       |
| Lead welding-----                  |                       |
| Helearc welding-----               |                       |
| -----                              | Catering.             |

Note: Related instruction at Carver in mathematics and science is offered in separate classes for the technology and trade preparatory courses.

Source: Prepared Jan. 3, 1961, by Office of Trade and Industrial Director for Vocational Education in Fulton County and Atlanta, Ga.

If in Atlanta vocational educational programs open to Negroes are more limited than those offered to whites, they appear at least to reflect the current employment demands of the community. In other parts of Georgia, however, vocational education curricula do not appear to be based even on community needs.<sup>29</sup> Many counties offer Federal grant training to whites but not to Negroes. While in some cases this might be explained in the same manner as the discrepancies in Atlanta—that is, Negroes are unemployable in certain jobs in the community—it hardly explains why 38 counties offer courses in homemaking education to whites without offering them to Negroes; or why 48 counties offer courses in agricultural education to whites but not to Negroes.<sup>30</sup>

Where schools are desegregated, inequality of opportunity is reduced, but not necessarily eliminated. In Baltimore, a city that desegregated its schools in 1954, the change has made little real difference in the patterns of vocational training. Before desegregation Mergenthaler was the white vocational school, while Carver was for Negroes. Today, Mergenthaler, legally open to all, has 25 Negroes in a student body of 1,500; Carver has 1,200 Negro students and no whites.<sup>31</sup> The curricula of the two schools, set out in table 2, show the same sort of disparities as are found in Atlanta. Carver offers no courses for technicians; Mergenthaler offers five. (The technicians' courses at Mergenthaler are not carryovers from a segregated system, but new programs introduced after the adoption of the National Defense Education Act of 1958.)<sup>32</sup> Among the other courses offered at Mergenthaler, but not available at Carver, are industrial electronics, mechanical drafting, and plumbing and heating. Among the courses offered at Carver, but not available at Mergenthaler, are drycleaning and pressing, painting and paperhanging, and shoe repairing.

TABLE 2.—*Courses offered at the two vocational-technical high schools in Baltimore, Md.*

| <i>Mergenthaler (formerly all-white)</i> | <i>Carver (formerly all-Negro)</i>       |
|--|--|
| Aircraft and general sheet metal.....    |  |
| Airplane mechanics.....                  |  |
| Automotive mechanics.....                | Automotive mechanics.                    |
| Brick and stone masonry.....             |  |
| Business education.....                  | Business education.                      |
| Stenography.....                         | (*)                                      |
| Business machines.....                   | (*)                                      |
| Distributive education.....              | (*)                                      |
| Commercial art.....                      | Commercial art.                          |
| Display.....                             | (*)                                      |
| Graphic.....                             | (*)                                      |
| Sign painting and show card writing..    | (*)                                      |
| Commercial baking.....                   |  |
| Cosmetology.....                         | Cosmetology.                             |
| Dressmaking and design.....              | Dressmaking and design.                  |
| .....                                    | Drycleaning and pressing.                |
| Electrical construction and maintenance. | Electrical construction and maintenance. |
| Electrical arc and gas welding.....      |  |
| Food preparation and service.....        | Food preparation and service.            |
| Industrial electronics.....              |  |
| Machine shop, tool and die making.....   | Machine shop, tool and die making.       |
| Mechanical drafting and design.....      |  |
| Metal casting.....                       |  |
| Oil burner installation and service..... |  |
| .....                                    | Painting and paperhanging.               |
| Plumbing and heating.....                |  |
| .....                                    | Power sewing and garment making.         |
| Practical nursing                        |  |
| Printing.....                            |  |
| Hand composition.....                    | (*)                                      |
| Linotype.....                            | (*)                                      |
| Photolithography.....                    | (*)                                      |
| Presswork.....                           | (*)                                      |
| Radio, television, and electronics.....  | Radio, television, and electronics.      |
| .....                                    | Shoe repairing.                          |
| .....                                    | Tailoring and design.                    |

TABLE 2.—*Courses offered at the two vocational-technical high schools in Baltimore, Md.—Continued*

| <i>Mergenthaler (formerly all-white)</i> | <i>Carver (formerly all-Negro)</i>    |
|--|---------------------------------------|
| Technicians program-----                 |                                       |
| Airframe and powerplant technician..     |                                       |
| Electrical maintenance technician---     |                                       |
| Industrial electronics technician-----   |                                       |
| Mechanical technician-----               |                                       |
| Tool design technician-----              |                                       |
| -----                                    | Trowel trades.                        |
| -----                                    | Welding.                              |
| Woodwork-----                            | Woodwork.                             |
| Cabinet and furniture construction--     | (*).                                  |
| Carpentry and millwork-----              | (*).                                  |
| Pattern making-----                      | (*).                                  |
| -----                                    | Carpentry and furniture construction. |

\*No breakdown of the contents of these courses given in catalog.

Source: Baltimore Public Schools, *General Description of Courses and Program* (Carver) (1960); *The Newest in Technical Education* (Mergenthaler) (1960); and *Description of the Courses* (Mergenthaler) (1960).

One need not be familiar with the niceties of our economy to know that training in the higher level skills is concentrated at Mergenthaler. In sum, Negroes in Baltimore with few exceptions are trained for the jobs "traditionally" open to them—the most menial jobs.

This inequality of opportunity for vocational education in Baltimore cannot be attributed to school segregation, for some Negroes are admitted to Mergenthaler. HEW policy, however, does promote the concentration of Negroes in courses that train for the more menial occupations. This policy was formerly embodied in a regulation which provided: <sup>23</sup>

(a) The fact should be emphasized that schools and classes are fostered under the vocational education acts for the purpose of giving vocational training to individuals to the end that they may be effectively prepared to enter or advance in profitable employment. *Admission to any vocational class should be based upon evidence that the applicant can benefit by the instruction to be given in that class, and that he possesses the qualifications required for the successful utilization of the training in that given type of work.*

(b) . . . *Entrance to a vocational class should be based, principally, upon three factors:*

(1) The desire of the applicant for the vocational training offered;

(2) His probable ability to benefit by the instruction to be given; and

(3) *His chances of securing employment in the occupation after he has secured the training, or his need for training in the occupation in which he is already employed.*

This regulation, designed to promote the most economical use of Federal funds, has often come into conflict with the HEW policy of requiring equality of opportunity in training. When this has occurred the concept of equality has given way. Thus, discrimination by employers and labor unions often limits the Negro's "chances of securing employment," and consequently his chances of obtaining training in many occupations. Limiting the training of Negroes to the requirements of jobs currently available to them in the community, rather than training Negroes for employment opportunities that may be available in the future or in some other geographic location, perpetuates discrimination in employment.

Moreover, to provide training only for jobs traditionally open to Negroes is economically wasteful since these are the jobs in which there is a growing surplus of labor and a scarcity of job openings. On the other hand, in the newer technical skills, in which training is offered only to whites, openings for qualified applicants abound. In deep Southern States, where racial lines in employment are still more firmly held, the training of Negroes in skills demanded by the present economy might not be sufficient in itself; affirmative efforts to break down racial barriers might also be required to assure that they have the opportunity to fill the jobs that are open. In northern areas like Detroit, however, jobs requiring specialized skills are even now going begging for lack of qualified applicants, Negro or white. Only the provision of appropriate training is needed.

The policy of allowing the reflection of discriminatory private employment practices to restrict training opportunities is even more directly encouraged by HEW regulations making current employment a condition for participation in the distributive education<sup>34</sup> and part-time education programs.<sup>35</sup> To the extent, then, that private employers discriminate, they deprive Negroes of the educational opportunities created by the grant program. Thus, again the Federal Government becomes in effect a partner in the perpetuation of discriminatory employment.

This is borne out by the Commission's investigation in the Detroit metropolitan area. Michigan has a fair employment practices law,<sup>36</sup> and no history of legalized segregation in its public schools. Yet there have been serious allegations of discrimination in the administration of cooperative training programs. Representatives of the Detroit Urban League,<sup>37</sup> the Board of Education,<sup>38</sup> and Youth Commission<sup>39</sup> have indicated that many high schools in Detroit located in all-Negro, or

primarily Negro, neighborhoods offer no cooperative training. Even where Negroes attend schools offering such programs, they seldom participate because of the inability of the board of education to place them. Where they do participate, they do not always receive the same on-the-job training as their white counterparts, but are confined to menial tasks. Exclusion from the part-time programs is particularly unfortunate for Negroes, who frequently have to work while they are in school.

Baltimore had no distributive or cooperative vocational education for Negroes prior to desegregation. Today distributive as well as business and office occupations cooperative programs (the latter is not supported by the Federal Government) are available to them. But despite its enforceable fair employment law,<sup>40</sup> Baltimore has had no greater success than Detroit in placing Negro students.<sup>41</sup> Here, too, the discriminatory practices of private employers limit the availability of Federal vocational training.

Union discrimination in the issuance of job referrals and clearances has the same effect. As discussed in other sections of this report,<sup>42</sup> this is particularly prevalent in the building and construction trades—the very occupations where the demand for skilled workers is expected to increase most rapidly.

Still another way in which union discrimination may prevent Negro access to vocational training involves apprenticeship programs, which are usually under joint union-management control.<sup>43</sup> Federally supported courses are often a part of such programs, providing classroom training to supplement on-the-job training. Where a union (or management) prevents Negroes from entering apprenticeship programs, it also prevents them from entry into the federally supported related training. In many communities, moreover, unions use the facilities of vocational high schools to train apprentices. In segregated Atlanta the integrated building trades unions, barred from using these public facilities, run their apprenticeship programs in the union halls. The exclusively white programs sponsored by the electrical workers, iron workers, plumbers, and sheet metal workers, and those of the segregated painters and carpenters use public facilities unavailable to Negroes.<sup>44</sup> In unsegregated Baltimore the all-white plumbers, electricians, and ironworkers use public school facilities, as do the integrated plasterers and lathers.<sup>45</sup>

Of course, the limited participation by Negroes in vocational training cannot be entirely attributed directly to employer and union discrimination. When courses in technical subjects are made available to Negroes, often none apply.<sup>46</sup> Here, as elsewhere, there are serious problems of lack of motivation engendered by years of unfair treatment.

Both discrimination and lack of motivation contribute to the serious problem of unemployment among Negro youth. The unemployment rates not only for the mature unskilled or semiskilled Negro, but also for all young workers in general, run far above those for the labor force

as a whole.<sup>47</sup> If the young Negro is also untrained, he has three strikes against him.

In spite of a declared policy that "there shall be no discrimination because of race" in the administration of federally aided programs of vocational education, a great deal of it appears to exist. Federal funds in some places support vocational education that is not only strictly separate but palpably unequal even in relation to current employment opportunities for Negroes. Moreover, the pattern of vocational education supported by Federal funds adopts the discriminatory employment patterns of the past and perpetuates them for the future by denying to Negroes the opportunity to obtain training in new fields. To the extent that openings for Negroes do occur in these fields, there are few who are trained to fill them. The circle of discrimination is complete—few are qualified because few will be hired; few will be hired because few are qualified.

### *Apprenticeship training*

Historically apprenticeship is a product of the English guild system.<sup>48</sup> Today it constitutes an organized course of study geared to provide the trainee with broad technical competence in his chosen craft. The Department of Labor defines an apprentice as: "a worker who learns, according to a written or oral agreement, a recognized skilled trade requiring two or more years of on-the-job experience and related instruction prior to the time he is considered a qualified journeyman."<sup>49</sup> The Department recognizes some 300 occupations as apprenticeable crafts.<sup>50</sup> The programs for most of these vary from 2 to 5 years in duration.<sup>51</sup>

As an official of the Department of Labor said recently, "the apprenticeship programs in this country offer the broadest kind of training needed for the job world of the 1960's."<sup>52</sup> They could be a primary vehicle for fulfilling the increasing demand of the American economy for skilled workmen and for helping minority groups emerge from their traditionally low economic status. Unfortunately, apprenticeship programs are doing little of either. Despite the long-term inducements of apprenticeship training programs—greater earnings,<sup>53</sup> job security,<sup>54</sup> and upward mobility<sup>55</sup>—they are currently training only 225,000 apprentices,<sup>56</sup> far below the number required to meet expected national needs.<sup>57</sup> Negro participation is, and always has been, minimal.<sup>58</sup>

The Bureau of Apprenticeship and Training in the Department of Labor<sup>59</sup> has two principal functions: to stimulate apprentice training activity, and to provide technical assistance to apprentice groups.<sup>60</sup> Its field representatives are available to assist employers and labor organizations in establishing programs, and to consult with those who administer them.<sup>61</sup> The Director of the Bureau describes its functions as entirely dependent "on the voluntary cooperation of employers and labor. Our assistance to them is of an advisory character."<sup>62</sup>

Yet the Bureau does exercise certain minimal controls, for apprentice programs must meet standards established by the Bureau in order to be registered.<sup>63</sup> Registration affords certain "advantages" other than counsel and advice. The Department of Labor can permit apprentices in approved programs to be paid wages below the minimum required by statute.<sup>64</sup> In addition, Selective Service regulations permit draft deferment for apprentices participating in approved programs under certain circumstances.<sup>65</sup> Only a limited number of registered programs are utilizing these benefits, however. In May 1960 only 103 of approximately 160,000 registered apprentices had been certified to work below the minimum rate and only 3,825 were enjoying draft deferments by virtue of their apprentice status.<sup>66</sup> Current Bureau estimates place 30 percent of the Nation's apprentices in unregistered training programs.<sup>67</sup>

The costs of administering apprenticeship programs are borne largely by the indenturing body. The Bureau provides no financial assistance.<sup>68</sup> Many such programs reap the benefits of other Federal financial assistance, however, for related classroom instruction is an integral part of all registered apprenticeship training programs and Federal vocational education grants often provide classrooms and instructors' salaries.<sup>69</sup>

One of the objectives of the national apprenticeship program is "to stimulate those responsible for such training to provide equal opportunities for all qualified individuals to acquire skills without regard to race, creed, sex, age, or physical handicaps."<sup>70</sup> However, the selection of apprentices on a nondiscriminatory basis is neither a condition for registration nor for approval of the program. According to its Director, the Bureau does not "promulgate or enforce criteria for the selection of apprentices."<sup>71</sup> But in its advisory capacity, the Bureau says, it does "encourage the selection of apprentices on a merit basis."<sup>72</sup>

Although some registered apprenticeship programs are operated solely by management, the bulk are governed by joint union and employer committees, of which there are some 7,800 in operation today.<sup>73</sup> These groups exercise complete control over the admission of apprentices. They fix eligibility standards and screen applicants.<sup>74</sup>

The standards for admission vary substantially according to craft and locality. Several major programs require that apprentices be high school graduates and be able to pass aptitude tests. Others require only that the apprentice be within given age limits and physically able. Some programs give preference to sons of employers or current employees. Some craft programs have established uniform national standards for admission, but administration is in the hands of the local apprentice body.<sup>75</sup>

Most registered apprentices are found in the construction crafts, where virtually all programs are controlled by joint union and contractor committees.<sup>76</sup> Figures provided by the Bureau of Apprenticeship reveal that out of 12,000 registered apprentices in Chicago, Dallas, Fort Worth,

St. Louis, Washington, and Atlanta, over 60 percent are in the construction crafts. Almost one-third of the registered apprentices in these cities are in the carpentry, electrical, plumbing, pipefitting, and steamfitting crafts. The bulk of the nonconstruction apprentices are in the printing, skilled machine, and metal trades.<sup>77</sup>

How effective has the Bureau of Apprenticeship been in encouraging apprenticeship on a nondiscriminatory basis? Unfortunately the Bureau's records do not contain racial information so that it is extremely difficult to get a complete picture. The Commission's studies, however, indicate a very limited participation of nonwhites in apprentice training. Table 3 shows the figures for the St. Louis area.

TABLE 3.—*Federally registered apprenticeship programs in the St. Louis area*

| <i>Crafts</i>                 | <i>Total apprentices</i> | <i>Negro or nonwhite</i> |
|-------------------------------|--------------------------|--------------------------|
| Automotive mechanic.....      | 144                      | —                        |
| Bricklayer.....               | 127                      | —                        |
| Baker.....                    | 27                       | 6                        |
| Carpenter:                    |                          |                          |
| Home construction.....        | 46                       | —                        |
| Commercial construction.....  | 61                       | —                        |
| Cement mason.....             | 18                       | —                        |
| Cabinetmaker.....             | 18                       | —                        |
| Draftsman.....                | 15                       | —                        |
| Electrician.....              | 156                      | —                        |
| Embalmer.....                 | 1                        | —                        |
| Glazier—glassworker.....      | 7                        | —                        |
| Ironworker.....               | 47                       | —                        |
| Lather.....                   | 121                      | —                        |
| Lithographer.....             | 45                       | —                        |
| Machinist.....                | 150                      | 1                        |
| Meatcutter.....               | 77                       | —                        |
| Molder—coremaker.....         | 16                       | —                        |
| Painter—decorator.....        | 71                       | —                        |
| Patternmaker.....             | 56                       | —                        |
| Plasterer.....                | 30                       | —                        |
| Plumber.....                  | 159                      | —                        |
| Printer.....                  | 78                       | —                        |
| Sheet metal worker.....       | 180                      | —                        |
| Sprinkler fitter.....         | 24                       | —                        |
| Steamfitter.....              | 35                       | —                        |
| Tile and terrazzo worker..... | 4                        | —                        |
| Tool and die maker.....       | 54                       | —                        |

Source: U.S. Department of Labor, Bureau of Apprenticeship and Training, Office of Field Operations Region IX (1961).

In addition to the craft programs in St. Louis, 14 business firms have registered industrial programs, 7 of them operated in conjunction with labor organizations. Only one Negro apprentice is registered. In sum, although 14.5 percent of the 2 million residents of the St. Louis standard metropolitan area are nonwhite,<sup>78</sup> less than one-half of 1 percent of the registered apprentices are nonwhite.

Although St. Louis was the only city for which the Commission was able to obtain complete information on the extent of nonwhite participation in registered programs, essentially the same pattern emerges from the available data collected on other areas of the country. In Atlanta and Baltimore, Negro apprentices are found primarily in the trowel trades. Of some 700 registered apprentices in the construction crafts in Atlanta, only 20 are Negro. They are in the lathering, plastering, and cement finishing crafts.<sup>79</sup> Of some 750 registered apprentices in the construction crafts in Baltimore, only 20 are Negro, all in the masonry and carpentry crafts.<sup>80</sup> There are no Negro apprentices in either city in the ironworker, plumber, steamfitter, electrician, sheet metal worker, or painter crafts.<sup>81</sup>

In Detroit, also, overall Negro participation in apprentice training is minimal. Ernest L. Brown, Jr., director, Vocational Service Department of the Detroit Urban League, stated at the Commission's Detroit hearing: <sup>82</sup>

A recent analysis of the apprenticeship opportunities for Negro youth, as indicated by the presence of Negroes in related training programs in high schools in Detroit, shows that less than 2 percent of these trainees are Negroes. Of the number currently enrolled, over 75 percent are enrolled in the trowel trades such as bricklaying, cement masonry, and plastering. When one looks at the apprenticeable trades engaged in by plumbers, patternmakers, electricians, machinists, toolmakers, and printers, to name a few, the almost complete void of Negro apprentices becomes immediately discernible.

Negro participation is minimal also in the apprentice programs of Detroit's major automotive manufacturers. Data available for one such manufacturer appear to be representative. The company has 12 plants in the Detroit area, with some 40,000 employees, 23 percent of whom are Negro. Of the 289 apprentices in these plants, 1 is Negro. Of the 775 employees in other training programs at these plants, only 10 are Negro.<sup>83</sup> 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.<sup>84</sup>

A recent survey by this Commission's New Jersey State Advisory Committee revealed that: "Of the 3,973 apprentices enrolled in the New

Jersey program in 1960, only 14, or less than one-half of 1 percent, were nonwhite.”<sup>85</sup> A study of New York apprenticeship by the New York State Commission Against Discrimination concluded: “. . . at most, two percent of the registered apprentices in major programs in the state are Negro.”<sup>86</sup> Testimony at the Commission’s California hearing indicated a similar pattern in that State.<sup>87</sup> A recent Urban League report on apprenticeship in 32 cities also revealed minimal Negro participation.<sup>88</sup> The 1950 census indicated that the nonparticipation of Negroes in apprenticeship training is nationwide.<sup>89</sup>

This lack of participation has serious implications for the Negro worker. For if he does not receive proper training today, there is little chance of his being among the skilled wage earners of the future. What, then, is the explanation for the absence of Negroes from apprenticeship training programs?

One factor certainly is lack of applicants. The Commission’s inquiries in Atlanta and Baltimore uniformly evoked this explanation, and undoubtedly there is substantial truth in it. Several recent studies suggest a number of reasons for this.<sup>90</sup> Relatively low wages over an extended period of training and the limited number of apprentice openings tend to discourage applicants in general. Other barriers are more applicable to Negroes. For instance, it is often difficult for them to learn of apprentice openings. As indicated in other sections of this report,<sup>91</sup> the educational and pretraining requirements of many programs are often unavailable to Negro youth or difficult for them to obtain. The paucity of skilled craftsmen among older Negroes whom the young can take as their models also tends to discourage interest. Moreover, the feeling is particularly strong among Negro youth that greater status and prestige attach to white collar positions than to blue collar jobs. In addition, many feel that it would be futile to apply for this training. All these factors tend to create a climate unfavorable to substantial participation by Negroes in apprenticeship.

Lack of motivation, however, is not the only difficulty. All authorities apparently agree that discrimination forms a substantial barrier to minority group entry into apprentice training.<sup>92</sup> This disability is most acutely felt by Negroes.<sup>93</sup>

Large segments of the American population are denied access to work and training in many skilled occupations because of widespread prejudices against racial and ethnic groups. Discrimination is strongest and most widespread in the case of Negroes. . . .

On the basis of its limited study, the Commission cannot be certain of either the extent or the nature of such discrimination. It can cite examples, however, and suggest other instances in which discrimination may be a factor.

Although Negroes constitute a substantial proportion of the construction workers in the United States, there are a number of construction crafts in which they have never been able to make significant inroads.<sup>94</sup> A recent study presented this picture of the industry.<sup>95</sup>

Here the unions exercise a high degree of control over the admission of apprentices, which has frequently been used to exclude Negroes. In the South, many unions have excluded Negroes entirely from the union and therefore from skilled work, or have forced them into all-Negro locals, where they have limited rights and opportunities.

Some evidence of such practices was obtained by the Commission. In Baltimore an administrator of one construction craft apprentice program said that he never let Negro applicants take the required aptitude test because he felt that they would not be acceptable to the apprenticeship committee.<sup>96</sup> An example of the discrimination that may occur in the system of segregated locals was observed in Atlanta, where, in one craft, the white local maintained an apprenticeship program but the Negro local did not. As a consequence, unless the Negro local institutes such a program, or Negroes are admitted to the existing program for whites, Negro youths in that city will be denied access to apprenticeship training in this craft. Similarly, programs that grant preference to relatives of those already in the industry create obvious difficulties for Negroes.

In the construction trades the prevalence of all-white craft unions may well result in exclusion of Negroes from apprenticeship training programs—for trainees in this industry are expected to become union members. So long as there is resistance to acceptance of Negroes as members, Negroes can expect similar resistance to acceptance into apprenticeship programs. Discrimination ranges from outright exclusion to more subtle impediments, such as the requirement of sponsorship by persons already employed in the craft.

In industrial apprenticeship training programs the opportunities for Negroes appear to be no greater than in the construction crafts. For discrimination here, however, management is primarily responsible<sup>97</sup> because, even in unionized plants, unions seldom have a voice in the selection of apprentices.<sup>98</sup> To the extent that employers select apprentices from among their employees, the job for which a person is hired initially may determine whether or not he will have access to these training opportunities. If Negroes are customarily hired in unskilled nonproduction jobs rather than in semiskilled production jobs, as is the case in a number of major Atlanta firms, for example, apprenticeship may never be available to them. Moreover, if management has a preference for white skilled workers, this preference will be reflected in the selection of persons for apprenticeship training. A 1949 study indicates that such attitudes may be found both in the North and South.<sup>99</sup>

The absence of Negroes from apprenticeship training programs is all too obvious. On the evidence gathered by the Commission, however, it is difficult to measure the extent to which racial discrimination contributes to exclusion. Clearly, discriminatory attitudes of both labor organizations and employers have their effect, but other factors—lack of education and lack of motivation—are also important.

The Bureau of Apprenticeship and Training has been unsuccessful even in its limited efforts to promote equality of opportunity. Under its present authority, indeed, it is unlikely that the Bureau can have any appreciable effect on the existing pattern of Negro exclusion. Even if it should embark on a more extensive educational program in an effort to eliminate the indirect barriers that discourage Negro youth from seeking apprenticeship training, it is questionable whether such a program would be successful if not accompanied by an attack on the discriminatory practices of indenturing bodies.

Although the Bureau has recently announced that, as a condition of future registration, it will require apprenticeship programs to provide specifically for nondiscriminatory admission,<sup>100</sup> this newly announced policy will undoubtedly be of limited effect. First, this policy applies only to the registration of new apprenticeship programs. Moreover, as pointed out above, the benefits of registration are slight, and, in fact, many unregistered programs are now in operation. In this situation, even the threat of withdrawal of present registration would be a hollow one. The financial leverage of the Federal Government in apprentice training—as now limited to related training under vocational education grants—is also of little significance. A different—and more active—role is clearly necessary, if the Bureau is to provide equality of opportunity in apprenticeship training.

Vice President Johnson, the Chairman of the President's Committee on Equal Employment Opportunity, is reported to be concerned with the problem of Negro apprenticeship.<sup>101</sup> Through this Committee's jurisdiction over Government contractors, some progress no doubt could be made.<sup>102</sup>

A fundamental problem in this field, however, is lack of participation by the Federal Government sufficient to assure that national purposes are fulfilled. Current apprenticeship programs are not meeting the needs of the economy for skilled craftsmen. It is estimated that in the construction crafts these programs will train only 10 percent of the journeymen needed by 1970.<sup>103</sup> With respect to all skilled crafts, the Department of Labor has stated that such programs are not training even enough craftsmen to replace those who retire.<sup>104</sup> Yet, Negroes constitute a disproportionately small minority of this inadequate number of workers being trained in apprenticeship programs.

The current federally approved programs, rather than decreasing the industrial handicaps of Negro workers, are actually perpetuating and

enlarging them. Although the Federal Government encourages the increase of apprenticeship training, it has not taken any significant action to insure that this training will be available on a nondiscriminatory basis.

### *Vocational rehabilitation*

The impact of the Federal vocational rehabilitation program on the total employment picture is slight in terms of the number of persons rehabilitated—only 80,739 in fiscal 1959.<sup>105</sup> Its significance lies in the extent to which it enables persons who would otherwise be unemployed and dependent to become self-sufficient, self-respecting, and self-supporting. It has special meaning for those who suffer not only physical or mental handicaps, but a racial handicap as well. For if, as indicated earlier, the untrained Negro worker is doubly handicapped in obtaining employment, the untrained Negro with a physical or mental disability is all but helpless without assistance.

The purpose of grants for vocational rehabilitation is to assist the States "in rehabilitating . . . handicapped individuals so that they may prepare for and engage in remunerative employment to the extent of their capabilities."<sup>106</sup> Participation is limited to those persons who have: (1) a physical or mental disability, (2) a substantial employment handicap resulting from this disability, and (3) reasonable expectation of benefiting from vocational rehabilitation by becoming "fit to engage in a remunerative occupation."<sup>107</sup> The services provided include guidance, treatment, training, maintenance during rehabilitation, and placement. Application of these to each client on an individual basis is not only a practical necessity, but is required by regulation.<sup>108</sup>

The vocational rehabilitation program is administered by the Office of Vocational Rehabilitation in the Department of Health, Education, and Welfare. Upon approval of a State plan, Federal funds are granted on a matching-fund basis. To be approved, a plan must provide the minimum vocational rehabilitation services required by statute,<sup>109</sup> and must meet certain administrative and personnel standards.<sup>110</sup> Moreover each State plan is required by regulation to provide "that eligibility requirements for vocational rehabilitation will be applied by the State . . . or local rehabilitation agency without regard to sex, race, creed, color, or national origin."<sup>111</sup> If, after reasonable notice and opportunity for hearing, the Secretary finds that a State plan no longer complies with statutory requirements, he may discontinue Federal funds. Any State so affected has a right to question such findings in a U.S. district court.<sup>112</sup>

The Federal Government has been granting funds to the States for these services since 1920, when Vocational Rehabilitation Act<sup>113</sup>

was originally passed. The program has been in continuous effect since that time and amendments have considerably broadened its scope. Thus, although the original act was designed to rehabilitate only physically handicapped persons injured in industrial accidents, it now applies to all persons with physical and mental disabilities. Federal assistance has also been extended to include grants to States and public and private nonprofit organizations for research purposes.<sup>114</sup> In fiscal year 1960 Federal funds of over \$49 million were granted to provide vocational rehabilitation services alone.<sup>115</sup> All 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam participate.<sup>116</sup>

Because vocational rehabilitation programs are directed toward employment, the employment opportunities available to a handicapped individual may determine his eligibility to participate in the program, the training he receives, and the extent of his rehabilitation. As with vocational education, therefore, discrimination in employment may well limit the usefulness of vocational rehabilitation to Negroes. Since, however, the latter program includes placement services as well as training, if it is administered without discrimination, it could provide the disabled Negro with a better opportunity for employment than the able-bodied Negro.<sup>117</sup>

Negroes appear to participate substantially in the benefits of vocational rehabilitation programs.<sup>118</sup> Whether the degree of participation reflects a lack of discrimination cannot be determined without extensive and detailed investigation. Some general outlines of this problem are, however, readily perceived.

Two principal aspects of the program directly affect equal employment opportunity: availability of training services, and availability and effectiveness of placement services.

*Availability of training.*—Although HEW regulations provide that eligibility for training services may not be determined by race,<sup>119</sup> the particular training decided upon must lead to a reasonable expectation of employment.<sup>120</sup> The requirement of a "reasonable expectation of employment" is interpreted differently from the regulation applicable to vocational education which conditions the training to be given on the applicant's "chances of securing employment in the occupation."<sup>121</sup> As explained by representatives of the Office of Vocational Rehabilitation:<sup>122</sup>

Practices of unions or employers as to discrimination against minority groups are not an element in the Federal standards relating to State agency determination of reasonable expectation that vocational rehabilitation service will fit the disabled individual for employment.

\* \* \* \* \*

The determination is based on the *broad possibilities* for his employment.

The Office of Vocational Rehabilitation stated, however: "In order to help a disabled person choose a vocation, the counselor takes into account the realities of the employment situation."<sup>123</sup>

The Michigan agency has reported<sup>124</sup> that in Detroit all training services and facilities are equally available to all. As has been pointed out,<sup>125</sup> however, vocational education and apprenticeship training, which are used for rehabilitation purposes, are not always equally accessible to Negroes despite the long history of nonsegregated schools in Detroit.

In Baltimore, where the schools recently have been desegregated, a similar situation exists. Although vocational education and apprenticeship training may not be equally available to Negroes, all other types of public training facilities are. There are also some integrated private facilities which provide training, although nine private facilities admit only white clients and two admit only Negroes. It appears that all types of training are available in Baltimore to whites and Negroes alike, either in a public or private facility and sometimes in both.

The availability of training in Atlanta presents a different picture. The public schools are still segregated. Moreover, Atlanta has six other public training facilities which accept only whites, and only one that accepts both white and Negro clients for training. Of the 55 private training facilities, 37 accept only whites and 18 only Negroes. As a result of public and private discrimination in admission to training facilities, there is no local training available to Negroes in Atlanta in colleges of business administration, colleges or institutes of technology, art centers, law schools, schools of comptometry, or schools of pharmacy. Nor can Negroes in Atlanta obtain training as X-ray or medical technicians, medical records librarians, or in specialized airport occupations. The only local training available to Negroes but not to whites in a specializing facility is in embalming and mortuary science.

Workshops train and employ the disabled and often provide adjustment services for them. As stated above, all rehabilitation services and facilities in Detroit are equally available to all clients. In Baltimore there are four workshops, all privately operated. All provide services for both Negroes and whites. Of the four in Atlanta, three are privately operated. Only one accepts all clients. The State Factory for the Blind, the only public workshop in Atlanta, trains only whites, but employs both Negro and white handicapped persons. It provides no adjustment services and such services are not available to the white blind elsewhere in Atlanta. Adjustment services are available for the Negro blind, however, at the Metropolitan Association for Colored Blind, which also provides training and employment. The workshop for the mentally retarded provides adjustment services and sheltered employment opportunities which are available only to white clients. There are no similar services provided for the Negro mentally retarded at any facility in Atlanta. The Atlanta rehabilitation agency reported, however, that

services "not available for clients in the area are purchased . . . from facilities . . . available for them elsewhere within or outside of the State."<sup>126</sup>

*Availability of placement services.*—The rehabilitation process is not complete until the handicapped individual has been placed in suitable employment.<sup>127</sup> Although, as mentioned above, the type of training available to the handicapped Negro is not necessarily affected by local employment patterns, the availability and effectiveness of placement services may be. Clients who are unwilling to move to another locality are limited to local job opportunities.

In some respects, however, the handicapped Negro receiving vocational rehabilitation services has wider employment opportunities than the able-bodied Negro despite handicap limitations. The training he receives is not necessarily limited to the type of employment available to him in the community: he may receive training in higher type skills denied able-bodied Negroes under local vocational education programs. If there are no opportunities for local placement because of race, he may be placed and employed in another community, and, when necessary, may obtain from the State vocational rehabilitation agency the costs of transportation and maintenance for a "reasonable period following placement."<sup>128</sup>

In employment placement, either locally or in another community, the handicapped Negro also receives the special benefits provided through the State public employment service under the amended Wagner-Peyser Act.<sup>129</sup> The act requires that, in order to qualify for Federal funds, State public employment offices must provide "for the promotion and development of employment opportunities for handicapped persons and for job counseling and placement of such persons, and for the designation of at least one person in each State or Federal employment office, whose duties shall include the effectuation of such purposes."<sup>130</sup> Additional local employment opportunities are provided the handicapped Negro by workshops and other organizations that serve State vocational rehabilitation agencies.<sup>131</sup>

## PLACEMENT—STATE EMPLOYMENT SERVICES

Of equal importance with the provision of training is the placement of those who have been trained in jobs matching their qualifications. The Federal Government has been supporting a system of free employment offices since 1933, when the Wagner-Peyser Act established "a national system of public employment offices."<sup>132</sup> The main purpose of this act,

passed in the early days of the New Deal, was to assist the numerous unemployed in finding jobs. The employment service program is operated nationally through State Employment Security offices under the administrative direction of the U.S. Employment Service or USES, a division of the Bureau of Employment Security, U.S. Department of Labor.<sup>133</sup> The entire cost of administering these offices is borne by the Federal Government. In fiscal 1961 approximately \$107 million in Federal grants were spent for this purpose.<sup>134</sup>

USES regulations and policies spell out the two main purposes of the program: (1) To assist unemployed workers in finding jobs; and (2) to assist employers in securing the qualified workers they need.<sup>135</sup> Assistance of both sorts is provided without charge. The value of these placement services, not only to those seeking employment but to the employer seeking workers, is substantial.<sup>136</sup> In addition to their job placement responsibilities, the State Employment Security offices are responsible for the administration of unemployment compensation.

### *Nondiscrimination policies*

USES policy, as set forth in its regulations and policy statements, is to end discriminatory employment and encourage employment based solely on fitness for the job. These regulations speak for themselves:<sup>137</sup>

It is the policy of the United States Employment Service:

\* \* \* \* \*

(b) To obtain from an applicant only that information which is necessary to determine his qualifications for employment and facilitate his placement on a job.

Another regulation deals expressly with service to minority groups:<sup>138</sup>

It is the policy of the United States Employment Service:

(a) To promote employment opportunity for all applicants on the basis of their skills, abilities, and job qualifications.

(b) To make definite continuous effort with employers with whom relationships are established, to the end that their hiring specifications be based exclusively on job performance factors.

(c) To assist the President's Committee on Government Employment Policy [now the Committee on Equal Employment Opportunity] in effectuating Executive Order 10590 [now Executive Order 10925] by not accepting discriminatory job orders from Federal establishments.

(d) To cooperate with procurement agencies and other appropriate agencies of the Government in their efforts to secure compliance with nondiscrimination clauses in Government contracts.

To effectuate these policies, USES has issued a manual entitled *Service to Minority Groups*<sup>139</sup> as a guide to State employment office personnel in assisting minority group members to obtain equal job opportunities. It suggests methods of training those employees having regular contact with employers in the techniques of gradually educating employers in the advantages of hiring on a merit basis.

As construed and applied by USES, the policy enunciated in the regulations and manual forbids racial identification on job application records.<sup>140</sup> It also prohibits State employment offices from accepting and filling discriminatory job orders from Federal Government agencies<sup>141</sup> and from placing job requests containing racial or religious specifications in offices in other States.<sup>142</sup> Although the policy with respect to discriminatory job orders placed by Government contractors is not as clear, apparently USES has interpreted the above regulation as permitting the acceptance but prohibiting the filling of such orders unless the discriminatory specifications are eliminated.<sup>143</sup>

The policies of USES are clear—to discourage employment discrimination and to encourage merit employment. As pointed out below, however, their application and interpretation by USES and by State agencies administering this program do not always effectuate these purposes. Moreover other USES regulations issued pursuant to the Wagner-Peyser Act often work to encourage discrimination.

### *Discriminatory job orders*

All employees of State employment offices are prohibited from accepting and filling discriminatory job orders received from Federal Government agencies. Although employment office personnel are also expected to discourage the placement of such orders by Government contractors by attempting to “sell” the idea of merit employment, they are not required to do anything beyond this “to assist the President’s Committee on Equal Employment Opportunity in effectuating the policies of Executive Order 10925.” Despite the USES regulations mentioned above, cooperation between employment service personnel and “other appropriate agencies of the Government in their efforts to secure compliance with nondiscrimination clauses in Government contracts” has been limited largely to the areas of “education, information, and persuasion.”<sup>144</sup>

Discriminatory job orders were not reported to the previous President’s Committees nor were they referred to the employment policy officers or compliance officers of Federal agencies, the persons primarily responsible for enforcing the Federal nondiscrimination policy. USES construed the rules of procedure of the President’s Committee on Government Employment Policy and the Committee on Government Contracts, as requiring the *individual* discriminated against to file the com-

plaint.<sup>145</sup> The application of such a requirement to this type of situation seems unrealistic; for the *individual* is not likely even to know of the discriminatory job order—especially if the State employment office has rejected the order. Failure to report discriminatory job orders to the President's Committees has hindered the effectiveness of the Federal policy of equal employment opportunity. Both the Committee on Government Employment Policy and the Committee on Government Contracts publicly stated that one of the major roadblocks to effectuating this policy was the lack of complaints filed with the committees.<sup>146</sup>

Even if State offices receiving discriminatory job orders were required to report these violations to the President's Committee on Equal Employment Opportunity, there would still be administrative hurdles in the way of effective enforcement. No procedure has yet been developed to inform the local employment offices around the country of the names of firms operating under Government contracts. Such a procedure would not be easy because there are hundreds of thousands of frequently changing firms with Government contracts. Yet, without current identification of Government contractors, any USES policy to discontinue the servicing of discriminatory contractors is illusory.

In practice, the difficulty of identifying Government contractors has meant that the personnel in the field either do not enforce the nondiscrimination policy, or they enforce it against only those companies that are well-known Government contractors.<sup>147</sup> Some State employment offices do not even pay lipservice to the regulations. 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.<sup>148</sup> This is an obvious violation of USES regulations. In offices in other parts of the Nation the directors admitted it was possible for individual members of their staffs to do this without their having any knowledge of it.<sup>149</sup>

In States without fair employment laws, local USES offices are entirely free to accept and fill discriminatory job orders from private firms. To this extent Federal money is being used to perpetuate discrimination. Even if a Federal regulation were to prohibit State employment offices from accepting and filling *all* discriminatory job orders, other extant USES regulations would still invite discrimination in recruitment services. Because of the manner in which State employment office budgets are determined by USES, State offices have tended to lose sight of their dual function—to assist workers in finding jobs and to assist employers in filling jobs. They view themselves, rather, as "service organizations, serving employers,"<sup>150</sup> and hesitate to do anything that might "injure their relationship with employers."<sup>151</sup> Moreover, their main concern is with filling the largest number of jobs possible. This works to the disadvantage of the minority group worker who is often more difficult to place.

Appropriations are keyed to "workload." There is some recognition of the difficulties of handling more complex jobs, but basically the appropriations formula is keyed to numbers. Not only are budgets for the local offices determined by a volume formula, but both administrators and line personnel in the local offices are rated primarily on their ability to place people in jobs. If an employment office refuses to process discriminatory orders, and thereby loses a substantial number of employer clients, its appropriations will be cut proportionately.<sup>152</sup>

This concern over the loss of job orders and appropriations on the part of professional employment service personnel is primarily based on a fear that private employment agencies will make inroads into their job orders. "If we were prohibited from accepting all discriminatory job orders, and the private agencies were not," said the director of one employment office, "they would kill our business by taking it all over."<sup>153</sup> On several occasions professional employment service personnel have alleged that a major sales theme of private employment agencies is: "You call us and you don't have to go through being argued into hiring colored people."<sup>154</sup> This occurs in the District of Columbia, where a substantial proportion (if not a majority) of the job orders placed by private business are discriminatory.<sup>155</sup> Two States—California and Illinois—prohibiting their State employment offices from processing discriminatory job orders have not imposed a similar requirement on the private agencies within the State. California reported no appreciable loss in job orders from private employers because of this policy, while Illinois reported a substantial loss.<sup>156</sup>

The Commission has surveyed the policies of employment offices in two cities with enforceable fair employment laws: Detroit and Baltimore.<sup>157</sup> Under USES regulations, offices located in Michigan and Baltimore are prohibited from taking discriminatory job orders from anyone. (In Baltimore this regulation was not made operative until early in 1961.)<sup>158</sup> At first blush, the experiences of these offices indicate that the fears of employment service personnel mentioned above are well founded. In both Baltimore and Detroit the volume of job orders dropped off after the imposition of a policy of nonacceptance of discriminatory requests. In both cities the directors of the program blamed this on the switch by employers from the public to the private employment agencies.<sup>159</sup> If this is true, the loss of job orders may flow from failure to enforce fair employment laws against private employment agencies. Employment office personnel in both cities admitted, however, that they still sent the "discriminating" firms only those persons who would be hired.<sup>160</sup> Their justification for this rested on the nature of the statute providing appropriations for local employment offices. In the words of an employee of the Michigan Employment Security Commission: "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."<sup>161</sup> An employee of the Department of Employment Security in Baltimore had this to say: "I have had some of these accounts for years. I know which firms hire who, and I send them the people they want to hire."<sup>162</sup> Thus even a statutory prohibition against accepting and filling private discriminatory job orders may have little effect on the practices of State employment offices.

The method of determining appropriations is not the only reason for the lack of cooperation between the employment service and enforcement agencies in States and cities with fair employment laws. In Michigan the Fair Employment Practices Commission (FEPC) has asked the State employment offices to refer to it discriminatory job placement orders which violate State law. They have refused to do so. In Baltimore there is an Equal Employment Opportunities Commission (EEOC), whose job is substantially similar to Michigan's FEPC. As in the case of Michigan, EEOC has asked the employment service to inform it of discriminatory job orders and the employment service has refused.<sup>163</sup> The reasons for not cooperating with the Detroit FEPC and the Baltimore EEOC are substantially similar. The Michigan Employment Security Commission has based its refusal on the argument that it has two primary jobs: to act as an employment procurement agency and to act as trustee of the State unemployment compensation funds. According to this argument, the fund would be jeopardized if the service were unsuccessful in job placement. The employment service feels that if it became "an enforcement arm of FEPC, many employers currently placing their job orders with the State employment service would look elsewhere to find their employees."<sup>164</sup> The Department of Employment Security in Baltimore adds: Its success depends on the confidence of employers who place orders with it; if it reported, and personnel appeared as witnesses against these employers, this confidence would be lost; it can make more advances to end discrimination by the slow process of education than by reporting violators.<sup>165</sup>

Apparently only New York and Wisconsin have been able to resolve this seeming conflict between the State employment offices and the State agencies charged with enforcing nondiscrimination laws.<sup>166</sup> If a private employer submits a discriminatory job order to a USES office in New York, it sends out a fieldworker to attempt to get the employer to comply with State law. If the employer is recalcitrant, the employment service reports him to the State Commission Against Discrimination. In Wisconsin, the State employment office immediately informs the State's Fair Employment Division. This is precisely what the Michigan and Baltimore USES offices have refused to do. Yet the executive director of the New York employment office "would doubt if we have

lost any appreciable business because of our reporting private firms that discriminate.”<sup>167</sup> Similarly, in Wisconsin, there has been no substantial difference in the number of job orders placed as a result of this policy.<sup>168</sup>

Apart from the reasons advanced by the Michigan and Baltimore offices for refusing to refer discriminatory job orders to their respective fair employment agencies, the Department of Labor’s interpretation of USES regulations prohibits such disclosure. The regulation reads:<sup>169</sup>

It is the policy of the United States Employment Service to permit disclosure of information from the files and records of the employment service:

\* \* \* \* \*

(f) To individuals, organizations, and agencies or for purposes other than as specified in paragraphs (a), (b), (c), (d), or (e) of this section if such disclosure will not impede the operation of, and is not inconsistent with the purposes of, the public employment service program . . . .

Paragraphs (a), (b), (c), (d), or (e) do not authorize the disclosure of information to State agencies charged with the enforcement of non-discrimination laws; and the Department of Labor formerly construed section (f) to mean that the disclosure of discriminatory job orders to State fair employment practices commissions would “impede the operation of . . . the public employment service program.”<sup>170</sup> Under the Department’s new interpretation,<sup>171</sup> confidential information may be turned over to “government agencies or commissions with enforcement responsibilities,”<sup>172</sup> but, apparently, only upon specific demand by the enforcement agency. If a demand is made and the information is turned over, however, it cannot be used “as evidence at a public hearing.” The New York and Wisconsin employment services have been making the information available without a demand, apparently in contravention of the new interpretation of the regulation, as well as the old.

The inconsistency and confusion in the application of USES policy to the processing of discriminatory job orders is further illustrated by the relationship between the employment service and the Anti-Discrimination Commission in Kansas.

Kansas has a fair employment law which, until recently, lacked sanctions<sup>173</sup> and was therefore deemed to be strictly educational. The Kansas employment service had refused to discontinue its processing of private discriminatory job orders despite the request of the State’s Anti-Discrimination Commission. The Anti-Discrimination Commission requested the Secretary of Labor to clarify the meaning of the following USES statement:<sup>174</sup>

It is the policy of the United States Employment Service:

To make no referral to a position where the services to be performed or the terms or conditions of employment are contrary to Federal, State or local law.

The Secretary replied: <sup>175</sup>

You, of course, appreciate that the construction of the Kansas Anti-Discrimination statute is a matter for the appropriate State authorities and for the courts.

On receipt of this reply the Anti-Discrimination Commission requested an advisory opinion from the State's attorney general who concluded that— <sup>176</sup>

. . . Kansas law does not provide an absolute prohibition against discrimination in employment, it would be our view that the actions of the state employment service could not have violated the policy of the United States Employment Service. . . .

This "buckpassing" meant that the Kansas employment service offices could continue to accept discriminatory job orders from private employers even though it was contrary to an expressed policy of the Kansas Legislature and the USES. The dispute in Kansas, and the general question of whether any State agency supported by Federal or public funds may aid and participate in employment discrimination, is now in a Federal district court. <sup>177</sup>

### *State employment office administration*

As pointed out above, the effectuation of the USES nondiscrimination policy is often blocked by other USES regulations which are inconsistent with this policy and which in fact encourage discrimination. Federal policy also affects the internal administration of State employment offices. To the extent that such policy permits discrimination in the use of the services rendered by local employment offices, it contributes to discrimination in employment. The manner in which State employment offices are administered can determine the degree to which the Federal nondiscrimination policy is effective.

*Segregated offices.*—Under existing Federal regulations the States are free to maintain racially segregated employment offices. In 1958 there were 15 cities in 4 States with physically segregated employment offices; <sup>178</sup> 25 cities had offices with separate entrances and separate personnel to process white and Negro applicants; and in over 70 other cities the offices had either separate waiting rooms or separate service points for the different races. <sup>179</sup> In some areas of the South, where the office is too

small to support more than one employee, Negro and white applicants sit on different sides of the interviewer's desk.<sup>180</sup> In addition to offices segregated by law, there are many offices segregated in fact by being located in all Negro or white neighborhoods, or because the offices specialize in processing jobs customarily barred to Negroes.

Since segregated offices cannot be maintained without racial records, the USES policy prohibiting the recording of racial information becomes meaningless. Moreover, if job orders are submitted only to the "white" office, they need not contain discriminatory specifications; this makes it difficult, if not impossible, to enforce the Federal proscription against processing discriminatory job orders placed by Federal agencies or Government contractors. In an effort to cure this problem, USES requires that where such orders are received by one segregated office, they must be transmitted to its counterpart.<sup>181</sup> But even this requirement raises practical difficulties. Unless job orders are referred simultaneously, the job may already have been filled by the time the order is referred to the second office. And job orders are rarely, if ever, referred simultaneously. In an attempt to meet these problems, USES requires segregated offices to fill out duplicate job slips to be routed to both offices. Even this procedure, however, does not guarantee that orders will be received simultaneously. Moreover, the administrative burden of duplicating every effort makes the maintenance of segregated offices wasteful as well as unworkable.

The day-to-day operations of segregated offices illustrate some of the administrative problems. When the District of Columbia maintained segregated offices, switchboard operators felt it necessary to ask prospective employers who had not requested a particular office whether they wanted white or Negro workers. The very nature of the question invites discriminatory job requests. Duplicate job orders were referred to the segregated offices, but sometimes one office had already filled the job before applicants from the other office could possibly appear at the employer's place of business.<sup>182</sup>

In North Carolina, the local offices may request a private employer submitting a job order to indicate a racial preference. "This is done 'only in cases where there is doubt about the employer's requirements.'" Where no such doubt exists, employment service personnel themselves determine whether to refer whites or Negroes according to their view of the "'social and economic characteristics of the community'" and knowledge of "'customary hiring requirements.'" "The nature of the job may also be considered, 'depending on the community and knowledge of usual community practice.'" <sup>183</sup> This practice not only encourages discrimination where the employer may want to hire on a merit basis,<sup>184</sup> but also perpetuates "customary hiring requirements" which limit Negroes to the traditional unskilled and service jobs.

In Atlanta the director of the employment service stated that all phone calls go directly to an order-taking unit which sends duplicate order forms to each of the segregated offices.<sup>185</sup> There have been allegations that, although all orders are made in duplicate, orders for "traditional white jobs" are not sent to the Negro unit until after the jobs have been filled.

As this Commission has found in other situations, the mere existence of segregation leads to discrimination. In Georgia, the State employment service facilities are segregated and there are no Negro employees of the employment service outside Atlanta.<sup>186</sup> Employment by the employment service, and facilities available to Negro applicants in Atlanta are "separate" but a long way from equal. Over half of the people using the facilities of the Atlanta office are Negro. Yet the Negro staff consists of 17 people while the staff servicing white job seekers numbers 53 (a few of the white personnel perform jobs necessary for both sections), and the space assigned to the Negro section, handling over half the business, is no greater than one-quarter of the space provided for whites.

*Internal employment.*—The Federal Government exercises very little control over the internal employment policies of State employment offices. It does require the States to establish and maintain "personnel standards on a merit basis" for the personnel administering the program.<sup>187</sup> It polices the merit system of the State employment offices and similar State agencies operating under Federal grants<sup>188</sup> through the Division of State Merit Plan Systems, in the Department of Health, Education, and Welfare. The Division requires States receiving grant aid to employ their personnel on the basis of standards "substantially equivalent" to Federal merit standards.<sup>189</sup> Included in these is the following:<sup>190</sup>

Disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of political or religious opinions or affiliations will be prohibited.

The regulation thus prohibits religious and political discrimination, but is mute on the subject of racial discrimination. The reason for this omission, as stated by the Division of State Merit Plan Systems, is that "the provisions of the standards, at the time of their adoption, were based on prevailing Federal, State, and local civil service rules and have not been modified in the absence of subsequent Federal statutory or executive provisions governing the policies in Federal-State relations."<sup>191</sup> The standards "have been interpreted to prohibit any State from barring Negroes from taking examinations for any positions for which they are qualified."<sup>192</sup> Currently, no State plan approved by the Division of State Merit Plan Systems discriminates on its face,<sup>193</sup> but

some allow for "selective certification" by race. This permits the prospective State civil service employer to call for a specially qualified person on the civil service register out of order. For example, if a particular local employment service office needs a Spanish-speaking interviewer, and the top 20 people on the civil service register do not have this qualification, the employer may go to the 21st person on the list if he has the skill. So, also, for an employment office segregated for whites, if the top candidates on the list are Negroes, the prospective employer may pass over them to get to a white interviewer. The Division of State Merit Plan Systems has accepted for certification the plans of seven States "providing for certification by color or race." In five of these—Arkansas, Delaware, North Carolina, Texas, and Virginia—selective certification is being used.<sup>194</sup>

While selective certification may be used to discriminate, it may also be used to give Negroes employment that would otherwise be unavailable.<sup>195</sup> These facts are known: as of 1957 no Negroes were employed in the State employment offices of Alabama, Mississippi, or South Carolina, and very few were employed in the other States which maintained segregated offices.<sup>196</sup> Recent reports of this Commission's State Advisory Committees and staff indicate some changes in employment in these offices since 1957. The Mississippi Employment Security Commission now employs three Negroes—two janitors, and a yard man.<sup>197</sup> Georgia maintains approximately the same number of Negroes as it did in 1957, all of them in one segregated office in Atlanta.<sup>198</sup> In July 1960 North Carolina employed 51 Negroes out of a total of 996 employees, and 10 of the Negroes were the only unskilled employees on the payroll of the State's Employment Security Commission.<sup>199</sup> The New Orleans office of the Louisiana employment service, not included in the 1957 study, employs only two Negroes other than porters and maids. "One is a field representative whose title is minority group consultant and the other his secretary."<sup>200</sup>

In reviewing the correlation between segregated offices and the limitation of Negro personnel, it is interesting to note employment patterns in two jurisdictions which formerly maintained segregated offices, Missouri and the District of Columbia. Of the 964 employees in the Missouri Division of Employment Security, 76, or 8 percent, are Negroes. Thirty-six of the 76 are classified as custodial workers or maintenance men; the other 30 are employed in clerical, professional, and managerial positions.<sup>201</sup> The District of Columbia employment office has a professional and clerical staff of 165 persons, of whom 67 are Negroes, occupying positions at almost all grade levels.<sup>202</sup>

*Discrimination in services rendered.*—In a program that permits segregated offices, selection of its own employees by race, and the processing of discriminatory job orders, it can reasonably be expected that some employees will use their positions to perpetuate

their own private prejudices. In New York and Michigan where State law forbids private employers from discriminating, the employment services are prohibited from processing discriminatory job orders. Yet the New York State Commission Against Discrimination was able to prove that one interviewer was secretly marking records to identify the race of applicants in order to discriminate.<sup>203</sup> Admissions of similar acts have come from Michigan<sup>204</sup> and Kansas.<sup>205</sup> The Michigan FEPC has received several charges of discrimination in the internal employment practices of State employment offices. The Michigan Employment Security Commission recognized that at least three of these complaints had merit, and in one of these cases the Commission had to intervene between the FEPC and its own local office by hiring Negroes and assigning them to that office.<sup>206</sup> The director of the same local employment office told a member of this Commission's staff that he once discouraged a private employer from employing 20 workers of "any color" with this comment: "You know darn well that you can't find 20 Niggers willing to work."<sup>207</sup>

This Commission has been unable to investigate all the allegations of discrimination that have been made. Two should be mentioned, however, because they have been brought to the attention of Federal bodies charged with power to enforce nondiscriminatory employment policies. One was a formal complaint charging the Louisiana Employment Security Service with refusing to hire qualified Negroes on the Civil Service register. This was dismissed by the President's Committee on Government Employment Policy because "Federal law requires only that a *merit system* of personnel administration be established."<sup>208</sup> In the other, the South Carolina Employment Service was accused of processing discriminatory job requests from a Government contractor in violation of USES policy and regulations.<sup>209</sup> This complaint is now under consideration by the President's Committee on Equal Employment Opportunity.

It is clear that there is an enormous gap between the expressed policies of nondiscrimination promulgated by USES and the actual implementation of these policies in the field. In some States the personnel to implement these policies appear to be hired on a discriminatory basis. Facilities are often segregated and unequal. Existing policies regarding the processing and filling of discriminatory job orders from Federal agencies and Government contractors are not effective; they run up against other inconsistent USES regulations and give rise to a host of practical administrative problems. USES policy with respect to the acceptance and processing of discriminatory job orders is currently being revised.<sup>210</sup> The significant changes are: (1) a clarification of present policy with respect to persuading employers to hire on a nondiscriminatory basis, (2) a provision that job orders will not be filled until discriminatory specifications have been eliminated, and (3) provision for

the referral of discriminatory orders placed by known Government contractors to the compliance officers of the contracting agencies or to the President's Committee on Equal Employment Opportunity.<sup>211</sup>

One of the main impediments to an effective nondiscrimination policy is the USES method of allocating funds to State employment offices. As this budgetary formula places a premium on the number of job placements made, there is an incentive to refer for employment the applicant who is easier to place than the minority group worker. For the same reason, the interests of the "job applicant client" are often overlooked in an effort to avoid offending the "employer client," since the main concern of most employment offices lies in maintaining and increasing the number of job orders received. The inconsistency of this general attitude with the declared policies of USES—to discourage employment discrimination and to encourage merit employment—is all too obvious.

## 6. Unions: Impact on Employment

Since some 18 million of the Nation's 70 million workers are covered by collective-bargaining agreements,<sup>1</sup> both the internal and external practices of unions significantly affect employment opportunity.

Internal policies are particularly vital in the skilled craft unions, especially in the building trades, where union membership is practically a condition of employment, and a large proportion of hiring is done directly through unions. Such policies determine admission to membership and affect job referrals and participation in apprenticeship training.<sup>2</sup> External policies, expressed in collective bargaining with management, affect equal opportunity through the union's power to negotiate terms and conditions of employment, including wages, hours, training, transfers, and promotions.

Organized labor has long maintained that its internal affairs are its own business. The common law has been relatively hospitable to this view, and judicial intervention has been limited generally to the grosser abuses of power.<sup>3</sup> In 1959, however, perhaps as a reflection of a belief that the increase of labor's strength in the national economy required accountability for the exercise of its power, Congress, through the Labor-Management Reporting and Disclosure Act,<sup>4</sup> undertook substantial regulation of the internal affairs of unions. With respect to the external operations of labor unions, the mechanics of collective bargaining and, to some degree, the substance of the bargaining agreement have been subject to Federal regulation for many years.<sup>5</sup>

In three cities the Commission conducted field investigations of labor organizations which had collective-bargaining agreements with companies performing work under Federal contracts or grant-in-aid programs. The surveys included a southern city—Atlanta; a border city—Baltimore; and a northern city—Detroit.<sup>6</sup> All of the surveyed companies working on grant-in-aid projects were in the construction industry; the traditional "craft" unions of the building and construction trades represented the employees.<sup>7</sup> The Government contractors selected were in manufacturing industries where primarily "industrial" unions represented the employees.<sup>8</sup> Because of profound differences between craft and industrial unions—despite the 1955 merger of the craft-based Ameri-

can Federation of Labor and the industrial-based Congress of Industrial Organizations—these two types of unions are treated separately in this study.<sup>9</sup>

## THE CONSTRUCTION CRAFT UNIONS

Industrial unionism is relatively new, dating from the formation of the CIO in 1935, although several earlier unsuccessful attempts had been made to organize all workers on a common, all-inclusive basis.<sup>10</sup> The craft unions, composed mainly of “the labor aristocracy of skilled workers,” and represented by the AFL and the independent railroad brotherhoods, dominated organized labor from the early 1890’s until the middle of the 1930’s.<sup>11</sup>

Essentially, the doctrine of craft unionism was “that workers should be organized by the skills they possessed and the tools they used rather than by the product they created or the plant in which they worked.”<sup>12</sup> A basic drive of the craft unions was to establish control over the jobs in their skills. Closed shops (making union membership a condition of employment) and union hiring halls (where employers hired only those persons referred by the unions) were among the devices used to achieve this goal. There was also an effort to restrict competition for the jobs. This was accomplished by limiting the number of workmen admitted to the unions and to apprenticeship training programs. In certain trades, notably plumbing and electrical, licensing requirements also served to limit competition.

Within this generally “protectionist” policy, race prejudice was sometimes a convenient vehicle to deter Negro workers from becoming competitors for jobs. But even where racial discrimination as such was not present, the effect of these restrictive practices was often to deny the Negro the opportunity to establish himself among the Nation’s skilled work force.<sup>13</sup>

In the 1930’s the rise of the industrial unions, devoted to bringing into single organizations all the workers in a plant or industry, presented a serious challenge to the craft union philosophy. The pressure of this challenge resulted in a significant change in attitude by many craft unions; yet a number of them, including those in the building and construction trades, have clung to their historic attitudes.

### *The importance of union membership*

Union contractors, out of necessity or convenience, rely on the construction craft unions as their sole or primary source of labor. The

employers' or contractors' needs for skilled workmen vary considerably from day to day and few, if any, maintain a full complement of skilled craftsmen. Moreover, the necessity of recruiting such a work force rapidly, often in a strange community, makes it highly desirable for contractors to have an established source of recruitment. This appears to be particularly the case in large-scale commercial construction, which is likely to be unionized. (In the three cities studied, the bulk of commercial building construction was unionized, but only in Detroit was there evidence of substantial unionization of other types of construction.<sup>14</sup>) Typically, craft unions bargain collectively with contractors' associations. Contracts establish uniform wages and working conditions for the particular craft within the union's geographical jurisdiction. Often the contract itself is brief; separate union working rules establish the specific conditions under which union members will be employed.

Although the Labor-Management Relations Act of 1947 (LMRA) outlawed the closed shop, union membership still appears to be a condition of employment in most union construction in the three cities studied.<sup>15</sup> One device for maintaining such closed-shop conditions is the union hiring hall, through which the union supplies workers required by the contractor.<sup>16</sup> Although relatively few of the bargaining agreements studied actually contained exclusive hiring hall provisions,<sup>17</sup> most "union" contractors have continued to rely on the unions as their sole or primary source of recruitment.<sup>18</sup>

Because union membership or referral by the union is a virtual necessity for obtaining employment on unionized projects (the bulk of commercial construction), the extent of Negro membership in construction craft unions determines the extent of Negro employment in this industry. Indeed the Negro has made little progress beyond his base of traditional strength in the "trowel" trades (plastering, lathing, bricklaying, and cement finishing) and unskilled and semiskilled construction labor.<sup>19</sup> Census and Bureau of Labor Statistics figures show that between 1910 and 1960, in the carpentry trade, the Negro has actually lost ground.<sup>20</sup> On the other hand, the number of Negroes employed as construction laborers has increased by 50 percent during the past decade.<sup>21</sup> In the plumbing, metalworking, and electrical trades, both 1950 census figures<sup>22</sup> and the Commission's field investigations show that Negro employment is minimal.

A 1957 Urban League study of Negro membership in construction unions in 32 cities showed a uniform pattern of exclusion from certain craft unions.<sup>23</sup> Commission field investigations revealed the same pattern. In Baltimore there are no Negro members of the ironworkers, steamfitters, plumbers, electrical workers, or sheetmetal workers unions. The cement masons, painters, plasterers, lathers, bricklayers, construction laborers, operating engineers, and riggers unions do have Negro members. Only the carpenters union maintains separate Negro and

white locals. Even though most of these Baltimore locals admit Negroes, the overall participation of Negroes is low. Membership figures available for 13 of them indicate that out of roughly 10,000 members fewer than 400 are Negroes, two-thirds of whom are in the cement masons and the segregated carpenters local. Contrast this with the laborers and hod carriers local, in which more than 3,200 of some 3,500 members are Negroes.<sup>24</sup>

In Atlanta neither the electrical workers nor the plumbers union has Negro members in construction units, although the electrical workers local does have Negro members in its industrial division.<sup>25</sup> No Negroes were reported to be members of the sheet metal workers or ironworkers unions.<sup>26</sup> The cement masons, lathers and plasterers, construction laborers, and teamsters have Negro members. The carpenters and bricklayers maintain segregated locals.<sup>27</sup>

Other studies indicate that an overall pattern of minimal Negro membership in skilled crafts other than the trowel trades prevails in many areas. The Commission's Louisiana State Advisory Committee reported that in New Orleans: "In some crafts, notably the electrical workers, plumbers, asbestos workers, boilermakers, piledrivers, elevator constructors, hoisting engineers, glassworkers, ironworkers, sheet metal workers and sign painters, Negroes are completely excluded." Separate Negro locals are maintained by the carpenters and painters, but the bricklayers, plasterers, teamsters, and roofers have Negro members.<sup>28</sup> The Missouri State Advisory Committee reported that Negro membership in Kansas City was "restricted in a number of unions such as plumbers, sheet metal workers, steamfitters, operating engineers, and electricians."<sup>29</sup>

The Commission's investigations do not reveal whether Negro exclusion from craft unions is due primarily to racial discrimination or to the generally restrictive attitudes of the craft unions. Both these factors and others contribute to exclusion. Interestingly, the restrictive attitude of the white carpenters local in Baltimore is apparently producing integration of the Negro carpenters union. The Negro local recently accepted a white member after he tried unsuccessfully to join the white local. At last report a second white carpenter was also in the process of joining the "Negro" local.<sup>30</sup>

Some locals, however, openly practice racial discrimination in their membership policies. Local union officers have been known to explain the absence of Negro members in the following terms: "'Nigras' are all afraid of electricity"—"Jews and colored folks don't want to do plumbing work because it is too hard."<sup>31</sup> George Meany, president of the AFL-CIO, in a recent speech to the Building and Construction Department of the AFL-CIO recognized the existence of discriminatory practices in the building trades:<sup>32</sup>

Labor cannot in good conscience urge Congress to act against racial discrimination when some of our own affiliated groups themselves are guilty of practicing discrimination.

Right here in the District of Columbia, . . . there are local unions whose membership and whose apprentice rolls are closed to Negro applicants. Such practices violate every basic tradition of the free trade union movement.

When discrimination exists, it is apparently by tacit agreement of the local union membership. None of the construction unions surveyed have racially restrictive provisions in their constitutions or bylaws.<sup>33</sup> Most, however, require that an applicant for membership be approved by the local before acceptance.<sup>34</sup> It is clear that the absence of Negro members in the "lily-white" construction locals means that few, if any, Negroes will be employed in these highly paid craft jobs on union construction projects.<sup>35</sup> Obviously, then, to the extent that union membership practices are discriminatory, they deny employment opportunities to Negroes on racial grounds.

#### *Discrimination despite union membership*

Even those unions which admit Negroes to membership, however, may discriminate against them with respect to job opportunities. Examples of such discrimination may be found in both the segregated union situation and in integrated unions where Negro membership is minimal.

Segregated unions exist in two crafts in Atlanta and in one in Baltimore. In each craft the Negro local is much smaller than its white counterpart. The total membership of the three all-white locals is 5,450, whereas the total of the three Negro locals is 330.<sup>36</sup> The existence of separate locals for the same craft tends to produce competition between the two for jobs, and the Negro locals suffer. The white locals try to provide their members with as much of the available work as possible. They have a competitive advantage because of size, probable support from other all-white craft unions on the job, and the fact that most contractors are white.

Negro locals in Atlanta may be called upon to provide token Negro participation on some Government projects.<sup>37</sup> Frequently, however, they find themselves completely excluded from jobs as most contractors hire through the white locals. It was reported in Atlanta that members of one of the white locals recently walked off the job in protest against the contractor's hiring workmen from the sister Negro local. Allegedly on other occasions white unions members were brought in from other cities to avoid placing Negroes on jobs.<sup>38</sup> The competition between Atlanta's white and Negro locals has hit the Negro locals so hard that one has become virtually extinct; members of the other have been forced

to seek work below union rates, because of their inability to find jobs on union construction.<sup>39</sup>

Although merger is the apparent solution to the dilemma of segregated locals, there is substantial resistance to such a move among Negroes as well as whites.<sup>40</sup> Negro opposition appears to stem largely from fear that they would have no voice as a small minority within the white locals.

The integrated building trades unions present a more favorable prospect for the Negro workman. In three of Atlanta's four integrated construction unions, Negroes constitute a majority of the membership. Two have Negro business agents who serve the entire membership. Even in the union with a majority of white members, the local employs a Negro organizer. All four of the unions have long histories of integration, two of them dating back to the turn of the century. From all appearances these unions enjoy satisfactory relations with the other building trades unions, and both Negro business agents are delegates to the Atlanta Building Trades Council.<sup>41</sup> Even in the integrated unions, however, there may be problems for Negroes in locals in which they constitute only a small portion of the membership. Reports from both Baltimore<sup>42</sup> and Washington, D.C.,<sup>43</sup> allege that Negro members of integrated unions often find it impossible to obtain employment because of difficulty in getting union referral (in addition to employer resistance).

#### *IBEW Local 26: Restrictions on employment opportunity*

The policies and practices of one craft local in Washington, D.C., typical of many, illustrate the extent to which traditional craft union attitudes of job control and restrictive membership still prevail, and the effects they can have on the Negro's opportunity to obtain training essential for employment as well as employment itself. Local 26, like the majority of construction locals in the District of Columbia, has no Negro members; there are 900 white journeymen among its membership.<sup>44</sup> It has a collective-bargaining agreement with the Institute of Electrical Contractors of the District of Columbia whose members perform the major part of the electrical work on commercial construction in the District. The agreement provides that the employer "shall notify the business manager of the union of all vacancies" and that the union shall operate a "referral office" for the recruitment of workers. Among the criteria for referral is "seniority, or work experience, in the greater Washington, D.C., area as an electrical worker."<sup>45</sup> Although the contract provides that referrals shall not be made on the basis of union membership, union members clearly have the advantage since they are virtually the only ones with seniority and experience in electrical commercial construction work in the District. It is equally clear that most employees in the craft hire solely through the union. Thus Local 26 has a virtual monopoly of electrical jobs on commercial construction work in this area.

The need for training in the electrical construction trade is apparent. Licensing by the District of Columbia and Alexandria, Va., is a condition of both employment and union membership. The apprenticeship program maintained jointly by the union and contractors affords the best method of obtaining such training. Because of traditional restrictive policies, however, the number of apprentices accepted annually is limited to 60, although more than 200 applicants are ordinarily on the waiting list. Many youths, Negro and white, will be unable to enter the program because of inability to meet the relatively high standards for admission or because of the competition for the limited number of openings. In addition, approximately one-third of the openings are reserved for relatives of those already in the craft, which further restricts the number of openings available to Negroes.

Training as journeymen may be obtained elsewhere. To attain union membership, however, the applicant must be approved as a qualified journeyman by the local union examining board and be accepted by a vote of the membership. Local 26 is not eager to accept new members. Despite the ever-accelerating construction activity in the District, in recent years the size of the local has remained relatively static. The prevailing attitude is that it is wiser to maintain a surplus of jobs for the members of the local than to expand the membership to meet the increased demand for workers. Thus it refers outside union members to District jobs rather than expand its own membership. It takes substantial pride in its craft, and tends to disparage the skills of electricians who perform primarily residential rather than heavy commercial construction work. These attitudes result in limited union membership opportunities even for those with experience and training in electrical construction.<sup>46</sup> Few Negroes have had experience on heavy commercial electrical work.

Some restrictive practices raise nonracial barriers to Negro entry into the field of union construction. Restrictions on union membership and admission to apprenticeship programs if aggravated by racial discrimination, may result in insurmountable barriers. None is peculiar to Local 26; in varying degrees, these practices exist in many of the construction craft unions. With respect to Local 26, Negroes have been seeking entry to apprenticeship training and union membership for several years without success.<sup>47</sup> The barrier to Negro employment was finally overcome for the first time in 1960 when a Negro member of an IBEW local in Detroit was referred to work by Local 26. But even this breakthrough took months to accomplish and occurred only after the intervention of the President's Committee on Government Contracts, the international union, AFL-CIO leadership, and local community groups.<sup>48</sup> Although this one Negro "union" electrician is still working in the District, he has not become a member of Local 26.

## INDUSTRIAL UNIONS

Industrial unions bring together both the skilled and unskilled into the same organizations and rely upon numerical strength—rather than control of a special skill—to provide bargaining power. This more egalitarian approach usually results in Negroes and whites becoming members of the same union, a situation more conducive to equality of treatment.<sup>49</sup> An interesting change in attitude often occurs when craft unions organize in industrial plants. For example, one of the construction craft locals in Atlanta has obtained substantial representation in manufacturing plants. This local, as well as the international with which it is affiliated, has been charged with excluding Negroes from construction jobs and apprenticeship programs. The local is now divided into various subunits, one for the members of each plant that it represents and another for its construction journeymen. There are no Negroes in the construction subunit; there are Negro members, however, in most of the other subunits. Monthly meetings for all members of the local are integrated, and Negroes hold minor offices in some of the subunits. The local recently lost an NLRB election, in part because of its inability to gain the support of the Negro employees. In a new organizing drive at this plant, it is using a Negro organizer from the AFL-CIO staff, as well as one of its own Negro members, in an effort to attract the support of Negro employees. This experience suggests the change in attitude required of a craft union when it turns to organizing workers instead of jobs.<sup>50</sup>

In industrial plants the collective-bargaining process normally starts only after the work force is established; not before, as in the construction field. Even after collective bargaining is underway, a union seldom has a significant role in the hiring process.<sup>51</sup> Formal apprentice training programs are not found as frequently in the industrial environment as in construction, and the selection of apprentices for such programs is normally a management prerogative.<sup>52</sup> Nevertheless industrial unions are in a position to exercise substantial influence on other aspects of the employment relationship.

In contrast with the rather skeletal bargaining agreements found in the construction field, those of the manufacturing industries frequently regulate virtually every aspect of in-plant activity. The grievance and arbitration procedure established by the collective-bargaining agreement provides the customary mode of resolving contractual disputes.<sup>53</sup> Seniority, defined and assured by agreement, is vital in industrial government; it often controls layoffs, recall rights, promotion, transfer, demotion, eligibility for vacation and welfare plans, distribution of overtime, and shift preference.<sup>54</sup> Through control of the grievance

and arbitration procedures, and through its authority to negotiate and administer collective-bargaining agreements including seniority provisions, the union may exercise substantial influence over the fate of any employee in the plant.

In industrial plants union membership appears readily available to Negroes.<sup>55</sup> Of 17 unions studied by the Commission in Atlanta and Baltimore, all have Negro members (as do all those studied in Detroit). The one international in Atlanta that maintained a separate Negro local has recently merged it with the white locals. Ten of these unions have Negro members on their executive boards, and Negroes are serving as minor officers or job stewards in all 17. In one Atlanta union, a Negro was recently chosen to head the union election committee by his fellow white committee members. Another Atlanta local has had a Negro organizer on its payroll for a number of years. All of these unions hold integrated meetings, although there appears to be seating segregation in some of the Atlanta meetings. But even Atlanta's union halls do not usually have separate drinking fountains or restroom facilities. In Baltimore, some locals sponsor integrated recreational and social activities, something which rarely occurs in Atlanta. In Atlanta, however, many union members may have their first experience in integration within their unions.

But the fact that these unions accept Negroes as apparent equals does not mean that Negroes enjoy similar status on the job. In Atlanta Negro union members may work in a plant that is entirely segregated; separate drinking fountains, restrooms, eating facilities, and even time-clocks are customary. There is no indication that the unions are attempting to change this in-plant segregation. On the other hand, in Baltimore few vestiges of the segregated system are visible. One Baltimore union was reported to have prevailed upon an employer to eliminate its practice of segregated employee picnics.<sup>56</sup>

The most important manifestation of unequal job opportunity, however, is the frequently inferior job status of Negro employees in the industrial plants. Most of the firms interviewed in Atlanta, Baltimore, and Detroit employed substantial numbers of Negroes. Often, however, Negro employees were found only in unskilled and semiskilled jobs.

While some unions in Detroit and Baltimore seem to have adopted a hands-off policy, several have tried to eliminate racial restrictions. Following a protest by the union, one Baltimore company agreed to reconsider its refusal to hire Negro women for production work.<sup>57</sup> A Detroit union, confronted with an employer's frequent dismissal of Negro employees for failure to pass company examinations, undertook coaching of Negro employees to prepare them for the tests.<sup>58</sup>

Of 12 major industrial collective-bargaining agreements reviewed in the Baltimore and Detroit areas, 3 contained nondiscrimination clauses binding both company and union; 3 others had nondiscrimination

provisions relating only to the union. These contract provisions, however, proscribed only on-the-job discrimination and did not relate to discrimination against applicants for employment.<sup>59</sup>

The Commission's investigation in the Baltimore and Detroit areas revealed no instances of disparity of wage rates between Negroes and whites performing similar work, nor any evidence of union unwillingness to enforce bargaining contracts on behalf of Negro employees. Atlanta, where the idea of distinct Negro and white jobs still prevails, presents a different picture.<sup>60</sup> With only limited exceptions, Negro employees are confined to unskilled classifications, principally janitorial and common labor jobs. Unions apparently are unwilling to try to improve job opportunities for Negroes.<sup>61</sup> For the most part these unions were confronted with company restrictions on Negro employment at the time collective bargaining was established. The departmental or occupational seniority provisions<sup>62</sup> subsequently written into the collective-bargaining agreements have merely served to freeze preexisting discriminatory employment patterns. Clearly, if Negroes traditionally have been assigned to unskilled jobs in nonproduction departments, their chances of advancement to better work are hampered by such seniority systems. There were also some isolated complaints of Negroes being laid off in violation of seniority rights and of different wage rates for Negro and white employees performing similar work. But barriers to advancement appear to be the major source of frustration to Negro workers in Atlanta.

An Atlanta representative of an international noted for its enlightened attitude on race relations provided some insight into union attitudes. When his union organized the plants in question, production jobs were exclusively white. He explained that, although the union had never urged an employer to discriminate in job assignments, officers of the union—having a predominantly white membership—were unwilling to jeopardize their positions by trying to persuade an employer to give production jobs to Negroes.<sup>63</sup> So the stalemate continues, the company acceding to supposed community attitudes and the union acquiescing for fear of antagonizing a membership sharing these attitudes. The Negro is the victim.

Employment patterns at one Atlanta firm, while not typical, illustrate the kind of hidden discrimination that may occur under a collective-bargaining agreement nondiscriminatory on its face.<sup>64</sup> The company in question has more than 1,000 employees, over a fourth of whom are Negro. For approximately 20 years the company's production and maintenance employees have been represented by the same industrial union. All the Negro employees work in the basic production and maintenance bargaining unit; no Negroes are employed in supervisory, clerical, or professional positions. There is virtually total racial segregation within the plant. Personnel records of Negro employees are

identifiable by a separate code number. Restrooms, drinking fountains, and eating facilities are segregated; even separate timeclocks are provided for Negro and white employees.

Although employed in most departments of the plant, Negroes are generally confined to the least skilled and lowest paying jobs. This has been accomplished by establishing separate "lines of promotion" for Negro and white employees. By contract, promotions are based upon seniority within lines of promotion, agreed upon by the company and union and published separately from the contract. Until a few years ago they were explicitly designated "colored" and "white." Although the racial designation has now been removed, their structure and composition have not changed. Consequently Negro lines of promotion still permit advancement only to semiskilled jobs, while white lines permit advancement to all skilled jobs available.

A sample department within the plant illustrates the effect of this system. Of its 124 employees 64 are Negro. There are 9 Negroes among the top 25 senior employees in the department. The dates of hiring of the 25 range from 1914 to 1935. There are 30 job classifications within the department. In 19 of them only white employees hold occupational seniority; in the remainder only Negroes hold seniority. Inasmuch as occupational seniority attaches when an employee is permanently assigned to a classification, this suggests that complete segregation within jobs has been preserved. Within the department the pay grades range from No. 1 to No. 26, with each pay grade progressing by 7-cent increments. No Negro employee has attained a pay grade over No. 8, and more than half have remained at grade No. 4 or lower. No white employee in the department has ever worked at lower than grade No. 4. Among the most senior 25 employees, the 16 white employees receive an average of 85 cents an hour more than the 9 Negroes. A similar picture prevails throughout the plant.

Other allegations of discriminatory treatment in this plant include complaints that Negroes performing the same tasks as white employees are classified differently and receive lower wages. When a new department opened recently and Negro employees attempted to transfer into "white" jobs within the department, the white employees threatened to walk out if Negroes were permitted to transfer. One Negro finally succeeded in transferring, but he worked only 2 days and then quit his job without explanation.

There has been evidence of Ku Klux Klan activity at the plant. Klan literature was seen in the offices of some of the foremen, and within the past year a Klan membership solicitation was posted on a company bulletin board in one of the departments. The company informed a Commission representative that it was unaware of any discrimination at

the plant. On another occasion it took the position that if such discrimination existed, it was the responsibility of the union to eliminate it through collective bargaining.

There is a single local at the plant and the great bulk of the Negro employees are members. Negroes have held various minor union offices for a number of years. On the surface fairly good relations exist between Negro and white union members. An officer candidly acknowledged the existence of discriminatory lines of promotion within the plant, although he tended to minimize their impact. Negro members have been bringing increasing pressure upon the union at both local and international levels to correct the existing discrimination. There has apparently been some progress made in equalizing the pay rates for Negro employees, but the basic problem of separate lines of promotion remains unsolved.

At the time of the Commission's investigation the union and employer were negotiating for a new agreement, and were seriously dealing for the first time with the question of seniority rights of Negro employees. Although the international is the certified bargaining representative, the negotiations were conducted by a local union committee. Apparently neither the local nor the international has been willing to risk an open break with those within the local union who oppose any change in the seniority system.

Resistance to change in seniority apparently springs in part from racial prejudice, but it is reinforced by the threat to the jobs of white employees. A change might enable senior Negro employees to compete for the higher rated jobs now held by junior white employees.

This struggle within the union has been in progress for more than 4 years. The employer has abdicated to the union the responsibility for initiating change. The union, however, may be ill-equipped to take action. Bound as it is to the will of the majority of its members, union leadership can hardly move more rapidly than union membership. Membership hostility coupled with employer apathy makes it highly doubtful that the union will be able to provide the necessary drive to eliminate discrimination.

Other studies indicate that, when an employer exhibits a determination to eliminate discrimination, union leadership often supports the policy, sometimes even in the face of strong dissent within the union.<sup>65</sup> A firm management policy frees the union from concern that the company will utilize internal union conflict to weaken its collective-bargaining position. This enables the union to join with the employer to effectuate fair employment. If discrimination is to be eliminated from those plants in which it has become established through union and management practices and collective-bargaining agreements, action by a union alone will not suffice.

## COMPARISONS

Racial discrimination by labor organizations is manifested in different ways by the construction craft unions and by the industrial unions. Craft unions, when they discriminate against Negroes, do so primarily by membership restrictions or other internal practices. Because the construction craft unions so often control hiring and admission to apprenticeship programs, denial of membership may well be tantamount to a foreclosure of the Negro worker's opportunity for a job or for training. In the industrial unions, on the other hand, membership is usually readily available to Negroes. Moreover the industrial unions do not generally control the hiring process or admission to apprenticeship training. To the extent that industrial unions discriminate against Negroes, they do so through external (rather than internal) practices—in the collective-bargaining process. This does not affect so much the Negro's basic opportunity to obtain employment as the terms and conditions under which he works.

In general it seems clear that the racial attitudes of the unions in industrial plants are better than those of the construction craft unions. Nevertheless in some instances industrial unions have become parties to agreements and practices that prevent Negro workers from achieving equal opportunity in employment.

## ANTIDISCRIMINATION MEASURES

What, if any machinery exists at the national level to eliminate racial discrimination by labor organizations? With respect to external practices, some Federal administrative and judicial remedies exist, but they are limited. With respect to internal discrimination, Federal legislation now offers no relief at all. The only machinery relating to such internal matters has been established within the labor movement itself. The newly established President's Committee on Equal Employment Opportunity, however, may provide a more effective means of eliminating both internal and external discrimination, at least where they are related to employment created by Government contracts.

### *Union machinery*

International unions, in addition to engaging in collective-bargaining and organizational activities, issue charters to locals, establish policy, and

act generally as overall governing bodies. All but a few of the internationals are affiliated with the AFL-CIO;<sup>66</sup> such affiliation entails no loss of autonomy. To assess the role of organized labor in attempting to eliminate discriminatory unionism, all three levels—local, international, and AFL-CIO—must be considered.

The great bulk of organized workmen are members of unions affiliated with the AFL-CIO.<sup>67</sup> Article II, section 4, of its constitution indicates that one of its objects is: "To encourage all workers without regard to race, creed, color, national origin, or ancestry to share equally in the full benefits of union organization."<sup>68</sup> At its third constitutional convention in 1959, it adopted the following resolution:<sup>69</sup>

We ask our affiliates to take prompt and effective action to prevent or correct any action or procedure of their local unions denying to any worker the full benefits of union membership because of race, creed, color, or national origin, or otherwise contravening the civil rights policy of the AFL-CIO.

We call on our affiliates to take appropriate action to eliminate segregation of their local union membership on the basis of race or color. There is no blinking of the fact that segregation is discrimination. . . .

We call on our affiliates not to permit dual seniority lists [i.e., white and Negro] and to insist on complete nondiscrimination by employers in hire, tenure, and conditions of employment and in advancement of their employees. We ask that, to this end, a non-discrimination clause be included in every collective-bargaining agreement, whether national or local, negotiated by each union, and that effective administration of such a clause be assured.

The AFL-CIO has made progress toward these goals. As recently as 1940 the AFL included 26 international affiliates with racial restrictions on membership; now it has only 1.<sup>70</sup> The number of Negro AFL-CIO members is estimated at 1.5 million<sup>71</sup> out of a total membership of more than 13 million.<sup>72</sup>

Machinery to implement nondiscrimination policy—including a national civil rights committee, a southern advisory committee, a mid-western advisory committee, and civil rights committees established by 20 or more State, and numerous city, central bodies—has been established within the AFL-CIO.<sup>73</sup>

The AFL-CIO civil rights committee was established in 1955 as the agency primarily responsible for the federation's policy of eliminating union discrimination.<sup>74</sup> The national committee, through the civil rights department, investigates written complaints of discrimination, but has no power to initiate investigations. Lacking effective enforcement powers, it operates primarily through persuasion and conciliation. The

only sanction at its disposal is expulsion of an offending international from the AFL-CIO, a remedy of questionable efficacy.<sup>76</sup> Moreover in most instances union discrimination occurs at the local level, and it is unlikely that the AFL-CIO would expel an international for the conduct of some of its locals. Since expulsion gets rid of an offending union rather than the offensive discrimination, the AFL-CIO apparently believes that it can exert more pressure on a recalcitrant union through persuasion than through expulsion.<sup>76</sup> The AFL-CIO has no direct control over its affiliates' local unions;<sup>77</sup> it must operate by persuading the international to exert pressure on offending locals.

The civil rights committee has a small professional staff. No information has been made public as to the number of cases handled or their outcome, but in some instances the committee has been instrumental in causing local unions to abandon practices of racial exclusion.<sup>78</sup> Through its educational efforts, the committee has also fostered an increased awareness within the labor movement of the problems of discrimination. Yet much remains to be done,<sup>79</sup> as evidenced by this Commission's study and by the increasing dissatisfaction of Negro union members with the AFL-CIO civil rights machinery.<sup>80</sup>

International unions suffer from many of the same difficulties as the AFL-CIO in attempting to implement civil rights policies. Many locals, particularly among the former AFL craft unions, are virtually autonomous. Some internationals, however, have taken forceful steps to prevent discriminatory local action. Notable among these are the United Packinghouse Workers of America (UPWA);<sup>81</sup> the United Automobile, Aircraft & Agricultural Implement Workers of America (UAW); and the Textile Workers Union of America (TWUA)—all industrial unions and former CIO affiliates. To enforce its nondiscrimination policy, the UAW recently placed one of its southern locals in trusteeship.<sup>82</sup> The Textile Workers successfully prevented one of its locals from giving financial support to a segregated private school in Front Royal, Va.<sup>83</sup>

The examples set by these unions suggest that the internationals can compel their locals to respect civil rights policies of the parent body. As might be expected, such action has been forthcoming only from unions that have accepted equal opportunity as one of their goals—and mostly from unions with substantial Negro membership which renders it safe and perhaps even necessary for the leadership to take a firm anti-discrimination stand. "Laissez faire" seems to be the policy of the bulk of the international unions toward the racial practices of their subordinate locals. Again, these internationals appear unwilling to risk alienating the rank and file. There are, of course, unions with past histories of racial exclusion that are unlikely, in the absence of strong external pressures, to provide effective leadership in the elimination of discrimination in the near future.

Most international unions, it must be said, have failed to exhibit any profound concern over civil rights problems. Partly through the efforts of the AFL-CIO, 24 of its 134 affiliates have established civil rights committees;<sup>84</sup> but only 4 have assigned staff personnel to serve them. Only two building trades unions (the IBEW and the Lathers) have established any civil rights machinery.<sup>85</sup>

Rank-and-file pressure is greatest at the local level. Thus, in the South, where efforts by local union leaders to combat discriminatory employment practices are needed most, they have seldom been forthcoming. Local members, reflecting the racial prejudices of the community, generally oppose action along these lines. Moreover in some southern plants opposition is well organized. One incident reported to the Commission, for example, involved the Ku Klux Klan: Threats were made that all Klan members would withdraw from a local if its officers attempted to enforce the seniority provisions of a collective-bargaining agreement on behalf of Negro employees.<sup>86</sup> An additional discriminatory fillip is the practice of some southern employers of resisting unionization by playing on the racial prejudices of their employees.<sup>87</sup> Even in a border city like Baltimore, one local union leader attributed his defeat in a union election to his advocacy of accepting Negroes into the union.<sup>88</sup>

Clearly there is an institutional disability within the labor movement that may well forestall the translating of enlightened parent resolutions into local action. This disability is in large measure the same as that suffered by any democratic institution bound by the will of its electorate. Not until the educational activities of the AFL-CIO have created sufficient concern for civil rights in the rank-and-file union membership or until other pressures are brought to bear can the announced goals of the AFL-CIO be expected to materialize.

A force within the labor movement that may produce sufficient "pressure" to bring about some changes in union practices is the recently created Negro American Labor Council (NALC). This was established in 1960 primarily to stimulate the AFL-CIO to take action to eliminate racial discrimination in the labor movement. As one of the NALC founders said:<sup>89</sup>

. . . the leadership of the AFL-CIO, despite its good faith, good will, and splendid pronouncements against racial discrimination, cannot be expected to move voluntarily and seriously to take positive and affirmative action for the elimination of race discrimination unless they are stimulated, prodded, and pressured to do so, both from within and without.

The NALC is composed primarily of Negro members of organized labor, but it does not itself function as a labor organization. Its main

purpose is to keep "the conscience of the AFL-CIO disturbed through continuous criticism of its obvious failure forthrightly to come to grips with the moral issue of race bias. . . ." <sup>90</sup>

In February 1961 the council adopted a "Code of Fair Racial Trade Union Practice" which has been submitted to the AFL-CIO Executive Council for adoption. Among the provisions of the proposed code are: (1) elimination from union constitutions and bylaws of any provisions directly or indirectly discriminating against Negroes; (2) abolition of segregated local unions; and (3) elimination from collective-bargaining agreements of all provisions which limit Negro workers' opportunities for training and promotion. One of the most significant recommendations was the proposed creation of an AFL-CIO Apprenticeship Program Board to establish uniform apprenticeship systems and to insure that equal opportunity to participate in apprenticeship training be given to all on the basis of merit alone, "without regard to nepotism, cronyism, or race." <sup>91</sup> The Executive Council of the AFL-CIO has not yet taken action on these proposals. <sup>92</sup> Since the NALC has been in existence for only a year, it is too early to assess its possible effectiveness.

### *Federal regulation of union practices*

Congressional regulation of labor unions until recently has been limited essentially to the collective-bargaining process. It was not until the enactment of the Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act) <sup>93</sup> that Congress concerned itself with internal union practices. Even this act, however, like the 1947 Labor-Management Relations Act (LMRA), and the earlier Railway Labor Act (RLA), <sup>94</sup> manifested a clear intent to let unions set their own membership qualifications. <sup>95</sup>

Neither of the acts that regulate relations between employers and unions—the LMRA and the RLA—was designed to provide relief from racial discrimination. <sup>96</sup> They do afford some protection to the minority group worker, however, where a collective-bargaining relationship exists between the employer and the union.

### *The duty of fair representation*

The most significant protection for minority groups flowing from LMRA and RLA is the right of a worker to be fairly represented by his collective-bargaining agent regardless of race, creed, color, or national origin. The Supreme Court first enunciated this doctrine in 1944 in *Steele v. Louisville & N. R.R.* <sup>97</sup> This case, arising under the RLA, involved a challenge by Negro firemen to a collective-bargaining contract that conditioned their seniority rights on race. The Court held that the union, acting as a collective-bargaining agent under Federal law, had a duty to exercise its bargaining power fairly: <sup>98</sup>

We think that the Railway Labor Act imposes upon the statutory representative of a craft at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates.

. . . the statutory power to represent a craft and to make contracts as to wages, hours, and working conditions does not include the authority to make among members of the craft discriminations not based on such relevant differences. Here the discriminations based on race alone are obviously irrelevant and invidious.

Subsequent decisions have extended the *Steele* doctrine's implications. The duty of fair representation is not limited to negotiation of a collective-bargaining agreement, but applies also to union administration of the agreement. In *Conley v. Gibson* (1957),<sup>99</sup> the Supreme Court was confronted with a protest by Negro workers against the failure of their bargaining representative to "protect them against discriminatory discharges." The Court elaborated on the union's duty:<sup>100</sup>

The bargaining representative's duty not to draw "irrelevant and invidious" distinctions among those it represents does not come to an abrupt end, as the respondents seem to contend, with the making of an agreement between union and employer. Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secured by contract. The bargaining representative can no more unfairly discriminate in carrying out these functions than it can in negotiating a collective agreement.

Nor is the duty of fair representation confined to the employees in the bargaining unit for which the union acts. In 1952 the Supreme Court decided *Brotherhood of R.R. Trainmen v. Howard*.<sup>101</sup> There Negro porters attacked a contract that threatened elimination of their jobs by transferring the bulk of their duties to another job classification. Even though the porters were not in the bargaining unit represented by the defendant union, the Court found that the defendant's duty of nondiscrimination extended to them. In short, the union's duty of fair representation extends to employees outside the unit who may be directly affected by its power. Although these landmarks in the area of fair representation arose under the RLA, it seems equally clear that the duty attaches similarly to unions covered by LMRA.<sup>102</sup>

The duty of fair representation does not mean that no distinctions may be made among employees represented by the union, for "A wide range of reasonableness must be allowed a statutory bargaining repre-

sentative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.”<sup>103</sup> It is clear, however, that distinctions based on race alone will not meet the test of “good faith and honesty of purpose.” For differences in seniority, wages, or other conditions of work based solely on race would fall within the proscription of the *Steele* doctrine. Similarly, a union’s refusal on the basis of race to process an employee’s grievance or otherwise to represent him with respect to the employment relationship would be in derogation of its duty.<sup>104</sup>

The courts have fashioned effective remedies to redress violations of the duty of fair representation. In appropriate cases both unions and employers have been restrained from enforcing discriminatory agreements or practices. In addition both unions and employers may be liable in damages for any monetary loss flowing from the discrimination.<sup>105</sup> Although this relief is adequate, it is costly and time consuming. It is arguable that the National Labor Relations Board (NLRB), which administers the LMRA, has power to compel a union to provide fair representation.<sup>106</sup> Such action would be desirable primarily because it would afford the injured party relief without the cost of court litigation.

One of the powers of the NLRB is to certify collective-bargaining representatives.<sup>107</sup> In many instances before unions become bargaining agents, they are certified as such by the Board. In such a case the union files a petition with the Board asserting its claim to represent certain employees. The Board then determines the appropriate bargaining unit (i.e., which employees shall be included in the group which the union seeks to represent);<sup>108</sup> conducts the election to determine whether a majority of the employees in the unit desire to be represented by the union; and certifies a union winning the election as the unit’s representative for collective-bargaining purposes.<sup>109</sup> Upon certification the employer must bargain with the union as exclusive representative of the employees in the unit.<sup>110</sup>

The NLRB has expressed willingness to utilize its power of certification to insure fair representation by the unions it certifies, and on several occasions it has threatened to revoke a union’s certification for failure to represent racial minorities fairly,<sup>111</sup> although it has never actually done so. The Board has rejected the contention that a union’s past history of discrimination should disqualify it from participating in an election which might lead to certification.<sup>112</sup> Even though the overall impact of such action would be limited, the NLRB might well amend its policy and disqualify discriminatory unions from participating in representation elections.

Both as a practical and legal matter, Board certification is not always necessary for a union to obtain employer recognition as the exclusive bargaining representative.<sup>113</sup> Many economically strong unions, particularly those in the building and construction crafts, are able to estab-

lish themselves as exclusive collective-bargaining representatives without petitioning for Board certification.<sup>114</sup>

In sum the *Steele* doctrine of "fair representation" requires that a union in discharging its representational functions do so fairly.<sup>115</sup> To date only the courts have effectively acted to insure fair representation. The NLRB has not actively used the doctrine to protect the rights of minorities.

### *The right to join a union*

Although few unions maintain color bars in their constitutions, many still refuse to accept Negroes. As was pointed out above, this raises serious problems in industries in which union membership is practically a condition precedent to obtaining a job.

The contention has been made under the "fair representation" theory that a union which denies membership to a person on the basis of his race cannot in fact "fairly represent" that person in collective bargaining. But both the courts and the NLRB have rejected this contention. The Supreme Court in the *Steele* decision said: "the statute does not deny to such a bargaining labor organization the right to determine eligibility to its membership. . . ." <sup>116</sup> Recently a U.S. court of appeals rejected the argument, and reaffirmed a union's right to discriminate in determining qualifications for membership.<sup>117</sup> Similarly the Board has said: "Neither exclusion from membership nor segregated membership *per se* represents evasion on the part of a labor organization of its statutory duty to afford equal representation."<sup>118</sup>

The refusal by the courts and the NLRB to consider exclusion from union membership as failure to provide "fair representation" is supported by the legislative history of both the LMRA and the RLA which indicates that Congress did not intend to interfere with a union's right to prescribe its own conditions of membership.<sup>119</sup> This seems inconsistent with the requirement of fair representation. Unions exercise control over the fate of a worker through negotiation and administration of collective-bargaining contracts. "The individual employee can participate meaningfully in this vital process only through the union; and membership is the condition precedent to such participation."<sup>120</sup> It is difficult to conceive how an employee can be fairly represented by a union that does not permit him a voice in its decisions.

The Labor-Management Reporting and Disclosure (Landrum-Griffin) Act of 1959 <sup>121</sup> did not change this state of affairs. Here too the legislative history of the act indicates a hands-off policy regarding union membership qualifications.<sup>122</sup> The statute does insure that: "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings,

and to participate in the deliberations and voting upon the business of such meetings. . . .”<sup>123</sup> This provision undoubtedly forbids attempts to relegate minorities to inferior status within the union. It would appear that unions which admit Negroes to membership do admit them on an equal footing. The problem is with unions that exclude Negroes. Currently, no Federal statute assures a worker that he will not be the victim of racial discrimination in his attempts to become a union member.

### *Discrimination based on nonmembership*

Although the LMRA provides no guarantee of nondiscrimination in access to union membership, it offers some protection to a worker who is denied employment because of his inability to obtain union membership. This protection is found in the “unfair labor practice” provisions of the act. The NLRB is empowered to prevent the commission of unfair labor practices by both employers and labor organizations.<sup>124</sup> It is an unfair labor practice for an employer, “by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.”<sup>125</sup> It is also an unfair labor practice for a union to cause or attempt to cause an employer to commit such discrimination.<sup>126</sup> Thus, the statute outlaws the closed shop—conditioning initial employment on union membership—discriminatory hiring hall arrangements,<sup>127</sup> and other discrimination based on an employee’s membership or nonmembership in a union.<sup>128</sup>

The NLRB may act to prevent or remedy such activities only if a charge of unfair labor practice has been filed with it. “Such charges may be filed by an employer, an employee, a labor organization, or other private party.”<sup>129</sup> Upon filing of the charge, the General Counsel of the NLRB conducts an investigation. If there is sufficient evidence to support the allegations, he may file a complaint against the offending party. The Board has broad latitude in fashioning appropriate remedies, including cease-and-desist orders and backpay awards, to those who have been victims of illegal discrimination.<sup>130</sup>

Under these provisions relief is available to the worker denied employment or certain benefits of employment because of his nonmembership in a union. Thus, to the extent that a man is denied union membership because of his race, and lack of membership directly results in the denial of employment, a minority worker may derive some protection from the statute. In industries such as building and construction in which union membership is often a prerequisite to employment, these provisions of the act could provide a vehicle for breaking down barriers to employment. Such relief is available, however, only if the employer’s discrimination is based on union membership or nonmembership and not on race. For example, if an employer refuses to hire a Negro because

of his nonmembership in a labor union, it constitutes a violation of the act. If, on the other hand, the employer refuses to hire this worker because of his race, there is no violation.<sup>131</sup> Thus, the General Counsel of the NLRB has ruled on one occasion that "no violation of the Act occurred when a labor union obtained the dismissal of a Negro from his job on racial grounds."<sup>132</sup>

Under certain circumstances—pursuant to union shop agreements—the LMRA permits union membership to be a condition of continued employment. However, it contains a proviso that was intended to protect minority group employees:<sup>133</sup> an employer may not justify the discharge of an employee under a union shop agreement "if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members. . . ." <sup>134</sup> Thus, the minority group worker who has been denied union membership on racial grounds is protected from loss of his job because of nonmembership in the union even when union membership is ordinarily required as a condition of continued employment. LMRA, then, does afford some protection to the minority worker who is denied union membership on racial grounds, where lack of union membership results in deprivation of employment. The only Federal protection against racial discrimination by labor organizations, as such, however, is the doctrine of "fair representation" enunciated by the Supreme Court.

### *The President's Committee on Equal Employment Opportunity*

A recent addition to the governmental machinery that may affect the racial practices of trade unions is the President's Committee on Equal Employment Opportunity.<sup>135</sup> This, unlike the previous Committee on Government Contracts, has express jurisdiction over labor organizations in connection with employment under Government contracts. Although it is too soon for definitive evaluation, its potential can be suggested.

The basic obligation of Government contractors under the Executive order establishing the President's Committee is that "In connection with the performance of work under this contract, . . . : The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin."<sup>136</sup> In carrying out this obligation, each contractor and its subcontractors must file with the contracting agency periodic compliance reports. These must contain, with respect to any union with which the contractor bargains, any information as to the union's practices and policies that may bear on the contractor's obligation of nondiscriminatory employment. Moreover, the contractor may be directed to include in the report a statement from the union that <sup>137</sup>—

. . . [Its] practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union . . . either will affirmatively cooperate, within the limits of . . . [its] legal and contractual authority, in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order.

By these provisions the contractor is made responsible merely for reporting on the practices of the unions with which it deals. Behind them, however, lies the threat that if the union's policies are discriminatory, and if the contractor's own employment policies are controlled in some degree by the union, the contractor may in effect be held responsible for the union's policies, and may therefore lose or fail to obtain a contract. Thus substantial indirect pressure may be brought against discriminatory unions.

The Executive order also contemplates certain direct pressures against unions by the Committee itself. The Committee is directed to "use its best efforts . . . to cause any labor union . . . to cooperate with, and to comply in the implementation of, the purposes of this order."<sup>138</sup> The Committee is empowered, in this connection, to "hold hearings, public or private, with respect to the practices and policies of any such labor organization. It shall from time to time submit special reports to the President concerning discriminatory practices and policies of any such labor organization. . . ."<sup>139</sup> The Committee may also publish the names of unions which "have complied or have failed to comply."<sup>140</sup> These provisions can help mobilize public opinion and bring into play the prestige and moral force of the President to secure the cooperation of recalcitrant unions; this may prove too much for all but the most intransigent.

The Committee may also take the more drastic step of recommending to the Department of Justice the institution of appropriate proceedings to enforce the nondiscrimination provisions, "including the enjoining . . . of organizations . . . who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the aforesaid provisions."<sup>141</sup>

Finally, the Committee "may also notify any Federal, State, or local agency of its conclusions and recommendations with respect to any such labor organization which in its judgment has failed to cooperate. . . ."<sup>142</sup> This provision, of course, presumes the existence of agencies with the power to deal with the problem. While there are no Federal agencies with such powers, there are some State and municipal fair employment agencies whose powers or good offices could be brought into play in this manner.<sup>143</sup>

These sanctions are formidable, yet some major difficulties remain. For one thing the Executive order in question applies only to unions that represent employees of firms performing work under contract or subcontract with the Government. Inasmuch as the nondiscrimination provisions of the order attach to "the performance of work under" the Government contract, it would seem that union practices are at issue only insofar as they affect employees who are actually engaged in work under a Government contract. A further complication arises from the fluctuating number of firms subject to the Committee's jurisdiction. Although some continually engage in work under Government contracts, many regularly pass in and out of this category.

A more fundamental obstacle lies in the fact that insofar as union practices are concerned, the basic complaint of minority workers in industrial plants is difficulty of advancement; in construction it is difficulty in obtaining employment. Departmental and occupational seniority often determine promotion in industrial bargaining agreements. Similarly, hiring preference in construction agreements may be accorded to those having seniority in the craft in the geographical area. Both of these collective-bargaining provisions are lawful.<sup>144</sup> On its face neither proposes discrimination because of "race, creed, color, or national origin." Yet, both may create serious difficulties in minority employment, advancement, and tenure. Can the Committee require that such provisions be ignored in order to implement the President's order?<sup>145</sup> Any such move could be expected to meet with considerable resistance from organized labor.

Although the Committee has considerable power, its ability to achieve far-reaching results is questionable. Limitations in coverage and the transitory nature of most Government contracts produce inherent disabilities. Substantial time may be required to overcome the effect of collective-bargaining practices that, although not in themselves racially discriminatory, raise barriers to equality of opportunity. Nevertheless, the Committee's jurisdiction over unions is an important advance in insuring equal opportunity in employment under Government contracts.

## SUMMARY

Clearly, both internal and external union practices affect equal opportunity in employment. These may range from outright racial discrimination to traditional collective-bargaining provisions that indirectly produce or entrench racial barriers.

With the possible exception of the President's Committee on Equal Employment Opportunity, present governmental machinery is insuffi-

cient to discourage significantly the discriminatory practices of some unions. Within the labor movement itself civil rights goals are celebrated at the higher levels, but fundamental internal barriers tend to preserve discrimination at the workingman's level.

Although Federal law provides that a worker shall not be denied initial employment because of his inability to join a union, lack of union membership does limit employment opportunities. There is no Federal prohibition against discriminatory denial of union membership on the basis of race, creed, color, or national origin.

The courts have defined a duty of "fair representation" which protects minority group employees from discrimination by their bargaining representatives with respect to terms and conditions of employment. But no administrative remedy is available. The man who suffers discrimination—often a low-income worker—must resort to time-consuming, expensive litigation to enforce his rights.

The President's Committee on Equal Employment Opportunity now has substantial powers to deal with trade union discrimination affecting work on Government contracts and, within the narrow limitations of its jurisdiction, may be able to deal with discriminatory practices more effectively than any previous Federal action in this field.



# 7. Conclusions

Although their occupational levels have risen considerably during the past 20 years, Negro workers continue to be concentrated in the less skilled jobs. And it is largely because of this concentration in the ranks of the unskilled and semiskilled, the groups most severely affected by both economic layoffs and technological changes, that Negroes are also disproportionately represented among the unemployed. The recent recession made this all too clear. But even now Negroes continue to swell the ranks of the unemployed as technological changes eliminate the unskilled or semiskilled tasks they once performed. Many will be permanently or chronically unemployed unless some provision is made for retraining them in the skills required by today's economy. The depressed economic status of Negroes is the product of many forces, including the following:

- Discrimination against Negroes in vocational as well as academic training.
- Discrimination against Negroes in apprenticeship training programs.
- Discrimination against Negroes by labor organizations—particularly in the construction and machinists' crafts.
- Discrimination against Negroes in referral services rendered by State employment offices.
- Discrimination against Negroes in the training and "employment" opportunities offered by the armed services, including the "civilian components."
- Discrimination by employers, including Government contractors and even the Federal Government.

Related to all of these is a basic problem that contributes to the limited extent and type of Negro employment—the lack of motivation on the part of many Negroes to improve their educational and occupational status. Generally, of course, lack of motivation is itself the product of long-suffered discrimination.

Throughout the Commission study, the vicious circle of discrimination in employment opportunities was 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.

Perpetuation of discriminatory training and employment practices is often supported by State employment offices. Present methods of determining Federal financial contributions to State offices encourage the referral of those applicants who are easiest to place and discourage the "selling" of merit employment. Some public employment offices openly base referrals on traditional employment practices in the community; the Commission survey revealed several instances of complaints from employers that no Negroes were ever referred for employment unless they were specifically requested. Moreover, except in States with enforceable fair employment legislation, Federal policy has permitted the acceptance and processing of discriminatory job orders from all employers other than Government contractors and Federal agencies. In practice, some employment offices have accepted and processed discriminatory job orders from the latter as well. The Commission survey revealed that, at least in Atlanta, Baltimore, and Detroit, Government contractors relied primarily on State employment offices as a recruitment source for most production employees and to a lesser degree for office clerical employees. Many companies utilize the services of these offices for testing applicants for employment or for admission into apprenticeship training programs.

In the building and construction trades, the craft unions are the main source of recruitment and also largely determine admission into apprenticeship training programs. Here, too, there is a vicious circle of discrimination. Many craft unions formerly denied membership to Negroes; some still do; others admit only a few Negroes. The paucity of Negro members may be based on several factors—the generally restrictive membership policies of the craft unions; the fact that Negroes have not obtained the training to qualify for membership; and lack of applicants. The last two factors are largely the product of past discrimination. A glaring example of the almost ineradicable effects of years of denial is the minimal participation of Negroes in apprenticeship training programs in the construction crafts. Many Negroes do not have the educational background—generally a high school education—to qualify for apprenticeship training; others feel it is futile to apply for the limited number of openings which have traditionally been denied to them because of their race. Yet without training, Negroes cannot hope to qualify for membership in the unions and, without such membership, the chances of obtaining employment in construction crafts—where job opportunities will soon far exceed the number of qualified applicants—are slight indeed.

It is clear, then, that even if employment opportunities were made equally available to Negroes, their occupational status would not be

greatly improved. Discrimination in education, training, and referral, whether by employment offices or by labor organizations, must first be overcome.

But the goal of equal employment opportunity is still far from achievement. Efforts of the Federal Government to promote nondiscriminatory employment by Government contractors and Federal agencies have not generally been effective in overcoming resistance to hiring Negroes in any but the lowest categories. Although opportunities for employment by the Federal Government have increased in recent years, the Commission's nine-city survey disclosed a disproportionate number of Negroes in the lower Classification Act positions and a concentration of Negroes in the unskilled Wage Board jobs. Similarly, Commission investigations in Atlanta, Baltimore, and Detroit revealed examples of racial discrimination in the form of "underemployment," outright refusal to employ, and exclusion from company-sponsored training programs by Government contractors.

The limitations on employment opportunities available to Negroes are reflected in their earnings. Thus, where the heads of the families have received the same amount of formal education, the median income of Negro families is considerably less than that of white families. A study by the State of Connecticut Commission on Civil Rights revealed that the average income of Negro families whose members had completed high school or college was roughly equivalent to that of white families whose members had not gone beyond grade school. It is little wonder, then—in view of the limited job opportunities and the lack of any demonstrable reward for completing their education—that Negroes tend to leave school earlier and in much greater proportions than do white students. Although the educational level attained by Negroes has increased considerably during the past 20 years, it is still much lower than the level of education attained by whites. The Negro school dropout suffers the worst employment handicaps; the rate of unemployment among this group is four times the average unemployment rate.

Some progress has been made in providing increased training and employment opportunities for Negroes. Through the efforts of the former Committee on Government Contracts, opportunities were made available to Negroes—even if sometimes only on a "token" basis—in nontraditional jobs, including office clerical, technical, and professional positions. One large automobile manufacturer now employs Negroes in management and administrative positions. Companies that had refused to hire any Negroes have finally employed them. Even one of the most restrictive of the construction craft unions eventually agreed to refer a Negro for work on a Government project. Educational programs undertaken by this Committee and by the former Committee on Government Employment Policy focused attention on the problem of motivation of minority group members and resulted in increased training

and counseling services in some communities. The desegregation of the Armed Forces initiated by Executive Order 9981 in 1948 resulted in increased "employment" opportunities for Negroes and, even more important, enabled many Negroes to obtain technical training which would not otherwise have been available to them.

Indications are that the establishment in 1961 of the President's Committee on Equal Employment Opportunity, with its prestige and broad authority, will bring considerably more progress. The requirement of "affirmative action" by Government contractors in adopting a nondiscriminatory employment policy, for example, should do much to overcome lack of motivation on the part of minority group members and should eventually elicit from them more applications for "nontraditional" jobs. The Civil Service Commission's current educational program should accomplish similar results in Federal employment. The new Committee's efforts to work with other Federal agencies in the fields of training and recruitment are also hopeful signs.

But much remains to be done that may well be beyond the new agency's jurisdiction. The Government-contract nondiscrimination clause has not been applied to employment created by Federal grant-in-aid and loan programs. With few exceptions these programs are administered without a nondiscrimination requirement. Yet Federal funds are used to create these employment opportunities in much the same manner as employment by Government contractors. The "civilian components" of our Military Establishment—the National Guard and reserve units attached to educational institutions—are beyond the scope of Executive Order 9981, and in some States Federal funds are being used to subsidize the discriminatory exclusion from, or segregation of Negroes in, these units.

Perhaps the greatest need for future Federal action, however, lies in the area of training. The Commission survey revealed that without adequate training opportunities, the goal of equal employment opportunity can never be achieved. Unless the Federal Government takes an active role in providing vocational education and apprenticeship training on a nondiscriminatory basis, Negroes will continue to suffer the economic and legal deprivations of the past.

The need for training and retraining has been further emphasized by the demands of today's economy. Even during the recent recession with its high rates of unemployment, jobs were going begging for lack of *skilled* workers to fill them. As technological changes and the replacement of old industries with new ones have been largely responsible for swelling the ranks of the unemployed, they have also increased the demand for skilled craftsmen and technicians. This demand will continue to increase. It is estimated that for every 100 skilled workers that the Nation had in 1955, it will need 122 in 1965, and 145 in 1975. Yet today our vocational education and apprenticeship training pro-

grams are not training even enough skilled workers to replace those who retire. Discrimination in such programs is a waste of human resources which this Nation can ill afford, particularly during an era when it is being challenged to develop to the utmost all the human and material resources at its command.

## FINDINGS

### *General*

1. Although the occupational levels attained by Negroes have risen sharply during the past 20 years, Negro workers are still disproportionately concentrated in the ranks of the unskilled and semiskilled in both private and public employment. They are also disproportionately represented among the unemployed because of their concentration in unskilled and semiskilled jobs—those most severely affected by both cyclical and structural unemployment—and because Negro workers often have relatively low seniority. These difficulties are due in some degree to present or past discrimination in employment practices, in educational and training opportunities, or both.

2. Directly or indirectly, Federal funds create employment opportunities for millions in the civilian and military establishments of the Federal Government and in employment by Government contractors and grant-in-aid recipients. In addition, Federal funds provide training opportunities and placement services that directly affect employment opportunities. A policy of equal opportunity for all regardless of race, color, religion, or national origin has been declared with respect to some programs in each of these areas of Federal involvement in employment, but that policy has yet to be made consistent or thoroughly effective.

### *Enforcement of Federal policy of equal employment opportunity*

3. The principal enforcement agency for Federal policy in this field is the President's Committee on Equal Employment Opportunity. This Committee has already taken steps to overcome obstacles encountered by the former Committee on Government Employment Policy and the Committee on Government Contracts in administering past programs of nondiscriminatory employment. Among projects which could contribute substantially to the effectuation of the Federal nondiscrimination program are the following:

(a) Regular surveys of all Federal employment, in both the civilian and military establishments (including members of reserve components),

to show current patterns of minority group employment, participation in training programs, and methods used to recruit for, and fill, jobs;

(b) Appointment of full-time employment policy officers in all executive departments and major agencies, and the appointment of full-time contracts compliance officers in the principal contracting agencies, all to be thoroughly trained, by or under the supervision of the President's Committee, in the objectives, problems, and techniques for effectuating the Federal policy of nondiscriminatory employment. (In the largest agencies with substantial field establishments, the appointment of specially trained regional deputy employment policy officers and deputy contracts compliance officers may also be required.)

(c) Expansion of the program of the former Committee on Government Employment Policy of conducting conferences in various locations with local administrators, deputy employment policy officers, and line supervisors to explain the Federal program of nondiscriminatory employment and discuss the problems involved and the techniques for overcoming them;

(d) Establishing and maintaining a centralized list of current Government contractors and circulating it regularly to State employment offices;

(e) Reaffirming that, when Government contractors completely delegate to labor organizations the power of hiring, or of determining admission to apprenticeship training programs or other terms and conditions of employment, they will be held responsible for the discriminatory acts of the unions;

(f) Requesting the Secretary of Labor to require State employment offices to report to the Committee all discriminatory job orders placed by Federal agencies and Government contractors.

4. The Committee's potential effectiveness is, however, limited. Established only by executive action, it is necessarily limited in budget and legal authority. Its jurisdiction over labor unions is indirect and tenuous. Its authority over employment created by grants-in-aid and over federally assisted training programs and recruitment services is not clearly defined.

#### *Employment created by grants-in-aid*

5. Grants-in-aid and contracts are similar in all pertinent respects, yet there is no uniform Federal policy requiring nondiscrimination in employment created by grant programs. Where such requirements are imposed, they have been undertaken on an agency-by-agency basis with little or no publicity or enforcement machinery.

6. In the absence of a uniform policy imposed from above, agency administrators, concerned primarily with carrying out the substance of their programs, give little consideration to the matter of nondiscrimina-

tory employment. Many agencies are reluctant to take the initiative for fear of jeopardizing their appropriations.

7. It is not clear that employment under grants-in-aid is within the scope of Executive Order 10925, which established the President's Committee on Equal Employment Opportunity and specifically prohibits discrimination in employment under Government contracts.

### *Armed Forces*

8. Although the Armed Forces Reserves are theoretically subject to Executive Order 9981, providing for equality of opportunity in the armed services, there continue to be segregated reserve units in some States and units in other States which completely exclude Negroes.

9. In some States Negroes are excluded from National Guard units; in others segregated units are maintained.

10. Although the National Guard is financed principally with Federal funds and trains under the direction of the Department of Defense, the Federal Government has taken no action to require desegregation of National Guard units.

11. Current statistics regarding the representation of minority groups in the Armed Forces, the National Guard and the Reserves are not generally available. Since 1955 the Department of Defense has taken the position that integration in the military is an accomplished fact and that no public interest can be served by further reports on the subject.

### *Training and recruitment*

12. When new opportunities in training or employment are made available to Negroes, there is often a dearth of qualified Negro applicants. Part of the problem is a lack of applicants resulting from the unwillingness of many Negroes to apply for jobs that have traditionally been closed to them or a lack of knowledge of such new openings. Another facet of the problem is a lack of adequately trained Negroes resulting from a shortage of training opportunities or lack of motivation on the part of Negroes to take training for jobs that may not be available to them.

13. Through the grant of substantial funds, the Federal Government participates in many training and recruitment programs. No program designed to eliminate discrimination in employment can be completely effective unless it includes efforts to eliminate discrimination in recruitment and training facilities.

14. Vocational training received through the public schools, and made possible by Federal grant funds, is the principal means of acquiring many of the basic industrial skills. The ability of Negroes to obtain employment in skilled jobs is often determined by the availability of these training programs.

15. Current policy of the Department of Health, Education, and Welfare, conditioning admission to vocational classes on an applicant's "chances of securing employment," tends to perpetuate discriminatory employment practices and is economically wasteful. Training opportunities for Negroes, limited to training for jobs currently available in the community rather than for future employment opportunities or opportunities in other communities, may be determined to a large extent by discriminatory hiring and referral practices of local employers and labor unions. Moreover, the jobs traditionally open to Negroes are generally the ones in which there is a growing surplus of labor. In the newer technical skills, on the other hand, where training is not generally available to Negroes, openings for qualified applicants are constantly increasing.

16. Distributive and part-time education are often denied to Negroes because they cannot obtain the employment required for these programs. Here again, discriminatory employment practices determine the availability of federally supported training.

17. Apprenticeship training could be an important means of fulfilling the increasing demand for skilled workmen and of helping minority groups emerge from their traditionally low economic status. However, present apprenticeship training programs are not training even enough craftsmen to replace those who retire, and Negroes constitute a disproportionately small minority of the inadequate number of workers being trained.

18. The nationwide paucity of participation by Negroes in apprenticeship training programs is caused by lack of qualified applicants and also by discriminatory practices of both labor organizations and employers, who control admission to such programs.

19. To overcome the lack of qualified minority group applicants when new job opportunities are opened, affirmative action is often necessary to encourage them to take the necessary training, to inform them of training and employment opportunities, and, by appointing or employing them in nontraditional jobs, to demonstrate that employment opportunities do exist.

20. Although the Federal Government bears the entire cost of administering State employment offices, it has done little to assure that the policies of the program—to encourage merit employment and to discourage employment discrimination—are being effectuated.

21. Federal money is being used to perpetuate discrimination in many State employment offices where segregated offices or services are maintained, employment office personnel are hired on a discriminatory basis, and where discriminatory job orders are accepted and filled or where nondiscriminatory orders are processed on a discriminatory basis.

22. Present methods of determining State employment office budgets, based primarily on the number of job placements made, encourage

employment discrimination and discourage the "selling" of merit employment.

### *Labor organizations*

23. The practices and policies of labor organizations are often vital to equality of employment opportunity. Internal union policies, governing membership and job referrals, are particularly important to the skilled craft unions, especially in the building trades, where membership is usually a condition of employment and a large proportion of hiring is done directly through the unions. External policies, expressed in collective bargaining, affect equal opportunity through the unions' power to negotiate terms and conditions of employment.

24. Membership and job referral practices of craft unions and hiring practices in the building and construction trades have hampered the effectiveness of the Government-contract nondiscrimination policy with respect to construction work undertaken for the Federal Government.

25. As the craft unions generally control admission to apprenticeship training programs, racial discrimination policies also operate to exclude Negroes from these programs.

26. Existing civil rights machinery within the AFL-CIO has not eliminated discriminatory practices and policies of some local unions.

27. Existing Federal law has little impact on the discriminatory practices of labor organizations. No law specifically prohibits unions from discriminating on the basis of race, color, religion, or national origin in determining membership qualifications or job referrals.

28. Federal law does impose a duty of fair representation upon unions and presently proscribes discrimination in initial employment based on membership or nonmembership in a union. The NLRB, however, the Federal agency authorized to administer these provisions, has not effectively enforced the duty of fair representation nor has it had a significant impact on the hiring and referral practices in the building and construction trades.

29. Although the President's Committee on Equal Employment Opportunity has authority to deal with union discrimination, it lacks direct jurisdiction over labor organizations and the authority it has is limited to trade union practices affecting employment on Government contracts.

## RECOMMENDATIONS

### *General*

*Recommendation 1.*—That Congress grant statutory authority to the President's Committee on Equal Employment Opportunity or establish a similar agency—

(a) To encourage and enforce a policy of equal employment opportunity in all Federal employment, both civilian and military, and all employment created or supported by Government contracts and Federal grant funds;

(b) To promote and enforce a policy of equality of opportunity in the availability and administration of all federally assisted training programs and recruitment services;

(c) To encourage and enforce a policy of equal opportunity with respect to membership in or activities of labor organizations affecting equal employment opportunity or terms and conditions of employment with employers operating under Government contracts or Federal grants-in-aid.

### *Armed Forces*

*Recommendation 2.*—That the President issue an Executive order providing for equality of treatment and opportunity, without segregation or other barriers, for all applicants for or members of the Reserve components of the Armed Forces, including the National Guard and student training programs, without regard to race, color, religion, or national origin; and directing that an immediate survey, and report thereon, be made regarding Negro membership in the Armed Forces, the Armed Forces Reserves, the National Guard, and student training programs, including data, where appropriate, on branch of service, rank, type of job or assignment, years of service, and rates of pay.

### *Employment under grant-in-aid projects*

*Recommendation 3.*—That the President issue an Executive order making clear that employment supported by Federal grant funds is subject to the same nondiscrimination policy and the same requirements as those set forth in Executive Order 10925 applicable to employment by Government contractors.

### *Training and recruitment*

*Recommendation 4.*—That Congress and the President take appropriate measures to encourage the fullest utilization of the Nation's manpower resources and to eliminate the waste of human resources inherent in the discriminatory denial of training and employment opportunities to minority group members by—

(a) Expanding and supplementing existing programs of Federal assistance to vocational education and apprenticeship training;

(b) 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 are in demand;

(c) Providing that, as a condition of Federal assistance, all such programs be administered on a nondiscriminatory, nonsegregated basis; and

(d) 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.

*Recommendation 5.*—That, in order to encourage the fullest utilization of the Nation's manpower resources, Congress enact legislation to provide equality of training and employment opportunities for youths (aged 16 to 21), and particularly minority group youths, to assist them in obtaining employment and completing their education—

(a) Through a system of federally subsidized employment and training made available on a nondiscriminatory basis; and

(b) Through the provision of funds for special placement services in the schools in connection with part-time and cooperative vocational education programs.

*Recommendation 6.*—That the President direct that appropriate measures be taken for the conduct, on a continuing basis, of an affirmative program of dissemination of information—

(a) To make known the availability on a nondiscriminatory basis of jobs in the Federal Government and with Government contractors; and

(b) 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.

*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 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 Federal 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.

*Labor organizations*

*Recommendation 9.*—That Congress amend the Labor-Management and Disclosure Act of 1959 to include in title I thereof a provision that no labor organization shall refuse membership to, segregate, or expel any person because of race, color, religion, or national origin.

# Documentation—Book 3

## NOTES: EMPLOYMENT, Chapter 1

1. President Kennedy's Special Message to Congress On Urgent National Needs, May 25, 1961, Washington Post, May 26, 1961, p. 12 A.
2. *Time*, Mar. 10, 1961, p. 90.
3. Soderling, "The Unemployed," *The Wall Street Journal*, May 3, 1961, p. 1; *New York Times*, May 25, 1961, p. 16.
4. *Time*, note 2, *supra*. The Department of Labor has predicted a net increase of 2.3 million skilled workers from 1960 to 1970, an increase of approximately 27 percent. Address by Seymour L. Wolfbein, Deputy Assistant Secretary of Labor, *The Outlook for the Skilled Workers in the United States*, The American Personnel and Guidance Association, Mar. 28, 1961, p. 3.
5. *Time*, *supra*, note 2; Wolfbein, *op. cit. supra*, note 4, at 5.
6. U.S. Department of Labor, *Special Labor Force Report No. 14* at A-40 (1961).
7. For example, in Detroit, Mich., 39 percent of the Negro work force was unemployed; 44 percent was unemployed in Fort Wayne, Ind.; 40 percent in Gary, Ind.; 39.8 percent in Louisville, Ky.; and 71 percent in South Bend, Ind. Other cities with 20 percent or more of the Negro work force unemployed were: Cleveland, Ohio (20 percent); Kansas City, Mo. (25 percent); Marion, Ind. (31 percent); Philadelphia, Pa. (28 percent); Pittsburgh, Pa. (24 percent); St. Louis, Mo. (20 percent); Tulsa, Okla. (30 percent); Wichita, Kans. (24 percent); Canton, Ohio (20 percent); Akron, Ohio (21 percent) and Phoenix, Ariz. (29 percent). National Urban League, *Survey of Unemployment in Selected Urban League Cities* (1961).
8. U.S. Department of Labor, *The Economic Situation of Negroes in the United States*, Bulletin S-3 at 6, 11, 13 (1960); U.S. Department of Labor, *Manpower—Challenge of the 1960's* at 20 (1960); Greenberg, *Race Relations and American Law* 154 (1959).
9. The President's Committee on Government Contracts, *Seventh Annual Report* 10-13 (1961).

Notes: Employment, Chapter 1—Continued

10. Ginzberg, *The Negro Potential*, 97-100 (1956).
11. *Ibid.*
12. *See ch. 5, infra.*
13. *See pt. IV, supra.*
14. Wolfbein, *op. cit. supra*, note 4.
15. Civil Rights Act of 1957, sec. 104(a)(2), 71 Stat. 635, 42 U.S.C. sec. 1975c(a)(2) (1958).
16. U.S. Const. amend. XIV, sec. 1.
17. U.S. Const. amend. V.
18. Civil Rights Act of 1957, sec. 104(a)(3), 71 Stat. 635, 42 U.S.C. sec. 1975c(a)(3) (1958).

## NOTES: EMPLOYMENT, Chapter 2

1. 26 Fed. Reg. 1977 (1961).
2. The White House, News Release, March 6, 1961.
3. 107 *Cong. Rec.* 5516 (daily ed. April 13, 1961) (remarks of Sen. Humphrey); Address by Senator Joseph S. Clark, *Equal Job Opportunity*, Charleston (W. Va.) Mayor's Commission on Human Relations, 2d Annual Banquet, April 12, 1961, reprinted in 107 *Cong. Rec.* A2458 (daily ed. April 13, 1961) (remarks of Sen. Randolph); "Civil Rights in Jobs," AFL-CIO News, March 11, 1961, reprinted in 107 *Cong. Rec.* A1794 (daily ed. March 15, 1961) (remarks of Sen. Williams); Detroit News, Mar. 7, 1961, p. 1A. (Comments of Senator Hart.)
4. See ch. 5, *infra*.
5. U.S. Bureau of the Budget, *Special Analysis of Federal Aid to State and Local Governments in the 1962 Budget* 3-6 (1961); see generally, ch. 4B, *infra*.
6. *Id.* at 3.
7. See generally, ch. 4B, *infra*.
8. See generally, ch. 5, *infra*.
9. Established by Exec. Order No. 9346, 8 Fed. Reg. 7183 (1943).
10. The Pendleton Act (Civil Service Act), 22 Stat. 403 (1883), 5 U.S.C. ch. 12 (1958).
11. U.S. Civil Service Commission, Rule VIII (1883); see U.S. Civil Service Commission (1st) *Annual Report* note at 7, 47 (1884).
12. Exec. Order 8587, 5 Fed. Reg. 445 (1940), amended the Civil Service rules to include a proscription against racial discrimination. See 5 CFR. secs. 04.2, 07.1 (1961).
13. Ramspeck Act, 54 Stat. 1211 (1940). Title 1, 5 U.S.C. sec. 631a (1958).
14. Ramspeck Act, Title II, sec. 3(e), 54 Stat. 1214 (1940) [no longer in effect]. The Classification Act of 1949, 63 Stat. 954, supersedes the Classification Act of 1923, 42 Stat. 1488, and Title XI, sec. 1103 of the new act, 63 Stat. 972, 5 U.S.C. sec. 1074 (1958) carries forward this provision.
15. Morris, *Encyclopedia of American History* 338-39, 511 (1953).
16. *Id.* at 338, 511.
17. *Id.* at 341.
18. *Id.* at 341, 511-12.
19. Unemployment Relief Act of 1933, 48 Stat. 22 [no longer in effect]; First Supplemental Civil Functions Appropriation Act, 1941, Title II, sec. 204, 54 Stat. 1048 (1940).
20. Unemployment Relief Act of 1933, sec. 1, 48 Stat. 22 [no longer in effect].

21. The Fourth Deficiency Appropriation Act, fiscal 1933, 48 Stat. 275, provides funds for each and every purpose of the Unemployment Relief Act of 1933, *supra*, note 20; Emergency Relief Appropriation Act of 1935, sec. 9, 49 Stat. 118; Emergency Relief Appropriation Act of 1936, Title II, 49 Stat. 1610; Emergency Relief Appropriation Act of 1937, sec. 12, 50 Stat. 356; Civilian Conservation Corps Act of 1937, sec. 8, 50 Stat. 320 [no longer in effect]; Civilian Pilot Training Act of 1939, sec. 2, 53 Stat. 855 [no longer in effect]; National Youth Administration Appropriation Act of 1941, para. 20, 54 Stat. 593 (1940); Nurses Training Act of 1943, sec. 1, 57 Stat. 153 [no longer in effect].
22. National Industrial Recovery Act of 1933, Title II, 48 Stat. 200 [no longer in effect]. *Cf.* the Fourth Deficiency Appropriation Act, fiscal 1933, note 21, *supra*, which provided funds for NIRA.
23. 44 C.F.R. sec. 265.33 (1938): "Except as specifically provided above, workers who are qualified by training and experience and who, as above outlined, are referred for work on a project, shall not be discriminated against on any grounds whatsoever." Staff Order 39, Federal Emergency Administration of Public Works, June 1, 1938.
24. Trent, "Federal Sanctions Directed Against Racial Discrimination," 3 *Phylon* 171, 178 (1942). Trent alleges there were many instances in which the Administrator applied sanctions and recites one.
25. 24 C.F.R. sec. 603.6 (1938): "The Local Authority will require that there shall be no discrimination because of race, creed, color, or political affiliations, in the employment of persons for work on the Project." Part III, Terms and Conditions, USHA Form 300, para. 6, Mar. 10, 1938.
26. Act of June 28, 1940, ch. 440, Title II, sec. 201, 54 Stat. 681 [no longer in effect], gave responsibility to the United States Housing Authority, created under the Housing Act of 1937, 50 Stat. 888, 42 U.S.C. secs. 1401-17, 1419-30 (1958), to develop housing for persons engaged in national defense activities. The Act of Oct. 14, 1940, ch. 862, 54 Stat. 1125 [no longer in effect], gave authority to the Federal Works Administrator to administer PWA housing for defense purposes.
27. For example, projects under the Emergency Relief Appropriation Act of 1938, 52 Stat. 809, and specifically for WPA projects thereunder as amended by Act of Feb. 4, 1939, ch. 1, sec. 3, 53 Stat. 507 [no longer in effect]; and projects under the NYA, see the National Youth Administration Appropriation Act of 1941, para. 20, 54 Stat. 593 (1940).

28. Hatch Political Activity Act, secs. 4 and 8, 53 Stat. 1148 (1939), 18 U.S.C. sec. 601 (1958).
29. 18 U.S.C. sec. 601 (1958). [Emphasis added.]
30. *Ibid.* But see, Emergency Relief Appropriation Act of 1935, sec. 9, 49 Stat. 118, which made it a misdemeanor to deprive any entitled person of employment or relief; Emergency Relief Appropriation Act of 1936, Title II, 49 Stat. 1610, which made it a misdemeanor to deprive an entitled person on account of race, religion, or political affiliation; Emergency Relief Appropriation Act of 1937, sec. 12, 50 Stat. 352, with the same provisions as the 1936 Act; Emergency Relief Appropriation Act of 1938, Title I, sec. 19, 52 Stat. 814, adding membership in a labor organization; Emergency Relief Appropriation Act of 1939, sec. 28, 53 Stat. 937, providing the same as the 1938 Act but making the penalty retroactive to funds left from the 1935 Act; Emergency Relief Appropriation Act, Fiscal Year 1941, sec. 27, 54 Stat. 623 (1940), which made the offense a felony and retroactive to funds available from the 1935 Act; Emergency Relief Appropriation Act, Fiscal Year 1942, sec. 22, 55 Stat. 401 (1941), same as the 1940 Act; Emergency Relief Appropriation Act, Fiscal Year 1943, 56 Stat. 634 (1942), the same as the 1942 Act.
31. Tennessee Valley Authority Act of 1933, 48 Stat. 58, 16 U.S.C. secs. 831-831dd (1958). The Fourth Deficiency Appropriation Act, fiscal 1933, note 21, *supra*, also provided funds for construction projects under the Tennessee Valley Authority Act.
32. Housing Act of 1937, 50 Stat. 888, 42 U.S.C. sec. 1401 (1958).
33. Morris, *op. cit.*, *supra*, note 15, at 512. Thus, in August 1939, there were still 10 million unemployed. Myrdal, *An American Dilemma* 410 (1944).
34. Weaver, *Negro Labor* 8-9 (1946).
35. *Id.* at 7; Myrdal, *op. cit. supra*, note 33, at 196-97; Ginzberg, *The Negro Potential* 4 (1956).
36. Ruchames, *Race, Jobs, & Politics* 9-10 (1953).
37. *Id.* at 10-11.
38. *Id.* at 11-14; Weaver, *op. cit. supra*, note 34, at 10-15.
39. Ruchames, *op. cit.*, *supra*, note 36, at 11.
40. Civilian Pilot Training Act of 1939, sec. 2, 53 Stat. 855 [no longer in effect].
41. Selective Training and Service Act of 1940, sec. 4(a), 54 Stat. 885 [no longer in effect].
42. First Supplemental Civil Functions Appropriation Act, 1941, 54 Stat. 1035 (1940).
43. Nurses Training Act of 1943, sec. 1, 57 Stat. 153 [no longer in effect]. The Emergency Relief Appropriation Act, Fiscal Year 1942,

- sec. 1(b), 55 Stat. 397 (1941), provided for nurses training also, but as a WPA project. The latter act also contained a nondiscrimination provision, see note 30, *supra*.
44. Weaver, *op. cit. supra*, note 34, at 15.
  45. (U.S.) Fair Employment Practice Committee, *Final Report 1* (1947).
  46. Ruchames, *op. cit. supra*, note 36, at 12-21, 37; Myrdal, *op. cit. supra*, note 33, at 410, 416-17.
  47. Ruchames, *op. cit. supra*, note 36, at 13-21.
  48. 6 Fed. Reg. 3109 (1941).
  49. Exec. Order No. 8802, preamble, para. 1.
  50. Exec. Order No. 8802, preamble, para. 3.
  51. As there was some confusion as to whether the order applied to the hiring practices of Federal agencies, President Roosevelt, acting on the suggestion of the Committee, later sent letters to the heads of all Federal departments and agencies "emphasizing the necessity of administering the Federal civil service without discrimination because of race, religion, or national origin." Ruchames, *op. cit. supra*, note 36, at 26.
  52. 8 Fed. Reg. 7183 (1943).
  53. *Op. cit. supra*, note 45, at 3, 8-9.
  54. H.R. 4453, and H.R. 6841, 81st Cong., 2d. sess. (1950).
  55. Independent Offices Appropriation Act, 1945, Title II, sec. 213 (Russell Amendment), 58 Stat. 387 (1944), 31 U.S.C. sec. 696 (1958).
  56. National War Agency Appropriation Act, 1945, 58 Stat. 536 (1944).
  57. National War Agencies Appropriation Act, 1946, 59 Stat. 473 (1945).
  58. See note 45, *supra*.
  59. 26 Fed. Reg. 1977 (1961).
  60. Federal Airport Act of 1946, 60 Stat. 170, 49 U.S.C. secs. 1101-19 (1958).
  61. 26 Fed. Reg. 3144 (1961), amending 14 C.F.R. sec. 550.7(d) (Supp. 1960), by adding a new subparagraph, (14), thus: 14 C.F.R. sec. 550.7(d) (14), effective Apr. 13, 1961.
  62. This committee was established on Dec. 5, 1946, by Exec. Order No. 9808, 11 Fed Reg. 14153 (1946).
  63. The President's Committee on Civil Rights, *To Secure These Rights* 168 (1947).
  64. 13 Fed. Reg. 4311 (1948).
  65. *Id.*, preamble, paras. 1 and 2.
  66. Emerson and Haber, *Political and Civil Rights in the United States*, vol. II, pp. 1447-48 (1958).

67. 13 Fed. Reg. 4313 (1948).
68. See note 41, *supra*.
69. The President's Committee on Equality of Training and Opportunity in the Armed Services, *Freedom to Serve*, 44, 61 (1950).
70. U.S. Department of Defense, *Utilization of Negro Manpower*, 6-10 (1959).
71. See ch. 3B, *infra*.
72. Exec. Order No. 9980, note 64, *supra*.
73. Exec. Order No. 9981, note 67, *supra*.
74. Exec. Order No. 10210, 16 Fed. Reg. 1049 (1951).
75. Exec. Order No. 10227, 16 Fed. Reg. 2675 (1951) to the GSA; Exec. Order No. 10231, 16 Fed. Reg. 3025 (1951) to the TVA; Exec. Order No. 10243, 16 Fed. Reg. 4419 (1951) to the Civil Defense Administration; Exec. Order No. 10281, 16 Fed. Reg. 8789 (1951) to the Materials Procurement Agency; and, Exec. Order No. 10298, 16 Fed. Reg. 11135 (1951) to the Department of the Interior.
76. 16 Fed. Reg. 12303 (1951).
77. The President's Committee on Government Contract Compliance, *Equal Employment Opportunity* (Terminal Report), 63-67, 70, 72 (1953).
78. See chs. 4 and 5, *infra*.
79. 18 Fed. Reg. 4899 (1953), as amended by Exec. Order No. 10482, which increased the membership of the Committee from 14 to 15 members, 18 Fed. Reg. 4944 (1953).
80. The proper name was "The Government Contract Committee." It has always been known popularly as "The President's Committee on Government Contracts," and the latter is the name under which it issued its reports. The popular name will be used throughout this report.
81. See ch. 4A, *infra*.
82. The President's Committee on Government Employment Policy, *Third Report* 1, 10 (1959).
83. 20 Fed. Reg. 409 (1955).
84. 5 C.F.R. secs. 401.1(b) and 401.12(a)(b)(c) (Supp. 1961).
85. Although the committee was established as an independent committee, its entire budget came from the Civil Service Commission, it was housed in offices at the Commission, and its personnel were employees of the Civil Service Commission on detached duty.
86. See ch. 3A, *infra*.
87. See note 1, *supra*.
88. *Ibid*.
89. See note 48, *supra*.

## NOTES: EMPLOYMENT, Chapter 3

1. U.S. Civil Service Commission, *Monthly Report of Federal Employment* 4 (1961).
2. Information obtained from the Office of the Secretary of Defense, Manpower (hereafter designated as O.S.D. (M)), Chief of Plans and Analysis, Requirements and Civilian Personnel Division, June 21, 1961.
3. Information obtained from O.S.D. (M), Staff Director, Reserve Forces Policy, June 22, 1961.
4. U.S. Civil Service Commission, *op. cit., supra*, note 1, at 7.
5. Information obtained from O.S.D. (Comptroller), Staff Director, Personnel Requirements Division, June 21, 1961.
6. The Pendleton Act (Civil Service Act), 22 Stat. 403 (1883), 5 U.S.C. ch. 12 (1958).
7. See discussion, ch. 2 at 6-7, and accompanying notes.
8. Independent Offices Appropriation Act, 1945, Title II, sec. 213 (Russell Amendment), 58 Stat. 387 (1944), 31 U.S.C. sec. 696 (1958).
9. This Committee was established by Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961).
10. "SEC. 213. After January 1, 1945, no part of any appropriation or fund made available by this or any other Act shall be allotted or made available to, or used to pay the expenses of, any agency or instrumentality including those established by Executive order after such agency or instrumentality has been in existence for more than one year, if the Congress has not appropriated any money specifically for such agency or instrumentality or specifically authorized the expenditure of funds by it. For the purposes of this section, any agency or instrumentality including those established by Executive order shall be deemed to have been in existence during the existence of any other agency or instrumentality, established by a prior Executive order, if the principal functions of both of such agencies or instrumentalities are substantially the same or similar. When any agency or instrumentality is or has been prevented from using appropriations by reason of this section, no part of any appropriation or fund made available by this or any other Act shall be used to pay the expenses of the performance by any other agency or instrumentality of functions which are substantially the same as or similar to the principal functions of the agency or instrumentality so prevented from using appropriations, unless the Congress has specifically authorized the expenditure of funds for performing such functions." 31 U.S.C. sec. 696 (1958).
11. *Ibid.*

12. On the floor of the Senate, Senator Russell made the following remarks:

. . . the purpose of the committee amendment . . . is to retain in the Congress the power of legislating and creating bureaus and departments of the Government, and of giving to Congress the right to know what the bureaus and departments of the Government which have been created by Executive order are doing. (90 *Cong. Rec.* 3059 (1944)) . . . [it] prevents the creation of agencies by any authority other than the Congress. (*Id.* at 3060.)

. . . I desire to put the responsibility on the Comptroller General for seeing that all of them, without exception come before the Congress of the United States to ask for their appropriations. (*Id.* at 3064.)

An attempt made on the floor of the Senate to exempt the FEPC from the Russell Amendment failed (*Id.* at 3064-65).

13. As mentioned in ch. 2, *supra*, two specific appropriations were granted to the FEPC after the passage of the Russell Amendment. The first was an appropriation of \$500,000 for the fiscal year beginning July 1, 1944; the second, granted the following year, was for the specific purpose of liquidating the affairs of the FEPC.
14. The first step in this process was the enactment of sec. 401 of the First Supplemental Appropriation Act, 1945, 58 Stat. 885 (1944), which provided that appropriations of executive departments and agencies should be available for the expenses of interagency or interdepartmental committees. In discussing sec. 401, Frederick J. Lawton, representing the Bureau of the Budget, stated:

[The Russell Amendment] was not entirely clear in its application to a number of governmental activities which do not require additional funds. There are committees made up of representatives of various departments who meet and discuss problems of common interest to those departments. . . . We have asked that those committees be generally authorized to operate, provided that no additional compensation is paid to any member of those committees by reason of his membership thereon, and provided that the clerical service that is furnished to those committees is supplied at no additional cost.

This is really a presentation to find out whether the Congress intended for every agency to have in its language authorization for the membership of officials of that agency, or use of employees of that agency, on such committees, or whether the law was not intended to apply to that class of

activity. *Hearings before the Subcommittee of the House Committee on Appropriations on the First Supplemental Appropriation Bill for 1945*, 78th Cong., 2d sess., at 43, 44 (1944).

Mr. Lawton added that sec. 401 was intended to refer only to an activity "authorized in the basic law, or in the appropriation act."

With respect to sec. 214 of the Independent Offices Appropriation Act, 1946, Mr. Lawton later testified:

Section 214 makes permanent law the provision which was inserted in the first supplemental appropriation bill for 1945 [Section 401] which was intended as a definition of what the Russell Amendment covered. Inasmuch as that amendment itself is permanent legislation, the definition, we thought, should also be made permanent. *Hearings Before the Subcommittee of the House Committee on Appropriations on the Independent Offices Appropriation Bill for 1946*, 79th Cong., 1st sess., at 1324 (1945).

15. 59 Stat. 134 (1945), 31 U.S.C. sec. 691 (1958). [Emphasis added.]
16. The closest proponents of a statutory policy have been able to come is the passage by the House of the McConnell bill, which provided for an FEPC with educational functions only, H.R. 4453, and H.R. 6841, 81st Cong., 2d sess. (1950). As mentioned in ch. 4A, *infra*, several requests were made to endow the President's Committee on Government Contracts with statutory authority, but these were also unsuccessful.
17. See note 13, *supra*.
18. See note 14, *supra*.
19. *Ibid*.
20. The personnel of the Committee were employees of the Civil Service Commission on detail to the Committee. Information obtained from the Chief Counsel, U.S. Civil Service Commission, Aug. 8, 1960.
21. Exec. Order No. 10590, 20 Fed. Reg. 409 (1955).
22. Exec. Order No. 10722, 22 Fed. Reg. 6287 (1957), increased the membership of the Committee from 5 to 7 members.
23. The President's Committee on Government Employment Policy, *Third Report 2* (1959).
24. The President's Committee on Government Employment Policy, *Fourth Report 8, 9* (1961).
25. See note 23, *supra*, at 1.

26. The President's Committee on Government Employment Policy, *First Report* V (1956).
27. 5 C.F.R. sec. 401.12(b) (1961).
28. See note 24, *supra*, at 19, 20.
29. Exec. Order No. 10590, sec. 5, 20 Fed. Reg. 409 (1955).
30. Exec. Order No. 10590, sec. 6(b), 20 Fed. Reg. 409 (1955).
31. See note 24, *supra*, at 29.
32. *Id.* at 12, 13.
33. *Id.* at 29.
34. *Ibid.*
35. *Id.* at 45.
36. *Id.* at 30.
37. *Id.* at 32.
38. *Id.* at 33, 34.
39. *Id.* at 36.
40. *Id.* at 38.
41. *Id.* at 40, 41.
42. *Id.* at 41.
43. *Id.* at 42.
44. *Id.* at 45.
45. *Id.* at 21.
46. *Ibid.*
47. *Id.* at 21-23 (for discussion of background of survey).
48. 63 Stat. 954, 5 U.S.C. secs. 994, 1071-1153 (1958).
49. U.S. Civil Service Commission, *Graphic Presentation of Federal Employment* 14 (1961).
50. The President's Committee on Government Employment Policy, *A Five-City Survey of Negro-American Employees of the Federal Government*, tables I, II, III, X (1957).
51. See note 49, *supra*, at 4.
52. Veterans' Preference Act of 1944, sec. 8, 58 Stat. 389, 5 U.S.C. sec. 857 (1958). See also, 5 C.F.R. secs 2.204-2.205 (1961).
53. See note 24, *supra*, at 24.
54. The President's Committee on Government Employment Policy, *Trends in the Employment of Negro-Americans in Upper-Level White-Collar Positions of the Federal Government* (1960).
55. The President's Committee on Government Employment Policy, *Characteristics of Negro Employment in Federal Agencies in Atlanta, Georgia* (1960).
56. *Ibid.* Detailed information on the types of jobs held by Negro employees was obtained by interview with the Executive Director, President's Committee on Government Employment Policy.

Notes: Employment, Chapter 3—Continued

57. Ginzberg, *The Negro Potential* 25, 112 (1956); Interviews, Atlanta, Ga., 1961.
58. See note 55, *supra*.
59. See note 24 *supra*, at 25. Although Dallas and Fort Worth are separate cities, they have been treated as one metropolitan area because of their proximity.
60. Letter from the Acting Executive Director, the President's Committee on Government Employment Policy to the Commission, Mar. 14, 1961.
61. These cities were chosen because of their geographical distribution, their high incidence of federally related employment—Federal establishments, both civilian and military, Government contractors, and grant-in-aid recipients—and their substantial Negro populations (over 50,000 in each city). Because of time and staff limitations, the Commission on Civil Rights was able to conduct only this single study in all the cities named below (note 62, *infra*). All other studies were limited to three cities—Atlanta, Baltimore, and Detroit. Nonwhites constitute 22.8 percent of the 1,017,188 residents of the Atlanta SMA; 22.2 percent of the 1,727,023 residents of the Baltimore SMA; and 15.1 percent of the 3,762,360 residents of the Detroit SMA. U.S. Bureau of the Census, *U.S. Census of Population: 1960, General Population Characteristics, Georgia, Final Report PC(1)-12B* at 31 (1961); *id.*, *Maryland, Final Report PC(1)-22B* at 19 (1961); *id.*, *Michigan, Final Report PC(1)-24B* at 35 (1961).  
In 1960 Negroes comprised 92.1 percent of the nonwhite population of the United States. U.S. Bureau of the Census, *U.S. Census of Population: 1960, General Population Characteristics, Advance Reports PC (A2)-2* at 4 (1961).
62. Atlanta, Ga.; Chicago, Ill.; Dallas-Fort Worth, Tex.; Detroit, Mich.; Los Angeles, Calif.; New York, N.Y.; St. Louis, Mo.; and Washington, D.C.
63. Information on Orientals was obtained only in Los Angeles; on Puerto Ricans only in New York.
64. This agreement was reached after the President's Committee expressed concern that the recording and retention of such data, including racial information, might become part of an employee's personnel record.
65. See note 23, *supra*, at 7.
66. Bureau of the Budget approval is required by Federal Reports Act of 1942, 56 Stat. 1078, 5 U.S.C. secs. 139-139f (1958).
67. In view of the later decision to conduct an overall Commission study in Baltimore, Md., this city was added to the eight orig-

inally selected. One of the agencies, however, did not extend its survey to include Baltimore.

68. The Commission on Civil Rights combined grades 10-18 rather than grades 12-18, as done by the President's Committee, because the Commission believed that this breakdown was more meaningful than one at the higher grade.
69. See app. V, tables 1, 2, 3, respectively.
70. See app. V, table 4.
71. As noted above, the Commission on Civil Rights did not conduct a separate survey of Atlanta. The survey of the Atlanta agencies was conducted as part of the survey in Atlanta by the President's Committee, reflecting employment as of July 31, 1960.
72. Table 6 indicates Oriental employment in Los Angeles, and Puerto Rican in New York. Only one agency in Atlanta provided information susceptible to analysis; neither of the agencies in Washington did.
73. The numbers used to identify the agencies are the same as those previously used in table 5, *supra*. See app. V, table 5, for detailed breakdown of methods by which jobs were filled.
74. Letter from official of Agency No. 4 to the Commission, May 3, 1961, indicates that the information submitted did not "show the extent to which minority employees have participated in career development programs."
75. See app. V, tables 6, 7.
76. Compare U.S. Bureau of the Census, *U.S. Census of Population: 1950 Special Reports, Occupational Characteristics P-E No. 1B*, at 29-31 (1956), with U.S. Department of Labor, *Special Labor Force Report No. 14* at A-25 (1961):

*Employed nonwhite males by occupation group*

|   | 1950<br>(percent) | 1960<br>(percent) |
|---|-------------------|-------------------|
| Professional, technical, and kindred workers-----     | 2. 1              | 3. 8              |
| Managers, officials, and proprietors, except farm---- | 2. 0              | 3. 0              |
| Clerical and kindred workers-----                     | 3. 1              | 5. 8              |
| Salesworkers -----                                    | 1. 1              | 1. 7              |
| Craftsmen, foremen, and kindred workers-----          | 7. 7              | 9. 5              |

77. Washington Post, Apr. 4, 1961, p. 3B.

78. *Ibid.*

79. See note 23, *supra*, at 17.

80. See Letter From Archibald J. Carey, Jr., Chairman, the President's Committee on Government Employment Policy, Dec. 30, 1960, appearing in the N.Y. Times, Jan. 5, 1961, p. 30, commenting that within some areas of Government employment, "racial

- discrimination is deeply entrenched and widely practiced.” See also Address by Robert F. Kennedy, Attorney General, University of Georgia Law School, May 6, 1961, reprinted, N.Y. Times, May 7, 1961, p. 62.
81. See 5 C.F.R. secs. 2.204-05 (1961). See 5 C.F.R. sec. 07.1 (1961), regarding the methods of filling a position in the competitive service.
  82. Interview with Executive Director, President’s Committee on Government Employment Policy, 1960.
  83. Of all jobs filled by the four agencies during the 4-month period, 5.9 percent were filled by Negroes. Yet Negroes constituted over 13.5 percent of all employees hired from Civil Service registers.
  84. See note 24, *supra*, at 45.
  85. Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961).
  86. Exec. Order No. 10925 required “all executive departments and agencies . . . to initiate forthwith studies of current government employment practices within their responsibility.” Although the order was not specific as to the details of the study, it was apparently contemplated that the survey contain information on the status of all minority groups. See Washington Post, Mar. 13, 1961, p. 1A. One agency advised the Commission that its survey would include information on the employment of Orientals, Puerto Ricans and Spanish-Americans, as well as Negroes.
  87. U.S. Atomic Energy Commission, Letter from Assistant General Manager for Administration to the Commission, June 16, 1961; U.S. Department of Agriculture, Memorandum to Heads of Department Agencies, May 3, 1961; U.S. Civil Service Commission, Letter from Chairman to the head of each Federal agency having competitive Civil Service positions, May 17, 1961; U.S. Department of Commerce, Memorandum to Heads of Bureaus and Offices, June 16, 1961; U.S. Department of Defense, Memorandum, March 24, 1961; U.S. Federal Aviation Agency, see St. Louis Post-Dispatch, May 19, 1961, p. 4B; U.S. General Services Administration, Letter from Director of Administration to the Commission, June 16, 1961; U.S. Housing and Home Finance Agency, Letter from Deputy Administrator to the Commission, June 14, 1961; U.S. Department of the Interior Press Release, Apr. 5, 1961; U.S. Department of Justice, Letter from First Assistant, Civil Rights Division, to the Commission, July 5, 1961; U.S. Department of Labor, see *Newsweek*, Apr. 24, 1961, p. 45, see also Washington Post, Apr. 19, 1961, p. 2A; U.S. Post Office Department, Department Bulletin, May 25, 1961, Letter from Assistant Postmaster General to the Commission, June 28, 1961; U.S. Department of

- State, Letter from Deputy Assistant Secretary for Personnel to the Commission, June 22, 1961; U.S. Treasury Department, Letter from Special Assistant to the Secretary to the Commission, June 20, 1961; U.S. Veterans Administration, Letter from Associate Deputy Administrator to the Commission, June 15, 1961.
88. Among those agencies are: Civil Service Commission, Washington Post, Mar. 25, 1961, p. 9; Department of Labor, Washington Post, Apr. 19, 1961, p. 2; Department of Defense, Washington Post, Mar. 28, 1961, p. 8; Treasury Department, Baltimore Afro-American, Mar. 25, 1961, p. 2, sec. 2; State Department, *Time*, Apr. 24, 1961, p. 45-46.
89. *Time*, Apr. 24, 1961, pp. 45-46; St. Louis Argus, Apr. 16, 1961, p. 1B.
90. Philadelphia Bulletin, Apr. 3, 1961, p. 10G. See note 94, *infra*.
91. See note 87, *supra*. Although several of the agencies have indicated their intention to do so, some have not as yet appointed full-time employment policy officers.
92. U.S. Civil Service Commission, *Federal Personnel Manual System Letter, No. 335*, May 25, 1961.
93. 26 Fed. Reg. 6579 (1961) (the regulations will appear in 5 C.F.R. ch. IV (Supp. 1962)).
94. Some indications of the effect of this program can already be seen in the recent increase in the number of Negroes taking the Federal service entrance examinations. In Region V, for example, which includes the Southeastern States, 100 Negroes took this examination in April 1961. In May 1961, following a tour of predominantly Negro colleges in Florida, Mississippi, Alabama, and Georgia by the Civil Service Commission's Special Assistant for Minority Group Matters, 508 Negroes took the examination. In Region VIII, which includes Texas, Oklahoma, Arkansas, and Louisiana, the number of Negroes taking the examination increased from 99 in April to 204 in May, after the Civil Service Commission's Special Assistant had visited Negro colleges in these States. Interview with the Special Assistant for Minority Group Matters, U.S. Civil Service Commission, July 1961.
95. Interviews in Atlanta, 1961. See also, The President's Committee on Equality of Training and Opportunity in the Armed Services, *Freedom to Serve* 50 (1950).
96. Selective Training and Service Act of 1940, sec. 4(a), 54 Stat. 885 [no longer in effect].
97. Nichols, *Breakthrough on the Color Front* 40 (1954).
98. Peters, *The Southern Temper* 142 (1959).
99. *Freedom To Serve*, *op. cit.*, *supra*, note 95, at 51-54, 56.
100. *Id.* at 53, 56.

101. Exec. Order No. 9981, 13 Fed. Reg. 4313 (1948).
102. *United States ex. rel. Lynn v. Downer*, 140 F. 2d 397 (2d Cir. 1944), *cert. denied*, 322 U.S. 756 (1944), *rehearing denied*, 323 U.S. 817 (1945).
103. *Freedom To Serve*, *op. cit.*, *supra*, note 95, at 44, 61.
104. Interview in Washington with the Civilian Aide, Office of the Assistant Secretary of Defense, July 5, 1961. The Aide stated: "I have long since concluded that the major victory we won in Korea was integration in the Armed Forces." See also Peters, *op. cit.*, *supra*, note 98, at 139-140, where it is stated that under contract with the Department of Defense, civilians completed a study of Armed Forces integration in 1951. The report, "Project Clear," was immediately labeled "secret"; it has never been declassified or released. It is believed that "Project Clear" is a study of equal importance with Myrdal's *An American Dilemma* (1944). See also, Puner, "What the Armed Forces Taught Us About Integration," *Coronet*, June 1960, reprinted 106 *Cong. Rec.* 11524-11525 (1960) (remarks of Senator Javits).
105. U.S. Department of Defense, *Utilization of Negro Manpower* 6-10 (1959) (Extracts from Official Reports of the Secretary of Defense 1947-57). As early as June 30, 1951, evidence of harmonious progression was noted. Moreover, every all-Negro unit was abolished ahead of the scheduled deadline of June 30, 1954.
106. *Id.* at 10.
107. Figures for 1949 and 1956: U.S. Department of Labor, *The Economic Situation of Negroes in the United States* 18 (1960); figures for 1954: Interview in Washington with Director of Personnel Policy, Office of the Assistant Secretary of Defense, Feb. 10, 1960; figures for 1961: Letter from Special Assistant, Secretary of Defense to the Commission, June 20, 1961.
108. *Id.*, Interview. See also, Department of Defense, *op. cit.*, *supra*, note 105, at 10, and Letter from Director of Personnel Policy, Office of the Assistant Secretary of Defense, to the Commission, Feb. 29, 1960.
109. Information, *op. cit.*, *supra*, note 2. The figure does not include ROTC or National Defense Cadet Corps students.
110. *Ibid.*
111. Compensation received by a private in the Reserves or National Guard is at least \$177.32 per annum. Department of Labor, *op. cit.*, *supra*, note 107, at 15, shows that, in 1958, one-half the Negro males earned less than \$3,368 per annum. This type of part-time employment, then, might constitute a significant addition to total income.

Notes: Employment, Chapter 3—Continued

112. Senior and Junior ROTC: Army, 10 U.S.C. ch. 405 (1958); Navy 10 U.S.C. sec. 6901 (1958); Air Force, 10 U.S.C. ch. 905 (1958); National Defense Cadet Corps, 10 U.S.C. secs. 3540(b) and 4651 (1958).
113. Letter, *op. cit.*, *supra*, note 108. More recent figures were not available.
114. Department of Labor, *op. cit.*, *supra*, note 107, at 18.
115. Letter, *op. cit.*, *supra*, note 108.
116. Information, *op. cit.*, *supra*, note 2; see also, Letter, *op. cit.*, *supra*, note 108.
117. *Id.*, Letter. These costs do not include construction, nor the considerable costs of equipment and support by the active forces. See also app. V, table 8.
118. Information, *op. cit.*, *supra*, note 3.
119. *Cf.* Department of Defense, *op. cit.*, *supra*, note 105, at 2.
120. U.S. Const., art. I, sec. 8, cl. 16; U.S. Const., art. II, sec. 2, para. 1. [Emphasis added.]
121. Letter, *op. cit.*, *supra*, note 108; Interview by telephone with Staff Representative, Director of Personnel, Office of the Assistant Secretary of Defense for Manpower Personnel and Reserve, Jan. 6, 1961.
122. 163 Bn., National Guard of the District of Columbia is white; 171st M.P. Bn., National Guard of the District of Columbia is Negro.
123. *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 at 16 (1820). [Emphasis added.] See also, Exec. Order, Governor, State of Georgia (June 30, 1958), 3 *Race Rel. L. Rep.* 1081 (1958): "Ordered: That no order, command or directive from the Government of the United States or any officer thereof to the Militia of the State of Georgia will be obeyed until the Governor of Georgia certifies in writing to the Adjutant General of the State of Georgia that such order, command or directive is constitutional."
124. 32 U.S.C. sec. 104(b) (1958).
125. 32 U.S.C. sec. 110 (1958).
126. 32 U.S.C. sec. 108 (1958).
127. Selective Service Act of 1948, secs. 4(d) and 6(c)(2)(A), 62 Stat. 607 and 610, amended by 1951 Amendments to the Universal Military Training and Service Act (The Universal Military Training and Service Act), secs. 1(g) and 1(m)(2), 65 Stat. 79 and 83 (1951), 50 App. U.S.C. secs. 454(d)(3) and 456(c)(2)(A) (1958); 32 C.F.R. sec. 1622.13(1) (Supp. 1961). *Compare* 32 C.F.R. sec. 1611.2(a)(7) (1954) [no longer in effect], with 32 C.F.R. sec. 1622.13(c)(d)(f) (1954), and with 32 C.F.R. sec. 1622.13(c)(d)(f)(j) and (l) (Supp. 1961).

Notes: Employment, Chapter 3—Continued

128. Reserve Forces Act of 1955, sec. 2(i), 69 Stat. 600, 50 U.S.C. sec. 1013 (a) (b) (c) (1958); Cf. AR 35-1706 (3 Oct. 1956).
129. See note 117, *supra*.
130. See note 121, *supra*.
131. See app. V, table 8.
132. Department of Labor, *op. cit.*, *supra*, note 107, at 19 and notes 2, 3. See also pt. III, ch. 4, at 186, *supra*.
133. American Veterans Committee, *Civil Rights Audit of the National Guard* 3 (1961).
134. See pt. VII, ch. 6, *infra*.
135. See pt. VII, ch. 3, *infra*.
136. *Reports of the State Advisory Committees* 299 (1959).
137. 10 U.S.C. secs. 101 (9) (10) (11) (12) (13) and 261 (a) (1) (5) (1958).
138. Information, *op. cit.*, *supra*, note 2. Cf. U.S. Department of Defense, *Annual Report of The Secretary of Defense on Reserve Forces* (1960), for fiscal 1959 figures.
139. Information, *op. cit.*, *supra*, note 3.
140. *Ibid*.
141. Information, *op. cit.*, *supra*, note 2.
142. Letter, *op. cit.*, *supra*, 108; Department of Defense, *op. cit.*, *supra*, note 105, at 8 says, that as of June 30, 1953: "The extension of the integration program to the reserve components was proceeding with notable success; directives were issued to provide for the participation of any eligible personnel in the Army Reserve regardless of race."
143. 10 U.S.C. sec. 262 (1958).
144. Letter, *op. cit.*, *supra*, note 107. For the Regular Army, figures are: Negro officers 2,753, and total officers 99,823; Negro enlisted men 87,734, and total enlisted men 768,842.
145. Greenberg, *Race Relations and American Law* 362 (1959).
146. *Reports of the State Advisory Committees* 318 (1961). See also pt. III, ch. 4, at 185-86, *supra*.
147. American Veterans Committee, *Audit of Negro Veterans and Servicemen* 19 (1960).
148. Interview, *op. cit.*, *supra*, note 121.
149. Letter From Assistant Secretary of Defense to the Commission, June 28, 1961.
150. Department of Labor, *op. cit.*, *supra*, note 107, at 18.

## NOTES: EMPLOYMENT, Chapter 4

1. It is impossible to estimate the number of persons so employed.
2. N.Y. Times, May 20, 1961, p. 22.
3. U.S. Bureau of the Budget, *Summary of Obligations by Objects Fiscal Years 1960, 1961, and 1962* (Mimeograph).
4. U.S. Bureau of the Budget, *Special Analysis of Federal Aid to State and Local Governments in the 1962 Budget*, Jan. 1961, p. 4.
5. Independent Offices Appropriation Act, 1945, Title II, sec. 213 (Russell Amendment), 58 Stat. 387 (1944), 31 U.S.C. sec. 696 (1958).
6. The President's Committee on Government Contract Compliance, *Equal Economic Opportunity* 11-12 (1953).
7. 8 Fed. Reg. 7183 (1943).
8. See ch. 3 at 19-20, *supra*.
9. Independent Offices Appropriation Act, 1946 sec. 214, 59 Stat. 134, 31 U.S.C. sec. 691 (1958). Except for Executive Order 9980, establishing the Fair Employment Board, every Executive order since has cited section 214 of the Independent Offices Appropriation Act, 1946, as authority for establishing machinery to effectuate a Federal nondiscrimination policy.
10. Exec. Order No. 10308, 16 Fed. Reg. 12303 (1951).
11. *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 3.
12. *Id.* at 28.
13. *Id.* at 63-70.
14. The proper name was "Government Contract Committee." It has always been known popularly as "The President's Committee on Government Contracts."
15. Exec. Order No. 10479, 18 Fed. Reg. 4899 (1953).
16. Executive Order 10479 provided for 14 members, including representatives of the following six agencies: The Atomic Energy Commission, the Department of Commerce, the Department of Defense, the Department of Justice, the Department of Labor, and the General Services Administration. Executive Order No. 10482 (18 Fed. Reg. 4949), issued on August 15, 1953, increased the membership to 15.
17. Exec. Order No. 10557, 19 Fed. Reg. 5655 (1954).
18. Exec. Order No. 10557, sec. 2b.
19. The exemption granted by the Committee stated:

"2(a) The head of each contracting agency is authorized to exempt contracts which do not exceed \$5,000 from the requirement for posting the notice, if he determines that it would be impracticable to require such posting. In exercising discretion with reference to posting the notice, the head of the contracting agency should be guided by such criteria

as the length of time necessary for the performance of the contract, the number of employees working on the contract, whether the contract is security classified, whether the company receives a large number of small contracts, and such other factors as would make the posting requirement impracticable.

“(b) The head of the contracting agency in exercising discretion should be guided by a presumption in favor of the practicability of posting the notice.” 20 Fed. Reg. 352 (1955).

There is no indication of how many exemptions were granted under this authority as the contracting agencies did not report to the Committee the exemptions granted.

20. Requests for 39 specific exemptions were submitted to the Committee by contracting agencies. Of these, 22 were denied. The two full exemptions granted included one to permit the Department of Agriculture (through the Commodity Credit Corporation) to exempt from the nondiscrimination requirement its contracts with financial institutions under the Federal crop support program. This was granted because of the remote relation to employment under the contract. The other full exemption permitted the Department of Defense to eliminate the requirement from a contract with a public utility company whose services were required in order to activate a military base but which refused to sign the contract with the nondiscrimination clause included. Interview with former Executive Director, President’s Committee on Government Contracts, 1961.
21. *Id.*, Interview; *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 17, 31–32.
22. General Regulation No. 51, Supplement No. 15, of July 31, 1952, issued by the Comptroller General, ruled that Government departments and agencies need not execute contracts for public utility services “regardless of the amount or number of payments made, when the utility company’s rates are fixed or adjusted by Federal, State, or other regulatory body, except when deemed to be in the best interests of the Government to do so.” The ruling was promulgated in an effort to reduce the volume of “red tape” and contract papers for telephone, electric power, gas, water, and other utility services rather than to allow an “escape” from the nondiscrimination contract clause. *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 17–18.
23. For example, the Houston Power and Lighting Company has, to date, refused to sign a contract containing an antidiscrimination

Notes: Employment, Chapter 4—Continued

- clause. N.Y. Times, July 15, 1961, p. 20. Similarly, the Carolina Power and Light Company has requested an exemption from inclusion of the clause in its contracts with the Federal Government. Durham Morning Herald, July 16, 1961, p. 8A.
24. President's Committee on Government Contracts, *First Report* 3, 5 (1954).
  25. President's Committee on Government Contracts, *Third Annual Report on Equal Job Opportunity* 5 (1956) and *Five Years of Progress* 22 (1958).
  26. For example, on April 20, 1955, complaints were filed with the Committee alleging discrimination by five oil companies. As of April 15, 1958, almost 3 years later, it was asserted that the cases had not only not yet been settled, but that the complainants had received no report from the Committee of the status of the complaints or of any progress made. As of May 14, 1958, complaints filed with the Committee by the NAACP in 1955, 1956, and 1957 concerning nine companies in addition to the five oil companies were still in "active" status. Interview with NAACP Labor Secretary, 1961. Cf. President's Committee on Government Contracts, *Pattern For Progress (Final Report)* 21 (app. E) (1960).
  27. General Instruction No. 1, issued by Chairman Nixon on July 25, 1957, to the heads of all executive departments and agencies, required them to report promptly all complaints filed. Executive Order 10479, sec. 5, already required them to report on the *disposition* of complaints.
  28. Interview, *supra*, note 20.
  29. *Pattern For Progress, op. cit. supra*, note 26, at 20-21 (app. D, E).
  30. *Id.* at 10-11.
  31. *Id.* at 10.
  32. *Equal Economic Opportunity, op. cit. supra*, note 6, at 14.
  33. See President's Committee on Government Contracts, *Second Annual Report* 1 (1956). *Five Years of Progress, op. cit. supra*, note 25, at 24, states, that in July 1954, the Committee asked all leading contracting agencies to designate compliance officers.
  34. *Five Years of Progress, op. cit. supra*, note 25, at 22.
  35. *Id.* at 24.
  36. Interviews with representatives of the President's Committee on Government Contracts, 1961.
  37. *Second Annual Report, op. cit. supra*, note 33, at 3.
  38. *Id.* at 2.
  39. *Id.* at 2, 3.
  40. The President's Committee on Government Contracts, *Compliance Guide* 26 (1958).

Notes: Employment, Chapter 4—Continued

41. Interviews with representatives of the automobile industry in Detroit, Michigan, 1960.
42. Circular No. 3 (President's Committee on Government Contracts), dated January 28, 1958, states the purposes of the surveys to be to determine compliance and measure progress made.
43. *Pattern for Progress*, *op. cit. supra*, note 26, at 12-13.
44. See *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 37.
45. *Compliance Guide*, *op. cit. supra*, note 40, at 26.
46. *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 36.
47. *Five Years of Progress*, *op. cit. supra*, note 25, at 24.
48. President's Committee on Government Contracts, *Fourth Annual Report On Equal Job Opportunity* 6-7 (1957); Section 3 of General Instruction No. 2 provided:
  - a. All contracting agencies of the Federal Government shall promptly inform the Committee when a contractor or prospective contractor is found to be ineligible to receive an award because of past or present discriminatory employment practices.
  - b. The Committee shall promptly inform all contracting agencies of the Federal Government of all such findings reported to it.
  - c. All agencies shall promptly inform the Committee when a contractor is found to have reestablished his eligibility for contract awards by reason of having taken steps to correct the discriminatory situation which was responsible for the original finding of ineligibility.
  - d. The Committee shall promptly inform all agencies of such findings of reestablished eligibility.
49. Interviews with former Executive Director of the President's Committee on Government Contracts. Apparently, several threats of disqualification were made, which were effective in bringing the contractors into compliance.
50. *Ibid.* The Executive Director of the former Committee related at least one instance of threat of contract termination made by the Department of Defense in 1958. Although the contractor's plant in Southern Illinois employed no Negroes at the time of the complaint, within a few weeks after contract termination and disqualification had been threatened, the work force included Negroes at clerical, skilled, and unskilled levels.
51. The meeting was planned in cooperation with the American Personnel and Guidance Association. The 16 cities represented were: Atlanta, Baltimore, Chicago, Cincinnati, Cleveland, Detroit, Indianapolis, Kansas City, Los Angeles, Louisville, New Orleans, New

- York City, Philadelphia, Pittsburgh, St. Louis, and Washington, D.C. *Five Years of Progress, op. cit. supra*, note 25, at 27.
52. Increased apprenticeship training opportunities were opened through the Board of Education in Cleveland; the high school counseling program in Indianapolis was strengthened; and a special program to identify potentially able students and encourage their training was instituted in Cincinnati. Chicago, Detroit, and Pittsburgh also adopted the Committee's approach to the problem of "raising the aspirational level of minority youth." *Fourth Annual Report, op. cit. supra*, note 48, at 9, 10, 11; *Pattern For Progress, op. cit. supra*, note 26, at 6.
  53. At the request of the Committee, the Bureau of Employment Security conducted a pilot study to determine the number of discriminatory job orders placed with State employment offices in a northern industrial State. As a result of the study, and the Bureau's finding of a higher proportion of discriminatory job orders than was anticipated, the Bureau developed training programs for its personnel to assist them in encouraging merit employment. The Bureau also cooperated with the Committee in displaying Committee literature and exhibits at State employment offices and by transmitting complaints filed at State employment offices to the Committee. Interviews, *supra*, note 49.
  54. For example, the Bureau of Apprenticeship and Training assisted the Committee in its negotiations with the Automotive Tool and Die Manufacturers Association of Detroit, the public school system, and the UAW, AFL-CIO, to open opportunities for Negroes in apprenticeship training in the tool and die makers trade in Detroit. Although the *policy* to admit Negroes was adopted, no Negroes are currently enrolled in the program and the one Negro who entered the program did not complete his training as he was activated in the Armed Services. Interviews, *supra*, note 49.
  55. With the cooperation of the Department of Health, Education, and Welfare, programs were developed to provide training for high school counselors, sponsored by the Department under the National Defense Education Act, to give counselors a better understanding of the specific problems faced by minority group youth. Interviews, *supra*, note 49.
  56. *Five Years of Progress, op. cit. supra*, note 25, at 6-10; *Pattern For Progress, op. cit. supra*, note 26, at 7. As mentioned in its terminal report, the Committee increased its efforts to stimulate Government contractors to adopt positive programs of nondiscriminatory employment after attempts to obtain Congressional sanction of the Committee's work failed in 1959. *Id.*, *Pattern For Progress*, at 8, 9.

57. Interviews with representatives of the President's Committee on Government Contracts, 1961.
58. At least one Government contractor publicly announced its intention of conforming its employment practices to local patterns. Thus, an official of the firm stated at the time it opened its plant in Atlanta: "When we moved into the South we agreed to abide by local customs and not hire Negroes for production work. This is no time for social reform in this area, and we're not about to try it." *Wall Street Journal*, Oct. 24, 1957, p. 1.
59. In order to compare the employment patterns of Government contractors with those of noncontractors in the same locality, questionnaires were mailed to both groups of companies. Responses were limited in all three cities. In Detroit, however, the small number of Government contractors responding rendered any comparisons unfeasible.
60. In Baltimore, 16.6 percent of the total employees of all noncontractors responding were Negroes; Negro employees constituted 12.4 percent of the total employees of all Government contractors responding. The one Negro clerical employed worked for a noncontractor as did the only Negro supervisors. On the other hand, only one of the four companies with no Negro employees was a Government contractor.  
In Atlanta, 14.8 percent of all employees working for Government contractors were Negroes; 18.5 percent of those working for noncontractors were Negroes. As in Baltimore, Negroes were confined primarily to unskilled and semiskilled jobs whether employed by Government contractors or by noncontractors.
61. *Reports of the State Advisory Committees* (1961).
62. For the first time, several companies admitted Negroes to apprenticeship training programs. See *Five Years of Progress op. cit. supra*, note 25, at 6-12. For examples of other training opportunities made available to Negroes as a result of Committee efforts, see note 52, *supra*.
63. Commission field investigations in Atlanta, Baltimore, and Detroit revealed that Government contractors interviewed in these cities utilized State employment offices as their primary source of recruitment for production employees and as one major source of recruitment for office and clerical employees.
64. 20 C.F.R. sec. 604.8(d) (1961).
65. The *Compliance Guide* (*op. cit. supra*, note 40) issued by the Committee contained recommended procedures, but the contracting agencies were under no obligation to follow these. Thus procedures varied from agency to agency. Even within the Department

Notes: Employment, Chapter 4—Continued

of Defense, for example, procedures followed by the Navy in complaint investigation varied from those followed by the Army. Interviews, *supra*, note 36.

66. In fiscal 1961, the 100 largest Government defense contractors were awarded contracts valued at \$15.4 billion or 73.4 percent of all military contract awards, valued at \$20.9 billion. 107 *Cong. Rec.* 4561 (daily ed. Mar. 27, 1961). These companies and their subcontractors employ 10 million workers. *N.Y. Times*, May 20, 1961, p. 22.
67. *Reports of the State Advisory Committees* (1961).
68. *Ibid.*
69. Interviews with representatives of Government contractors in Atlanta, Baltimore, and Detroit, 1961.
70. *Ibid.*
71. See ch. 5 at 116–117, *infra*.
72. See ch. 3, *supra*.
73. Thus, for the first time, in October 1960, a Negro electrician was hired to work on a Government construction project in the District of Columbia after Local 26, IBEW, issued him a referral card. This followed months of negotiation between representatives of the contractor, the electrical subcontractor, Local 26, The President's Committee, the contracting agency, the U.S. Attorney General's office, and the Washington Urban League, among others. During this period, the electrical subcontractor had indicated, after the contracting agency (General Services Administration) had threatened contract cancellation, that it would rather forfeit the contract than bypass the union in order to hire a Negro electrician. Local 26 finally did issue the job referral card, however, thereby making it unnecessary for the electrical subcontractor to change its regular practice of hiring "through the Union." *Washington Post*, Oct. 21, 1960, p. 1B, Oct. 20, 1960, p. 1D, Sept. 1, 1960, p. 1B, Aug. 6, 1960, p. 1B.
74. *Ibid.* Since October 1960, apparently no other Negro electricians have been hired on Government construction jobs in the District of Columbia.
75. See p. 79, *infra*.
76. Thus, shortly after the effective date of Executive Order 10925, it was reported that "textile manufacturers have practically stopped bidding on military contracts for the past few weeks," *Wall Street Journal*, Apr. 28, 1961, p. 1.
77. See note 23, *supra*.
78. Interviews in Atlanta, 1961.
79. See ch. 5 at 97–102, *infra*.

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80. Interviews, *supra*, note 36. See also note 52, *supra*.
81. See ch. 3 at 40, *supra*.
82. *Pattern For Progress, op. cit. supra*, note 26, at 15.
83. Exec. Order No. 10925, 26 Fed. Reg. 1977 (1961).
84. Interviews, *supra*, note 36.
85. 26 Fed. Reg. 6585 (1961) (The Rules and Regulations will appear in 41 C.F.R. secs. 60-1.1—60-1.65 (Supp. 1962)).
86. *Id.* sec. 60-1.26.
87. *Id.* sec. 60-1.20(b).
88. *Id.* sec. 60-1.20(c).
89. *Id.* sec. 60-1.5.
90. Interviews, *supra*, note 36. In Michigan, frequently firms with announced nondiscrimination policies were the subject of more complaints with the State's F.E.P.C. than firms with a history of discriminatory employment policies. Interviews in Detroit, November and December 1961.
91. Interviews, *supra*, note 36.
92. Exec. Order No. 10925, sec. 302(a).
93. Rules and Regulations, sec. 60-1.24(b)(2), 26 Fed. Reg. 6585 (1961).
94. Exec. Order No. 10925, sec. 307.
95. Exec. Order No. 10925, sec. 312.
96. Exec. Order No. 10925, sec. 301(1) provides:

In connection with the performance of work under this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
97. Exec. Order No. 10925, sec. 301(2).
98. See note 73, *supra*.
99. A local union membership that had resisted the employment of Negroes in skilled jobs has recently abandoned its objection and

Notes: Employment, Chapter 4—Continued

Negroes are being hired in these jobs for the first time. The existence of the new Executive Order enabled the officers of the union to convince the local's membership of the necessity of abandoning past objections to the hiring of Negroes. Interview in Washington, D.C., July 1961.

100. The Order became effective on April 6, 1961, 30 days after its execution.
101. On May 3, 1961, the Committee met with 42 labor union representatives and "received a pledge of cooperation in carrying out the Administration's no-bias order on Federal contract work." *Washington Post*, May 4, 1961, p. 4A. See also *N.Y. Times*, May 4, 1961, p. 31.
102. On May 2, 1961, the Committee met with representatives of 48 of the nation's largest defense contractors. *Washington Post*, May 3, 1961, p. 2A.
103. *Ibid.* Statement of Vice President Johnson in addressing representatives of Government contractors on May 2, 1961.
104. As mentioned above, these included:

The Committee recommends that the President take appropriate measures to designate an established department or agency of the Government to receive and investigate complaints of violation of the nondiscrimination provision in Government contracts. The designated department or agency should be responsible for the preliminary efforts at conciliation, mediation, and persuasion to effect compliance by contractors and should recommend necessary action by the contracting agencies.

The Committee recommends that each agency of the Government immediately establish administrative procedures to insure compliance with the nondiscrimination provision in accordance with Executive Order 10308 and recommendations and standards of action proposed by this Committee.

The Committee proposes a revision of the nondiscrimination provision and recommends that the President by Executive order require that the revised provision be adopted by all Government agencies for use in contracts for supplies, services, and construction.

The Committee recommends that when conciliation and persuasion fail in enforcement of the nondiscrimination provision, contracting agencies enforce the provision where practical through termination of contract, injunction, or disqualification from future contracting. The Committee recommends that if these remedies prove ineffective, the President

Notes: Employment, Chapter 4—Continued

request the Congress to enact legislation supporting the use of arbitration and liquidated damages to obtain conformance. *Equal Economic Opportunity, op. cit. supra*, note 6, at 63-70.

105. See p. 83, *infra*.
106. President's Committee on Equal Employment Opportunity and Lockheed Aircraft Corporation, *Joint Statement on "Plan For Progress"* (1961) (mimeographed). See also ch. 5, *infra*.
107. Interviews with Negro employees of Lockheed in Atlanta, Feb. and Mar. 1961.
108. *Ibid.*
109. *Ibid.* As recently as June 1960, a Negro employee was suspended for three days as a result of his having punched out on the wrong time clock (used by white employees) after having been warned not to do so.
110. Many aspects of these matters are affected by the existing collective bargaining agreement between the company and the IAM. See discussion in ch. 6, at 150, *infra*.
111. Washington Post, May 26, 1961, p. 1.
112. The companies signing these agreements on July 12, 1961, were: Western Electric Co., Boeing Airplane Co., Douglas Aircraft Co., General Electric Co., Martin Co., North American Aviation, Inc., Radio Corporation of America, and United Aircraft Corp. These are among the largest defense contractors and an estimated 800,000 jobs will be covered by these agreements. Washington Post, July 13, 1961, p. 2. It is interesting to note that, since the signing of these agreements, complaints have been filed with the President's Committee alleging discriminatory hiring practices by one of the signatories, General Electric Co. N.Y. Times, July 28, 1961, p. 8.
113. See discussion ch. 3 at 20, *supra*. Apparently, any Government contractor against whom sanctions—such as contract termination or debarment—are imposed would have standing to challenge the Committee's authority to impose such sanctions. *Copper Plumbing & Heating Co. v. Campbell*, 290 F. 2d 368 (D.C. Cir. 1961) (distinguishing *Perkins v. Lukens Steel Co.*, 310 U.S. 113) (1940).
114. See ch. 2, note 19, *supra*, and accompanying text.
115. Basic Land Ordinance, May 20, 1785; see, Morris, *Encyclopedia of American History* 113 (1953).
116. Northwest Territory Ordinance of 1787, 1 Stat. 51 note (1789), see 1 U.S.C. pp. XXXVII-XXXIX (1958). The grant of lands for schools refers to art. III: ". . . schools and the means of education shall forever be encouraged."

Notes: Employment, Chapter 4—Continued

117. Morrill Act of 1862, 12 Stat. 503, 7 U.S.C. secs. 301-305, 307, 308 (1958).
118. U.S. Bureau of the Budget, *Special Analysis of Federal Aid to State and Local Governments in the 1962 Budget* 3-4 (1961).
119. *Id.* at 3.
120. Hospital Survey and Construction Act of 1946 (Hill-Burton Act), 60 Stat. 1040, 42 U.S.C. secs. 291, 291a-291m (1958).
121. Federal Airport Act of 1946, 60 Stat. 170, 49 U.S.C. secs. 1101-19 (1958).
122. Housing Act of 1937, 50 Stat. 888, 42 U.S.C. secs. 1401-17, 1419-30 (1958).
123. Wagner-Peyser Act, 48 Stat. 113, 29 U.S.C. ch. 4B (1958).
124. Act of Aug. 14, 1935, ch. 531, Title III, 49 Stat. 628, 42 U.S.C. secs. 501-503 (1958).
125. Hatch Act of 1887, 24 Stat. 440, 7 U.S.C. secs. 361b-361c (1958), (agricultural research); Federal Water Pollution Control Act, sec. 4, 62 Stat. 1158 (1948), 33 U.S.C. sec. 466c (1958); Act of July 1, 1944, ch. 373, 58 Stat. 707, 42 U.S.C. secs. 281-90 (1958), (national research institutes of health); National Defense Education Act of 1958, 72 Stat. 1580, 20 U.S.C. secs. 461-65 (1958).
126. National School Lunch Act, 60 Stat. 230 (1946), 42 U.S.C. secs. 1751-60 (1958).
127. Federal Water Pollution Control Act, 33 U.S.C. secs. 466, 466a-466k (1958).
128. Act of Aug. 14, 1935, Title V, *supra*, note 124, 42 U.S.C. secs. 701-731 (1958).
129. Housing Act of 1949, 63 Stat. 413, 42 U.S.C. secs. 1441-1462 (1958).
130. Act of Sept. 23, 1950, ch. 995, 64 Stat. 967 (Public Law 815), 20 U.S.C. ch. 19 (1938).
131. Act of Sept. 30, 1950, ch. 1124, 64 Stat. 1100 (Public Law 874), 20 U.S.C. secs. 236-44 (1958).
132. See pt. IV, chs. 4 and 9, and pt. VI, chs. 4 and 5.
133. Exec. Order No. 10925, secs. 301-303, 26 Fed. Reg. 1977 (1961).
134. 71 U.S. (4 Wall.) 143 (1866).
135. *Id.* at 155. *Cf. Stearns v. Minnesota ex rel. Marr*, 179 U.S. 223, 249 (1900): "The state of Minnesota accepted the trust [grant of land] created by the Act of Congress. Acceptance by a trustee of the obligations created by the donor of a trust completes a contract." See also, *Tucker v. Ferguson*, 89 U.S. (22 Wall.) 527 (1875), and *American Emigrant Co. v. Adams County*, 100 U.S. (10 Otto) 61 (1879).

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136. 21 Fed. Reg. 1193 (1956).
137. Letters From Assistant Secretary, Department of Health, Education and Welfare, to the Commission, Mar. 7 and 22, 1961.
138. Bureau of the Budget, *op. cit. supra*, note 118, at 8.
139. *Brown v. Board of Education*, 347 U.S. 483 (1954).
140. 42 U.S.C. sec. 291e(f) (1958).
141. Letters, *op. cit. supra*, note 137.
142. 42 U.S.C. sec. 291m (1958).
143. Letter From Assistant to the Secretary, Department of Health, Education, and Welfare, to the Commission, Feb. 24, 1960.
144. Bureau of the Budget, *op. cit. supra*, note 118, at 8. A measure of the importance of the grants may be obtained from app. V, table 9, for the Atlanta, Baltimore, and Detroit standard metropolitan areas.
145. 20 U.S.C. sec. 242(a) (1958).
146. 49 U.S.C. secs. 1103, 1108 (1958).
147. Bureau of the Budget, *op. cit. supra*, note 118, at 9.
148. 14 C.F.R. sec. 550.24(i)(2) (1961). *Cf.* 14 C.F.R. sec. 550.24(i)(5) (Supp. 1960) [no longer in effect].
149. U.S. Federal Aviation Agency, "Airports Policy and Procedure Memorandum No. 76," Oct. 28, 1960. *But see* 14 C.F.R. sec. 550.24(i)(2) (1961).
150. H.R. 6580, 6608, and 8102, S. 1703, 87th Cong., 1st sess. (1961).
151. 26 Fed. Reg. 3144 (1961), amending 14 C.F.R. sec. 550.7(d) (1961), by adding a new subparagraph, (14), thus: 14 C.F.R. sec. 550.7(d)(14), effective Apr. 13, 1961.
152. See p. 58, *supra*.
153. See note 151, *supra*.
154. Interview in Washington with Staff Representative, Federal Aviation Agency, July 11, 1961.
155. Bureau of the Budget, *op. cit. supra*, note 118, at 3.
156. Federal-Aid Highway Act of 1956, 70 Stat. 374, 23 U.S.C. secs. 103, 104, 120 (1958).
157. Interviews in Washington with Representatives, Bureau of Public Roads, Feb. 25, June 30, and July 1, 1960.
158. *Ibid.*
159. *Id.*, June 30.
160. Interview in Washington with Representative, Bureau of Public Roads, May 29, 1961.
161. 23 U.S.C. sec. 113 (1958); Davis-Bacon Act, 49 Stat. 1011 (1935), 40 U.S.C. sec. 276a (1958).
162. Interviews, Feb. 25 and July 1, 1960, *supra*, note 157. Exec. Order No. 8802, 6 Fed. Reg. 3109 (1941), established the first FEPC.

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163. *Id.*, Interview, July 1, 1960.
164. Cf. note 96, *supra*. For the nondiscrimination clause previously required for use in Government contracts, see p. 58, *supra*.
165. Interviews, *supra*, note 157.
166. 42 U.S.C. sec. 1441 (1958).
167. Bureau of the Budget, *op. cit. supra*, note 118, at 9.
168. 42 U.S.C. sec. 1401 (1958).
169. Bureau of the Budget, *op. cit. supra*, note 118, at 9.
170. 42 U.S.C. sec. 1401 (1958).
171. 42 U.S.C. sec. 1441 (1958).
172. Letter From Administrator, Housing and Home Finance Agency, to the Commission, Oct. 21, 1960.
173. U.S. Housing and Home Finance Agency, *Loan and Capital Grant Contract, Part II, Terms and Conditions*, sec. 107(a)(13) (1960).
174. 42 U.S.C. sec. 1454 (1958).
175. See pt. VI, ch. 4.
176. U.S. Housing and Home Finance Agency, *Policies and Procedures of the Administrator—Field Service* sec. 4 (1959).
177. Interview in Washington with Staff Representative, Urban Renewal Agency, Aug. 31, 1960.
178. U.S. Housing and Home Finance Agency, "Periodic Labor Requirements Inspection Report" form H-600: k (1959).
179. Interview, *supra*, note 177.
180. See Bureau of the Budget, *op. cit. supra*, note 118, at 9.
181. U.S. Housing and Home Finance Agency, *Terms and Conditions*, Form No. PHA-3001 sec. 304(B) (1956).
182. U.S. Public Housing Administration, Bulletin No. LR-12, *Construction Contract Documents*, "Special Conditions," item 13 (1955).
183. Interview in Washington with Staff Representatives, Public Housing Administration, Sept. 7, 1960.
184. Letter From Staff Representative, Public Housing Administration, to the Commission, Feb. 1961.
185. See Wall Street Journal, Apr. 28, 1961, p. 1.
186. See app. V, table 10.
187. See app. V, tables 11 and 12. Interviews in Atlanta, Baltimore, and Detroit, 1961.
188. See generally (Charleston, S.C.) News and Courier, Mar. 29, 1961, p. 6B ("Extension Service Integration Sought").
189. *Equal Economic Opportunity*, *op. cit. supra*, note 6, at 63-67.
190. *Pattern for Progress*, *op. cit. supra*, note 26, at 15.

NOTES: EMPLOYMENT, Chapter 5

1. *Time*, Mar. 10, 1961, p. 90; Soderling, "The Unemployed," *The Wall Street Journal*, May 3, 1961, p. 1; *New York Times*, May 25, 1961, p. 16.
2. Address by Seymour L. Wolfbein, Deputy Assistant Secretary of Labor, *The Outlook for the Skilled Worker in the United States*, The American Personnel and Guidance Association, Mar. 28, 1961.
3. Address by H. Daniel Darling, Deputy Assistant Director, Bureau of Employment Security, Minority Groups Conference of Minority Group Advisors of State Public Employment Offices, July 13, 1960; *New York Times*, Apr. 7, 1961, p. 1; *The Wall Street Journal*, May 3, 1961, p. 1.
4. U.S. Bureau of the Budget, *Special Analysis of Federal Aid to State and Local Governments in the 1962 Budget* 8 (1961); veterans services and benefits for supervision of schools and training establishments, \$1.56 million; vocational education, \$40.26 million; land-grant colleges, \$7.28 million; defense educational activities, \$78.31 million; vocational rehabilitation, \$55.18 million. By telephone, June 19, 1961, Budget Officer, Bureau of Employment Security, \$107 million.
5. The President's Committee on Government Contract Compliance, *Equal Economic Opportunity*, Terminal Report 70, 71 (1953).
6. The President's Committee on Government Contracts, *Pattern for Progress*, 7th Annual (Final) Report, 15 (1961).
7. The President's Committee on Equal Employment Opportunity and Lockheed Aircraft Corporation, *Joint Statement on "Plan for Progress"* 5, 6 (1961) (mimeographed).
8. U.S. Department of Health, Education, and Welfare, *Public Vocational Education Programs*, pamphlet No. 117, OE-80007 at 1 (1960).
9. 45 C.F.R. sec. 102.86 (Supp. 1957) [no longer in effect].
10. Smith-Hughes Vocational Education Act of 1917, sec. 9, 39 Stat. 933, 20 U.S.C. sec. 19 (1958); Vocational Education (George-Barden) Act of 1946, sec. 4, 60 Stat. 776 (designated by Health Amendments Act of 1956, Title III, sec. 301, 70 Stat. 925 as Title I, sec. 104 of Vocational Education Act of 1946), 20 U.S.C. sec. 15k (1958).
11. 20 U.S.C. sec. 16 (1958).
12. 20 U.S.C. sec. 11 (1958).
13. 39 Stat. 929, 20 U.S.C. secs. 11-15 and 16-28 (1958).
14. George-Barden Act, *supra*, note 10, 20 U.S.C. secs. 15i-15m and 15o-15q (1958); Health Amendments Act of 1956, *supra*, note 10, 20 U.S.C. secs. 15aa-15jj (1958); National Defense Educa-

- tion Act of 1958, 72 Stat. 1580, 20 U.S.C. secs. 15aaa-15ggg (1958).
15. U.S. Department of Health, Education, and Welfare, *Digest of Annual Reports of State Boards for Vocational Education*, OE 80008, 12, 13 (1960).
  16. U. S. Department of Health, Education, and Welfare, "Table 3.— Enrollment in Vocational Classes By Type of Program and By State or Territory, Fiscal Year 1960" (unpublished) (1961).
  17. U.S. Department of Health, Education, and Welfare, "Table 5.— Number of Teaching Positions and Counselors of Vocational Classes by Type of Program, By Type of Class, and by State or Territory, Fiscal Year 1960" (unpublished) (1961).
  18. 45 C.F.R. sec. 102.57 (1960).
  19. 45 C.F.R. sec. 102.72 (1960).
  20. 45 C.F.R. sec. 102.70 (1960).
  21. 45 C.F.R. secs. 102.108 and 102.109 (1960).
  22. 45 C.F.R. secs. 102.101 and 102.107 (1960).
  23. 45 C.F.R. secs. 102.1(m) and 102.47 (1960).
  24. 45 C.F.R. sec. 102.18 (1960). This regulation was issued Dec. 28, 1948, see 13 Fed. Reg. 8789 (1948).
  25. Interview in Washington with Assistant to the Secretary, Department of Health, Education, and Welfare, July 1, 1960.
  26. Interview in Atlanta with Trade and Industrial Director for Vocational Education for Fulton County and Atlanta, Ga., Jan. 19, 1961.
  27. *Missouri ex rel. Gaines v. Canada*, 305 U.S. 337 (1938). See also, *infra*, note 126 and accompanying text.
  28. See app. V, table 13.
  29. See app. V, table 14.
  30. *Ibid.*
  31. Interviews in Baltimore with Principal of Carver Vocational-Technical High School, Feb. 23, 1961, and Principal of Mergenthaler Vocational-Technical School, Mar. 14, 1961.
  32. See note 14, *supra*.
  33. 45 C.F.R. sec. 102.85 (Supp. 1957) [no longer in effect]. [Emphasis added.] This has been superseded by 45 C.F.R. sec. 102.41(3) (1960). The regulation quoted was intended to be advisory rather than directive, and its removal was effected in order to retain only directives within the regulations without advisory statements. However, the removal of the quoted regulation does not negate HEW's policy that training should be given only to those who can benefit by the instruction, as explained over the telephone by the Assistant Director of Vocational Education, Department of Health, Education, and Welfare, June 26, 1961.

34. 45 C.F.R. sec. 102.55 (1960).
35. 45 C.F.R. sec. 102.46 (1960).
36. Mich. Stat., Ann., secs. 17.458 (1)–(11) (Supp. 1957).
37. Interviews in Detroit with Director, Vocational Services Department, Urban League, Apr. 10, 1961.
38. Interview in Detroit with Administrative Assistant for Guidance and Placement, Detroit Board of Education, Apr. 5, 1961.
39. Interview in Detroit with Senior Technician, Technical Staff, Detroit Youth Commission, Apr. 5, 1961.
40. Ordinance 379 (1956) as amended by Ordinance 409 (1960).
41. Interviews in Baltimore with Director of Vocational Education, Baltimore City Schools, Feb. 20, 1961, and Teacher-Coordinator, Carver Vocational-Technical High School, Feb. 23, 1961.
42. See ch. 6, *infra*.
43. See text accompanying note 73, *infra*.
44. Interviews in Atlanta with representatives of labor unions, Apr. 7, 10, and 11, 1961; and interviews with Atlanta representatives of the Bureau of Apprenticeship.
45. Baltimore Department of Education, Division of Vocational Education, "Report for 1959–1960"; Interviews in Baltimore with representatives of labor unions, Mar. 30, Apr. 4, and May 4, 1961.
46. See note 39, *supra*.
47. U.S. Department of Labor, *Special Labor Force Report No. 14* at 344 (1961); New York Times, Apr. 6, 1961, p. 1.
48. Kursh, *Apprenticeship in America* 39 (1958).
49. U.S. Department of Health, Education, and Welfare and U.S. Department of Labor, *Careers in Apprenticeship* (1959).
50. *Ibid.*
51. Kursh, *op. cit. supra*, note 48, at 142–47.
52. Wolfbein, *op. cit. supra*, note 2, at 5.
53. National Manpower Council, *A Policy for Skilled Manpower* 254–59 (1954). Despite the decline in percentage differential between the wages of skilled and unskilled workmen, the dollar earnings of the skilled continue to be substantially greater, see 84 *Mon. Lab. Rev.* "Union Wage Scales in Building Trades, 1960," 513 (1961); Kursh, *op. cit. supra*, note 48, at 23–24.
54. Wolfbein, *op. cit. supra*, note 2, at 9; Kursh, *op. cit. supra*, note 48, at 24.
55. Kursh, *op. cit. supra*, note 48, at 33–36.
56. Interview by telephone with Director of Research Bureau of Apprenticeship and Training, May 1961.
57. Wolfbein, *op. cit. supra*, note 2, at 5.
58. NAACP, *The Negro Wage-Earner and Apprenticeship Training Programs* 10–11 (1960).

Notes: Employment, Chapter 5—Continued

59. General Order 91, issued by the Secretary of Labor Dec. 11, 1956, established the Bureau of Apprenticeship and Training. The Secretary of Labor's order provides:

Pursuant to the authority vested in me by the Act of March 4, 1913 (37 Stat. 736; 5 U.S.C. 611), R.S. 161 (5 U.S.C. 22), Reorganization Plan No. 6 of 1950 (15 F.R. 3174; 64 Stat. 1263), the Act of August 16, 1937 (50 Stat. 664; 29 U.S.C. 50), Executive Order 9617, September 19, 1945 and Executive Order 10366, June 26, 1952, and in order more effectively to perform the functions of improving the working conditions of wage earners of the United States and advancing their opportunity for profitable employment through a program of promoting training for workers in industry and commerce, including apprentices, it is hereby ordered that:

There is established in the Department of Labor a Bureau of Apprenticeship and Training to be headed by a Director, appointed by the Secretary of Labor. . . .

60. U.S. Department of Labor, *Apprentice Training* 4 (1960).
61. *Ibid.*
62. Letter From the Director of the Bureau of Apprenticeship and Training to the Commission, Feb. 18, 1960.
63. Kursh, *op. cit. supra*, note 48, at 52, 53-54; The Federal Committee on Apprenticeship, *op. cit. supra*, note 60, at 6, has recommended that an effective program should provide the following:
- the starting age of an apprentice to be not less than 16
  - a schedule of work processes in which an apprentice is to receive training and experience on the job
  - organized instruction designed to provide the apprentice with knowledge in technical subjects related to his trade. (A minimum of 144 hours per year is normally considered necessary.)
  - a progressively increasing schedule of wages
  - proper supervision of on-the-job training with adequate facilities to train apprentices
  - periodic evaluation of the apprentice's progress, both in job performance and related instruction, and the maintenance of appropriate records
  - employee-employer cooperation
  - recognition for successful completions
64. Fair Labor Standards Act of 1938, sec. 14, 52 Stat. 1068, 29 U.S.C. sec. 214 (1958) authorized the Administrator, Wage and Hour Division, Department of Labor to take this action. To implement

Notes: Employment, Chapter 5—Continued

- this policy, the Administrator has promulgated a series of regulations, 29 C.F.R. secs. 521.1-521.12 (Supp. 1961).
65. 32 C.F.R. sec. 1622.23a (1954)
  66. Letter From the Bureau of Apprenticeship and Training to the Commission, Aug. 12, 1960. At the end of 1959, there were more than 165,000 registered apprentices, U.S. Department of Labor, "Apprentice Registration Actions Calendar Year 1959" (1960).
  67. See note 56, *supra*. Total apprentices are estimated at 225,000, including 160,000 registered.
  68. See note 62, *supra*.
  69. 45 C.F.R. sec. 102.43 (1960), to teachers; 45 C.F.R. sec. 102.45 (1960) for supplies and equipment; 45 C.F.R. sec. 102.75 (1960) to apprentices.
  70. National Apprenticeship Program Objectives, approved by the Secretary of Labor, Oct. 19, 1955, p. 1.
  71. See note 62, *supra*.
  72. *Ibid*.
  73. Interview with the Director of the Bureau of Apprenticeship and Training, Aug. 9, 1960.
  74. *Ibid*.
  75. *Ibid*. See also note 62, *supra*.
  76. *Id.*, note 73, *supra*; Kursh, *op. cit. supra*, note 48, at 60.
  77. Information provided by the Bureau of Apprenticeship and Training as a result of an interview in Washington with the Director of Research, May 2, 1961.
  78. U.S. Bureau of the Census, *U.S. Census of Population: 1960, General Population Characteristics, Missouri, Final Report PC(1)-27B*, p. 39 (1961).
  79. Interview from Washington to Atlanta, by telephone, with field representative, Atlanta metropolitan area, Bureau of Apprenticeship and Training, Feb. 10, 1961; Interviews in Atlanta with representatives of labor organizations, Apr. 7, 10, and 11, 1961. Although information obtained from the Regional Office of the Bureau of Apprenticeship and Training indicated that the Negro bricklayers local maintained an apprentice program, an interview with the business agent of the local revealed that it had lapsed because of difficulty in finding work for the apprentices. The total number of construction apprentices in Atlanta is based on information obtained from the Regional Office of the Bureau of Apprenticeship and Training. There were some instances in which the Bureau's figures indicated a greater number of apprentices than staff interviews with the business agents of the particular craft

Notes: Employment, Chapter 5—Continued

unions indicated. In such cases the lower figure was used to arrive at the total.

80. Interview in Washington with Maryland State Supervisor, Bureau of Apprenticeship and Training, Feb. 24, 1961; Interviews in Baltimore with representatives of labor organizations, Mar. 30, Apr. 4, and May 4, 1961. These figures represent a compilation of information obtained from staff interviews with representatives of the craft unions participating in the programs, and representatives of the Bureau of Apprenticeship and Training.
81. See notes 79 and 80, *supra*. In most instances this is based on information obtained from interviews with union representatives; however, in the case of the sheet metal workers in both cities and the iron workers and painters in Atlanta, this is based upon information obtained from the regional offices of the Bureau of Apprenticeship and Training.
82. *Detroit Hearings* 128.
83. *Id.* at 61-66. The major automobile manufacturers were unable to provide the Commission with a racial breakdown on their apprentice and other training programs. Hence, these figures are based upon information obtained from the UAW, the collective bargaining representative of the employees in the plants in question.
84. Interview in Detroit with Employer Representative, Joint Apprenticeship Committee, Automotive Tool and Die Manufacturers Association, Apr. 17, 1961. The Negro admitted to the program was a Naval Reservist and dropped out before completion because he was activated.
85. *Reports of the State Advisory Committees* 406 (1961).
86. New York State Commission Against Discrimination, *Apprentices, Skilled Craftsmen and the Negro* 63 (1960).
87. *California Hearings* 336.
88. National Urban League, *Apprenticeship and Training Opportunities for Negro Youths in Selected Urban League Cities* (1961).
89. See app. V, table 15.
90. Ginzberg, *The Negro Potential* 104-108 (1956); New York State Commission against Discrimination, *op. cit. supra*, note 86, at 67-90; NAACP, *op. cit. supra*, note 58, at 13-19.
91. See Vocational Education, pp. 97-101, *supra*.
92. Kursh, *op. cit. supra*, note 48, at 97-99; Ginzberg, *op. cit. supra*, note 90, at 106; New York State Commission Against Discrimination, *op. cit. supra*, note 86, at 91-105, NAACP, *op. cit. supra*, note 58, at 21-25.
93. National Manpower Council, *op. cit. supra*, note 53, at 246.

Notes: Employment, Chapter 5—Continued

94. See app. V, table 18. On the basis of 1950 census figures, although Negroes have substantial representation in construction labor, and the trowel trades, in most of the construction crafts Negroes are under-represented. See NAACP, *op. cit. supra*, note 58, at 8.
95. Ginzberg, *op. cit. supra*, note 90, at 105-06.
96. Interview note 80, *supra*.
97. NAACP, *op. cit. supra*, note 58, at 21.
98. See *Detroit Hearings* 49, 57; see ch. 6 at 134, *infra*.
99. Noland and Bakke, *Workers Wanted* (1949). A study of employer hiring and promotion preferences in New Haven and Charlotte found about 80 percent of the employers expressing a marked preference for white production workers, and these percentages increased with jobs requiring greater responsibility.
100. Bureau of Apprenticeship and Training, Circular No. 62-5, July 31, 1961.
101. Washington (D.C.) Post, Apr. 1, 1961, p. 2.
102. See ch. 4, discussion of the President's Committee on Equal Employment Opportunity.
103. U.S. Department of Labor, *Manpower Requirements and Training Needs in Construction Occupations 1960-70*, p. 4 (1959); app. V, table 16, details the crafts and the expected needs in each.
104. Wolfbein, *op. cit. supra*, note 2, at 5.
105. U.S. Department of Health, Education, and Welfare, *OVR 142-61*, table S-43 (1961).
106. Vocational Rehabilitation Act, sec. 1, 41 Stat. 735 (1920) amended by Vocational Rehabilitation Amendments of 1954, sec. 2, 68 Stat. 652, 29 U.S.C. sec. 31 (1958).
107. 29 U.S.C. sec. 41(b) (1958).
108. 45 C.F.R. secs. 401.15 and 401.16 (1960).
109. 29 U.S.C. sec. 35(a) (7) (9) and (10) (1958).
110. 29 U.S.C. sec. 35(a) (1) (6) (8) and (11) (1958).
111. 45 C.F.R. sec. 401.14(a) (2) (1960).
112. 29 U.S.C. sec. 35 (c) and (d) (1958).
113. See note 106, *supra*. Vocational Rehabilitation Act, 40 Stat. 617 (1918) [no longer in effect], applied only to entitled discharged servicemen. The Act of July 11, 1919, ch. 12, 41 Stat. 158 [no longer in effect], broadened eligibility, but still confined it to veterans.
114. 29 U.S.C. sec. 31 (1958).
115. U.S. Department of Health, Education, and Welfare, "Federal Grants and State Funds Available for Basic Support Programs Under Section 2 of the Vocational Rehabilitation Act" (1961).
116. Letter From the Office of Vocational Rehabilitation to the Commission, Mar. 7, 1961.

117. In addition to the specialized services available in the State agency administering vocational rehabilitation and the facilities from which services are secured, the specialized services of other agencies are available: USES, 29 U.S.C. sec. 35(a)(10) (1958); Public Welfare and Assistance, the Bureau of Old-Age and Survivors Insurance, and other Federal and non-Federal agencies, 29 U.S.C. sec. 35(a)(9) (1958); promotion of employment opportunities for the handicapped by HEW and the Department of Labor, and cooperation with the President's Committee on Employment of the Physically Handicapped, 29 U.S.C. sec. 38 (1958).
118. Table S-43, *op. cit. supra*, note 105. For fiscal 1959, Negroes accounted for 18 percent of the total persons rehabilitated in the United States; for the State of Georgia 33 percent; the State of Maryland 27 percent; and the State of Michigan 9 percent of all persons rehabilitated. For fiscal 1960, the Office of Vocational Rehabilitation, "Special Inquiry by OVR Regional Offices III, IV, V" (1961), reported that for the offices administering rehabilitation services in Atlanta, Baltimore, and Detroit (except the blind), the percentage of Negro rehabilitants was 27, 37, and 28, respectively. The percentage of Negro rehabilitants in each of these areas is equal to or greater than the percentage of Negro population in these same areas.
119. See note 111, *supra*.
120. 29 U.S.C. sec. 41(b) (1958); 45 C.F.R. sec. 401.14(b)(3) (1960).
121. Staff Memorandum on Meeting at the Office of Vocational Rehabilitation, Jan. 26, 1961. See also text following note 33, *supra*.
122. Letter, *op. cit. supra*, note 116. [Emphasis added.]
123. *Ibid*.
124. The source of data concerning training and placement services in Atlanta, Baltimore, and Detroit is the Letter, *op. cit. supra*, note 116, and enclosures thereto.
125. Vocational Education and Apprenticeship Training, *supra*.
126. See note 116, *supra*, at 7. 29 U.S.C. sec. 35(a)(4) (1958) and 45 C.F.R. sec. 401.18 (1960), require State plans to show the criteria and order for supplying services to eligibles when all eligibles applying for such services cannot be provided them. Such criteria are to be designed to achieve the objectives of vocational rehabilitation within the extent possible with available funds. When the purchase of services out-of-State is required because of an eligible's race, it would appear that the 14th amendment has been violated. For the Supreme Court has stated in *Missouri ex rel. Gaines v. Canada*, *supra*, note 27, that the obliga-

tion to give equal protection of the laws can be performed by a State only within its borders, and the payment of fees to provide Negroes similarly qualified as whites with privileges granted within the State only to whites does not diminish the discrimination, *id.* at 349-50; and, again, that the right to equal protection is personal, entitling the individual to it whether or not other Negroes sought the opportunity to avail themselves of it, *id.* at 351.

127. 45 C.F.R. secs. 401.30 and 401.21(e) (1960).
128. 29 U.S.C. secs. 35(a)(7), 41(a) and 41(a)(6) (1958); 45 C.F.R. secs. 401.20, 401.21, 401.28, 401.29, 401.41 (b) and (c) (1960). See also, note 126 and text *supra*. Problems of distributive occupational training and placement might be met for the blind in local communities where such placement might be denied able-bodied Negroes. See, Vocational Rehabilitation Amendments of 1954, sec. 4(a), 68 Stat. 663, amending the Randolph-Sheppard Vending Stand Act, sec. 1, 49 Stat. 1559 (1936), 20 U.S.C. sec. 107 (1958), to give preference to blind persons in running vending stands in Federal and other property, and assuring the preference by providing for the assignment of vending machine income to blind persons.
129. Wagner-Peyser Act, secs. 3 and 8, 48 Stat. 114 and 115 (1933), as amended by Vocational Rehabilitation Amendments of 1954, sec. 6, 68 Stat. 665, 29 U.S.C. secs. 49b and 49g (1958).
130. 29 U.S.C. sec. 49g (1958).
131. 29 U.S.C. sec. 41 (c) and (d) (1958).
132. 29 U.S.C. sec. 49 (1958). Beginning in 1942, the State Employment Offices were administered directly by the National Government to promote the national war effort. They were returned to the States in 1946, see, Department of Labor Appropriation Act, 1947, 60 Stat. 684 (1946), 29 U.S.C. sec. 49c note (1958). *Cf.* Employment Act of 1946, sec. 2, 60 Stat. 23, 15 U.S.C. sec. 1021 (1958).
133. 29 U.S.C. sec. 49 (1958); 20 C.F.R. sec. 602.1(e) (1961).
134. See, Budget Director, note 4, *supra*.
135. 20 C.F.R. sec. 602.2(a) (1961).
136. Interviews in Atlanta, Baltimore and Detroit with private companies indicated that they relied heavily on USES for referrals and sometimes the testing of prospective employees. Some firms relied on USES exclusively, while others relied on USES only for certain types of employees. See also, Employment Security *Manual* Part II, sec. 1822 (1955), where, for interviewing in interstate clearance, office space can be given, and binding authority to hire can be given USES employees, is shown.

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137. 20 C.F.R. sec. 604.1(b) (1961).
138. 20 C.F.R. sec. 604.8 (1961).
139. U.S. Department of Labor, *Service to Minority Groups* (1958).
140. See accompanying text to note 137 *supra*, and *Service to Minority Groups, op. cit. supra*, note 139, at 28-29, 53.
141. See note 138 and accompanying text *supra*, and *Service to Minority Groups, op. cit. supra*, note 139, at 34.
142. Employment Security Manual Part II, sec. 1822 (1953); *Service to Minority Groups, op. cit. supra*, note 139, at 7.
143. Letter From Director of the Bureau of Employment Security to the Commission, Oct. 6, 1960.
144. Interview with representative of Bureau of Employment Security, Sept. 22, 1961. See ch. IV, *supra*.
145. USES Staff Paper, Aug. 4, 1960, p. 4.
146. Address by Dr. Ross Clinchy, Executive Director, President's Committee on Government Employment Policy, and Address by Miss Margaret Garrity, Executive Director, President's Committee on Government Contracts, Minority Groups Conference of Minority Group Advisors of State Public Employment Offices, July 13, 1960.
147. Interview in Atlanta with Director, Georgia State Employment Office, Jan. 19, 1961; Interview in Detroit with Director, Michigan Employment Security Commission, Nov. 18, 1960.
148. *Id.*, interview with Georgia Director. See Milwaukee Journal, May 30, 1961, p. 16, where it was reported that the "Georgia State employment service has agreed in writing not to discriminate in referring job applicants."
149. Interview in Washington with Director, District of Columbia USES, Oct. 21, 1960, and May 17, 1961; see note 147, *supra*, interview with Michigan Director.
150. *Ibid.*
151. *Ibid.*
152. *Ibid.*
153. *Id.*, interview with D.C. Director.
154. See note 149, *supra*.
155. *Id.*, interview with D.C. Director.
156. See note 145, *supra*, at 9 and 10. California has an FEP law, California Labor Code, Ann., secs. 1410-1432 (Supp. 1959). Illinois did not have an FEP law until this year. State of Ill., Acts of 1961, S.B. 609.
157. Michigan has a statewide FEP law, see note 36, *supra*. Baltimore's is citywide, see note 40, *supra*.
158. Interviews in Baltimore with various line personnel, Department of Employment Security, Mar. 2 and 3, 1961.

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159. See note 147, *supra*, interview with Michigan Director; Interview in Baltimore with Executive Director, Department of Employment Security, Jan. 3, 1961.
160. Interview in Detroit with employee, Michigan Employment Security Commission, Apr. 9, 1961; Interview in Baltimore with employee, Department of Employment Security, Mar. 3, 1961.
161. *Id.*, interview with Michigan employee.
162. Interview with Maryland employee, see note 160, *supra*.
163. See note 159, *supra*, Interview with Maryland Director; Interview in Baltimore with Executive Director, Equal Employment Opportunity Commission, Dec. 8, 1960.
164. See note 147, *supra*, Interview with Michigan Director.
165. See note 159, *supra*, Interview with Maryland Director.
166. New York State Executive Law, secs. 290-301 (Supp. 1960); Wisconsin Statutes, secs. 111.31-111.38 (1959).
167. Interview by telephone, with Executive Director, New York State Division of Placement and Unemployment Insurance, May 19, 1961.
168. Interview by telephone, with Minority Group Advisor to the Bureau of Employment Security, June 1, 1961.
169. 20 C.F.R. sec. 604.16(f) (1961).
170. Interview by telephone, with Bureau of Employment Security, June 2, 1961; Interview by telephone, with Solicitors Office, Department of Labor, June 5, 1961.
171. U.S. Department of Labor, Bureau of Employment Security Manual Transmittal Letter No. 762, Apr. 28, 1961, p. 5. The change has not yet been issued in the form of a regulation.
172. *Ibid.*
173. Kans. Gen. Stat. Ann. secs. 44-1001-44-1008 (Supp. 1959), as amended by Kans. Sess. Laws 1961, ch. 248.
174. 20 C.F.R. sec. 604.1(j) (1961).
175. Letter From the Secretary of Labor to the Executive Secretary, Antidiscrimination Commission of Kansas, Nov. 11, 1960.
176. Letter From the Attorney General of Kansas to the Executive Secretary, Antidiscrimination Commission of Kansas, Nov. 23, 1960.
177. *Pryor v. Poirer*, Civ. No. 2-2219, D. Kans., filed 1961.
178. See app. V. table 17. By 1960, the number of cities had been reduced to 12 through the efforts of USES.
179. *Ibid.*
180. See note 147, *supra*, Interview with Georgia Director.
181. See note 142, *supra*.
182. Interview by telephone, with Minority Group Advisor, District of Columbia USES, May 17, 1961.

Notes: Employment, Chapter 5—Continued

183. *Reports op. cit., supra*, note 85 at 494. In part this is a vestigial policy of USES, which formerly read: "Employment Service personnel will receive and record all specifications stated by an employer, including specifications based on race, color, creed, or national origin. *If the employer does not include any discriminatory specification in his order, but community custom or past hiring practices of the employer indicate that he may refuse to hire individuals of a particular race, color, creed, or national origin, the employment office interviewer shall ascertain whether or not he has any restrictive specifications. . . .*" [Emphasis added.] *USES Operations Bulletin No. C-45 July 1, 1942*, as cited in Myrdal, *op. cit. supra*, note 143, at 417-18.
184. *Id.*, *Reports* at 494. See also, *id.* at 340, where the testimony of Mr. Samuel White, personnel director of the Coronet Manufacturing Co. of Kansas City, before the Missouri State Advisory Committee on Nov. 17, 1960, is reported. Mr. White testified that unless he specifically requested the employment office to send Negroes, they sent whites; and it was his company's policy to hire on a merit basis.
185. See *supra*, note 147, Interview with Georgia Director.
186. *Ibid.*
187. 29 U.S.C. sec. 49n (1958); 20 C.F.R. sec. 602.15 (1961).
188. Letter From Division of State Merit System to the Commission.
189. 42 C.F.R. sec. 53.160 (1960).
190. 42 C.F.R. sec. 53.161 (1960).
191. See note 188, *supra*.
192. *Id.* at 2.
193. *Id.* at 6.
194. Interview by telephone, with The Chief, Division of State Merit Systems, May 19, 1961.
195. *Ibid.*
196. See app. V, table 17.
197. *Reports op. cit. supra*, note 85, at 318.
198. See note 147, *supra*, Interview with Georgia Director.
199. *Reports op. cit. supra*, note 85 492-93.
200. *Reports op. cit. supra*, note 85, at 207.
201. *Id.*, at 339.
202. See note 142, *supra*.
203. See generally, *Reports op. cit. supra*, note 85, at 430.
204. See note 160, *supra*, Interview with Michigan employee.
205. *Reports, op. cit. supra*, note 85, at 159. See also, the Washington State Advisory Committee's report, *id.* at 633, where it is reported: "Until these firms do, in fact, establish such a policy [to hire on a nondiscriminatory basis] and make this policy widely known, . . .

State employment offices will not refer qualified nonwhite workers who seek employment with these firms." Washington has a State FEP law, Revised Code of Washington, secs. 49.60.010-49.60.320 (1959).

206. See note 147, *supra*, Interview with Michigan Director.
207. Interview in Michigan with Director, State employment branch office, Nov. 17, 1960.
208. *Reports op. cit. supra*, note 85, at 207.
209. New York Times, June 7, 1961, p. 1.
210. By letter of August 31, 1961, USES informed all State Employment Security Agencies of revisions in the Employment Security Manual to become effective upon publication in the *Federal Register*, probably by mid-October 1961.
211. After providing for steps to be taken to persuade employers to hire on a merit basis, Section 8130 of the Manual, as revised, will provide:

B. In States, cities, or other jurisdictions having fair employment practice laws, advises the employer that the discriminatory order is contrary to law and that no referrals can be made until the discriminatory specification(s) are removed.

C. If a discriminatory job order is received from an employer who has a Federal Government contract and the employer refuses to eliminate the discriminatory specification(s), the local office manager, after taking steps outlined in A above, provides a copy of the order, with an explanatory note, to the contracts compliance officer of the Federal agency awarding the contract. In the event that the name of the Federal agency is unknown, a copy of the job order with an explanatory note shall be referred to the President's Committee on Equal Employment Opportunity, Washington 25, D.C.

D. If an order containing a discriminatory specification(s) is received from a Federal establishment, explains that such an order is not acceptable because of Government policy.

The revisions do not provide for referral of discriminatory orders placed by Federal agencies to the President's Committee on Equal Employment Opportunity. This, apparently, was an oversight. Interview, by telephone, with Representative, Bureau of Employment Security, September 22, 1961.

## NOTES: EMPLOYMENT, Chapter 6

1. U.S. Department of Labor, *Directory of National and International Labor Unions in the United States*, 9, 15 (1959). These figures are for 1958. The Nation's labor force surpassed 73 million during 1959-60, 84 *Mon. Lab. Rev.* 349 (1961).
2. See ch. 5 (*Apprenticeship Training*), *supra*.
3. See generally, Summers, "The Law of Union Discipline: What the Courts Do in Fact," 70 *Yale L.J.* 176 (1961); also see, Wellington, "The Constitution, The Labor Union, and 'Governmental Action'" *id.* 345, at 350: "At common law state courts will not order unions to admit applicants to membership." The Federal approach to the question of union membership has likewise left unions free to determine the qualifications for membership, see discussion, p. 146, *infra*.
4. In 1959 Congress passed the Labor-Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U.S.C. ch. 11 (Supp. II, 1959-60), containing the first major controls over the internal operations of labor organizations, see discussion, pp. 146-147, *infra*.
5. See discussion, pp. 145-48, *infra*, of the Railway Labor Act, 44 Stat. 577 (1926), 45 U.S.C. secs. 151-163 and 181-188 (1958), and the Labor-Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C. ch. 7 (1958).
6. The principal minority group in the Standard Metropolitan Area (SMA) of Atlanta, Baltimore, and Detroit is the Negro. See ch. 3, note 61, *supra*, for population figures. In addition, IBEW Local No. 26 of Washington was included because of the publicity of the dispute with the President's Committee on Government Contracts.
7. Representatives of locals affiliated with the following international unions were interviewed, although not every union was contacted in each city:

Bricklayers, Masons and Plasterers', International Union of America (AFL-CIO); United Brotherhood of Carpenters & Joiners of America (AFL-CIO); International Brotherhood of Electrical Workers (AFL-CIO); International Union of Operating Engineers (AFL-CIO); International Hod Carriers', Building & Common Laborers' Union of America (AFL-CIO); International Association of Bridge, Structural & Ornamental Iron Workers of America (AFL-CIO); The Wood, Wire & Metal Lathers International Union (AFL-CIO); Brotherhood of Painters, Decorators & Paperhangers of America (AFL-CIO); Operative Plasterers' & Cement Masons' International Association of the United States and Canada (AFL-CIO); United Association of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry of

- the United States and Canada (AFL-CIO); International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (IND).
8. Representatives of locals affiliated with the following internationals were interviewed, although not every union was contacted in each city, and in some cases interviews were with numerous locals of the same international: International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (AFL-CIO); International Union of Electrical, Radio & Machine Workers (AFL-CIO); United Electrical, Radio & Machine Workers of America (IND); International Brotherhood of Electrical Workers (AFL-CIO); International Association of Machinists (AFL-CIO); United Mine Workers of America District 50 (IND); United Steelworkers of America (AFL-CIO); International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (IND); Oil, Chemical & Atomic Workers International Union (AFL-CIO).
  9. A number of AFL unions had adopted the industrial organizing approach prior to the merger. The merger itself has not affected the structure of the affiliated international unions. The dichotomy between craft and industrial unions is not all-pervasive, for a number of unions organize on both a craft and industrial basis; nevertheless, it is a desirable framework for contrasting the unions in construction with those in manufacturing.
  10. Schlesinger, *The Coming of the New Deal* 407-419 (1959).
  11. Myrdal, *The American Dilemma* 1297 (note) (1944).
  12. Schlesinger, *op. cit. supra*, note 10, at 407.
  13. Spero and Harris, *The Black Worker* 53-86 (1931); Bloch, "Craft Unions and the Negro in Historical Perspective," 43 *Jour. Neg. Hist.* 10, 32 (1958).
  14. Residential and highway and bridge construction appeared to be primarily unorganized in both Atlanta and Baltimore.
  15. Inasmuch as conditioning hiring on union membership is unlawful under LMRA 29 U.S.C. sec. 158(a)(3) (see discussion, pp. 147-48, *infra*), union and contractor representatives are reluctant to acknowledge the existence of closed-shop conditions. Nevertheless a few contractors did acknowledge that union membership was a condition of employment. This is of necessity a qualitative judgment, based on interviews both within and without the construction industry in all cities. See Haber and Levinson, *Labor Relations and Productivity in the Building Trades* 62-72 (1956). See also Meyers, "Right to Work in Practice," *Report to the Fund for the Republic* 4, 7, and 13-20, 40 (1959).

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16. Another common hiring device is referral by current employees who are themselves union members.
17. Only 7 out of 24 construction agreements reviewed in the 3 cities established the union as exclusive source of workmen; while several others recognized the union as one source of recruitment, the majority were silent on the subject of hiring.
18. Hiring information was obtained on 24 union construction contractors in the 3 cities. Although all the contractors maintained a permanent work force, frequently it was necessary to recruit additional workmen. All but one relied primarily upon union referral as its source of workmen, and only rarely did any contact the U.S. Employment Service. The one contractor not utilizing union referral recruited only common laborers, which it hired on the job site. Nonunion contractors, on the other hand, placed heavy reliance on the U.S. Employment Service and newspaper ads.
19. See app. V, table 18, indicating the number of Negroes employed in various construction trades in 1950.
20. Preliminary surveys for 1960 indicate that the Negro percentage of total employed carpenters is 3.53 percent, as compared with 3.88 in 1950. The 1960 figure is an interpolation of information contained in: U.S. Department of Labor, *Special Labor Force Report No. 14 A-25* (1961). For figures prior to 1950, see Northrup, *Organized Labor and the Negro 18-19* (1944).
21. *Id.*, U.S. Department of Labor and app. V, table 18.
22. See app. V, table 18.
23. National Urban League, *Negroes and the Building Trades Unions* (1957).
24. Interviews in Baltimore with representatives of the various unions involved, March, April, and May, 1961, with the exception of the information on the sheet metal workers, which is based on interviews with representatives of the Bureau of Apprenticeship and Training.
25. Interviews in Atlanta, April 1961, with representatives of the respective unions.
26. Interview with Atlanta representatives of the Bureau of Apprenticeship and Training, March 1961.
27. Interviews in Atlanta with representatives of the respective unions, April 1961, with the exception of the common laborers, which information is based on interviews with representatives of the other locals.
28. *Reports of the State Advisory Committees* 208 (1961).
29. *Id.* at 348; see also Hawley, in National Planning Association, *Selected Studies of Negro Employment in the South, Negro Em-*

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- ployment in the Birmingham Metropolitan Area 301-302 (1954); and Wesson, in National Planning Association, *Selected Studies of Negro Employment in the South, Negro Employment Practices in the Chattanooga Area* 435-436 (1954).
30. Interview in Baltimore, April 1961.
  31. Interviews with representatives of local unions, 1961.
  32. Address, by George Meany, president, AFL-CIO, Sixth National Legislative Conference of the Building and Construction Trades Department AFL-CIO, Mar. 14, 1960, p. 4.
  33. Interviews in Atlanta, Baltimore, and Detroit with representatives of respective unions, March, April, and May, 1961.
  34. *Ibid.* See also Bromwich, *Union Constitutions, a Report to The Fund for the Republic* 7 (1959); one Baltimore union official told a Commission investigator that some locals with only minimal Negro membership maintain a quota on the number of Negroes admitted.
  35. Wage scales are substantially greater on union construction projects than on nonunion, and the desirability of being employed under a union contract is apparent, see Kursh, *Apprenticeship in America* 25-29 (1958). Union hourly wage scales in the building trades averaged \$3.66 per hour for all workers in 1960, \$3.86 for journeymen, and \$2.88 for helpers and laborers, 84 *Mon. Lab. Rev.* 513 (1961).
  36. Interviews in Atlanta and Baltimore with representatives of the various unions, March, April, and May, 1961, with the exception of the Negro carpenters local in Atlanta, which information is based upon interviews with representatives of the white local. These figures represent a compilation of information obtained from the various interviews.
  37. One official of a white local reported that when a contractor was working Government projects, he would often hire one or two men from the Negro local for the sake of appearances and put them to work on a part of the project separate from the white workers.
  38. Interview in Atlanta, April 1961.
  39. *Ibid.*
  40. *Ibid.*
  41. *Ibid.*
  42. Baltimore Afro-American, Mar. 18, 1961, p. 1, sec. 3.
  43. Segal, "The Practices of Craft Unions in Washington, D.C., With Respect to Minority Groups," National Association of Intergroup Relations Officials, *Civil Rights in the Nation's Capital* 34-38 (1959).

44. Interview in Washington with a representative of Local 26, June 1961. This interview forms the basis of all the information in this discussion, except where otherwise indicated.
45. Collective Bargaining Agreement between the Institute of Electrical Contractors of the District of Columbia, Inc., and Local Union No. 26, International Brotherhood of Electrical Workers, art. I, sec. 2(a), 2(b)(1), and art. VI, sec. 1(a) (1959).
46. Recently the local refused to accept into membership a white electrician with 15 years' experience in residential and light commercial work because he was not experienced in heavy commercial work.
47. For example, in 1958 three Negroes who had unsuccessfully sought employment with a union electrical contractor in the District applied to Local 26, one for apprenticeship training, the other two for journeyman membership. The applicant for apprentice training is still on the waiting list and has never been notified to appear before the apprentice committee for approval. The two applicants for membership, along with a third Negro who later applied, were notified in the fall of 1960 to appear at the local to take the examination to establish their qualifications as journeymen. Two took the examination and both were advised that they had failed.
48. See Washington Post, Oct. 21, 1960, p. 1B. See also discussion, ch. 4 at 69, *supra*.
49. See Northrup, *op. cit. supra*, note 20, at 14-16.
50. Interviews in Atlanta, with representatives of the local, April 1961.
51. Of 22 major industrial bargaining agreements, 8 covering multi-plant operations, reviewed in Atlanta, Baltimore, and Detroit, only 1 gave the union any role in hiring, the right to refer applicants for openings. It should be noted, however, that some employers indicated that unions on occasion informally refer applicants for consideration.
52. Of 31 organized employers responding in Atlanta, Baltimore, and Detroit to a Commission questionnaire, only 9 had apprentice programs, 4 of which were registered. In only two companies, both organized by craft unions, was the union reported to have a voice in the selection of apprentices. See also *Detroit Hearings* 49.
53. Of the 22 industrial bargaining agreements reviewed (see note 51, *supra*), all contained grievance and arbitration procedures for the purpose of resolving disputes between the union and employer regarding the interpretation and application of the bargaining agreement. For a discussion of the rather complex question of the rights of individual employees under grievance and arbitration

- provisions, see Cox, "Rights Under a Labor Agreement," 69 *Harv. L. Rev.* 601 (1956).
54. In each of the 22 agreements (*supra*, note 51), seniority was a factor in promotion, demotion, layoff and recall, and eligibility for vacation; in varying degrees, it affected distribution of overtime, shift preference, and participation in welfare plans.
  55. The discussion is based upon interviews with union representatives in Atlanta, Baltimore, and Detroit, March, April, and May, 1961.
  56. Interview in Baltimore, February 1961.
  57. Interview in Baltimore, May 11, 1961.
  58. Interview in Detroit, April 7, 1961.
  59. Staff review of collective-bargaining agreements obtained through interviews with union representatives and employers.
  60. See Hill, "Recent Effects of Racial Conflict on Southern Industrial Development," 20 *Phylon* 324-326 (1959).
  61. The same situation seems to exist in other Southern States. *Cf.*, *op. cit. supra*, note 28, at 585: "It is evident that the participating unions in Tennessee were *at best* a neutral factor in fostering the nondiscriminatory utilization of Negroes in the plants where they had bargaining rights."
  62. Departmental or occupational seniority systems give preference to those having established seniority in a particular department or occupation. Thus, when an opening occurs, the employees within the department or occupation have first opportunity to fill the position. Such systems are customary in large industrial plants, with varying modifications. Only 1 of the 22 agreements reviewed contained a plantwide seniority system and it covered a small plant of fewer than 25 employees.
  63. Interview in Atlanta, April 1961.
  64. This entire discussion is based on interviews in Atlanta, with representatives of the company, the union, and with Negro employees in the plant, April 1961.
  65. See Weaver, *Negro Labor* 66-77 (1946); Industrial Relations Counselors, *Employing the Negro in American Industry* 145-152 (1959); Hope, in National Planning Association, *Selected Studies of Negro Employment in the South, 3 Southern Plants of International Harvester Company* 101-115 (1953).
  66. Two of the principal independent internationals are the Teamsters and the United Mine Workers. In addition to the international affiliates, there are some Federal unions and local industrial unions which are affiliated directly with the AFL-CIO; however, they constitute less than 1 percent of the total AFL-CIO membership, U.S. Department of Labor, *op. cit. supra*, note 1, at 8.

67. *Ibid.* (1958 figures).
68. Constitution of the American Federation of Labor and Congress of Industrial Organizations, as amended, art. II, sec. 4 (1959).
69. AFL-CIO, *Policy Resolutions on Civil Rights and Civil Liberties* 6-7 (1960).
70. This is the Brotherhood of Locomotive Fireman & Enginemen; Fleischman, "Equality and the Unions," *Bulletin of the Religion and Labor Council of America*, February 1961.
71. *Ibid.* As there are no racial records maintained by the AFL-CIO or its affiliates, this figure is necessarily an estimate and cannot be accepted as completely accurate.
72. Interview in Washington, with director, AFL-CIO Civil Rights Department, July 14, 1961; see also Department of Labor, *op. cit. supra*, note 1, at 8.
73. *Id.*, Interview, May 1961; Report by Boris Shishkin, Director of AFL-CIO Civil Rights Department, "Labor Drives for Equality," Sixth Labor Conference on Civil Rights, November 12, 1960.
74. *Id.*, Interview. See also Fleischman, *op. cit. supra*, note 70.
75. *Id.*, Fleischman. Expulsion has never been used to implement the civil rights policies of the AFL-CIO. In instances where it has been used primarily for alleged corrupt practices, expulsion has not been notably successful.
76. *Id.*, Fleischman; Interview, *supra*, note 73.
77. U.S. Department of Labor, *The Economic Situation of Negroes in the United States* 24 (1960).
78. *Ibid.*; Fleischman, *supra*, note 70; and also American Jewish Committee, "Partial Report of Union Race Relations Progress, 1955-60," November 1960, pp. 4, 7, 8.
79. Address by Arthur Goldberg, Secretary of Labor, American Jewish Committee, New York, N.Y., Apr. 29, 1961. With respect to union discrimination it was stated:  
"Our labor unions have proclaimed laudatory objectives in this field and they are to be commended for what has been accomplished so far. Yet, frankly, as one associated with the American labor movement for a quarter of a century, I must say there is much more to be done by our trade unions."
80. See discussion of Negro American Labor Council, p. 142, *infra*; see NAACP, *Racism Within Organized Labor* (1961).
81. See Hope, *Equality of Opportunity* (1956).
82. Fleischman, *op. cit. supra*, note 70. The Secretary of Labor upheld the international's action in placing the local in trusteeship, under title III, Labor-Management Reporting and Disclosure Act, 29 U.S.C. secs. 461-466 (Supp. II 1959-60).

83. Interview, *supra*, note 73. The dispute between the local and international was settled by a board of arbitration which upheld the international.
84. Interview, *supra*, note 72. In addition 14 internationals have assigned to their own officers the responsibility for their civil rights programs.
85. *Ibid.* The Lathers rely upon their international officers rather than a special committee to implement their program.
86. Interview in Washington, July 1961.
87. Most of the labor organizations in the Atlanta area reported that such tactics were fairly common. The IUE recently lost an NLRB election at a Mississippi plant after the employer had, among other things, written the employees, enclosing a newspaper clipping showing officers of one IUE local joining the NAACP. The letter inquired of the employees: "Is the IUE attempting to organize you because it's interested in you or because it's interested in furthering its leaders' theories, which include integration?" See *IUE v. NLRB*, 289 F. 2d 757, 759 (D.C. Cir. 1960), *remanding* *NECO Electrical Products Corp.* 124 NLRB 481 (1959). In the instant case, this conduct was not treated by the Board as an unfair labor practice nor as grounds for setting aside the election. See also *Sharnay Hosiery*, 120 NLRB 750 (1958).
88. Interview in Baltimore, Apr. 14, 1961.
89. Address by A. Philip Randolph, president, Brotherhood of Sleeping Car Porters, Negro American Labor Council Workshop and Institute, Feb. 17 and 18, 1961, p. 15.
90. *Id.* at 14.
91. Negro American Labor Council, "Code of Fair Racial Trade Union Practice," Codes 1-4 (1961).
92. N.Y. Times, June 27, 1961, p. 20; the executive council referred the proposed code to a subcommittee for report at its September meeting.
93. See note 4, *supra*.
94. See note 5, *supra*.
95. See notes 119, 122, 133, *infra*.
96. See Kovarsky, "Racial Discrimination in Employment and the Federal Law," 38 *Ore. L. Rev.* 54 (1959).
97. 323 U.S. 192 (1944).
98. *Id.* at 202, 203.
99. 355 U.S. 41 (1957).
100. *Id.* at 46.
101. 343 U.S. 768 (1952). See also *Dillard v. Chesapeake and Ohio Ry.*, 199 F. 2d 948 (4th Cir. 1952).

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102. *Syres v. Oil Workers*, 223 F. 2d 739 (5th Cir.), *rev'd per curiam*, 350 U.S. 892 (1955); *Whitfield v. Steelworkers*, 263 F. 2d 546 (5th Cir.), *cert denied*, 360 U.S. 902 (1959); see also *Wallace Corp. v. NLRB*, 323 U.S. 248, 255 (1944). The duty should attach whether or not the union is certified as the bargaining representative by the NLRB. Cox, "The Duty of Fair Representation," 2 *Vill. L. Rev.* 151 (1957). But see, *Williams v. Yellow Cab Co.*, 200 F. 2d 302 (3d Cir. 1952, *cert. denied*, 346 U.S. 840 (1953)).
103. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 38 (1953).
104. See *Conley v. Gibson*, note 99, *supra*. Cf. *Ostrosfsky v. Steelworkers*, 273 F. 2d 614 (4th Cir. 1960) *cert. denied*, 363 U.S. 849 (1961).
105. *Central of Georgia Ry. v. Jones*, 229 F. 2d 648 (5th Cir.), *cert. denied*, 352 U.S. 848 (1956); *Rolax v. Atlantic Coast Line*, 186 F. 2d 473 (4th Cir. 1950); *Brotherhood of Locomotive Firemen v. Mitchell*, 190 F. 2d 308 (5th Cir. 1951).
106. Cox, *op. cit. supra*, note 102, at 172-175. This article argues that a union's failure fairly to represent could constitute an unfair labor practice within the meaning of the LMRA. The question has never been answered by the courts. It was reserved by the Supreme Court in *Ford Motor Co. v. Huffman*, *supra*, note 103. Cf., Wellington, "Union Democracy and Fair Representation: Federal Responsibility in a Federal System," 67 *Yale L.J.* 1327 (1958), where court enforcement of fair representation is discussed.
107. 29 U.S.C. sec. 159 (1958).
108. The NLRB has consistently refused to consider race as a factor in determining the appropriate bargaining unit, even in the face of a contention that racial minorities could be fairly represented only if placed in a separate unit, *Colorado Fuel and Iron Corp.*, 67 NLRB 100 (1946).
109. U.S. National Labor Relations Board, 25th Annual Report 21 (1961).
110. *Id.* at 77.
111. *Larus & Bros.*, 62 NLRB 1075 (1945); see *Hughes Tool Co.*, 104 NLRB 318 (1953), certification revoked for failure to represent fairly nonunion employees.
112. *Pacific Maritime Assn.*, 110 NLRB 1647 (1954), *aff'd sub nom. NLRB v. Pacific American Shipowners Assn.*, 913 (9th Cir. 1955).
113. Under the statute the employer is obligated to bargain collectively with "representatives designated or selected . . . by the majority of the employees in a unit appropriate for such purposes," 29

- U.S.C. sec. 159(a) (1958). The designation does not have to be a result of NLRB certification; *United Mine Workers v. Arkansas Oak Flooring*, 351 U.S. 62 (1956).
114. Interview with representatives of the NLRB revealed that petitions for certification by building trades unions were rare.
115. The duty may well not include an affirmative obligation to take steps to eliminate existing discriminatory terms and conditions of employment. See, Cox, *op. cit. supra*, note 102, at 157: "The union's only obligation stated colloquially, is to refrain from action which makes individuals and minorities worse off than they would be in its absence. Since this obligation would be violated by joining in discriminatory practices, the distinction to be drawn is the hazy but familiar line between action and inaction." *But see*, dissent, *Central of Georgia Ry. v. Jones*, *supra*, note 105, at 649.
116. 323 U.S. at 204 (1944).
117. *Oliphant v. Brotherhood of Locomotive Firemen*, 262 F. 2d 359 (6th Cir. 1958), *cert. denied*, 359 U.S. 935 (1959); see Wellington, *op. cit. supra*, note 3.
118. U.S. National Labor Relations Board, *10th Annual Report* 18 (1946). See *Norfolk Southern Bus Corp.*, 83 NLRB 115 (1949) (unfair labor practice case) and 76 NLRB 488 (1948) (representation case); also *Veneer Products*, 81 NLRB 492 (1949). The current NLRB position appears to be a departure from its earlier view, expressed in *Bethlehem Alameda Shipyard*, 53 NLRB 99 (1943).
119. 79 *Cong. Rec.* 9686 (1935) (remarks of Congressman Wood); 29 U.S.C. sec. 158(b)(1) provides: "It shall be an unfair labor practice for a labor organization . . . to restrain or coerce (A) employers in the exercise of the rights guaranteed . . . : Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership . . . ;" see remarks of Senator Taft, note 133, *infra*. For discussion of the legislative history of the Railway Labor Act, see *Oliphant v. Brotherhood of Locomotive Firemen*, 156 F. Supp. 89 (N.D. Ohio 1957).
120. Wellington, *op. cit. supra*, note 3.
121. 29 U.S.C. sec. 401 (Supp. II, 1959-60).
122. On Aug. 12, 1959, Congressman Powell offered on the floor an amendment to be included in title I of the act, providing: "Except that no labor organization shall . . . refuse membership, segregate, or expel any person on the grounds of race, religion, color, sex, or national origin." 105 *Cong. Rec.* 15721 (1959) (remarks of Congressman Powell). In opposition to the amendment, Con-

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gressman Landrum stated: "We do not seek in this legislation, in no way, no shape, no guise, to tell the labor unions of this country whom they shall admit to their unions." *Id.* at 15722 (remarks of Congressman Landrum). The Powell amendment was defeated on the floor. *Id.* at 15724. *But see*, Givens, "Federal Protection of Employee Rights Within Labor Unions," 29 *Fordham L. Rev.* 259 (1960).

123. 29 U.S.C. sec. 411(a)(1) (Supp. II, 1959-60).
124. 29 U.S.C. sec. 160 (1958). The Railway Labor Act does not provide comparable administrative remedies. See Wellington, *op. cit. supra*, note 106, at 1337-1338.
125. 29 U.S.C. sec. 158(a)(3) (1958).
126. 29 U.S.C. sec. 158(b)(2) (1958).
127. See *Local 357 v. NLRB*, 365 U.S. 604 (1961) for a discussion of permissible hiring hall arrangements.
128. See *Radio Officers' Union v. NLRB*, 347 U.S. 17 (1954).
129. National Labor Relations Board, *op. cit. supra*, note 109, at 55.
130. U.S. Department of Labor, *Supplement to Federal Laws and Agencies* 14-16 (Supp. 1960). See U.S. National Labor Relations Board, *Rules and Regulations and Statements of Procedure Series 8* (1959).
131. See Cox, *op. cit. supra*, note 102. See also *NLRB v. Intracoastal Terminal*, 286 F. 2d 954 (5th Cir. 1961) (employer's discrimination against Negroes in length of vacation). In the intermediate report of this case (125 NLRB 359, 369 (1959)), the trial examiner stated:  
"If the discrimination had been resumed in 1958 for the reason which caused it in earlier years, that is, because the Negroes are not Caucasians, there would have been no violation of section 8(a)(3) because the discrimination in 1958 would have been founded in race, not 'to encourage or discourage membership in any labor organization.'"
132. Rauh, "Civil Rights and Liberties and Labor Unions," 8 *Lab. L.J.* 874, 877 (1957).
133. 93 *Cong. Rec.* 4193 (1947) (remarks of Senator Taft): "Let us take the case of unions which prohibit the admission of Negroes to membership. If they prohibit the admission of Negroes to membership, they may continue to do so; but representatives of the union cannot go to the employer and say, 'You have got to fire this man because he is not a member of our union.'"
134. 29 U.S.C. sec. 158(a)(3)(A) (1958). Similar provisions are contained in the Railway Labor Act, 45 U.S.C. sec. 152 Eleventh (a) (1958).

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135. This Committee was established by Exec. Order No. 10925, Fed. Reg. 1977 (1961). See generally, ch. 4, *supra*.
136. Exec. Order No. 10925, sec. 301(1).
137. Exec. Order No. 10925, sec. 302(d).
138. Exec. Order No. 10925, sec. 304.
139. Exec. Order No. 10925, sec. 305.
140. Exec. Order No. 10925, sec. 312(a).
141. Exec. Order No. 10925, sec. 312(b).
142. Exec. Order No. 10925, sec. 305.
143. It appears that 21 States have enacted legislation banning discrimination in private employment. See, AFL-CIO, *Your Rights* (1960), where are listed: Alaska, California, Colorado, Connecticut, Indiana, Kansas, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, Wisconsin; and see, California Eagle, April 20, 1961, p. 4, Idaho; St. Louis Post-Dispatch, August 1, 1961, p. 1A, Missouri; Chicago Sun-Times, July 1, 1961, p. 6, Illinois.
144. 29 U.S.C. sec. 158(f) (Supp. II, 1959-60) provides: "It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement . . . with a labor organization . . . because . . . (4) such agreement . . . provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area . . ."
145. Exec. Order No. 10925, sec. 302(d) provides with respect to the statement to be made by labor organizations: ". . . to the effect that the said labor union's or representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or representative either will affirmatively cooperate, within the limits of his *legal and contractual* authority, in the implementation of the policy and provisions of this order . . ." [Emphasis added.] Seemingly this portion of the order contemplates that existing nondiscriminatory contractual provisions shall not be subordinated.

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APPENDIX V

TABLE 1.—*Comparison of surveys of Federal employment conducted in Dallas-Fort Worth, Tex., December 1960*

|  | <i>Committee survey, all agencies (percent)</i> | <i>Commission survey, 4 agencies (percent)</i> |
|--|---|--|
| Percentage of Negro employment to total Federal employment . . . . . | 6.9   | 11.5   |
| Percentage of Negro supervisors to total Negroes employed . . . . .  | 2.3   | 4.9  |
| Percentage of Negroes employed in Classification Act positions in:   |   |  |
| Grades 1 through 4 . . . . .   | 87.2  | 93.3   |
| Grades 5 through 9 . . . . .   | 12.2  | 6.7  |
| Grades 10 through 18 . . . . .                                       | .6  |  |

TABLE 2.—*Comparison of surveys of Federal employment conducted in Detroit, Mich., December 1960*

|  |      |      |
|--|------|------|
| Percentage of Negro employment to total Federal employment . . . . . | 30.1 | 38.8 |
| Percentage of Negro supervisors to total Negroes employed . . . . .  | 4.1  | 7.8  |
| Percentage of Negroes employed in Classification Act positions in:   |      |      |
| Grades 1 through 4 . . . . .   | 76   | 80.5 |
| Grades 5 through 9 . . . . .   | 21.3 | 17.2 |
| Grades 10 through 18 . . . . .                                       | 2.7  | 2.3  |

TABLE 3.—*Comparison of surveys of Federal employment conducted in New York, N.Y., December 1960*

|  |      |      |
|--|------|------|
| Percentage of Negro employment to total Federal employment . . . . . | 15.6 | 26.7 |
| Percentage of Negro supervisors to total Negroes employed . . . . .  | 4.8  | 8.9  |
| Percentage of Negroes employed in Classification Act positions in:   |      |      |
| Grades 1 through 4 . . . . .   | 74.1 | 83.1 |
| Grades 5 through 9 . . . . .   | 23.3 | 15.3 |
| Grades 10 through 18 . . . . .                                       | 2.6  | 1.6  |

TABLE 4.—*Comparison of surveys of Federal employment conducted in Atlanta, Ga., July 31, 1960<sup>1</sup>*

|  |      |      |
|--|------|------|
| Percentage of Negro employment to total Federal employment . . . . . | 14.6 | 11.2 |
| Percentage of Negroes employed in Classification Act positions in:   |      |      |
| Grades 1 through 4 . . . . .   | 85.9 | 97.4 |
| Grades 5 through 9 . . . . .   | 12.8 | 1.3  |
| Grades 10 through 18 . . . . .                                       | 1.3  | 1.3  |

<sup>1</sup> No new head counts were made for the Commission's Atlanta survey; this information is based on the survey as of July 31, 1960, conducted for the President's Committee on Government Employment Policy.

TABLE 5.—Job placements—four agencies

|                              | Total jobs filled |     |                | From register |     |    | By outside recruitment |    |   | By transfer |    |   | By reinstatement |     |   | By promotion |     |     |
|------------------------------|-------------------|-----|----------------|---------------|-----|----|------------------------|----|---|-------------|----|---|------------------|-----|---|--------------|-----|-----|
|                              | W                 | N   | O <sup>1</sup> | W             | N   | O  | W                      | N  | O | W           | N  | O | W                | N   | O | W            | N   | O   |
| <i>Agency 1</i>              |                   |     |                |               |     |    |                        |    |   |             |    |   |                  |     |   |              |     |     |
| Classification Act.....      | 1,400             | 639 | 23             | 283           | 253 | 11 | 272                    | 59 | 1 | 155         | 24 | 1 | 115              | 79  | 2 | 575          | 224 | 8   |
| Wage Board.....              | 157               | 294 | 20             | 61            | 107 | 9  | 16                     | 21 | . | 4           | 4  | . | 8                | 29  | 1 | 68           | 133 | 10  |
| Total.....                   | 1,557             | 933 | 43             | 344           | 360 | 20 | 288                    | 80 | 1 | 159         | 28 | 1 | 123              | 108 | 3 | 643          | 357 | 18  |
| <i>Agency 2</i>              |                   |     |                |               |     |    |                        |    |   |             |    |   |                  |     |   |              |     |     |
| Classification Act.....      | 511               | 50  | 7              | 61            | 11  | .. | 34                     | .. | . | 76          | 5  | 1 | 64               | 5   | . | 276          | 29  | 6   |
| Wage Board.....              | 60                | 57  | 2              | 11            | 20  | .. | 4                      | 3  | . | 5           | 2  | 1 | 5                | 8   | . | 35           | 24  | 1   |
| Total.....                   | 571               | 107 | 9              | 72            | 31  | .. | 38                     | 3  | . | 81          | 7  | 2 | 69               | 13  | . | 311          | 53  | 7   |
| <i>Agency 3</i> <sup>2</sup> |                   |     |                |               |     |    |                        |    |   |             |    |   |                  |     |   |              |     |     |
| Total.....                   | 1,990             | 428 | 25             | 313           | 78  | 3  | 73                     | 15 | . | 70          | 14 | 2 | 99               | 41  | 2 | 1,435        | 280 | 18  |
| <i>Agency 4</i> <sup>2</sup> |                   |     |                |               |     |    |                        |    |   |             |    |   |                  |     |   |              |     |     |
| Total.....                   | 211               | 45  | ..             | 19            | 3   | .. | 12                     | 2  | . | 17          | 10 | . | 24               | 2   | . | 139          | 28  | ... |

<sup>1</sup> "O" or "other" includes Puerto Ricans and Orientals

<sup>2</sup> Only Classification Act positions were reported among jobs filled for the 4-month period.

TABLE 6.—Percentage of Negroes participating in training programs for four agencies, by cities

|                         | <i>Employees</i> |              |                      | <i>Employees in training</i> |              |                      |
|-------------------------|------------------|--------------|----------------------|------------------------------|--------------|----------------------|
|                         | <i>Total</i>     | <i>Negro</i> | <i>Percent Negro</i> | <i>Total</i>                 | <i>Negro</i> | <i>Percent Negro</i> |
| Washington, D.C.....    | 12,334           | 2,468        | 20.0                 | 535                          | 74           | 13.8                 |
| Atlanta, Ga.....        | 2,456            | 265          | 10.8                 | 358                          | 63           | 17.6                 |
| Baltimore, Md.....      | 3,549            | 936          | 26.4                 | 630                          | 182          | 28.9                 |
| Chicago, Ill.....       | 10,674           | 4,069        | 38.1                 | 555                          | 72           | 13.0                 |
| Dallas-Fort Worth.....  | 3,486            | 401          | 11.5                 | 181                          | 2            | 1.1                  |
| Detroit, Mich.....      | 4,008            | 1,557        | 38.8                 | 196                          | 60           | 30.6                 |
| Los Angeles, Calif..... | 10,424           | 3,090        | 29.6                 | 284                          | 32           | 11.3                 |
| New York, N.Y.....      | 14,241           | 3,803        | 26.7                 | 1,289                        | 287          | 22.3                 |
| St. Louis, Mo.....      | 3,620            | 1,210        | 33.4                 | 383                          | 162          | 42.3                 |

TABLE 7.—Percentage of Negroes participating in training programs for nine cities, by agencies

|                             | <i>Employees</i> |              |                      | <i>Employees in training</i> |              |                      |
|-----------------------------|------------------|--------------|----------------------|------------------------------|--------------|----------------------|
|                             | <i>Total</i>     | <i>Negro</i> | <i>Percent Negro</i> | <i>Total</i>                 | <i>Negro</i> | <i>Percent Negro</i> |
| Agency 1.....               | 36,297           | 12,442       | 34.3                 | 2,652                        | 688          | 25.9                 |
| Agency 2 <sup>1</sup> ..... | 8,492            | 2,171        | 25.6                 | 1,390                        | 190          | 13.7                 |
| Agency 3.....               | 17,228           | 2,599        | 15.1                 | 355                          | 54           | 15.2                 |
| Agency 4.....               | 2,775            | 587          | 21.2                 | 14                           | 2            | 14.3                 |

<sup>1</sup> Data with respect to only 8 cities were available for Agency 2.

TABLE 8.—Compiled information collected by State Advisory Committees on the National Guard

| State               | Men     |       |                 | Funds         |             |                   | Segregation            |                  |
|---------------------|---------|-------|-----------------|---------------|-------------|-------------------|------------------------|------------------|
|                     | Total   | Negro | Negro (percent) | Federal       | State       | Federal (percent) | Practices              | Laws             |
| Florida.....        | 8, 186  | 0     | 0               | (*)           | \$797, 440  | (*)               | Yes <sup>1</sup> ..... | No.              |
| Indiana.....        | 11, 580 | (*)   | 10-15           | \$6, 590, 495 | 1, 489, 065 | 81. 5             | No.....                | No.              |
| Iowa.....           | (*)     | 50    | (*)             | (*)           | (*)         | (*)               | No.....                | No.              |
| Kansas.....         | (*)     | 22    | (*)             | (*)           | (*)         | (*)               | No.....                | No.              |
| Mississippi.....    | (*)     | 0     | 0               | (*)           | (*)         | (*)               | .....                  | (*)              |
| Missouri.....       | 10, 300 | 98    | .95             | 6, 747, 775   | (*)         | 83                | Yes <sup>2</sup> ..... | No.              |
| Montana.....        | 2, 323  | 0     | 0               | 1, 875, 000   | (*)         | 90. 6             | No.....                | No.              |
| Nebraska.....       | 4, 118  | 7     | .17             | 1, 820, 108   | 501, 741    | 78. 4             | No.....                | No.              |
| Nevada.....         | 728     | (*)   | (*)             | (*)           | (*)         | (*)               | Yes <sup>3</sup> ..... | No.              |
| New Jersey.....     | 15, 750 | (*)   | (*)             | (*)           | (*)         | (*)               | No.....                | No.              |
| North Carolina..... | 11, 345 | 0     | 0               | 5, 100, 000   | 196, 739    | 96. 3             | Yes <sup>5</sup> ..... | Yes.             |
| North Dakota.....   | 2, 171  | 0     | 0               | (*)           | (*)         | (*)               | No.....                | No.              |
| Oklahoma.....       | 9, 219  | 340   | 3. 68           | 5, 763, 731   | 329, 000    | 94. 6             | No.....                | No.              |
| Rhode Island.....   | 2, 742  | 18    | .65             | 2, 835, 081   | (*)         | (*)               | No.....                | No.              |
| Tennessee.....      | 12, 489 | 0     | 0               | 9, 374, 914   | (*)         | 92.               | No.....                | No.              |
| Virginia.....       | 8, 402  | 0     | 0               | 6, 587, 687   | (*)         | (*)               | No.....                | (*)              |
| West Virginia.....  | 4, 066  | 72    | 1.77            | 3, 158, 583   | (*)         | 90. 2             | No.....                | No. <sup>7</sup> |
| Wyoming.....        | 1, 998  | (*)   | (*)             | 6, 500, 000   | (*)         | 94                | No.....                | No.              |

\*No answer furnished.

Source: State Advisory Committees, 1960-61.

<sup>1</sup> From Florida State Advisory Committee Report: "... the Governor has throughout the entire history of the National Guard in Florida, accepted only white male persons for commissions or enlisted service in the Florida National Guard."

<sup>2</sup> There are no desegregated units in Missouri. "It has been the policy of the Missouri National Guard for years to hold the unit commander responsible for the recruiting." Major General Shepard, Adjutant General of Missouri, as quoted in Missouri State Advisory Committee Report.

<sup>3</sup> Units in Reno and Las Vegas are the only desegregated units in the State.

<sup>4</sup> New Jersey's National Guard is desegregated. The National Guard Bureau requires racial information, but New Jersey will not keep it.

<sup>5</sup> "The white and colored militia shall be separately enrolled, and

shall never be compelled to serve in the same organization. No organization of colored troops shall be permitted where white troops are available, and while permitted to be organized, colored troops shall be under command of white officers." N.C. Laws 1917, ch. 200, sec. 6: C.S., sec. 6796.

<sup>6</sup> 1 complaint alleging refusal to accept enlistment into National Guard because of race was in the investigative stage at the time of this writing.

<sup>7</sup> "... The Governor shall at all times have the power to create new organizations whenever, in his judgment, the efficiency of the State force will thereby be increased, except insofar as such action would be contrary to the provisions of the regulations of the national military establishment governing the National Guard; and he is hereby directed to organize a unit or units and equip same, composed of Negro troops which unit or units shall be organized and equipped in accordance with the provisions of the U.S. Army regulations. . . ."

W. Va. Laws 1949, ch. 105.

TABLE 9.—Total Federal aid to impacted areas and to Atlanta, Baltimore, and Detroit, 1960

| Area        | Public Law 874—Aid to impacted schools |                        | Public Law 815—Construction of schools in impacted areas |                     |
|-------------|--|------------------------|--|---------------------|
|             | Entitled                               | Total current expenses | Federal funds reserved                                   | Total Federal funds |
| Atlanta.... | \$874,640                              | \$14,767,362           | \$3,247,582  | \$4,122,222         |
| Baltimore.. | 1,292,085                              | 40,772,174             | 4,746,991  | 6,039,076           |
| Detroit.... | 314,924                                | 24,288,087             | 11,317,661   | 11,632,585          |
| Nation....  | 177,556,580                            | .....                  | 845,389,575  | 1,022,946,155       |

Source: U.S. Department of Health, Education, and Welfare, *Administration of Public Laws 874 and 815* (1960).

TABLE 10.—Number of white and Negro employees working in various job classifications on construction projects financed in part by Federal grant funds, by city

| City           | Clerical and managerial |                | Skilled |                 | Semiskilled |       | Unskilled |       |
|----------------|-------------------------|----------------|---------|-----------------|-------------|-------|-----------|-------|
|                | White                   | Negro          | White   | Negro           | White       | Negro | White     | Negro |
| Atlanta.....   | 18                      | 0              | 297     | <sup>1</sup> 57 | 91          | 48    | 37        | 188   |
| Baltimore..... | 29                      | <sup>2</sup> 7 | 418     | 63              | 18          | 17    | 68        | 301   |
| Detroit.....   | 35                      | <sup>3</sup> 3 | 283     | <sup>4</sup> 57 | 59          | 22    | 51        | 123   |
| Total.....     | 82                      | 10             | 998     | 177             | 168         | 87    | 156       | 612   |

<sup>1</sup> 50 cement finishers.

<sup>2</sup> All unskilled labor foremen.

<sup>3</sup> 2 unskilled labor foremen.

<sup>4</sup> 30 truckdrivers and 14 members of the trowel-trades.

TABLE 11.—Percentage of white and Negro employees working in various job classifications on construction projects financed in part by Federal grant funds, by administering agency<sup>1</sup>

| Agency                   | Clerical and managerial |       | Skilled |                 | Semiskilled |       | Unskilled |       |
|--------------------------|-------------------------|-------|---------|-----------------|-------------|-------|-----------|-------|
|                          | White                   | Negro | White   | Negro           | White       | Negro | White     | Negro |
| FAA <sup>2</sup> .....   | 100                     | 0     | 76      | 24              | 33          | 67    | 9         | 91    |
| HEW.....                 | 80                      | 20    | 84      | 16              | 50          | 50    | 11        | 89    |
| BPRds <sup>3</sup> ..... | 91                      | 9     | 88      | 12              | 62          | 38    | 22        | 78    |
| URA <sup>3</sup> .....   | 100                     | 0     | 23      | <sup>4</sup> 77 | 77          | 23    | 0         | 100   |
| PHA <sup>5</sup> .....   | 80                      | 20    | 89      | 11              | 87          | 13    | 38        | 62    |
| Total, all grants...     | 89                      | 11    | 85      | 15              | 66          | 34    | 20        | 80    |

<sup>1</sup> To nearest full percent.

<sup>2</sup> No nondiscrimination clause at time of survey.

<sup>3</sup> Existing nondiscrimination clause at time of survey.

<sup>4</sup> All skilled employees were employed as truckdrivers.

<sup>5</sup> Existing nondiscrimination clause with quota at time of survey.

TABLE 12.—Number of white and Negro employees working in various job classifications on construction projects financed in part by Federal grant funds, by administering agency

| Agency                   | Clerical and managerial |       | Skilled |                 | Semiskilled |       | Unskilled |       |
|--------------------------|-------------------------|-------|---------|-----------------|-------------|-------|-----------|-------|
|                          | White                   | Negro | White   | Negro           | White       | Negro | White     | Negro |
| FAA <sup>1</sup> .....   | 4                       | 0     | 16      | 5               | 4           | 8     | 2         | 20    |
| HEW.....                 | 8                       | 2     | 179     | 34              | 3           | 3     | 10        | 82    |
| BPRds <sup>2</sup> ..... | 48                      | 5     | 621     | 86              | 103         | 64    | 116       | 423   |
| URA <sup>2</sup> .....   | 10                      | 0     | 9       | <sup>3</sup> 30 | 23          | 7     | 0         | 41    |
| PHA <sup>4</sup> .....   | 12                      | 3     | 173     | 22              | 35          | 5     | 28        | 46    |
| Total.....               | 82                      | 10    | 998     | 177             | 168         | 87    | 156       | 612   |

<sup>1</sup> No nondiscrimination provision at time of survey.

<sup>2</sup> Existing nondiscrimination clause at time of survey.

<sup>3</sup> All truck drivers.

<sup>4</sup> Existing nondiscrimination clause with quota at time of survey.

TABLE 13.—Minimum occupational experience required in State plans for vocational education for trade and industrial teachers

| States           | Day trade classes  | Extension or evening classes   |
|------------------|--|--|
| Alabama.....     | 2 years beyond apprenticeship.   | Same as for day classes.   |
| Arkansas.....    | Qualified as journeyman.   | 2 years as journeyman.   |
| Florida.....     | 6 years' practical experience or equivalent, or 2 years as journeyman if possess a bachelor's degree and license to work in the occupation to be taught. | 6 years' practical experience; 2 as journeyman, plus license to work in occupation to be taught. |
| Georgia.....     | 3 years as journeyman beyond apprenticeship.   | Same as day classes.   |
| Louisiana.....   | 6 years.....   | Do.  |
| Mississippi..... | 2 years as journeyman..  | 2 years experience beyond apprenticeship.  |
| North Carolina.. | 2 years beyond learning period for semiskilled trades or unit of a trade; 2 years in the trade or unit.  | Same as day classes.   |
| South Carolina.. | 2 years beyond apprenticeship.   | Do.  |
| Tennessee.....   | 2 years at journeyman level.   | Do.  |
| Texas.....       | 7 years in the trade or graduation from a technical institution and 3 years in the trade, or equivalent combination.                                     | Do.  |
| Virginia.....    | 6 years of trade experience or equivalent.   | 6 years, 2 beyond a 4-year apprenticeship or equivalent.   |

Source: Letter from U.S. Department of Health, Education, and Welfare, Office of Education, to the Commission, Mar. 1, 1961.

TABLE 14.—*Segregated vocational education in Georgia*

*High school vocational teachers in Georgia—service*

|                                     | <i>White</i>     | <i>Negro</i>     | <i>Total</i> |
|-------------------------------------|------------------|------------------|--------------|
| Agriculture.....                    | 316              | 119              | 435          |
| Business education.....             | <sup>1</sup> 745 | <sup>2</sup> 179 | 924          |
| Distributive education.....         | 21               | 4                | 25           |
| Homemaking education.....           | 393              | 177              | 570          |
| Industrial arts education.....      | 129              | 35               | 164          |
| Trade and industrial education..... | 64               | 40               | 104          |
| <b>Total.....</b>                   | <b>1,668</b>     | <b>554</b>       | <b>2,222</b> |

*Agricultural education program (Federal grants)*

|  |        |        |       |
|--|--------|--------|-------|
| Total enrolled.....                        | 63,012 | 13,027 | ..... |
| Number of high schools offering program... | 264    | 114    | ..... |
| Number of counties offering program.....   | 152    | 104    | ..... |
| Average pupil teacher load per day.....    | 605    | 725    | ..... |

*Distributive education program (Federal grants)*

|  |       |       |       |
|--|-------|-------|-------|
| Total enrolled, high school and adult program..... | 5,081 | 2,350 | ..... |
| Total enrolled in high school.....                 | 748   | 147   | ..... |
| Number of high schools offering program...         | 22    | 4     | ..... |
| Number of counties offering program.....           | 13    | 4     | ..... |

*Homemaking education program (Federal grants)*

|  |        |        |       |
|--|--------|--------|-------|
| Total enrolled.....                        | 36,132 | 17,633 | ..... |
| Number of high schools offering program... | 313    | 140    | ..... |
| Number of counties offering program.....   | 155    | 117    | ..... |

*Trade and industrial education program  
(Federal grants)*

|  |                     |       |       |
|--|---------------------|-------|-------|
| Enrollment in high school day trade classes..              | 1,023               | 1,592 | ..... |
| Enrollment for diversified cooperative training (DCT)..... | 831                 | 186   | ..... |
| Number of counties offering DCT.....                       | 25                  | 6     | ..... |
| Number of DCT programs available.....                      | 33                  | 6     | ..... |
| Adult trade and industrial programs:                       |                     |       |       |
| Number enrolled.....                                       | <sup>3</sup> 20,357 | 1,107 | ..... |
| Number of day trade courses for adults...                  | 11                  | 3     | ..... |

<sup>1</sup> 292 part time.

<sup>2</sup> 116 part time.

<sup>3</sup> Approximately 13,000 are in trade and industrial special classes, enrolling only white adults.

Source: Georgia Nuclear Advisory Commission, *A Special Report on Vocational Education* (1960).

TABLE 15.—Numerical and percentage distribution of employed Negro apprentices, by occupation, for the United States, 1950

| <i>Occupations</i>                                  | <i>Total apprentices</i> | <i>Negro apprentices</i> | <i>Negroes, percentage of total</i> |
|---|--------------------------|--------------------------|-------------------------------------|
| Total . . . . .                                     | 111, 750                 | 1, 890                   | 1. 69                               |
| Auto mechanics . . . . .                            | 3, 600                   | 90                       | 2. 50                               |
| Bricklayers and masons . . . . .                    | 6, 510                   | 270                      | 4. 14                               |
| Carpenters . . . . .                                | 9, 930                   | 60                       | . 60                                |
| Electricians . . . . .                              | 9, 360                   | 90                       | . 96                                |
| Machinists and toolmakers . . . . .                 | 14, 550                  | 60                       | . 41                                |
| Mechanics, other than auto . . . . .                | 6, 720                   | 210                      | 3. 12                               |
| Plumbers and pipefitters . . . . .                  | 11, 010                  | 90                       | . 81                                |
| Building trades, not elsewhere classified . . . . . | 3, 690                   | 150                      | 4. 06                               |
| Metalworking, not elsewhere classified . . . . .    | 7, 170                   | 150                      | 2. 09                               |
| Printing trades . . . . .                           | 14, 160                  | 180                      | 1. 27                               |
| Other skilled trades . . . . .                      | 11, 610                  | 450                      | 3. 87                               |
| Trades not specified . . . . .                      | 13, 440                  | 90                       | . 66                                |

Source: U.S. Bureau of the Census, *U.S. Census of Population: 1950, Special Reports, Occupational Characteristics P-E No. 1 B*, 32 (1956).

TABLE 16.—Estimated number of workers needed by 1970 compared with the number provided through apprenticeship in selected construction occupations

| Occupation                            | Additional workers needed by 1970                         |  |   |   | Total needed<br>Thousand | Number           | Percent of total<br>needed |
|---------------------------------------|---|--|---|---|--------------------------|------------------|----------------------------|
|                                       | Workers<br>currently<br>employed <sup>1</sup><br>Thousand | From deaths<br>and retire-<br>ments <sup>2</sup><br>Thousand | From shifts<br>to other oc-<br>cupations <sup>3</sup><br>Thousand | To meet<br>increased<br>demand <sup>1</sup><br>Thousand |                          |                  |                            |
| Brick, stone, and tile.....           | 270   | 59   | 2   | 105   | 166                      | 37,080           | 22                         |
| Carpenter.....                        | 1,200   | 288  | 226   | 440   | 954                      | 55,380           | 6                          |
| Cement mason.....                     | 45  | 11   | 3   | 20  | 34                       | 4,030            | 12                         |
| Electrician (construction).....       | 130   | 30   | 2   | 80  | 112                      | 39,770           | 36                         |
| Ironworker.....                       | 90  | 21   | 12  | 50  | 83                       | 12,450           | 15                         |
| Lather.....                           | 35  | 9  | 5   | 5   | 19                       | 1,520            | 8                          |
| Painter and paperhanger.....          | 425   | 106  | 87  | 90  | 283                      | 8,560            | 3                          |
| Plasterer.....                        | 67  | 16   | 5   | 20  | 41                       | 6,180            | 15                         |
| Plumber-pipefitter.....               | 315   | 72   | 17  | 135   | 224                      | 38,640           | 17                         |
| Roofer.....                           | 58  | 12   | 8   | 25  | 45                       | 5,220            | 12                         |
| Sheet-metal worker.....               | 140   | 28   | 8   | 85  | 121                      | 25,790           | 21                         |
| Elevator constructor.....             | 10  | 2  | 1   | 5   | 8                        | ( <sup>5</sup> ) |                            |
| Operating engineer <sup>6</sup> ..... | 225   | 56   | 30  | 150   | 236                      | 1,000            | ( <sup>7</sup> )           |
| Asbestos worker.....                  | 20  | 4  | 3   | 10  | 17                       | 590              | 3                          |
| Boilermaker.....                      | 32  | 8  | 4   | 18  | 30                       | 1,080            | 4                          |
| Glazier.....                          | 12  | 2  | 2   | 10  | 14                       | 3,000            | 21                         |
| Laborer and hod carrier.....          | 750   | 180  | 100   | 300   | 580                      | .....            | .....                      |

<sup>1</sup> Preliminary estimates based on a study being conducted by the Bureau of Labor Statistics, except data shown for boilermaker, elevator constructor, laborer and hod carrier, and lather which are estimates made by the Bureau of Apprenticeship and Training. For a detailed analysis of employment trends, see the forthcoming publication of the Bureau of Labor Statistics, *Manpower Needs and Resources in the United States, 1960-1975*.

<sup>2</sup> Based on <sup>3</sup> Tables of Working Life for Men,<sup>2</sup> developed by the Bureau of Labor Statistics, and estimated age distributions.

<sup>3</sup> A rough estimate based on a study of the employment histories of former apprentices.

<sup>4</sup> Assumes continuation of current level of registered apprenticeship and rate of completion. Also includes allowance for apprentices who fail to complete their apprenticeship training but eventually become journeymen in their trade.

<sup>5</sup> Data not available.

<sup>6</sup> Does not include oilers and helpers.

<sup>7</sup> Less than 1 percent.

Adapted from U.S. Department of Labor, Bureau of Apprenticeship and Training, *Manpower Requirements and Training Needs in Construction Occupations—1960-70*, Dec. 1959.

TABLE 17.—Number of segregated employment offices and number of Negro employees in segregated offices, by State, 1957

|                                   | Separate building | Separate entrance same building | Separate waiting space or service points | Negro staff |
|-----------------------------------|-------------------|---------------------------------|--|-------------|
| Alabama.....                      | 0                 | 4                               | 9  | 0           |
| Florida.....                      | 7                 | 1                               | 10                                       | 15          |
| Georgia.....                      | 0                 | 4                               | 11                                       | 18          |
| South Carolina.....               | 0                 | 2                               | 9  | 0           |
| Mississippi.....                  | 0                 | 0                               | 11                                       | 0           |
| Tennessee.....                    | 4                 | 0                               | 7  | 26          |
| Oklahoma.....                     | 3                 | 0                               | 0  | 17          |
| Texas <sup>1</sup> .....          | 0                 | 2                               | 13                                       | 4           |
| North Carolina <sup>1</sup> ..... | 1                 | 10                              | ...                                      | 38          |
| Virginia <sup>1</sup> .....       | 0                 | 2                               | ...                                      | (2)         |
|                                   | 15                | 25                              | 70                                       | 118+        |

<sup>1</sup> States with approved merit plans that allow selective certification by race.

<sup>2</sup> Not known.

Source: Compilation of Segregated Employment offices and Negro Employment in Segregated Offices. U.S. Bureau of Employment Security, 1957.

TABLE 18.—Total Negro employment in sample construction trades, 1950

| Craft   | Number employed | Number Negroes employed | Total (percent) |
|---|-----------------|-------------------------|-----------------|
| Brickmasons, stonemasons, and tilesetters.....        | 163, 650        | 17, 910                 | 10. 94          |
| Carpenters.....                                       | 898, 140        | 34, 860                 | 3. 88           |
| Cement and concrete finishers.....                    | 28, 200         | 7, 380                  | 26. 17          |
| Cranemen, derrickmen, and hoistmen...                 | 102, 300        | 6, 690                  | 6. 54           |
| Electricians.....                                     | 302, 340        | 3, 090                  | 1. 02           |
| Excavating, grading and road machinery operators..... | 104, 760        | 3, 300                  | 3. 15           |
| Construction foremen.....                             | 58, 200         | 870                     | 1. 49           |
| Glaziers.....   | 10, 380         | 300                     | 2. 89           |
| Painters, construction and maintenance.               | 381, 150        | 19, 860                 | 5. 21           |
| Plasterers.....                                       | 60, 180         | 9, 930                  | 16. 50          |
| Plumbers and pipefitters.....                         | 271, 530        | 8, 880                  | 3. 27           |
| Roofers and slaters.....                              | 43, 200         | 3, 000                  | 6. 94           |
| Stone cutters and stone carvers.....                  | 8, 880          | 270                     | 3. 04           |
| Structural metal workers.....                         | 48, 180         | 1, 320                  | 2. 74           |
| Tinsmiths, coppersmiths and sheetmetal workers.....   | 117, 270        | 990                     | 0. 84           |
| Construction laborers.....                            | 639, 960        | 159, 990                | 25. 00          |

Source: U.S. Bureau of the Census, *U.S. Census of Population: 1950, Special Reports, Occupational characteristics P-E No. B 31, 32, 36* (1956).

EXHIBIT 1.—Minority group survey forms

Employment of whites and Negroes (or other Minority Groups) <sup>1</sup> in full-time civilian positions (including temporary employees, but excluding part-time or intermittent employees)

|   |       |
|---|-------|
| Department or agency  | _____ |
| Field installation or major organizational unit at headquarters | _____ |
| City and State  | _____ |
| Total white employment (as of Dec. 31, 1960)                    | _____ |
| Total Negro employment (as of Dec. 31, 1960)                    | _____ |
| Total Puerto Rican employment (as of Dec. 31, 1960)             | _____ |
| Total Oriental employment (as of Dec. 31, 1960)                 | _____ |

<sup>1</sup> In New York, list separately Puerto Ricans and Negroes as "Minority Groups"; in Los Angeles, list separately Orientals and Negroes as "Minority Groups." In all other cities, "Minority Groups" should be limited to Negroes.





*Additional information (3-month period)*

I. Records of white and "Minority Group" employees who have participated in employee training programs during the period from Jan. 1, 1961, until Apr. 1, 1961

Supply the following information with respect to employee training programs in effect in your agency for the period from Jan. 1, 1961, to Apr. 1, 1961:

| Program   | In effect |    | Number participating from Jan. 1, 1961, to Apr. 1, 1961 |                      |   |
|---|-----------|----|---|----------------------|---|
|   | Yes       | No | Total   | Négroes <sup>1</sup> | Puerto Ricans <sup>2</sup> Orientals <sup>3</sup> |
| Career development program.....                 |           |    |   |                      |   |
| Training in non-Federal facilities program..... |           |    |   |                      |   |
| Name of agency or department.....               |           |    |   |                      |   |
| Location of agency or department.....           |           |    |   |                      |   |

<sup>1</sup> Complete for all cities as defined.  
<sup>2</sup> Complete for New York City only as defined.  
<sup>3</sup> Complete for Los Angeles only as defined.

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*Additional information (4-month period)*

II. Summary of daily records of employees recruited from Jan. 1, 1961, until May 1, 1961

From the daily records on "Types of Personnel Actions (attachment 3)" prepared for the period Jan. 1, 1961, until May 1, 1961, please furnish the following information:

| <i>Method of filling jobs</i>  | <i>By whites</i> <sup>1</sup> | <i>By Negroes</i> <sup>2</sup> | <i>By Puerto Ricans</i> <sup>3</sup> | <i>By Orientals</i> <sup>4</sup> |
|--|-------------------------------|--------------------------------|--------------------------------------|----------------------------------|
| Total number of jobs filled by agency.....                                 |                               |                                |                                      |                                  |
| Jobs filled by appointment:  |                               |                                |                                      |                                  |
| 1. By hiring from a U.S. Civil Service Commission Register.....            |                               |                                |                                      |                                  |
| 2. By outside recruitment (attach explanation for each job so filled)..... |                               |                                |                                      |                                  |
| Jobs filled by promotion <sup>1</sup> .....                                |                               |                                |                                      |                                  |
| Jobs filled by transfer.....   |                               |                                |                                      |                                  |
| Jobs filled by reinstatement.....  |                               |                                |                                      |                                  |

<sup>1</sup> Please list as "promotions" only *intra-agency* personnel actions resulting in a higher G.S. grade or wage rate range; those personnel actions that involve employees of another agency should be classified as "transfers."  
<sup>2</sup> Complete for all cities as defined.  
<sup>3</sup> Complete for New York City *only* as defined.  
<sup>4</sup> Complete for Los Angeles *only* as defined.

*Daily record sheet of jobs filled by agency*

\_\_\_\_\_ (Date form completed)

Name of agency or department \_\_\_\_\_

Location of agency or department \_\_\_\_\_

(City)

(State)

*Type of personnel action*

Jobs filled by appointment (use separate line for each new appointment processed)

A. From U.S. Civil Service Commission Register

| Classification Act positions |             | Wage board positions |           | Date job filled | Number of positions filled by— |                      |                            |
|------------------------------|-------------|----------------------|-----------|-----------------|--------------------------------|----------------------|----------------------------|
| G.S. grade                   | Series code | Job title            | Wage rate |                 | Whites <sup>1</sup>            | Negroes <sup>1</sup> | Puerto Ricans <sup>2</sup> |
| _____                        | _____       | _____                | _____     | _____           | _____                          | _____                | _____                      |
| _____                        | _____       | _____                | _____     | _____           | _____                          | _____                | _____                      |
| _____                        | _____       | _____                | _____     | _____           | _____                          | _____                | _____                      |
| _____                        | _____       | _____                | _____     | _____           | _____                          | _____                | _____                      |
| _____                        | _____       | _____                | _____     | _____           | _____                          | _____                | _____                      |

<sup>1</sup> Complete for all cities as defined.

<sup>2</sup> Complete for New York City only as defined.

<sup>3</sup> Complete for Los Angeles only as defined.





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