U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION EXTENSION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 10831

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MARCH 1, 6, 9, AND APRIL 14, 1978

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U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION EXTENSION

WEDNESDAY, MARCH 1, 1978

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m., in room 2237 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee), presiding.

Present: Representatives Edwards, Drinan, and Volkmer.

Staff present: Thomas P. Breen, counsel; Ivy L. Davis, assistant counsel; and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Good morning. Today we begin the first in a series of hearings on H.R. 10831 to extend the life of the U.S. Commission on Civil Rights and to make certain technical and substantive changes in its charter.

The Commission was established by Congress in the Civil Rights Act of 1957. It is a temporary agency, originally established for 2 years. Since 1957, its life has been extended on six occasions and its jurisdiction expanded—consistent with our broadened definition of civil rights and an awareness of civil rights problems. In 1964, the Commission was authorized to serve as a national clearinghouse for civil rights information, and its jurisdiction was extended to denials of the equal protection of the law in the administration of justice. In 1972 its substantive jurisdiction was expanded to include sex discrimination.

In 1975 Congress authorized the Commission to conduct a special 1½-year study of age discrimination in the delivery of services supported by Federal funds. This special report, released on January 10 of this year, was authorized to advise the Congress and the President of examples of age discrimination and to assist in the formulation of regulations to implement the Age Discrimination Act of 1975, which prohibits such discrimination in programs receiving Federal funds.

For more than two decades the Commission has served as this country's national conscience, pointing out our weaknesses and strengths in meeting our goals for equality of rights. The Commission is well respected in the civil rights community and throughout the Government. Its studies and findings are frequently cited by each branch of government. Its recommendations have been influential in the passage of every civil rights bill since its founding.

On February 8 of this year, I introduced H.R. 10831. The bill extends the life of the Commission for 5 years. It also includes both technical and substantive changes in its charter.

Of major concern to me, other Members of Congress, and representatives of the civil rights community is the continuation of the grassroots input to the Commission from the State advisory committees. Therefore, section 5 of H.R. 10831 will amend the 1957 act to insure mandatory establishment of these committees. I look forward to the witnesses' responses to questions regarding them.

[A copy of H.R. 10831 follows:]

A BILL To extend the Commission on Civil Rights for five years, to authorize appropriations for the Commission, to effect certain technical changes to comply with other changes in the law, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Commission Act of 1978".

SEC. 2. (a) Section 103(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(a); 71 Stat. 635), is amended by striking out "in accordance with section 5 of the Administrative Expenses Act of 1946, as amended" and inserting in lieu thereof the following: "in accordance with section 5703 of title 5".

(b) Section 103(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975b(b); 71 Stat. 635) is amended by striking out "in accordance with the provisions of the Travel Expenses Act of 1949, as amended" and inserting in lieu thereof the following: "in accordance with the provisions of subchapter I of chapter 57 of title 5".

SEC. 3. (a) Section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(a); 71 Stat. 635) is amended by striking out "and" at the end of clause (5), by redesignating clause (6) and all references thereto, as clause (7), and by inserting after clause (5) the following new clause:

"(6) study and collect information concerning legal developments constituting unlawful discrimination or a denial of the equal protection of the laws under the Constitution on account of age, or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6); 87 Stat. 361), appraise the laws and policies of the Federal Government with respect to such discrimination or denials on account of age, or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973, and serve as a national clearinghouse for information in respect to such discrimination or denials on account of age or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973; and".

(b) Section 104(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(b); 71 Stat. 635), is amended by striking out "1978" and inserting in lieu thereof "1983".

SEC. 4. Section 105(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(a); 71 Stat. 636) is amended by striking out "and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year".

SEC. 5. Section 105(c) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(c); 71 Stat. 636) is amended by striking out the word "may" the first time it appears, and inserting in lieu thereof the word "shall".

SEC. 6. Section 105(d) of the Civil Rights Act of 1957 (42 U.S.C. 1975(d); 71 Stat. 636) is amended by striking "sections 281, 283, 284, 434, and 1914 of title 18, and section 190 of the Revised Statutes" and inserting in lieu thereof "sections 203, 205, 207, 208, and 209 of title 18".

SEC. 7. Section 106 of the Civil Rights Act of 1957 (42 U.S.C. 1975e; 71 Stat. 636) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 106. There are authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.".

Mr. EDWARDS. I have been asked to read the statement of the distinguished member from the Sixth Congressional District of Virginia, and the subcommittee's ranking Republican, M. Caldwell Butler. He regrets that he will be unable to be here because of another committee meeting and asks that his statement be included in the record at this time.

Mr. Chairman, I would like to join you in welcoming this distinguished panel which has been assembled for the first of what I believe will be several days of hearings on legislation to extend the life of the Civil Rights Commission for 5 years.

In both 1976 and 1977 this subcommittee was asked to increase the Commission's authorization limitation, which was set when Congress last extended the Commission in 1972. During those hearings we began to take the first close look at the operation and budget of this Commission. Many of us were quite surprised and distressed to find that the Commission had been duplicating the work of other Federal agencies and straying from its congressionally mandated jurisdiction. Moreover, we learned that the operating expenses of the Commission had more than doubled over the last 5 years.

This is an excellent and appropriate chance to conduct an extensive review of the Commission's budget and expenditures. I hope that our witnesses today and in future hearings will be prepared to discuss the merits of sunset legislation and the much-touted zero-based budgeting procedures.

Mr. Butler concludes by saying:

I am looking forward to hearing the opinions on the merits of this Commission from the assembled witnesses and hope to learn whether some of the Commission's excesses have been curbed during the past year.

Does the gentleman from Missouri, Mr. Volkmer, wish to be recognized?

Mr. VOLKMER. No. I would just like to welcome the witnesses here, and especially Ms. Frankie Freeman, who has done outstanding work, and I hope to hear from her later.

Mr. EDWARDS. Our first witness today is a valued colleague and friend, Hon. Leon E. Panetta of the 16th District of California. Mr. Panetta was formerly Director of the Office of Civil Rights of HEW and brings to the Congress and to the committee a wealth of experience in the field of civil rights.

We are delighted to have you here, Leon, and you may proceed with your statement.

TESTIMONY OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE 16TH DISTRICT OF CALIFORNIA

Mr. PANETTA. Thank you, Mr. Chairman, members of the subcommittee.

I would first of all ask that my statement, as presented, be included in the record.

Mr. EDWARDS. Without objection.

[The prepared statement of Hon. Leon E. Panetta follows:]

STATEMENT OF HON. LEON E. PANETTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, members of the subcommittee, thank you very much for allowing me to be here today.

I am pleased that the Committee is conducting such extensive hearings on the reauthorizatoin of the United States Commission on Civil Rights and I share your concern that the reauthorization reflect a thorough and careful study of both the performance and the need for the Commission.

Let me say at the outset that I come here as a very strong advocate of the Commission. Clearly, the effort to assure civil rights to all Americans is one of the largest and most complex undertakings of our government in its history. Numerous laws dealing with equal opportunity to vote, to live in decent housing, to hold a job, to receive quality education, to receive justice in our judicial system have been enacted. Extension of protection to women, minorities, the handicapped, the aged, has complicated and broadened the enforcement problem.

To meet this challenge, each agency of the Federal government has an office that deals with civil rights. The Civil Rights Division of the Justice Department, the Department of Housing and Urban Development, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance in Labor, the US Civil Service Commission—these and other bodies also make their contributions to equal rights.

Seeing this broad involvement of Federal agencies, perhaps one might reasonably ask, "Why then do we need the Civil Rights Commission? Isn't the job being done elsewhere?" That is a fair question, but I believe the answer is no, it is not being done elsewhere. Each of the agencies I have cited deals with specific instances of compliance review or alleged discrimination. As is so common in the Federal government, this leaves little time or energy for compiling information on trends, patterns, progress, new areas that need attention. This is precisely the value and function of the Commission. Moreover, the Commission has the opportunity to serve as an ombudsman or mediator in many instances, relieving or preventing tension before matters get out of hand. Because of its closeness to the local level and because of the prestige it carries as a commission of the Federal government, it has achieved an admirable record of conciliation and compromise.

But, Mr. Chairman, it is particularly because of my feeling that the Commission does reach out to the local level in a way perhaps unique in the Federal government, that I want to spend the balance of my testimony discussing the need for and the role of the State Advisory Committees.

As we are all aware, the Office of Management and the Budget and the Commission reached an agreement on November 15, 1977 to disband the state committees and move to a system of 10 regional committees. It is my understanding that the agreement followed extensive pressure by OMB to make the cut-back.

Under the provisions of the Civil Rights Act of 1957, of course, the constitution of state advisory committees is optional on the part of the Commission and so OMB is not out-of-place in demanding a change. However, it is worth noting that the Commission did formulate these committees almost immediately upon its own establishment because it did recognize the importance of state contributions to civil rights. It is also ironic that the notice of the cut-back came only a few short months after the Commission published its report "The Unfinished Business Twenty Years Later," a 221-page summary of the accomplishments of each of its 51 committees.

Mr. Chairman, before I go on to discuss some of the specific achievements of the state committees, I would like to make an observation about the propriety of OMB's policies in this area. Representatives of OMB have admitted publicly that the cut-back would not save a single dollar! What it simply amounts to is that these committees will be lost in order to add 41 committees to the grand total of committee cut-backs. But if these reductions will not save money, if they will reduce citizen involvement in our process of government, then why is it being done?

Moreover, these will, I believe, severely hamper the work of an effective agency in an important and extremely sensitive—I am not exaggerating—issue area. Mr. Chairman, I believe I can make these statements with some assurance. Before coming to the House, I served as Director of HEW's Office of Civil Rights during a troubled time when the effort to end discrimination in our nation's schools was often met with bitterness and hostility by many. Time and time again, once local officials were given the opportunity to work as partners with the Federal government, that bitterness and hostility evaporated. Indeed, each of us in his role as Senator or Representative has seen that process at work in diverse situations. People who are given a stake, a say, in what happens to them will respond with reason in a spirit of compromise; people who are shut out will respond with resentment and resistance.

Let me go from generalities to specifics and give you some examples of how this has worked in practice in the activities of some of the state committees. A study by the Louisiana Advisory Committee on the problem of the lack of low-

cost housing in New Orleans has documented and highlighted a crucial issue which hopefully will give local officials the documentation and the back-up they need to get more assistance from the Federal government to solve this problem. In my own state of California, the state committee investigated the fact that minority students make up an unexpectedly large proportion of those in special education programs for the mentally retarded, chiefly because of their lack of good schools or familiarity with the English language severely handicapped them. This was one of the first reports to shed light on what educators have now found to be a significant problem and are presently attempting to deal with. Equal employment opportunity has been an active concern of the Massachusetts group, leading to executive orders by Governor Dukakis to require affirmative action in the hiring by the state of women and minorities. Some years back, the Illinois committee worked with the mayor of Peoria to develop a police-community relations project to address and to a large extent quell the anxiety among minorities that they were the recipients of police brutality. Mr. Chairman, the advisory committee in your own state of California has had an exemplary history. Its report on migrant workers, for example, led to the formation of a governor's task force on migrant workers that has begun to deal with the many basic problems of those workers.

I have deliberately chosen these examples to show that the activities and accomplishments of the Civil Rights Advisory Committees have not been restricted to one region of the country or to one issue or to the problems of one group over another. And I might ask each member of the Subcommittee—aren't these achievements, with their emphasis on cooperation, dialogue, working within the system, the same kind of solutions that we would seek ourselves? The same kind of mediation that we practice when representing our constituents before Federal agencies or departments or when resolving disputes within our districts and states?

Increasingly these days, we are coming to recognize that the power and influence of the Federal government must be tempered with the wisdom and experience of the people themselves. More than any other issue, civil rights calls for local involvement, local commitment. The members of the state advisory committees bring that local contact. Reading through the membership lists of the committees, I was struck by the fact that very few of the names are well known. That is as it should be. These are working committees, Mr. Chairman, not honorary ones. Are we going to take the cumulative local experience and local ties of these 861 men and women and merge them into ten giant, regional committees? Will Arizona be better at understanding Hawaii's problems than Hawaii? Will New York comprehend the issues in Vermont? Will Kentucky understand civil rights problems in Mississippi just as Mississippians do?

Mr. Chairman, I think each of us knows that the answer to these questions is no and I do not think any one of us would like another state to be involved in telling us what our own state's problems are. I would, then, urge the Subcommittee to report out the reauthorization of the Commission with the provision for mandatory reinstitution of the state committees. I might in closing note that I have introduced a measure in the House to do just that and I would hope that you would all join in that effort. I believe each of our states and our constituents would be given the voice in the resolving of civil rights matters to which they are deserved.

Thank you, Mr. Chairman and members of the Subcommittee.

Mr. PANETTA. What I would like to do is summarize some of the points contained in my testimony and to talk about a few that may not be included.

First of all, I want to commend the subcommittee and you, Mr. Chairman, for conducting these hearings on the Civil Rights Commission and on its work and on its reauthorization. I think it demands careful study on its performance and on the need for the Commission.

As a Director for the Office of Civil Rights, an enforcement arm of the Federal Government, I am a strong supporter of the work of the Civil Rights Commission. They perform some very necessary roles in the enforcement effort. We are now talking about a myriad of

civil rights laws that are in existence and that demand enforcement: The equal opportunity to vote, the equal opportunity with regard to housing, to employment, to education, to equal justice, the protection of women, minorities, the handicapped, the aged—a vast, complicated, and complex myriad of laws in the civil rights area.

And to meet this enforcement effort, we have created a number of agencies as the enforcement arm of those laws: The Civil Rights Division of the Justice Department, the Office for Civil Rights, the various enforcement offices within the Federal Government, the Equal Employment Opportunity Commission, and so on. These are all the enforcement arms of these laws.

One of the problems is that there really is no one oversight mechanism within the Federal Government, with the exception of the Civil Rights Commission. The Civil Rights Commission performs a very valuable role in terms of oversight of the enforcement effort. They are an independent commission; they can be very objective in the way they review enforcement efforts.

I can recall, as Director of the Office for Civil Rights, that they were constantly present, overseeing work that we were doing and determining just how effectively we were enforcing the law and playing a role of oversight and ombudsman for the public that I think is extremely important in this area because, as you know, this is an area in which political pressures, in which manipulations of all kinds, can take place in the enforcement effort. It is very important to have an objective and independent commission reviewing the work of this kind of enforcement.

The second role that it plays, which is equally important, is that the Civil Rights Commission reaches into the communities of this country to sensitize them to the need for civil rights and for respect for the laws that we have in this area. We do not have effective laws that can be enforced, really effectively, without the support of communities, without the support of local citizens.

I can recall incident after incident in which we went into communities to enforce equal education laws. And if the community resisted, if they fought, then it was a very tough battle to enforce the law and, more important, to really deliver on the rights that we were protecting. When a community gathered together and said, yes, this is the law, this is what we should do, and provided the emotional support and the community support for that effort, then the differences were amazing.

The Civil Rights Commission, to the extent that it reaches into these communities through its citizen committees, provides, I think, that kind of community sensitivity to the need to recognize the importance of civil rights. I think this is an extremely important role for the Civil Rights Commission, and its basic tool is the citizen committees that have been established in each of the States. This is the principal tool of contact with the community.

One of the regrets I have is that the proposal, as I understand it, provides for the reduction in those citizen committees, eliminating the State committees and going to a process of 10 regional committees. I think the subcommittee and the Congress have to ask why. Why is this necessary? Is it necessary because the State committees have been ineffective?

I don't think so at all. As a matter of fact, they have just issued a very substantive report, which I am sure the committee has, outlining the work in each of the States and with regard to each of the State committees. The subcommittee itself can review that report, but I think the examples of it and of the work of these committees are unprecedented: in Louisiana, the cases where the State committee there has dealt with housing problems; in California, in education problems; in Massachusetts, with employment problems; in Illinois, with regard to police-community relations.

There are things happening in each of these States, and I think the State committees are proving an effective mechanism in sensitizing and really implementing civil rights enforcement at that level.

All right. Let's assume for the sake of argument that these committees have been performing a valuable role.

Is it because of the costs that we are going to save by reducing the committees to 10 regional committees?

That is not the case either, because OMB has, in fact, admitted that we are not going to save any money by reducing the State committees to regional committees. So the cost factor does not seem to be the main motivating mechanism.

Indeed, I might suggest that when you reduce it to 10 regional committees for this country, the staff, the travel expenses, all of the supportive administrative technology that has to back up the regional committees might very well result in additional costs as far as the operation of the regional committees.

Are we gaining anything administratively by doing this?

Again, I don't think so. I think when we move from State committees to regional committees, we actually increase the administrative complexity in trying to deal with individual problems.

But, most important, do we increase citizen involvement?

I think the answer to that is no, we don't increase citizen involvement by going to regional committees. In fact, what we do is we begin to combine States; we begin to, instead of focusing on particular problems, draw broad conclusions as to regional areas. And, frankly, the problems of Alabama are not similar to the problems of even Georgia, for that matter, and the problems of Georgia are certainly not similar to the problems of North Carolina or Virginia. You can't put these States into regional boxes, particularly with regard to civil rights enforcement.

So, I feel, on the basis of effectiveness and on the basis of cost and on the basis of administration, but most of all on the basis of citizen involvement, that we simply have to retain the use of the State committees.

I have had individuals in my own district who, because of my background, not familiar with civil rights, were questioning: Why civil rights? Why should we enforce these laws? Why should we proceed the way we are? And then, to have these people selected to be on the State committees, they are now very supportive of the efforts of civil rights, because they suddenly see why we are doing it. They are suddenly a part of the process.

I have introduced a bill, H.R. 10501, to retain the State committees, and I urge the subcommittee's careful consideration of that bill

and, hopefully, implementing its language in whatever is reported out of the subcommittee.

Mr. Chairman, members of the committee, the important thing about civil rights enforcement is that it does affect all people. We talk about equal rights, we talk about equal opportunities, and we are talking about how it relates to all people. It is one think to talk about enforcement, but the best kind of enforcement is when you don't really need to enforce it; people are willing to understand and to move ahead in these areas without using the heavy arm of the Government. But without the citizen committees, without the sensitivity of the communities that are involved, you cannot really implement good and effective civil rights enforcement in this country.

I want to thank the subcommittee for its time. I will be pleased to answer any questions that you may have.

Mr. EDWARDS. Thank you very much, Mr. Panetta. You have certainly made a very strong case for the extension of the life of the Civil Rights Commission and also for retaining the State advisory committees. Thank you very much.

I have no questions. Does the gentleman from Massachusetts, Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman and Mr. Panetta. I am sorry that, due to the weather, I was a bit late.

I commend you upon your vigorous statement here. I confess that I have a bit of a conflict of interest, because for several years I was the chairman of the Massachusetts Advisory Committee to the U.S. Commission on Civil Rights.

On the other hand, I find myself going back and forth whether or not the decision to regionalize is wise. You have made a very effective case for the nonregionalization, and I tend to agree with you. But let me just ask one point here about the OMB recommendation.

Your testimony seems to suggest that this was due entirely to, as you put it, "extensive pressure by OMB to make a cutback." Simultaneously, you suggest that this is within the purview of OMB, since these things are optional.

I might quarrel with you there, because it seems to me that the U.S. Commission on Civil Rights should carry out the law as they see it, and OMB should not interfere.

Do you have any sense as to the real feeling of the U.S. Commission itself?

Mr. PANETTA. With regards to the committees?

Mr. DRINAN. To the disbanding of the committees.

Mr. PANETTA. Well, I have talked to some of the members and have talked to some of the staff. I think there is some ambivalence in the Commission itself as to whether this is the way to move.

I think OMB did indicate that the reduction could take place, although again I have to emphasize that it does not result in a cost savings. It does add on the side 41 committees to the grand total of committees that the administration can claim it has reduced for reorganization purposes. But I think, if that is the sole purpose, we have to look at—the subcommittee has to look at the effectiveness of these committees. That is the issue.

That is really the issue and should be the sole issue: Are these subcommittees working effectively and are they really helping to

implement civil rights enforcement and sensitivity? I think the answer to this is yes.

Now, I guess we can play all kinds of administrative games and shadow games with regard to restructuring. But I honestly think that the Commission itself has often stated its support for the State committees. I think, frankly, that if the subcommittee decided to retain them, I don't think there would be serious objection by the Commission. But I will let the chairman speak for the Civil Rights Commission.

Mr. DRINAN. May I ask a question of Mr. Edwards, the chairman, and perhaps of yourself?

In the bill that you are proposing, would the U.S. Commission be required to have an advisory committee in every single State, even if by some miracle there was no civil rights problem there?

Mr. EDWARDS. Yes.

Mr. PANETTA. Yes; that is correct.

Mr. EDWARDS. I think it is very similar to the suggestion made by Mr. Panetta.

Mr. DRINAN. In other words, Congress originally gave the option to the U.S. Commission, if it so desired, to not have a State advisory committee in Montana or Massachusetts. Do you take away that option?

Mr. PANETTA. That is correct.

Mr. DRINAN. Good.

I thank you very much, Mr. Panetta, for your testimony.

Mr. EDWARDS. Mr. Volkmer.

Mr. VOLKMER. I, too, want to thank you, Congressman, for being here today and giving us your thoughts and ideas. I think they are very valid. I would like to just go into a little more detail on the question of regionalism versus the State advisory committees.

The purpose of the advisory committees is to provide input to the Commission on what is happening at the State level.

You point out in your statement that, to address the issues adequately, the regional committee members will have to know perhaps most of the laws and how they operate and what is going on in each of those States, wouldn't they?

Mr. PANETTA. That is exactly right.

Mr. VOLKMER. In other words, if California, Hawaii, Washington, and Oregon are in the region, then, even though there may be a number of people representing each State there would still be problems operating effectively. In other words, if you had a problem resulting in San Francisco and everybody in the region wanted to know, they might all have to check into it a little bit, wouldn't they?

Mr. PANETTA. I think that is absolutely right.

Again, the familiarity with the particular State, with the particular problems, with the particular laws; I would assume that the Commission would not want to see that reduced. But in order not to reduce that, they are going to have to increase the staff. That is going to be necessary in order to maintain touch.

Mr. VOLKMER. These advisory committees are solely advisory committees. We are not eliminating—as you pointed out, we are not cut-

ting back any expense; we are not saving the American people any money.

Mr. PANETTA. That is right.

Mr. VOLKMER. Is it your view, Mr. Panetta, that we would be removing from the Commission an area of input if we went with regionalism?

Mr. PANETTA. That is right.

Mr. VOLKMER. Your comments are very well taken, and I agree with what you have said. The chairman and I think the bill is very good on that point.

I am one who wants to reorganize, too, but not just for the sake of reorganization. There is a difference. Such reorganization has to have a purpose. You want to insure what you are doing after you reorganize will work as good or better than when you started. I think this is one case where OMB just doesn't know what they are doing.

I yield back the balance of my time.

Mr. EDWARDS. Counsel?

Mr. BREEN. As you know, my parents live in your district, and I just wondered about the diversity of participation in the committees.

Mr. PANETTA. Yes; there is. As a matter of fact, as it was indicated in my statement, there are citizens in my district who were unfamiliar, really, with civil rights or its implementation who were then appointed to the State civil rights committees, and the difference was night and day. They suddenly became sensitive to these issues, and I have had many of them write me, concerned about elimination of State committees, because they really feel they are just getting into it. They are beginning to have hearings throughout the State.

Sure, they are not the enforcement arm, but they are a very effective tool, again, for sensitizing—the committee, the public attention that is attracted by the State committees and the hearings they had. I just think it is a very invaluable tool for this whole effort.

Mr. BREEN. And they have some impact on the State?

Mr. PANETTA. Absolutely, yes. And these are citizens, incidentally, that are doing this on a voluntary basis. We are not talking about people being paid; we are talking about people doing this on a voluntary basis—citizens from every stratum of life who bring a particular viewpoint there and take it back to their communities. I think we are losing something if we just remove them and go to broad regional committees.

I have been a part of regionalization with regard to Government in various aspects and, frankly, I have never seen it work very effectively, because what you do is you just create another area. You still have to perform the same basic roles. You still want to go down into these States and deal with them on a particular basis. All you are really creating is just another layer to try to do the job. We have the State committee; I think we ought to retain that and not play games with the administrative complexities.

Mr. BREEN. Thank you.

Mr. EDWARDS. Thank you very much, Mr. Panetta.

Mr. DRINAN. Mr. Panetta, I think for the record we ought to indicate that, as far as I know, the chairman of this distinguished

subcommittee is not living in snowy Indiana and is still residing in sunny California.

Mr. PANETTA. That's correct. I apologize for that. That was a statement we had made on the Senate side. We rephrased it for this purpose but left in Indiana.

Mr. EDWARDS. Our next witness is "Mr. civil rights himself," Clarence Mitchell, who has been our counsel and and conscience on every civil rights bill that I can remember.

And I apologize to Mr. Flemming, because I know he is ahead on the witness list here, but I think that Dr. Flemming will probably be here longer than Clarence Mitchell.

Clarence, we are delighted to have you here.

[The prepared statement of Clarence Mitchell follows:]

STATEMENT OF CLARENCE MITCHELL, CHAIRMAN, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. Chairman and members of the sucommbittee, I am Clarence Mitchell, chairman of the Leadership Conference on Civil Rights. I thank you for giving me this opportunity to present the views of the Leadership Conference on Civil Rights on H.R. 10831, a bill to extend the life of the United States Commission on Civil Rights.

We wish we were able to tell you there is no need for such a bill. That would indicate that all the problems of discrimination, in its various forms, had been discovered, explored and solved. Unfortunately, the day for such testimony is still in the future, and we must deal with the facts as they now exist. Those facts indicate that discrimination is still rampant, despite the many legal weapons available for use in combatting it, and despite the significant progress that has been made in suppressing it since the passage of the Civil Rights Act of 1957, which will be amended by H.R. 10831.

Additionally, it has become clear that blacks are not the only group subject to discrimination, a fact of which we were aware but which was not generally recognized. Women, native Americans, persons of Spanish heritage, Asian Americans, the aged, the handicapped, all have brought their complaints into the public forum and have secured legislation to prohibit various types of discrimination practiced against them. The volume of these complaints and the implications of this legislation alone would be enough to justify the extension of the life of the Commission for at least five years.

It is our opinion that on all of these issues, as well as on the ones of long-standing violations of the constituional rights of black citizens that inspired passage of the Civil Rights Act of 1957 and subsequent legislation, the Commission has been since its creation the official conscience of the Nation, constantly speaking out against injustice wherever it exists. It has been a well-informed conscience, supplying statistics, examples and other data to support its positions, positions that in many cases have been adopted by the Congress, the President and the courts.

Mr. Chairman, in your letter inviting us to testify you asked us to discuss six specific issues as they relate to the bill. We will do so now.

1. The achievements of the Commission and what should be its objectives if extended.

So many of the results of the Commission's activities are so intangible that it would be impossible to completely assess the extent of its achievements. However, there is enough that can be measured to warrant continuation of the Commission's existence.

The Commission has had an effect on all civil rights legislation passed from 1960 to date. If anyone studies the debates on each piece of this legislation, he will see that the Commission's reports, testimony and recommendations are widely quoted to support positive positions supporting civil rights. The research done by the Commission on the particular subject under consideration very often provided the convincing data needed to influence the course of legislation. In some instance, it may be found that the information supplied by the Commission has likewise been presented by the leadership conference or its constituent organizations. But coming from an official source, it is granted a recognition of authenticity that is not given to other sources. To use an analogy, meat with a

Department of Agriculture stamp of approval is accepted as meeting certain standards, although the stamp in no way changes the quality of the meat. Congress, the courts and the public have accepted the findings of the Commission as the findings of an official, disinterested Government agency and have reacted to them accordingly.

We cite two examples where we feel the Commission may well have provided the difference between passage or defeat of the specific provision before the Congress, both of which deal with voting. The first is the changeover from court-appointed voting referees provided for in the Civil Rights Act of 1960 to Civil Service Commission-appointed voting examiners under the 1965 Voting Rights Act. The second instance is the 1975 extension of the protections of the 1965 Voting Rights Act to cover persons who are American Indian, Asian American, Alaskan natives or of Spanish heritage. We could cite more, but we use these two examples because they relate to one of the most important of all civil rights, the right to vote.

Another achievement of the Commission has been to alert the public to developments in the area of civil rights, both favorable and unfavorable. Its comprehensive reports on all aspects of American life are always well publicized, well received and informative. We believe they have helped shape public opinion favorably to the exercise of civil rights and have helped dull many of the attacks on the assertion of those rights. We stress particularly the positive approach the Commission has taken. While it does point out deficiencies in the administration and enforcement of civil rights law, it also notes the gains made under them. The prime example is its efforts to publicize the success stories in student transportation and the benefits to children of all races that flow from the unitary school system.

The Commission's activities aid and encourage those who work faithfully for the protection of constitutional rights and induces those who may be timid to become involved and make a contribution.

If its life is extended, we trust the Commission will continue basically in the same types of activities in which it has engaged, for the struggle for full freedom is far from won. We would hope, of course, that it would broaden its fields of interest and address important issues as they arise. For instance, we hope it could give some additional guidance in the present controversy in which we are involved—the fight to save affirmative action. Recognizing the statement the Commission has already issued, we look to it to do in-depth studies of the continuing need for affirmative action. Also, we would hope that the Commission will be given a mandate from Congress that would allow it to inquire into more types of discriminatory practices.

2. Whether the Commission's mandate to investigate and identify any possible civil rights violations has been achieved thus making its extension unnecessary.

As we indicated at the opening of our statement, we wish we could answer this in the affirmative. Unfortunately, we cannot.

It is simply unrealistic to believe that the effects of injustices that have occurred for over 300 years could be discovered and cured in two years, the original term of the Commission, or in the twenty years it has actually been in operation. This would be so if such injustices had come to a halt with the passage of the 1957 Civil Rights Act. But they did not. They continued, not totally unabated, but certainly on a large scale. As many wrongs were righted, clever opponents found ways of circumventing the proposed solutions. As problems were solved in one part of the country, it was discovered that the denial of rights was not geographically isolated. (no surprise to us, but to many who had previously supported our position). As blacks discovered they could use new legislation to improve their lot, women, Chicanos, Puerto Ricans, and other minorities, the poor, the aged and the handicapped began raising questions about denials of their rights, many of which are still unanswered.

We will not press for this at this time, because of the circumstances that require action on this bill, but what Congress should consider is making the Commission's date of termination open-ended, as it did with the literacy test ban in the Voting Rights Act.

3. Whether the Commission is not needed as its studies are simply duplicative of other agencies' work.

Some of the studies of the Commission may contain data that is similar to that buried in the archives of other Government agencies. But nowhere else can one find the comprehensive, correctly interpreted, constructively oriented materials that the Commission publishes. As a matter of fact, much of the information circulated by the Commission is dragged from reluctant Government agen-

cies, who realize it could put them in an unfavorable light for not fulfilling their civil rights responsibilities.

If in rare cases there is some duplication, perhaps it would be the wiser course to transfer the authority of the duplicating agency on that particular subject to the Commission.

4. Whether the Commission's State advisory panels should be retained in their present form or combined into regional groups.

On this issue we support the old adage, "The more the merrier." We believe that the problems of discrimination are so pervasive that each State must be made conscious of its own shortcomings, not those of a neighboring jurisdiction. Moreover, we fear that in a regional arrangement, the peculiar problems of a small State could be ignored in the push to solve a major problem arising in a large industrial city of a more populous State. There are enough differences within a State (as witness the problems of a large city such as Baltimore contrasted with those of the Eastern Shore of Maryland) to require the attention of advisory members from each State without diluting their attention with the differences and problems of their neighbors.

We know that 51 advisory panels are an inviting target in this period. But we ask you to consider that we are dealing with unpaid personnel, most of whom contribute much more in time and out of pocket expenses than they ever receive in travel allowance. And, remember also that cost of travel will increase as the members must go to a more distant regional center rather than their local meeting place.

5. Whether the Commission should be authorized to spend the amounts necessary to carry out its mandate during the extension period or retain an authorization ceiling limiting its authority to spend.

There are too many variables to justify an authorization ceiling. We do not know what the Commission's workload will be during the period of the extension. The rate of inflation over those years cannot be safely estimated. It is possible a limit set now will a few years from now require a decrease in personnel and activities of the Commission. Most importantly, we do not know what added duties Congress will impose upon the Commission. We should recall that the last time Congress extended its life (1972), it set an appropriations ceiling. It also extended the Commission's jurisdiction to include investigation of sex discrimination. As a consequence, it was necessary to amend the authorization in 1976 to allow the increased appropriations necessary to do the job Congress had directed the Commission to do. In order to avoid the necessity of again going through these complicated appropriations procedures, Congress should eliminate the ceiling.

6. Whether the Commission's authority should be expanded to include discrimination against the aged and the handicapped.

We favor such an expansion. As we noted earlier, we in the Leadership Conference have long known that discrimination is not solely reserved for blacks. This is what has brought about our coalition of some 146 national organizations, some of which represent the aged and handicapped. Regardless of what the Congress does on this issue, we are certain it will in the future expand the rights of these groups of our population (as it has just voted to do in raising the mandatory retirement age for employment). As it does, it will benefit, as will the aged, the handicapped and the rest of our citizenry if they all have the advantage of the advice of the agency that has the expertise in the area of discrimination, the Commission on Civil Rights.

There are already enough problems arising out of the enforcement of the laws protecting the aged and handicapped to justify the Commission making inquiry into this area of law enforcement or, unfortunately in some cases, nonenforcement. The problems of the aged and handicapped are but additional aspects of the total problem, denial of human rights.

Mr. Chairman, the questions you posed were so well formed that the answers to them required the use of our allotted time. We trust our responses indicate that we wholeheartedly support passage of H.R. 10831.

TESTIMONY OF CLARENCE MITCHELL, CHAIRMAN, LEADERSHIP CONFERENCE ON CIVIL RIGHTS

Mr. MITCHELL. Thank you, Mr. Chairman.

Like you and the other members of the committee, I am anxious to hear the testimony of the Civil Rights Commission, so I will be

brief. In the interest of brevity, I would ask that my statement be filed in the record without reading it.

Mr. EDWARDS. Without objection, so ordered.

Mr. MITCHELL. I would just like to give a little note for history of the atmosphere in which these hearings are taking place. Not so long ago a Federal judge raised a question in a case I was handling. The question was whether, when the Congress passed the Reconstruction legislation giving blacks the right to present testimony in court, did Congress also mean to give them the right to testify before administrative hearings.

This required a considerable amount of research. I think I was able to show that the Congress did intend that blacks would have the right to testify all across the board. But what struck me as I was engaged in the research is what is left out of the picture of those times when one reads the record.

I think that there will come a day in the history of this country when, either for purposes of legal research or simple historic interest, people will be looking at events of this kind to find out just what the times were like. So I say, first, in an effort to give some picture that will last through the years, that the country owes a great debt to you, Mr. Chairman. In all the years that I have known you, all the years that you have served in the Congress of the United States, you have displayed a remarkable personal concern about these things, which is all the more wonderful when one looks at the background out of which you have come. You have come out of a background where you could have very easily devoted your attention to things other than civil rights, and you could have made a great success—as, indeed, you have. But you have been a faithful supporter of these causes, and the country, as I say, owes you a great debt for that.

I would like to call attention also to the fact that, as evidence of the evolution and constructive way in which we are moving in this country, there is sitting with you a distinguished black woman who is your counsel. When I first came to Washington 30 years ago, that was unthinkable. Yet we have gotten to the place in this country where, in some instances, ability and talent are recognized. You have been one of those who have helped bring that about.

Your colleague, Father Drinan, when we were first trying to get civil rights legislation approved, was dean of a law school. We always looked forward to the clear, scholarly presentation that he would make, coming down here at his own expense and in the interest of the cause, always coming up with the right answer.

I would like to say to, Mr. Volkmer, too, that the State of Missouri has played an important part in the evolution that I am talking about. There was a distinguished Senator from that State with whom I became acquainted who later became President of the United States. It was President Harry Truman who brought together outstanding citizens, and formed a committee which was headed by Charles Wilson, then head of General Electric. That committee published a report called "To Preserve These Rights." President Truman staked his political future on that report, and it was vindicated by his election. One of the primary recommendations of that committee was the establishment of the Civil Rights Commission.

Then, in 1956, when we were trying to get civil rights legislation through for the first time, it was one of the things on which there was the least controversy. In 1957, when we actually got a civil rights law passed, the pilot in the Senate Subcommittee on Constitutional Rights was another Missourian who was my good friend, Hon. Thomas C. Hennings, who worked assiduously to see that this legislation was passed.

I have said these things primarily to give some picture to posterity. In addition, I want to call attention to the kind of people who are before you as part of the Civil Rights Commission itself.

My first acquaintance with Dr. Arthur Flemming came when he was a talented and highly-in-demand Government official as we were gearing up for war. There is hardly a part of this country's recent history where his name does not appear as giving his personal time and talents to the national interest. I think it is a very fortunate thing that he is the chairman of the Civil Rights Commission.

With him is Ms. Frankie Freeman, a distinguished lawyer, who, as has been pointed out the other day, is the oldest member of the Commission in point of time—not in chronological age—because she has been there longer than any other. But she, a busy lawyer, has given of her time through the years to try to make this operation work.

A more recent addition is Rabbi Saltzman, Murray Saltzman. I had the good fortune to be in his synagogue—I was in the city of Indianapolis—and also to join with him in visiting many of the important people of the community: the banking interests, labor interests, the newspapers, you name it; they were there at his invitation. It was very interesting to see how his personal input to the city of Indianapolis was helping to make that a better community.

I am happy that they are accompanied by the distinguished acting staff director, Mr. Nunez. He is an individual who has given long and very useful service.

I think that perhaps the most useful thing I could do before I conclude is to make a couple of observations about some of the things that have arisen in the course of the questioning.

First, with respect to the matter of state advisory committees, I think back to the time when it was very, very difficult to get anybody to serve on the state advisory committees. Therefore, it is heartening to know that people are now interested in maintaining these committees. I share the view of those who feel that it would be useful to retain them, though not exactly for the reasons given by some others.

I don't perceive that there are vast differences in the problems, let us say, between the State of Georgia and the State of Massachusetts. One has only to look at the problems that we have had in the desegregation of Boston schools to realize that there are the same unfortunate racial inclinations in the North, South, East, and West.

One has only to look at the problems of, let us say, the Indians in Minnesota, or the Mexican-Americans in New Mexico and other Western States, to know that the problem of discrimination has an unfortunate way of affecting people without regard to race or religion or national origin. But the hallmarks and the issues of dis-

crimination are the same, no matter where you go and no matter who they affect.

We are happy in the Leadership Conference that we have gotten to the place in the organization where we are concerned about the problems of women, where we are concerned about the problems of the handicapped, about Asian-Americans, people of Spanish ancestry, all of those who are the disadvantaged of America. Another good thing is that we understand that the same reasons for not hiring women, not hiring the handicapped, not hiring the people of Spanish ancestry or Asian ancestry are given each time you get into a colloquy with employers or others who say you can't hire these people for this or that reason. We are expert in answering those, because we have discovered that we heard them all before as they were applied to blacks.

I think it would be unfortunate if all these good citizens who want to serve are not permitted to serve because of a move from State to regional committees.

I don't think it is an insurmountable roadblock. I have had the good fortune to work with the people in the Office of Management and Budget on the civil rights reorganizations. I have found them to be people who don't possess all the information that some of us who have been around here a longer time have, but they are for the most part reasonable and constructive people.

It is my opinion that if it is the clear intention of this congressional committee to authorize the re-creation of the State committees, that the Office of Management and Budget will come into agreement. Certainly, I pledge I will do all I can to help bring them into an understanding.

Now, I also wanted to say that with respect to the question of differences, at one point in the history of this civil rights fight, the opposition argued that you couldn't have a national civil rights law because the problems were so different and, for that reason, you shouldn't try to impose, as they put it, the will of Washington on every nook and cranny of the Nation. But I have found that the people of this country are remarkably resilient in adjusting to the needs of the times. It is my opinion that they will adjust, whether we do it by States or by regions. The great asset of the States, as I said, is that you bring in more men and women of goodwill.

I think that is about all I would like to say, with this one exception, and that is the question of duplication. I think that it is important to remember how duplication came about.

It came about because in the evolution of these statutes we were doing it a step at a time. We had the 1957 Civil Rights Act; we had the 1960 Civil Rights Act; we had the 1964, 1965, and the amendments that have been necessary to renew some of these statutes at 5-year intervals. All of these things made it possible for a kind of mosaic of enforcement to develop in this country.

I use the word "mosaic" because I don't think in any way that it is undesirable to have as many of these agencies as we have. I do think that where we can, without losing any of their responsibilities, consolidate and move forward, that is a good idea. That is why we support the President's proposed reorganization which he sent over to Congress.

I close with a word of hope: that, far more than many of us realize, the Nation is conscious of its responsibilities to the disadvantaged. We need only have rallying points to which those who believe in constructive things can come. The Civil Rights Commission is one of those rallying points. It is my hope that, because it is, it will be continued until we no longer have any problems of discrimination in this Nation.

I thank you.

Mr. EDWARDS. Thank you very much, Mr. Mitchell, and thanks to the Leadership Conference on Civil Rights for sending you to endorse the bill and the provisions therein which would extend the life of the Commission for another 5 years. It is very important for us to have the recommendation of the Leadership Conference, and it is always a pleasure to have you.

Mr. MITCHELL. Thank you.

Mr. EDWARDS. Mr. Volkmer.

Mr. VOLKMER. Mr. Mitchell, do you believe the Commission should have an open-ended authorization?

Mr. MITCHELL. Yes. I think it would be very wise not to have a limitation, as we pointed out in our testimony.

I believe Senator Sam Ervin of North Carolina first initiated the idea of putting a ceiling. Thereafter, the Commission got new responsibilities, and it was necessary to have a supplementary appropriation in order to make it possible for them to perform these duties.

In addition, I think it is kind of a punitive and a shameful thing to do to a noble agency like this, to say that you have got to live within a restrictive appropriations. So I earnestly hope that it will be open-ended.

Mr. VOLKMER. Thank you.

Mr. EDWARDS. Thank you very much, Clarence.

Our last witness is Dr. Arthur S. Flemming, Chairman of the U.S. Commission on Civil Rights.

It was the pleasure of my hometown, San Jose, to have Dr. Flemming as a speaker at a luncheon last Friday before the Santa Clara Council of Christians and Jews. Dr. Flemming gave a most remarkably interesting and inspiring speech to this local group. In addition, he directed some very kind remarks to the chairman and, indeed, to the entire subcommittee, and we appreciate that very much.

Dr. Flemming, we welcome you. Will you introduce your colleagues?

Without objection, your full statement will be made part of the record.

[The prepared statement of Arthur S. Flemming follows:]

OUTLINE OF STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN
U.S. COMMISSION ON CIVIL RIGHTS

I. INTRODUCTION

A. I am pleased to appear here today on behalf of the Commission to testify on H.R. 10831, proposed legislation which would extend the life of the Commission for 5 additional years, authorize appropriations for the Commission, require state advisory committees to the Commission, effect certain technical amend-

ments to comply with other changes in the law and expand the Commission's jurisdiction to include age and handicap.

B. In 1946, President Harry S. Truman appointed a distinguished, bipartisan committee to determine necessary measures for effective protection of the civil rights of the people of the United States.

1. The result of the committee's study was the 1947 report, "To Secure These Rights," which included in its recommendations the establishment of a permanent Commission on Civil Rights.

2. The Truman Committee articulated the need for such a Commission by stating:

In a democratic society, the systematic, critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring, and range widely. From our own effort, we have learned that a temporary, sporadic approach can never finally solve these problems.

Nowhere in the federal government is there an agency charged with the continuous appraisal of the status of civil rights, and efficiency of the machinery with which we hope to improve that status. There are huge gaps in the available information about the field. A permanent Commission could perform an invaluable function by collecting data. It could also carry on technical research to improve the factgathering methods now in use. Ultimately, this would make possible a periodic audit of the extent to which our civil rights are secure. If it did this and served as a clearinghouse and focus of coordination for the many private, state, and local agencies working in the civil rights field, it would be invaluable to them and to the federal government.

3. Both Presidents Truman and Eisenhower recommended to the Congress the establishment of such a Commission.

C. Title I of the Civil Rights Act of 1957, the first civil rights law enacted in the twentieth century, established the U.S. Commission on Civil Rights as an independent, bipartisan, factfinding agency for a two-year term.

1. The Commission was empowered to investigate allegations that U.S. citizens were being denied the right to vote because of their color, race, religion or national origin; to study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution.

2. The Commission was authorized to subpoena witnesses and to place them under oath in connection with any public hearings it might decide to hold.

D. Both the life and mandate of the Civil Rights Commission have been extended by amendments to the 1957 Civil Rights Act.

1. In 1964, the Commission was authorized to serve as a national clearinghouse for civil rights information. At the same time, the Commission's mandate was extended to include denials of the equal protection of the laws in the administration of justice.

2. In 1972, on the occasion of the sixth and most recent extension of its life, the Commission's substantive jurisdiction was expanded to include sex discrimination.

3. Congress in 1975 mandated that the Commission carry out a special 1½ year study of age discrimination in the delivery of services supported by federal funds, an area outside the Commission's current legal jurisdiction.

a. The purpose of this special assignment was to identify examples of age discrimination and to provide a foundation for the development of regulations to implement the Age Discrimination Act of 1975—a statutory prohibition against such discrimination in the delivery of services or benefits under programs receiving federal funds.

b. On January 10th of this year the Commission submitted its report to the President and the Congress.

E. During the last 20 years the Commission has endeavored to exercise leadership in the area of civil rights (1) by conducting indepth studies of civil rights issues, evaluating the evidence obtained through field studies and public hearings, and then transmitting findings and recommendations to the Congress and the President; and (2) by monitoring the work of Federal departments and agencies that are responsible for the implementation of civil rights laws; evaluating the evidence obtained as a result of these monitoring activities and then transmitting findings and recommendations to the President and to the Congress.

1. The Commission at all times has endeavored to stay on the "cutting edge" of the issues it has confronted, to identify and commend those who have been responsible for dealing with these issues in a manner consistent with the Constitution of the United States, and, at the same time to identify and take issue with those who have either erected or refused to remove roadblocks that deny the equal protection of the laws to our citizens.

2. Leaders of the civil rights movement have succeeded in this twenty year period in bringing about the enactment of sound legislation.

3. The courts of the nation have rendered decisions which have provided a foundation for action programs.

4. As a nation, we are now engaged in efforts designed to implement these laws and these decisions.

a. These efforts lead to vigorous opposition on the part of those who want to preserve the status quo and in so doing undermine the Constitution.

b. At no time in our history has it been more important to expose this opposition and to help and assist those who are willing to provide the leadership that is so essential if the rhetoric of the Constitution is going to lead to action—action that will open up opportunities for today's citizens in such areas as housing, employment, education, and that will protect the civil rights of all citizens in the administration of justice.

F. In the last five years, the Commission has released to the public over 190 reports covering a wide range of civil rights subjects.

1. These reports have been based upon information and data gathered by the Commission's professional staff, through Commission hearings and consultations, and through the work of State Advisory Committees to the Commission.

2. The Commission's reports constitute a comprehensive source of information on the nation's civil rights problems and progress, or lack of progress, in dealing with these problems.

3. Many of the Commission's reports can be grouped under the headings of housing, employment and equal opportunity, education, administration of justice, women's rights and civil rights enforcement.

II. BODY

A. Housing

1. This is an area where the nation has refused to confront in a vigorous and effective manner the denial to minorities of equal access to decent housing.

2. An overview of developments or lack of developments in this area was provided in one of the reports the Commission issued in connection with the observance of "Twenty Years After Brown" entitled "Equal Opportunity in Housing."

3. The fact that much remains to be done in this area is underlined by the following excerpts from our State of Civil Rights Report for 1977:

"Twenty-nine years ago Congress pledged a home and a suitable living environment as basic rights of every American family. In 1969 Congress declared that, as a matter of national policy, housing discrimination must end. In 1977 these two promises remained unfulfilled for millions of minority and female-headed households . . . Federally-subsidized housing programs and fair housing enforcement activity in 1977 both fall far short of meeting the national need."

B. Employment and equal opportunity

1. This is an area where statistics on both employment and unemployment and on economic status of both minorities and women make it clear that although we have learned how to put affirmative action plans on paper we have a long way to go in order to reach equal opportunity goals consistent with the Constitution and the laws enacted by the Congress.

2. Reports issued by the Commission dealing both with the over-all picture and with specific areas such as the enforcement of equal employment opportunity laws, the practices of labor unions, minorities and women as government contractors, and women and minorities in television, all have served to underline the seriousness of the problems that confront us in this area.

3. In its State of Civil Rights Report for 1977 the Commission said:

"Developments affecting the employment position of minorities and women in 1977 were generally discouraging. Although overall joblessness declined and employment increased during the year, the disparities between whites and minority groups persisted as minorities shared only marginally in the improve-

ments. Black unemployment was the highest since World War II. The persistent income gap between white men as compared to minorities and women is also a disturbing fact * * *."

4. The Commission has continued to identify affirmative action plans as a "must" if equal opportunity goals are to be achieved—most recently in a special report issued in October, 1977.

5. The Commission has endorsed enthusiastically the President's Reorganization Plan No. 1 of 1978 which makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. This plan conforms in principle to one of the Commission's major recommendations in the area of fair employment enforcement.

C. Education

1. This is an area where the nation has made a significant start but has a long distance to travel before children and young people will have the equal access to educational opportunities that can only come as a result of the desegregation of our schools and the implementation of policies that lead to successful integration of our educational programs.

2. Many of the Commission's reports in education contributed to and were climaxed by the report released in August, 1976 entitled "Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools."

a. In this report we concluded that in most communities desegregation has gone peacefully and smoothly—for every community that has produced sensational headlines there are dozens of other communities which have received no headlines and attracted no television coverage, where desegregation is proceeding without major incident.

b. We also concluded that the only way in which to bring the nation together on this issue is through a prompt, vigorous implementation of the constitutional right to equal educational opportunity and that where this has been and is being done, citizens discover that desegregation works.

3. In our State of Civil Rights Report for 1977 we said:

"* * * in 1977 the national movement toward greater equality of educational opportunity proceeded in an encouraging manner . . . desegregation measures in numerous communities throughout the country continue to lessen racial isolation in elementary and secondary schools * * * congressional activity has threatened to slow down the efforts to ensure equal educational opportunity * * * actions of the executive branch held the promise of increasing equal opportunity in education."

D. Women's rights

1. This is an area where intensive work is called for if significant advances are not to be turned into retreats, and if further advances are to take place in an expeditious manner.

2. The Commission continues to follow-up on the issues that it identified in its report dealing with the constitutional aspects of the right to reproductive choice.

3. In our State of Civil Rights Report for 1977 we said:

"During 1977 two of the most critical women's rights issues—the proposed Equal Rights Amendment to the Constitution and the rights to reproductive choice—were subjected to serious attack. Little progress was made toward ratification of ERA, first introduced more than 54 years ago, and ground was lost in assuring the right of reproductive choice, particularly to poor women."

E. Administration of justice

1. This is an area where familiarity with the operation of certain police departments or correctional institutions makes clear that there are those in positions of responsibility who still believe that the enforcement of civil rights should be subordinated to what they believe are over-riding considerations.

2. Reports prepared in many instances by some of the Commission's State Advisory Committees underline the importance of this aspect of the Commission's jurisdiction in relation to both minority groups and women. Specific Commission studies relative to the treatment accorded Native Americans point up the seriousness of the problems with which they are confronted.

3. In the State of Civil Rights Report for 1977 we said:

"Aspects of the administration of justice in the United States were the focus of public concern and important developments in 1977. One major area of con-

troversy concerned allegations of serious police abuse of citizens and of tense, troubled relations between police and minority communities. Questions involving the treatment of American Indians in the adminstration of justice and far reaching proposals regarding regulation of undocumented aliens were also prominent."

F. Civil rights enforcement

1. Eternal vigilance is required if legislative and judicial victories which have been won in such areas as voting rights, housing, employment and education are not to be undermined.

2. A report entitled "The Federal Civil Rights Enforcement Effort" was first published in 1970 and a "Reassessment" in 1971. In 1974 the Commission began publishing a seven volume series with the final volume in the series appearing in 1977.

3. In releasing the State of Civil Rights Report for 1977 the Commission stated that throughout the report it had devoted a great deal of attention to the implementation of civil rights laws and then said:

"The nation's expectations have been raised. The President's goals are clear * * *. There has been progress * * *. There are unanswered questions."

As noted earlier in this report one of the unanswered questions has been answered in the form of Reorganization Plan No. 1 for 1978.

I am attaching to this statement a brief identification of some of our more important reports during the last five years under each one of the headings I have just discussed.

G. The U.S. Commission on Civil Rights is the only agency in the Federal government which is exclusively concerned with the full range of matters relating to civil rights.

1. The Commission, however, identifies existing studies and current research efforts by other departments or agencies before undertaking a project of its own.

2. It is only when the Commission finds that existing studies or current research projects do not adequately address a specific civil rights problem that we undertake a study of our own.

H. The reports of the Civil Rights Commission have been utilized by the nation's lawmakers in designing legal safeguards for the civil rights of the American people.

1. The Civil Rights Acts of 1960, 1964, and 1968, and the Voting Rights Act of 1965 embody some of the Commission's recommendations for legislative action.

2. More recent statutes such as the 1975 Amendments to the Voting Rights Act, the Equal Credit Opportunity Act, the Civil Rights Attorneys' Fees Act, the nondiscrimination provisions of the State and Local Fiscal Assistance Act, and the Mortgage Loan Disclosure Act represent the legislative fulfillment of some of the Commission's concerns.

I. The reports of the Civil Rights Commission have had an impact on the administrative processes of the Federal Government.

1. As stated earlier in this testimony, during the last three years the Commission has released a seven-volume series of enforcement effort reviews of regulatory agencies, housing, education, revenue sharing, employment, federally assisted programs, and the Executive Office.

2. The value of an independent evaluation of Federal civil rights enforcement is illustrated by the report "To Eliminate Employment Discrimination."

a. This report not only identified specific deficiencies in the performance of individual agencies, but also analyzed deficiencies in the overall system of equal employment opportunity enforcement.

b. Eleanor Holmes Norton, the chairperson of the Equal Employment Opportunity Commission, has testified before this Commission relative to the constructive role this report played in connection with changes in organizational structure and procedures that have been put into effect in connection with the work of the Equal Employment Opportunity Commission.

c. This report, together with an update of the report made at the request of the Office of Management and Budget, has played a significant role in the development of Reorganization Plan No. 1 of 1978—especially that part of the Plan which makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement.

J. The reports of the Civil Rights Commission have had an impact on the operation of both public and private institutions in the communities of the nation.

1. This impact is traceable to the Commission's work in the areas of housing and employment and especially in the area of desegregation of the public schools.

2. In the area of desegregation the impact has been felt in the ten communities that were studied in 1973, in the 29 communities where case studies were conducted by the Commission's State Advisory Committees and Regional Office staffs in 1976, and through public hearings held in Boston, Louisville, Denver, Tampa, and Los Angeles.

3. These activities, plus the survey in which over 600 school superintendents participated, has enabled the Commission to make available to these communities and to other communities throughout the nation reliable evidence which has been used to deal with some of the myths that have surrounded the school desegregation controversy, and to identify the factors that contribute to both weakening and strengthening the school desegregation process.

K. Enlargement of Commission's jurisdiction

1. H.R. 10831 would extend the Commission's jurisdiction to include discrimination on the basis of age and handicap.

2. The Commission's consistent position relative to the enlargement of its jurisdiction has been that it would welcome such action on the part of the Congress provided that resources are made available enabling it to undertake its new duties and responsibilities without detracting in any manner from its current duties and responsibilities.

III. CONCLUSION

A. Minorities and women continue to experience discrimination in virtually all facets of American life. Minorities and women are still excluded from many of our nation's jobs, educational opportunities, and housing markets. Moreover, they are disproportionately subject to legal injustice, and are denied their rightful share of the benefits provided by all levels of government.

B. This Commission is prepared to stay on the "cutting edge" of these issues and to continue to make findings and recommendations based on a careful evaluation of relevant evidence. It is also prepared to continue to perform an oversight function relating to the Federal Departments and Agencies that have been given the responsibility for the enforcement of civil rights laws. Furthermore, it is prepared to follow-up on its reports and call attention to both lack of progress and progress in the implementation of its recommendations.

C. There has been progress but much remains to be done.

1. What remains to be done can only be done by disturbing the status quo—something which cannot happen without arousing those who have a stake in maintaining it.

2. The efforts to maintain the status quo must be offset by those who believe that the highest priority must be given to the implementation of the constitutional and moral imperatives that are an integral part of the civil rights movement.

D. I and my colleagues will be happy to respond to questions, including any related to new language that has been included in H.R. 10831.

ATTACHMENT

(Brief summaries of 38 of approximately 190 publications released by the Commission during the past 5 years)

A number of categories of reports are not included in these summaries. Pursuant to its clearinghouse responsibility, the U.S. Commission on Civil Rights provides copies of its publications free of charge to the public upon request.

HOUSING

(A brief summary of 5 out of 10 reports)

Understanding Fair Housing (1973)—A concise publication designed to inform citizens of the history of housing segregation in the United States, the legal basis for equal opportunity in housing, and common misconceptions about fair housing.

Equal Opportunity in Suburbia (1974)—Was the product of an extensive study of racial isolation in the Nation's metropolitan areas—a study of why this pattern of isolation has occured, how it is cripping the growth and prosperity of our cities, and how it can be arrested and reversed.

Mortgage Money: Who Gets It? (1974)—Reported the results of a Commission investigation of mortgage lending policies and practices in Hartford, Connecticut, a demonstrably typical American city.

*The Federal Civil Rights Enforcement Effort—1974: Volume II, To Provide * * * For Fair Housing* (1974)—Evaluated the civil rights activities of the Federal agencies with fair housing responsibilities and set out detailed recommendations for more effective enforcement of the Nation's fair housing laws.

Twenty Years After Brown: Equal Opportunity in Housing (1975)—Presented an overview of developments in housing opportunities for minorities and women with emphasis on events of the last two decades.

Employment and Economic Opportunity

(A brief summary of 6 out of 38 reports)

Twenty Years After Brown: Equality of Economic Opportunity (1975) was one in the series of Commission reports commemorating the 20th anniversary of the landmark Supreme Court decision *Brown* v. *Board of Education.* The report sketches the nature and extent of changes in the economic status of minorities and women since 1954 and the development of laws prohibiting employment discrimination.

The Challenge Ahead: Equal Opportunity in Referral Unions (1976) is based on a Commission study regarding the influence of referral unions on equal employment opportunity. The Commission found that referral unions, which constitute a major segment of organized labor in the United States, continue to engage in discriminatory practices which adversely affect the employment opportunities of minorities and women.

Minorities and Women as Government Contractors (1975) assessed the operations and evaluated the effects of the Federal section 8(a), Buy Indian, and minority subcontracting programs. The report also treated State and local programs designed to increase contracting opportunities for minority- and female-owned business.

Window Dressing on the Set: Women and Minorities in Television, published this year, analyzed the portrayal of women and minorities on television and their employment in the television industry. The Commission found that women and minorities are victimized by common forms of discrimination; that they are underrepresented on the work forces of Federally-licensed local stations and are almost totally excluded from decision-making positions in the industry.

Last Hired, First Fired: Layoffs and Civil Rights (1977). This report resulted from a Commission study of the effects of the 1974–75 economic recession on the effort to ensure equal employment opportunities for the Nation's minority groups and women. The report reviewed the legality of layoffs by seniority when disproportionate numbers of minorities and women are affected, and explored alternatives to layoffs already practiced in Western Europe and by certain industries in this country.

Statement on Affirmative Action (1977) is a position paper for public discussion and consideration on affirmative action. It included an examination of the specific decisions made by agencies charged with implementing and interpreting Title VII, the reasons for the decisions, and what the decisions have meant in practical terms to the people affected by them.

Education

(A brief summary of 9 out of 62 reports)

Toward Quality Education for Mexican Americans, published in 1974, was the sixth and final volume in the Commission's research series on the education of Mexican American students. The series of reports represents comprehensive assessment of the nature and extent of educational opportunities available to the approximately 1½ million Mexican American children attending public schools in the Southwestern United States. The Commission found that in virtually all aspects of the educational process, including student assignment, curriculum, counseling, and teacher education and assignment, Mexican American students were the victims of discrimination and/or neglect.

Twenty Years After Brown: Equality of Educational Opportunity (1975) was the second in a series of reports commemorating the twentieth anniversary of

the decision of the United States Supreme Court in *Brown v. Board of Education*. The report reviewed two decades of desegregation law, examined the evolution of educational opportunities available to the nation's minority students, and made broad policy recommendations for achieving equal educational opportunity.

A Better Chance to Learn: Bilingual-Bicultural Education was prepared following the 1974 decision of the United States Supreme Court in *Lau v. Nichols* that school officials are obligated by Title VI of the Civil Rights Act of 1964 to provide children who speak little or no English with special language programs which will give them an equal opportunity to an education. This publication assessed the educational principles underlying bilingual-bicultural education, described selected programs, and provided procedures for evaluating bilingual-bicultural programs.

The Federal Civil Rights Enforcement Effort—1974: Volume III, To Ensure Equal Educational Opportunity assessed in detail the degree to which the Department of Health, Education, and Welfare, the Internal Revenue Service, and the Veterans Administration are carrying out their constitutional and statutory responsibilities to ensure equality of educational opportunity.

School Desegregation in Ten Communities (1973), reviewed the desegregation experiences of a sample of school districts that varied widely in size and geographic location.

A Long Day's Journey Into Light: School Desegregation in Prince George's County, a history of the 20-year effort to desegregate the public schools of Prince George's County, Maryland, was published in 1976. This report, based upon several years of research and interviews, recounted the administrative, legal and social forces that determined the county's pace and progress of school desegregation.

Desegregating the Boston Public Schools: A Crisis in Civic Responsibility (1975) was prepared following a full-scale staff investigation and week-long public hearing in Boston. The report presents the Commission's detailed findings of fact and policy recommendations regarding the court-ordered desegregation of the city's schools.

Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools (1976) presents the results of the Commission's year-long national study of school desegregation. By identifying both the causes of problems and the ingredients of success in individual school districts throughout the country, the report clarifies many of the issues surrounding school desegregation and provides practical information which can assist those who are responsible for our children's education.

A Generation Deprived—Los Angeles School Desegregation (1977) was a study of the development of equal educational opportunities in the Los Angeles Unified School District. This report, latest in a series of studies, included Commission findings and recommendations regarding Los Angeles' school desegregation efforts.

Civil Rights Enforcement

(A brief summary of 16 out of 28 reports)

The Federal Civil Rights Enforcement Effort—1947—The Federal Civil Rights Enforcement Effort was first published in 1970. In 1973 *A Reassessment* was published, which summarized the civil rights steps taken by the Government since the original report. Shortly thereafter, the Commission determined that more in-depth assessments were needed in several areas of civil rights. Thus, in 1974 it began publishing its seven volume series with the final volume appearing in 1977.

Volume I: To Regulate in the Public Interest (1974) the Commission reviewed regulatory agencies including the Federal Communications Commission, Interstate Commerce Commission, Civil Aeronautics Board, Federal Power Commission, and the Securities and Exchange Commission. This report measures how well these agencies have performed their civil rights enforcement job.

*Volume II: To Provide * * * For Fair Housing* (1974) evaluated the civil rights activities of the Federal agencies with fair housing responsibilities (HUD, VA, GSA, and the Federal financial regulatory agencies) and set out detailed recommendations for more effective enforcement of the Nation's fair housing laws.

Volume III: To Ensure Equal Educational Opportunity (1974) assessed in detail the degree to which the Department of Health, Education, and Welfare, the Internal Revenue Service, and the Veterans Administration are carrying out their constitutional and statutory responsibilities to ensure equality of educational opportunity.

Volume IV: To Provide Fiscal Assistance (1975) this report focused on the Treasury Department, Office of Revenue Sharing and its role in enforcing the nondiscrimination provisions of the State and Local Fiscal Assistance Act.

Volume V: To Eliminate Employment Discrimination (1975) this report evaluated the civil rights activities of most Federal agencies with major responsibilities for ensuring equal employment opportunity: the Civil Service Commission, the Department of Labor, the Equal Employment Opportunity Commission, and the Equal Employment Opportunity Coordinating Council.

Volume VI: To Extend Federal Assistance (1975) this report evaluated the civil rights activities of several Federal agencies with responsibilities for ensuring nondiscrimination in their federally assisted programs under Title VI of the Civil Rights Act of 1964.

Volume VII: To Preserve, Protect and Defend the Constitution (1977) assessed the effectiveness of civil rights efforts by the White House (primarily November 1971–August, 1974), Office of Management and Budget, Federal Regional Councils and Federal Executive Boards. This concluding volume ties together the need for an effective process by which civil rights policy is coordinated and executed within the executive branch.

To Know or Not to Know (1973) this report reviews the collection and use of racial and ethnic data in Federal Assistance programs. Concerns for the inability to measure the extent to which minorities receive the benefits of Federal domestic programs led to this analysis of six agencies and their practices. The Commission recommended that a system be developed to assess the adequacy of Federal efforts in providing assistance to minorities by comparing the racial and ethnic origin of beneficiaries with those intended by law to receive such benefits.

Counting the Forgotten (1974) this report evaluates the adequacy of the efforts of the Bureau of the Census to enumerate the Spanish speaking background population in the 1970 census. The Commission concluded the procedures used by the Census Bureau were insensitive to the Spanish population and that a serious undercount probably resulted. It has over the past three years worked with other agencies and Congress to stimulate improved methodology in an effort to avoid a repeat in the 1980 census.

The Voting Rights Act: Ten Years After (1975) The Commission assessed ten years of progress and problems under the Voting Rights Act of 1965. Events that occurred since 1971 are emphasized in this analysis of 10 states covered by the Act. Remaining problems and barriers to political participation of minorities were identified and ultimately served as the basis for the extension of the Voting Rights Act in 1975.

Using the Voting Rights Act (1976) This Commission publication describes and explains the special provisions of the Voting Rights Act of 1965, as amended by Congress in 1970 and 1975.

A Guide to Federal Laws Prohibiting Sex Discrimination (1976) This publication was first introduced in 1974. In a very useful format it reviews the provisions of Federal laws and regulations which prohibit sex discrimination. The report explains the law, coverage under it, basic requirements and how and where a complaint may be lodged. The final chapter discusses some federal advisory and information programs.

The Other Side of the Tracks: A Handbook on Nondiscrimination in Municipal Services (1974) This booklet tells community residents and community leaders what kind of discrimination is unlawful when municipal services are provided. It was based upon the 1971 Fifth Circuit Court of Appeals decision in *Hawkins* v. *Town of Shaw*.

Toward a More Cooperative and Productive Relationship Among Civil Rights Agencies and Officials (1974) This report is one of a series which highlights regional conferences on civil rights held during 1974–76. The session reported here took place in early February, 1974 in St. Louis, Missouri.

Sex Bias in the U.S. Code (1977) was an assessment of the status of women under Federal law which identified sex-based references and sex bias in the U.S. Code. This report also discussed possible solutions and advocated action on the part of Congress and the President in ending the bias which remained in the law.

TESTIMONY OF ARTHUR S. FLEMMING, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

Dr. FLEMMING. Thank you very much, Mr. Chairman and members of the subcommittee.

As I indicated, I am accompanied today by my colleague Commissioner Freeman and also my colleague Commissioner Saltzman. In addition to that, Mr. Nunez, who is the acting staff director, is with us; and Lucy Edwards, who handles so effectively our interrelationships on the Hill, is likewise with us.

I would like at this time to take note of the fact that a person that became very well known to the members of this committee, Mr. John Buggs, our staff director, found it necessary to resign his position as staff director, effective February 1, because of illness. It has been my privilege to work with John Buggs over a period of a number of years, and as a result of that privilege I came to have the highest regard and respect for him as a leader in the civil rights movement and also as the administrator of our staff.

As you and the members of the subcommittee know, we are all part-time Commissioners. This means we are very dependent on the staff director for the conduct of the day-by-day activities of the Commission. We are deeply indebted to John Buggs for the way in which he conducted the day-to-day activities of the Commission. We are deeply indebted to him for the manner in which he maintained very effective relationships with the Members of the Congress. We are very indebted to him for the courageous way in which he dealt with civil rights issues before one organization after another throughout the Nation.

Mr. EDWARDS. I might point out that I know I speak for all the members of the subcommittee—indeed, the entire House Judiciary Committee and all the members of the staff. We deeply regret John Buggs' illness and the fact that he is not sitting there with you. It just doesn't seem right not to have him here, and we do appreciate your words.

Dr. FLEMMING. Thank you very much.

Mr. Chairman, may I say that, in response to your comments, I was very, very happy to have the opportunity of talking to what seemed to me to be a very representative audience in San Jose. At that time I was very happy to be able to make comments similar to Clarence Mitchell's relative to the contributions that you and the members of this subcommittee have made to the civil rights movement.

If I had been listening to Clarence Mitchell first, as a good Methodist, I would simply have gotten up and said "Amen." But in view of the fact that I had the opportunity of making similar comments earlier, I want to express myself in this way.

I am very pleased to have the opportunity of appearing here today on behalf of the Commission to testify on H.R. 10831, the proposed legislation which would extend the life of the Commission for 5 additional years, authorize appropriations for the Commission, require State advisory committees to the Commission, effect certain technical amendments to apply with other changes in the law, and

expand the Commission's jurisdiction to include age and handicapped.

I was very interested in listening to Clarence Mitchell's reference to the committee that was appointed by President Truman in 1946 to inquire into some of the issues that confronted the Nation at that time in the field of civil rights. It so happens that a few years later I had the opportunity of being associated with Charles Wilson, the man who served as chairman of that particular commission, when he served as director of the Office of Defense Mobilization.

The committee that President Truman appointed was a very distinguished bipartisan committee. The results of the committee's study were reflected, as Clarence Mitchell has indicated, in the 1947 report, "To Secure These Rights," which included in its recommendations the establishment of a permanent commission on civil rights.

I think that, Mr. Chairman and members of the committee, the way in which that committee articulated the need for such a commission is very significant, particularly in the light of what has happened over the period of the last 30 years. The commission said:

> In a democratic society, the systematic, critical review of social needs and public policy is a fundamental necessity. This is especially true of a field like civil rights, where the problems are enduring and range widely. From our own effort, we have learned that a temporary, sporadic approach can never finally solve these problems.
>
> Nowhere in the federal government is there an agency charged with the continuous appraisal of civil rights and efficiency of the machinery with which we hope to improve that status. There are huge gaps in the available information about the field. A permanent commission could perform an invaluable function by collecting data. It could also carry on technical research to improve the fact-gathering methods now in use. Ultimately, this would make possible a periodic audit of the extent to which our civil rights are secure. If it did this and served as a clearinghouse and focus of coordination for the many private, state, and local agencies working in the civil rights field, it would be invaluable to them and to the Federal Government.

We know both presidents Truman and Eisenhower recommended to the Congress the establishment of such a commission.

In title I of the Civil Rights Act of 1957, the first civil rights law enacted in the 20th century, it established the United States Commission on Civil Rights as an independent, bipartisan, factfinding agency for a 2-year term. The Commission was empowered to investigate allegations that U.S. citizens were being denied the right to vote because of their color, race, religion, or national origin; to study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution; and to appraise the laws and policies of the Federal Government with respect to equal protection of the laws under the Constitution. The Commission was authorized to subpena witnesses and to place them under oath in connection with any public hearings it might decide to hold.

Both the life and mandate of the Civil Rights Commission have been extended by amendments to the 1957 Civil Rights Act. In 1964, the Commission was authorized to serve as a national clearinghouse for civil rights information. At the same time, the Commission's mandate was extended to include denials of the equal protection of the laws in the administration of justice.

In 1972, on the occasion of the sixth and most recent extension of its life, the Commission's substantive jurisdiction was expanded to include sex discrimination.

Congress in 1975 mandated that the Commission carry out a special 1½-year study of age discrimination in the delivery of services supported by Federal funds, an area outside the Commission's current legal jurisdiction. We have completed that particular mandate, and on January 10 of this year we submitted our reports to the President and to the Congress.

During the last 20 years, the Commission has endeavored to exercise leadership in the area of civil rights, first by conducting in-depth studies of civil rights issues, evaluating the evidence obtained through field studies and public hearings, and then transmitting findings and recommendations to the Congress and the President; and second, by monitoring the work of Federal departments and agencies that are responsible for the implementation of civil rights laws, evaluating the evidence obtained as a result of these monitoring activities, and then transmitting the findings and recommendations to the President and to the Congress.

The Commission at all times has endeavored to stay on the "cutting edge" of the issues it has confronted, to identify and commend those who have been responsible for dealing with these issues in a manner consistent with the Constitution of the United States, and, at the same time, to identify and take issue with those who have either erected or refused to remove roadblocks that deny the equal protection of the laws to our citizens.

The leaders of the civil rights movement have succeeded in this 20-year period in bringing about the enactment of sound legislation.

The courts of the Nation have rendered decisions which have provided a foundation for action programs.

As a nation, we are now engaged in efforts designed to implement these laws and these decisions. These efforts lead to vigorous opposition on the part of those who want to preserve the status quo and in so doing undermine the Constitution.

At no time in our history has it been more important to expose this opposition and to help and assist those who are willing to provide the leadership that is so essential if the rhetoric of the Constitution is going to lead to action—action that will open up opportunities for today's citizens in such areas as housing, employment, education, and that will protect the civil rights of all citizens in the administration of justice.

In the last 5 years the Commission has released to the public over 190 reports covering a wide range of civil rights subjects. These reports have been based upon information and data gathered by the Commission's professional staff, through Commission hearings and consultations, and through the work of State advisory committees to the Commission.

The Commission's reports constitute a comprehensive source of information on the Nation's civil rights problems and progress, or lack of progress, in dealing with these problems. Many of the Commission's reports can be grouped under the headings of housing, em-

ployment and equal opportunity, education, administration of justice, women's rights, and civil rights enforcement.

Housing is an area where the Nation has refused to confront in a vigorous and effective manner the denial to minorities of equal access to decent housing. An overview of developments or lack of developments in this area was provided in one of the reports the Commission issued in connection with the observance of "Twenty Years After Brown" entitled "Equal Opportunity in Housing."

The fact that much remains to be done in this area is underlined by the following excerpt from our State of Civil Rights Report for 1977, which we issued just a few days ago:

> Twenty-nine years ago Congress pledged a home and a suitable living environment as basic rights of every American family. In 1969 Congress declared that, as a matter of national policy, housing discrimination must end. In 1977 these two promises remained unfulfilled for millions of minority and female-headed households. Federally subsidized housing programs and fair housing enforcement activity in 1977 both fall far short of meeting the national need.

Employment and equal opportunity is an area where statistics on both employment and unemployment and on economic status of both minorities and women make it clear that although we have learned how to put affirmative action plans on paper, we have a long way to go in order to reach equal opportunity goals consistent with the Constitution and the laws enacted by the Congress.

Reports issued by the Commission dealing both with the overall picture and with specific areas such as the enforcement of equal employment opportunity laws, the practices of labor unions, minorities and women as Government contractors, and women and minorities in television, all have served to underline the seriousness of the problems that confront us in this area.

In our State of Civil Rights Report for 1977 the Commission said:

> Developments affecting the employment position of minorities and women in 1977 were generally discouraging. Although overall joblessness declined and employment increased during the year, the disparities between whites and minority groups persisted as minorities shared only marginally in the improvements. Black unemployment was the highest since World War II. The persistent income gap between white men as compared to minorities and women is also a disturbing fact.

The Commission has continued to identify affirmative action plans as a must if equal opportunity goals are to be achieved—most recently in a special report issued in October 1977. The Commission has endorsed enthusiastically the President's Reorganization Plan No. 1 of 1978 which makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. This plan conforms in principle to one of the Commission's major recommendations in the area of fair employment enforcement.

Education is an area where the Nation has made a significant start but has a long distance to travel before children and young people will have the equal access to educational opportunities that can only come as a result of the desegregation of our schools and the implementation of policies that lead to successful integration of our educational programs.

Many of the Commission's reports in education contributed to and were climaxed by the report released in August 1976 entitled "Ful-

filling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools." In this report, we concluded that in most communities desegregation has gone peacefully and smoothly. For every community that has produced sensational headlines, there are dozens of other communities which have received no headlines and attracted no television coverage, where desegregation is proceeding without major incident.

We also concluded that the only way in which to bring the Nation together on this issue is through a prompt, vigorous implementation of the constitutional right to equal educational opportunity and that where this has been and is being done, citizens discover that desegregation works.

In our State of Civil Rights Report for 1977 we said:

In 1977 the national movement toward greater equality of educational opportunity proceeded in an encouraging manner. Desegregation measures in numerous communities throughout the country continued to lessen racial isolation in elementary and secondary schools. Congressional activity has threatened to slow down the efforts to insure equal educational opportunity. Actions of the executive branch held the promise of increasing equal opportunity in education.

In the area of women's rights we have an area where intensive work is called for if significant advances are not to be turned into retreats and if further advances are to take place in an expeditious manner. The Commission continues to follow up on the issues that it identified in its report dealing with the constitutional aspects of the right to reproductive choice.

In our State of Civil Rights Report for 1977 we said:

During 1977 two of the most critical women's rights issues—the proposed equal rights amendment to the Constitution and the rights to reproductive choice—were subjected to serious attack. Little progress was made toward ratification of ERA, first introduced more than 54 years ago, and ground was lost in assuring the right of reproductive choice, particularly to poor women.

Administration of justice is an area where familiarity with the operation of certain police department or correctional institutions makes clear that there are those in positions of responsibility who still believe that the enforcement of civil rights should be subordinated to what they believe are overriding considerations. Reports prepared in many instances by some of the Commission's State advisory committees underline the importance of this aspect of the Commission's jurisdiction in relation to both minority groups and women. Specific Commission studies relative to treatment accorded Native Americans point up the seriousness of the problems with which they are confronted.

In the state of civil rights report for 1977 we said:

Aspects of the administration of justice in the United States were the focus of public concern and important developments in 1977. One major area of controversy concerned allegations of serious police abuse of citizens and of tense, troubled relations between police and minority communities. Questions involving the treatment of American Indians in the administration of justice and far-reaching proposals regarding regulation of undocumented aliens were also prominent.

In the area of civil rights enforcement we believe that eternal vigilance is required if legislative and judicial victories which have been won in such area as voting rights, housing, employment, and

education are not to be undermined. A report entitled "The Federal Rights Civil Rights Enforcement Effort" was first published in 1970 and a "Reassessment" in 1971. In 1974 the Commission began publishing a seven-volume series with the final volume in the series appearing in 1977.

In releasing the state of civil rights report for 1977 the Commission stated that throughout the report it had devoted a great deal of attention to the implementation of civil rights laws and then said: "The Nation's expectations have been raised. The President's goals are clear. There has been progress. There are unanswered questions." As noted earlier in this report, one of the unanswered questions has been answered in the form of Reorganization Plan No. 1 for 1978.

I am attaching to this statement, Mr. Chairman, a brief identification of some of our more important reports during the last 5 years under each one of the headings I have just discussed.

The U.S. Commission on Civil Rights is the only agency in the Federal Government which is exclusively concerned with the full range of matters relating to civil rights. The Commission, however, identifies existing studies and current research efforts by other departments or agencies before undertaking a project of its own. It is only when the Commission finds that existing studies or current research projects do not adequately address a specific civil rights problem that we undertake a study of our own.

The reports of the Civil Rights Commission have been utilized by the Nation's lawmakers in designing legal safeguards for the civil rights of the American people. The Civil Rights Acts of 1960, 1964, and 1968 and the Voting Rights Act of 1965 embody some of the Commission's recommendations for legislative action. More recent statutes, such as the 1975 amendments to the Voting Rights Act, the Equal Credit Opportunity Act, the Civil Rights Attorneys' Fees Act, the nondiscrimination provisions of the State and Local Fiscal Assistance Act, and the Mortgage Loan Disclosure Act represent the legislative fulfillment of some of the Commission's concerns.

Also, the reports of the Civil Rights Commission have had an impact on the administrative processes of the Federal Government. As stated earlier in this testimony, during the last 3 years the Commission has released a seven-volume series of enforcement effort reviews of regulatory agencies, housing, education, revenue sharing, employment, federally assisted programs, and the Executive Office.

The value of an independent evaluation of Federal civil rights enforcement is illustrated by the report "To Eliminate Employment Discrimination." This report not only identified specific deficiencies in the performance of individual agencies but also analyzed deficiencies in the overall system of equal employment opportunity enforcement.

Eleanor Holmes Norton, the chairperson of the Equal Employment Opportunity Commission, has testified before this Commission relative to the constructive role this report played in connection with changes in organizational structure and procedures that have been put into effect in connection with the work of the Equal Employment Opportunity Commission.

This report, together with an update of the report made at the request of the Office of Management and Budget, has played a sig-

nificant role in the development of Reorganization Plan No. 1 of 1978, especially that part of the plan which makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement.

The reports of the Civil Rights Commission have had an impact on the operation of both public and private institutions in the communities of the Nation. This impact is traceable to the Commission's work in the areas of housing and employment and especially in the area of desegregation of the public schools.

In the area of desegregation, the impact has been felt in the 10 communities that were studied in 1973, in the 29 communities where case studies were conducted by the Commission's State advisory committees and regional office staffs in 1976, and through public hearings held in Boston, Louisville, Denver, Tampa, and Los Angeles.

These activities, plus the survey in which over 600 school superintendents participated, have enabled the Commission to make available to these communities and to other communities throughout the Nation reliable evidence which has been used to deal with some of the myths that have surrounded the school desegregation controversy and to identify the factors that contribute to both weakening and strengthening the school desegregation process.

H.R. 10831 would extend the Commission's jurisdiction to include discrimination on the basis of age and handicap. The Commission's consistent position relative to the enlargement of its jurisdiction has been that it would welcome such action on the part of the Congress provided that resources are made available enabling it to undertake its new duties and responsibilities without detracting in any manner from its current duties and responsibilities.

Minorities and women continue to experience discrimination in virtually all facets of American life. Minorities and women are still excluded from many of our Nation's jobs, educational opportunities, and housing markets. Moreover, they are disproportionately subject to legal injustice and are denied their rightful share of the benefits provided by all levels of government.

This Commission is prepared to stay on the "cutting edge" of these issues and to continue to make findings and recommendations based on a careful evaluation of relevant evidence. It is also prepared to continue to perform an oversight function relating to the Federal departments and agencies that have been given the responsibility for the enforcement of civil rights laws. Furthermore, it is prepared to follow up on its reports and call attention to both lack of progress and progress in the implementation of its recommendations.

There has been progress, but much remains to be done. What remains to be done can only be done by disturbing the status quo—something which cannot happen without arousing those who have a stake in maintaining it. The efforts to maintain the status quo must be offset by those who believe that the highest priority must be given to the implementation of the constitutional and moral imperatives that are an integral part of the civil rights movement.

Mr. Chairman, I and my colleagues will be happy to respond to questions, including any related to new language that has been included in H.R. 10831.

Mr. EDWARDS. Thank you, Dr. Flemming. That is a very strong and helpful statement in support of this legislation and your position.

I just might ask you this question. After 20 years—more than 20 years—of existence of these new civil rights laws and of the Commission, do you and your staff sometimes feel you are fighting a lonely battle that you don't have enough soldiers on your side?

Dr. FLEMMING. Mr. Chairman, I think probably there are times when we have that feeling, but whenever we have that feeling, we think of Clarence Mitchell and his associates in the Leadership Conference. And as his testimony before this committee this morning has indicated, we are never really fighting a lonely battle. Maybe Clarence and his associates and members of the Commission together at times feel that way.

I have been very much interested in the last week or 10 days in the fact that writers have been making a comparison between the state of the Nation in the field of civil rights today, as contrasted with 10 years ago, when the Kerner Commission report was issued. I was not a member of the Kerner Commission, but soon after that report was issued, I became one of the charter members of the Urban Coalition, and I rember how often I used that report. I was also at that time president of the National Council of Churches, and I used that report very extensively in connection with the work of that organization. I used to refer to it as one of the great documents of my lifetime, and I still feel that way about it. And as I have read these roundup reports, I recognize that people have identified both pluses and minuses, and that, on balance, many feel that the minuses outweigh the pluses. I think probably that is a fair appraisal of the situation.

However, when I look at summaries of that kind, I recall—Mr. McClory you heard me quote Branch Rickey out in San Jose the other day. When he was very discouraged at the time he was trying to open up professional baseball to the members of the black community he said to some who were trying to get him to stop, "Never accept the negative until you have thoroughly explored the positive." There are positive developments which we must continually explore and lift up for the purpose of inspiring people to continue to move forward in this very important field.

Of course, I feel that one who truly inspired us to keep moving was the man whose loss we have been mourning over a period of the past few weeks: Hubert Humphrey. It was my privilege to be associated with him when I was president of Macalester College, when he was out of public life for a period of 18 months and was teaching there. Time and time again, he would talk with me about his experiences in the civil rights field. He never lost hope, even though he recognized that the Nation at times was experiencing some very real setbacks. I feel the way he did, that we must never lose hope.

But it is clear that we have got some very, very important battles lying just ahead. I feel that the opportunities that confront this Commission have never been greater than they are right now and in the months and years that lie immediately ahead.

Mr. EDWARDS. Dr. Flemming, would you not agree that even though it appears that certain aspects of the dire warnings of the

Kerner Commission have come about, that if we had not had the national effort, as evidenced by the various civil rights laws and the Commission and whatever national commitment there has been, today it would be much worse than it is?

Dr. FLEMMING. I certainly agree with you wholeheartedly. That is why it seems to me it is always important for us to keep exploring the positive at the same time that we identify the negative.

Mr. EDWARDS. We certainly have no choice, do we?

Dr. FLEMMING. That is right. Had it not been for the efforts that have been made, we would be far worse off than we are at the present time.

Mr. EDWARDS. I am going to ask just one more question, and it is a substantive question.

Your recommendation, I believe, is that the presently operating 51 State advisory committees be abolished and replaced by regional advisory committees. Is that your recommendation, or is that OMB's?

If so, I wonder if you could explain the reasons for the proposed change and what stage you are in.

Dr. FLEMMING. I would be very glad to give the history of that proposal.

As you know, under the overall legislation affecting the State advisory committees, each department and agency of the Government once a year submits its plans for State advisory committees to the Office of Management and Budget. We did that last year, as we had every year.

At that time, of course, the Office of Management and Budget was operating under a directive from the President to take a close look at advisory committees, with the end in view of some reductions in the number of advisory committees. Some of the officials of the Office of Management and Budget asked me to drop by, and they talked with me about the possibility of having 10 regional advisory committees. Right from the beginning they specified that all States would have membership on these 10 regional advisory committees.

I then discussed this with my colleagues and with staff, and we decided as a Commission to indicate to the Office of Management and Budget that we would be willing to proceed along those particular lines.

After that second conversation, we recall a communication from OMB that in effect was a directive to proceed along those lines. The Office of Management and Budget was operating in accordance with the overall law relative to State advisory committees. So we then went ahead and made plans for the establishment of regional advisory committees.

As we worked on it, the program evolved in this way. We decided that there would be a minimum of five persons from each State on the regional advisory committees. We recognized that in many instances there would be more than five. We stated that in setting up regional advisory committees we would want to make sure that there was a good representation of all groups from each State: Minority groups, women, persons over 60 years of age, and so on.

Then we also decided that there would be vice chairpersons for each region representing each State. Then we also decided that this

was an opportunity to see if we could do a better job of involving the field operations in the overall planning process as far as the Commission was concerned. We had developed a tentative understanding under which the regional chairmen would come in for consultation twice a year, maybe even as much as once a quarter, so that they in turn could then go back and work with the vice chairperson from each one of the States and the representatives from each one of the States.

Soon after we received the communication from the Office of Management and Budget, we had a meeting of all State chairpersons here in Washington and presented what ideas we had developed up to that time for implementing this particular concept and invited their comments. With one exception, they were unanimous in saying they thought it was a very poor idea. But then, having said that, they did indicate a willingness to comment on the ideas we had for implementing the regional idea, and they were very helpful to us and stated their views.

Of course, as you know, the State chairpersons not only indicated to us that they thought it was a very poor idea, but they went to the White House and stated the same conclusion and also met with the Director of the Office of Management and Budget and stated their views. They have met with a good many persons on Capitol Hill and stated their veiws.

I would like to say this: that I know I speak for the members of the Commission when I say that we have a high regard and respect for the volunteers who serve as State chairpersons and for those who serve with them. We recognize that in many instances they have rendered a very valuable service to us and also to the States of which they are a part. However, we felt as a Commission that operating under this new approach we conceivably could do a better job in terms of insuring adequate input from the field.

We have been taking preliminary steps with the end in view of operating in this way. However, we have taken note of the discussions that took place before the Senate committee and are sure that these discussions will be repeated before your committee. So we have notified all of the State committees that they are to continue to operate during the present fiscal year, pending any action that might be taken by the Congress on this matter.

Mr. EDWARDS. Thank you, Dr. Flemming.

The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman.

Doctor, I am sorry that I had to go out to make a quorum in another subcommittee.

If I may, Mr. Chairman, I will reserve my time until others have had their opportunity to question.

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer.

Mr. VOLKMER. I would just like to pursue a little bit, Chairman Flemming, how you got yourself where you are in making the recommendation and where we are right now.

What is your present position?

Dr. FLEMMING. We accepted the idea that was presented to us by the Office of Management and Budget. We then got a directive from

them to operate along those particular lines, and we have been proceeding to implement——

Mr. VOLKMER. I understand that.

Dr. FLEMMING [continuing]. Implement that particular idea. We stated before the Senate committee, and we have stated to others who have questioned us on it, that we feel that we could take that idea and make it work and do a good management job which would insure a good input from the field, including each one of the 51 states. That is still our position.

Mr. VOLKMER. May I ask you a question, then?

What has been going on in the past with the State advisory committees? Have they been ineffective?

Dr. FLEMMING. In our judgment, the answer to that is no. In our judgment, the State advisory committees have rendered a good service. It has been spotty. Some have rendered a better service than others, and that will always be true of committees made up of a group of volunteers.

But if you are going to generalize in terms of contributions that have been made by the State advisory committees, we would say that it has been on the plus side.

On the other hand, we felt that if we took this other idea and implemented it, it was conceivable that it could improve the input from the field, as contrasted with what it has been up to the present time. I think, Congressman Volkmer, it should be kept in mind that the Commission has always worked through a regional structure. We have regional offices. We have a regional director. It is these regional offices that have serviced the State committees, so that the regional approach is not unknown to us in connection with the relations with the State advisory committees.

But I would not for a moment cast any aspersions on the work that has been done by the State committees. They have made a real contribution. We simply felt, after considering the matter, that conceivably by taking this other approach we could improve the input from the field to the Commission.

You can appreciate that a part-time Commission is confronted with a rather difficult span of control if you are thinking about 51 other part-time committees. To the extent that we could work through some regional chairpersons, it is conceivable that we could improve communications between our Commission and the representatives on these regional committees from the respective States.

No State would be out of the picture under this concept. Every State would have representation on the regional committees; every State would have a chairperson or—a regional vice chairperson who would function for that particular State.

Mr. VOLKMER. Let me ask you, as a practical matter, let's say that in my State, Missouri, there wasn't a serious infraction of the Civil Rights Act. But now, let's say that action in certain areas, such as labor or something, has been a problem and the local State people wanted to take that up.

Now, under the regional concept, would they have to move through the region before that would be brought up as a recommendation for action or anything?

Dr. FLEMMING. Yes. They have to move through the regional office today before there would be action on it, because there has to be an allocation of resources in order to do that.

Mr. VOLKMER. That's the regional office——

Dr. FLEMMING. The regional director.

Mr. VOLKMER [continuing]. That has a paid staff. Now we're talking about a voluntary service of a regional office.

Dr. FLEMMING. That is right.

Mr. VOLKMER. Is that correct?

Dr. FLEMMING. That is right.

Mr. VOLKMER. So do we have two people to go through? That is what I am trying to get at.

Dr. FLEMMING. No. At the present time the regional director is confronted with requests from the various States within his particular region.

Mr. VOLKMER. Right.

Dr. FLEMMING. He has got limited resources. Therefore, he has got to make a decision as to how those resources are going to be used. Under the concept of the regional committee, he would consult his regional committee and get their advice before he made the decision. They would not have a veto, but they would advise him as to how best to allocate those resources within the region. Then he would make the decision. So there would be one additional step, namely, the opportunity for the regional committee to weigh the proposals from the various States and to make recommendations to them.

Mr. VOLKMER. In other words, we're adding that additional step—that additional layer, aren't we?

Dr. FLEMMING. It is an additional step, no question about it.

Mr. VOLKMER. So that what we are doing through this supposed reorganization is adding to the review process rather than cutting back.

Dr. FLEMMING. Well——

Mr. VOLKMER. I am not arguing with you. But that is how it appears to me—now, if that is not a fair statement, say so.

Dr. FLEMMING. It is a fair statement. I mean, we have the feeling that from a management point of view that would represent an improvement, because——

Mr. VOLKMER. Wouldn't it mean a slowing down?

Dr. FLEMMING. No, because the representatives from each State would have the opportunity of taking a look at the proposals from the States in those regions and giving the Regional Director the benefit of their advice. And we have a feeling that that advice would be good and would help in making a decision as to the allocation of those resources.

It would take a little more time. It would, as you put it, slow down the process a little bit. But we do think the combined judgment of the persons in these States would be helpful to the Regional Director in making his decision on the allocation of resources.

Mr. VOLKMER. Couldn't we accomplish the same thing under the bill introduced by Chairman Edwards?

Can't each Regional Director now say, "I want each State chairman to act as my advisory committee when these things come up." Isn't that correct?

Couldn't you do that any way under the present set-up?

Dr. FLEMMING. There is nothing to prevent that from being done at all.

Mr. VOLKMER. And we could still have our State committees?

Dr. FLEMMING. That is correct.

Mr. VOLKMER. I mean, you have got the same thing now. If he wants advice, he can get advice.

Dr. FLEMMING. He could get advice now from the State chairpersons in his particular region. He could call them together, for example, as a group.

Mr. VOLKMER. Sure. If he has something from Missouri, he could say: "I want you people—I would like to talk to the people from Kansas, Nebraska, Illinois, Missouri, and I want to talk to you now. I would like to go over this problem and hear what you have to say about it."

Dr. FLEMMING. That is right. He would be conferring with the chairperson from each State, as contrasted with conferring with a regional advisory committee, on which, of course, there would be more persons.

Mr. VOLKMER. Mr. Chairman, that is all I have.

I would like to ask Ms. Freeman a question. It is something that has concerned me for some time. I really haven't looked into it. I have heard it mentioned in discussions, Mr. Chairman.

Are there any problems with the craft unions?

Ms. FREEMAN. I want to be sure I understand you.

Mr. VOLKMER. Are there any problems with the craft unions?

Ms. FREEMAN. Do we continue to have problems in Missouri?

Mr. VOLKMER. Yes.

Ms. FREEMAN. Yes, we do.

Mr. VOLKMER. I just wondered.

Ms. FREEMAN. They have diminished, but there are still some unions that have very restrictive admission policies. Our Commission has a continuing study—I think "Union Study, Part 2"—in which it is my hope that we would be able to deal with some of these problems.

Yes, we do, even though there have been improvements. It is improving.

Mr. VOLKMER. But you are still working on it?

Ms. FREEMAN. It is still a continuing problem.

Mr. VOLKMER. But you are still working on it?

Ms. FREEMAN. Yes, we are still working on it.

Mr. VOLKMER. If you need any help on it, let me know.

Ms. FREEMAN. Thank you very much.

Mr. VOLKMER. Thank you, Mr. Chairman.

Mr. EDWARDS. Father Drinan.

Mr. DRINAN. I would just like to raise one question. I have no quarrels with, just praise for the work of the Commission. But I wondered if Dr. Flemming would discuss the "cutting edge" that is mentioned in your testimony twice. On page 17 it says, "The Commission is prepared to stay on the 'cutting edge' of these issues."

I am wondering if there is any feeling among the more militant elements in the civil rights community that the Commission is

not always on the "cutting edge." Would you want to respond to that?

Dr. FLEMMING. I would rather have the representatives of the civil rights community respond to that.

Mr. DRINAN. I haven't heard any of it, and I commend you because I haven't heard. I am just raising the question whether some people would feel that the Commission should be more on the cutting edge.

Dr. FLEMMING. I am sure that there are situations where people would have that point of view. This has not been called to my attention.

Over the period of the last 2 to 3 years, I have had the feeling that we have joined hands with the members of the civil rights community in being out on the cutting edge with them.

Mr. DRINAN. Well, that is my impression too. I would like to, and I know the chairman of the subcommittee also would want to, invite any people who might quarrel with this statement that the Commission is on and endeavoring to stay on the cutting edge.

I commend you for all the work you have done and look forward to the work that, hopefully, you will do in the area of the handicapped and also with respect to discrimination on the basis of age.

I thank you once again, and I yield my time back to the chairman.

Mr. EDWARDS. In connection with what Mr. Drinan said, there is a problem in California with the California State Advisory Committee. The committee has not yet issued a report after a considerable investigation of the community-police relations in a number of cities. I did hear about that, and there are some complaints that the promised report has not been written. Are you prepared to bring us up to date on that?

Mrs. EDWARDS. Perhaps Mr. Nunez might even be in a better position than I am. My last understanding, however, is that the staff has been working with the advisory committee in developing these reports. But, as you can appreciate, over the last few months there has been some inaction, certainly, on the part of the advisory committee members in putting together their recommendations.

Mr. NUNEZ. I believe, Congressman, that you met with our Regional Director concerning—I thought you did.

Mr. EDWARDS. Well, we can resolve that.

Mr. NUNEZ. I will get back to you on that.

Mr. EDWARDS. It is of some importance.

Dr. FLEMMING. Mr. Chairman, I was given a little memorandum in the form of a briefing that I had before I went to San Jose. The impression I got from that memorandum was that definitely our regional office would be working with the State advisory committee in expediting that report. I also have the impression that the picture had been improved somewhat as a result of the appointment of a new chief of police in the area. But I think that you can look forward to a report coming out.

As Lucy Edwards indicated, the State committees have been kind of having the feeling that they really weren't in a position to move forward because of the question that had been raised as to their

future. But we have tried to clear that up by saying to all of them, continue to operate, certainly at least during the current fiscal year. Then when we learn what kind of legislation is going to emerge, we will be back in touch with you again. So that ought to bring about more expeditious action on the part of the California committee. I will certainly stay in back of it and make sure there is a report.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Thank you, Mr. Chairman.

Hello, Dr. Flemming. Nice to see you again.

Dr. FLEMMING. Nice to see you.

Mr. STAREK. I have a couple of questions.

I am still somewhat confused by your responses to the chairman's questions about maintaining the State advisory committees. The bill that we are considering has a section which would make the State advisory committees mandatory. The Senate bill has no such provision.

I would like to know whether you support the language in this bill, or do you instead support the Senate version, which would, permit the Commission to decide whether or not these committees should be regional?

Dr. FLEMMING. We would support permissive as contrasted with mandatory language.

Mr. STAREK. You want permissive not mandatory language?

Dr. FLEMMING. That is right.

Mr. STAREK. Speaking of OMB, during our hearings last year on the increase in the authorization level of the Commission, the subcommittee noted OMB was attempting to reduce the widespread use of consultants throughout the government. I wonder if the Commission has made any efforts to reduce the number of consultants which are being used.

Dr. FLEMMING. I would have to supply for the record a statement indicating the number used in fiscal 1977 as contrasted with fiscal 1976 and the number that we contemplate using in 1978. I would be very happy to supply that for the record.

Mr. EDWARDS. Without objection, it will be received and made a part of the record.

Mr. STAREK. Thank you very much.

If I understood his testimony correctly, Mr. Mitchell stated that one of the reasons why the Commission should continue in existence is because of the fragmented enforcement procedures in civil rights laws. If civil rights enforcement procedures were more coordinated, would the job of the Commission be easier?

Dr. FLEMMING. Well, let's be very specific about it.

If the Reorganization Plan No. 1 of 1978 becomes law, our oversight responsibility in that area would be a more concentrated type of responsibility than it is at the present time. We have to look in detail at what the Civil Service Commission is doing, for example, in that particular area, as well as what the Equal Employment Opportunity Commission is doing. If the plan becomes effective, we would look at what the Equal Employment Opportunity Commission is doing.

And here again, when we look at what they are doing, we will be trying to stay on the cutting edge. We will be trying again to identi-

fy the situation as we see it, namely, as to whether or not they are doing the kind of job that should be done. We would be looking at one agency as contrasted with two.

That reorganization plan also, of course, is going to provide for some additional consolidation. Instead of about 30-odd agencies being involved in the enforcement of the executive order, that is all being concentrated within the Department of Labor. In addition to this, the Equal Employment Opportunity Commission is being given some real coordinating authority to take the place of the old council, which really was not in a position to do anything in a very meaningful way.

We can take a look at what the Equal Employment Opportunity Commission does in the way of coordination. We can evaluate that and provide the President and Congress with the results of our evaluation.

Mr. STAREK. How much work do you do with the General Accounting Office?

Dr. FLEMMING. We keep in touch. You will notice in my opening statement that we do everything we can to make sure that we are not duplicating something that is going on in some other part of the Government. That would include the General Accounting Office. And our staff—our respective staffs do maintain contact with one another.

Mr. STAREK. The reason I asked that question is that I have heard suggestions that, the work of the Commission could be handled by the General Accounting Office. Could you tell us why you believe that the General Accounting Office would not be able to handle the Commission's work?

Dr. FLEMMING. Well, it seems to me that the General Accounting Office is, of course, an arm of Congress and is charged with the responsibility of carrying out the specific responsibilities that are assigned to it by the Congress from time to time, The Commission is an independent body. Both the executive and the legislative branches have cooperated to make it independent. This does put us in a position where we can make our evaluations and our appraisals from an independent point of view.

I think, as far as civil rights activities are concerned, a citizen commission charged with the responsibility of performing this kind of responsibility can do things that a full-time agency connected with one of the branches of Government would find a little bit more difficult to do.

Mr. STAREK. Thank you.

I notice on page 16 of your statement that you say the Commission would be happy to accept additional jurisdiction providing there are appropriate resources available. Do you have any estimate as to what the appropriate resources may be by fiscal year 1977?

Dr. FLEMMING. That question was addressed to us when we appeared before Senator Bayh, as chairman of the Senate Judiciary Subcommittee on the Constitution. We state our conclusion in a letter to the Senator. If I may, I would like to submit the letter for the record.

[Letter given to subcommittee.]

Mr. EDWARDS. Yes, sir. It will be received and made a part of the record.

Dr. FLEMMING. The conclusion is that approximately $2,800,000—that's for both, both the handicapped and the aging.

Mr. STAREK. That is for fiscal year 1979?

Dr. FLEMMING. Yes. Well, that would be for fiscal year 1979, the first full fiscal year.

Mr. STAREK. As you know, the authorization provision in HR 10831 is open-ended. There is no ceiling. Should the committee decide to establish a ceiling, as the Commission has had since 1968, what figure would you recommend?

Dr. FLEMMING. Well, I would like to have the opportunity of having a little staff work done on that. You have to fix a figure on the basis of a number of assumptions, and this points up the problem when you are dealing with an appropriation authorization. You could take the amount of money that is included in the President's budget for 1979 and suggest that, but at the same time that you are suggesting that, you have to recognize that consideration is being given to extending our jurisdiction. Therefore, how much should be added to the ceiling in order to cover the enlarged jurisdiction?

The House Committee on Education and Labor is considering the extension of the Older Americans Act at the present time. They have before them a proposal that it be amended in such a way as to direct us to make a study on the elderly minority. If that should become the will of the Congress, that is an additional amount of money that would have to be added.

I think that illustrates the difficulties that are involved in a closed authorization. I have operated under both a number of times in the Government. I don't see any need for a closed authorization.

I appreciate the fact that if you have a closed authorization, it means that the legislative committee will regularly and systematically engage in oversight functions. But the legislative committee can do that without there being a closed authorization. Any time the committee wants to perform an oversight function, as far as we are concerned, of course, it is in a position to do so. So I don't see that anything really is accomplished by putting in the closed authorization.

It seems to me that it is better all the way around if the Appropriations Committee is the committee that deals with the exact amount of money that is going to be used in any given fiscal year.

Mr. STAREK. One last question, if I may.

Speaking of the Appropriations Committee, I assume that you have begun your budgetary processes for fiscal year 1979.

Dr. FLEMMING. We have appeared before the House subcommittee that handles our appropriations?

Mr. STAREK. What is the figure you are requesting?

Dr. FLEMMING. $10,752,000.

Mr. STAREK. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Mr. Chairman, I think that we should note that 10 years ago today the Kerner Commission report appeared.

Dr. Flemming, would you want to reflect upon the grim fact that 10 years later black families still average only 60 percent of the earnings of white families? Black families in America have gained nothing over the past 10 years since the Kerner Commission report was published. Black families averaged 60 percent of the earnings of white families 10 years ago; the disparity remains the same. The gap has not been closed.

Even more grim is this fact: That unemployment among blacks from 10 years ago to today has doubled in this decade, and black teenager unemployment has tripled.

I would suggest, therefore—not blaming you or the Commission, but blaming all of us—that something is very, very wrong. We are not doing the right things when these terrible phenomena have persisted for 10 years.

Dr. FLEMMING. Congressman Drinan, I think that while you were out of the room, in a discussion with the chairman I commented on the appraisals that are being made of the situation 10 years after the Kerner Commission report. I indicated that people are identifying some pluses and minuses but that most persons are in agreement on the fact that the minuses far outweigh the pluses.

The most serious minuses are those that you have just identified. We identified those minuses in our State of Civil Rights Report for 1977. There is not any question at all about the fact that these minuses make it very clear that there is a lot of work for a lot of us to do in order to achieve the kind of objectives that were set forth by the Kerner Commission.

Mr. DRINAN. I thank you.

I yield back the balance of my time.

Mr. EDWARDS. How do you divide the money up to the State advisory committees?

Does a certain amount go to each State, based on population, or something like that?

Dr. FLEMMING. Mr. Nunez might answer that.

Mr. EDWARDS. Or would you provide for the record last year's budget for the various States? I think we might be interested in that.

Mr. NUNEZ. We would be happy to supply that for the record.

Mr. EDWARDS. How much is in your budget?

Mr. NUNEZ. Specifically, I am not—we don't normally break it down by States. We break it down—we appropriate the funds by regions.

It is based on the fact that you do have State advisory committees and you do have a minimal cost factor, so you can't, when you are dealing with a very small State in comparison with a large one like California.

The major expense in running the advisory committees, I might add, is the travel cost, which is a very substantial sum in a very large State like Texas, California, or Alaska, just to bring the committee together.

The work of the committees, I might point out, is based on the staff work that the regional offices do for them, so that, depending on the size of the State advisory committee—I might point out, the larger the State, the larger the number of advisory committees you

might have. So generally, the larger States with the larger populations would have a much larger sum of money allocated to them. But the actual program costs of running the State advisory committees would be allocated to the regional office and that cost that would be directly applied to running the committee would be basically travel and per diem.

I could supply that for you.

Mr. EDWARDS. I think it would be helpful for you to supply it.

I might suggest that a new way to have regular meetings and committee meetings, inasmuch as travel is so inconvenient and so terribly expensive, is to do it on the television. You know, the Bank of America does that in California. They are sitting in a room in Los Angeles and San Francisco, and it is just as though they are all in the same room because of closed circuit television. It would be, I am sure, much less than air travel, which is terribly, terribly expensive.

Mr. NUNEZ. Right.

Dr. FLEMMING. Mr. Chairman, I would like, with the permission of the committee, to ask my two colleagues, in light of the dialog that has taken place here, if they have some comments they would like to make relative to our work, or relative to the issues that have been raised with us.

Commissioner Freeman.

Mr. EDWARDS. Yes, please.

Ms. FREEMAN. Mr. Chairman and the committee, yes, I do appreciate the opportunity to add to the comments made by the chairman

I am the only Commissioner who has ever been a member of a State advisory committee. I was appointed to the Missouri advisory committee from the beginning, in 1958, and I continued as a member of the State advisory committee until my appointment to the Civil Rights Commission 14 years ago, so I have some firsthand knowledge of the feelings of the members of the State advisory committees with respect to the work of this Commission.

It was really with a great deal of pride that I came to serve as a Commissioner. However, we know that because this Commission has always had limited resources, we have had to sort of juggle funds and that sometimes our field offices have had to make choices. So even though this Commission would certainly wholeheartedly follow whatever legislation is enacted, the reason that we recommended, in accordance with the OMB recommendation, was that at least we were going to try to comply with the recommendation, with the hope that perhaps it would strengthen their work.

There was never any idea that we have not recognized or appreciated the work of the state advisory committees, recognizing the valuable contribution those committees have made to the work of the Commission and to the country. It was still in a spirit of trying to at least keep the work of the Commission going, because I believe that this Commission is more needed today than it was at the time the act was passed.

There is another dimension to the question that Father Drinan made. I think that in addition to the shattered lives of the unemployed and underemployed, this country has never come to grips with the economic costs to the gross national product.

This Commission is embarking on a study that would try—a study on the cost of unemployment and underemployment—that would try to cost that out. Perhaps, maybe that might be the way in which people will recognize that more needs to be done.

In a report of the President's Council of Economic Advisers some 12 years ago, which was the last and only report that I think has ever been attempted, the projection was that the cost of unemployment—forgone earnings—by virtue of labor discrimination against blacks was $4 million. Well, now, if you take the figures that Father Drinan has mentioned today, can you actually guess the horrifying amount of billions of dollars that would be: 41.1 percent black teenage unemployment; 22.3 percent Hispanic teenage unemployment; 15.4 percent white teenage unemployment—coupled with the fact of 60 percent being the average income of black families of that of the whites?

Now, that wouldn't be so bad if you went to the supermarket and something cost a dollar and I could put up 60 cents, if that is all the money I had. But that is not the way it is. That family with 60 percent still has to pay whatever it costs.

This is the kind of work that we will continue to bring to the public, to the President, and the Congress, and the people.

Mr. EDWARDS. Thank you, Commissioner.

Dr. FLEMMING. Commissioner Saltzman.

Mr. SALTZMAN. Thank you. I appreciate the opportunity. I would like to just say a few brief words.

In response to the question, could the GAO function in place of the Commission, I think that might be comparable to saying or asking could the Senate function in place of the House and combine the bicameral legislative function of the Government into one.

I think both Houses have a place in the function, independent of one another, even though sometimes they seem to be functioning in the same direction.

The Commission, as the chairman pointed out, as the citizens independent agency, has a unique place in this entire effort. I would reiterate my own personal support.

I think the chairman said he spoke for the Commission for the permissive rather than the mandatory language with respect to the State advisory committees, and that could be contained within a report of this subcommittee, the Senate subcommittee, supporting the continuation of the State advisory committees.

Finally, in respect to the Commission's being on the "cutting edge," as far as I know, I don't know of any civil rights organizations that feel the Commission has failed to be on the cutting edge. Rather, the criticism I have heard and received has been that in the allocation of resources we have sometimes not paid as much attention to one group as they would like over another group.

That is always a very difficult, I am sure, balancing act for us in terms of the allocation of resources. I think the commissioners are a representative group, and we do, with all integrity, concern, and compassion, attempt to give an adequate balancing of the resources. So that we are aware of the cry for help from those ethnic groups, those racial groups, those segments of our population that require the assistance and the concern of the commission. But I think that

has been where the most significant criticism has come of the Commission from various groups; it has been, it seems to me, on the allocation of resources.

In response, I can only say that I believe that the Commission has attempted to be fair, equitable, and compassionate.

But with the leadership—and I would like to speak as the youngest member on the Commission in terms of service—with the leadership of Chairman Flemming, and certainly, also, with Commissioner Freeman, as one who has been inspired by their vision, their idealism, their integrity, their determination that this Commission go forward, I think the Commission will remain on the cutting edge.

Thank you very much.

Mr. EDWARDS. Thank you, Commissioner.

Mr. Breen.

Mr. BREEN. Dr. Flemming, some question has been raised about the language in H.R. 10831 which expands the Commission's jurisdiction to review discrimination on the basis of age and handicap. The language of the bill states that you study unlawful discrimination or denial of equal protection. The word that is troubling is the word "unlawful," since recent Supreme Court decisions have indicated that some discrimination is not unlawful.

If that is how this language were interpreted then you couldn't look at all of the problems that affect the aged and the handicapped but only those that some court or statute has defined as being unlawful. I don't think that is the intent of this language, and I would like your views as to how we can assure that your review is never limited to unlawful types of discrimination.

Dr. FLEMMING. I have heard that issue raised. If I could address myself to the age aspect of it, my suggestion would be that the language be worded in such a manner as to make sure that it encompasses what is encompassed by the Age Discrimination in Employment Act and the Age Discrimination Act of 1975.

It seems to me that the language—that if language is worked out which encompasses both of those acts, then we would have a very broad jurisdiction.

Now, I haven't followed the legislation on the handicapped closely enough to make a suggestion there. I guess that if the word "unlawful" stayed in, that would tie in both to the Age Discrimination and Employment Act and the Age Discrimination Act of 1975. Put those two together, and you've got the field well covered as far as age is concerned.

Mr. BREEN. Would you agree that the committee ought to consider this proposed language rather carefully.

Dr. FLEMMING. Yes. We would be delighted—I would be delighted to work with you on that. I would also be delighted to have some of the people at HEW who followed the age legislation work with us on it.

Mr. BREEN. Thank you, doctor.

Mr. EDWARDS. Does your present jurisdiction include discrimination in employment, education, housing, et cetera, against homosexuals?

Dr. FLEMMING. Our position on that is set forth in a formal Commission document.

The Commission has determined that under our jurisdiction over equal protection in the administration of justice we are able to investigate the disparate treatment of any class of persons by law enforcement, corrections, probation and parole agencies, and the civil and criminal courts. That is the short answer.

I would like to read to you the full statement on jurisdiction adopted unanimously by the commissioners at our August 15, 1977, meeting. It reads:

The United States Commission on Civil Rights has jurisdiction to collect, study, and publish information concerning the denial (by federal, state, or local governments) of equal protection of the laws (1) because of race, color, religion, sex, or national origin, or (2) in the administration of justice. In our judgment, we do not have authority to investigate the disparate treatment of individuals based on sexual orientation under our general jurisdiction to deal with problems of sex discrimination. After careful study of our jurisdictional statute and its legislative history, we are convinced that our jurisdiction in that area is limited to discrimination based on gender. Therefore, we do not have authority to consider discrimination in education, employment, housing, et cetera, based on sexual orientation.

Our jurisdiction over equal protection in the administration of justice is considerably broader. We believe that, under this jurisdictional category, we are able to investigate the disparate treatment of any class of persons by law enforcement, corrections, probation and parole, and the courts, both civil and criminal. However, our plans for fiscal years 1978 and 1979 do not include, in connection with our administration of justice jurisdiction, any studies concerned with sexual orientation.

Mr. EDWARDS. Thank you.

Are there any further questions?

(No response.)

Mr. EDWARDS. We thank you very much for your helpful testimony.

Our next hearing on this subject is next week.

[Whereupon, at 11:50 a.m., the hearing was concluded.]

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION EXTENSION

MONDAY, MARCH 6, 1978

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 1:30 p.m., in room 2226 of the Rayburn House Office Building, Hon. Don Edwards [chairman of the subcommittee] presiding.

Present: Representatives Edwards, Drinan, Volkmer, Butler, and McClory.

Staff present: Ivy L. Davis, assistant counsel, and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

Today we continue the second in a series of hearings on H.R. 10831, to extend the life of the U.S. Commission on Civil Rights, to make certain technical and substantive changes in the law, and to authorize necessary funds.

The hearing originally set for last week has been rescheduled for Thursday, March 9, at 9:30 a.m. in Rayburn 2141.

One of the substantive changes set forth in section 5 of H.R. 10831, would amend the Civil Rights Act of 1957 to require the establishment of State advisory committees. At present, the continuation of the SAC's is at the discretion of the Commission, and as we have discussed, the Commission has accepted the recommendation of the Office of Management and Budget to restructure the 51 State advisory committees (SAC's) to 10 regional advisory committees (RAC's). Our witnesses today will speak specifically to this restructuring as well as to other sections of the bill.

Our first witness is Mr. Wayne G. Granquist, Associate Director for Management and Regulatory Policy, Office of Management and Budget. Mr. Granquist has been deeply involved in the decision to restructure the Commission's advisory committees.

Unless any members of the committee desires to be recognized at this time, we will welcome Mr. Granquist, who is accompanied by a colleague.

If you will introduce your colleague, Mr. Granquist, you may proceed.

And without objection, your full statement will be made part of the record.

[The prepared statement of Mr. Granquist follows:]

STATEMENT OF WAYNE G. GRANQUIST, ASSOCIATE DIRECTOR FOR MANAGEMENT AND REGULATORY POLICY, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today to testify in support of legislation which would amend the Civil Rights Act of 1957 with respect to the United States Commission on Civil Rights.

The Commission is an independent, fact-finding agency which provides a unique perspective on civil rights problems and recommended remedial measures. Accordingly, the Office of Management and Budget supports the five-year extension of the Commission proposed by H.R. 10831, and the expansion of the Commission's jurisdiction to include discrimination against the aged and the handicapped and the removal of the statutory ceiling on its annual appropriations.

Mr. Chairman, I have been asked to discuss the planned consolidation of the Commission's 51 State Advisory Committees (SAC's) into 10 regional committees. First, let me describe briefly the review process which lead to this proposal, and then the specific reasons behind the recommendation concerning the State Advisory Committees.

As you know, a year ago the President directed a review of all advisory committees as a part of his overall effort to streamline the Federal Government and make it more efficient and effective. To carry out the review, the Office of Management and Budget issued guidelines which restated the President's directive, and also the requirement of the Federal Advisory Committee Act that each committee be reviewed annually to determine if (1) it is carrying out its purpose; (2) its responsibilities should be revised; (3) it should be merged with other advisory committees; or (4) whether it should be abolished.

The Departments and agencies which use advisory committees to obtain advice and recommendations have primary responsibility for them. Accordingly, OMB's guidelines directed each Department and agency to review all of its committees—regardless of the authority under which the committees were established—and to submit their recommendations to OMB. Those recommendations proposed an overall reduction of 26 percent in the number of advisory committees.

The President indicated that he believed more could be done. He asked the agencies to review again the need for their remaining committees. Our staff in OMB, the budget divisions and the Committee Management Secretariat, reviewed the recommendations and worked with the agencies. The resulting recommendations, announced by the President on August 25, 1977, would reduce the number of committees reviewed from 1,189 to 709, or 40 percent. Specifically, the President recommended:

That 261 committees be terminated (five by Executive Order, 21 by statute, and 235 by administrative action); and

That 297 committees be consolidated into 78, for a further reduction of 219 in the total.

The State Advisory Committees of the Commission, of course, fell into the latter category—not to be terminated, but to be consolidated, as were the 63 District Advisory Committees of the Small Business Administration, which also were to be consolidated into 10 regional committees, and the 34 National Science Foundation committees which were to be consolidated into nine, and many others.

The effect of these recommendations, as of the end of 1977, will be reflected in the President's Annual Report on Federal Advisory Committees, which is to be submitted to the Congress on March 31. While that report is still in preparation, I can say that there has been a significant reduction in the number of advisory committees, and most of the recommended terminations—and many of the consolidations—have been completed.

With regard to the State Advisory Committees, the Commission's initial recommendation was that they should be continued. OMB staff reviewed that recommendation but, while recognizing the contributions of the State Committees, believed that the Commissions's capability to meet its responsibilities could be strengthened by substituting 10 Regional Committees instead. More specifically, the Commission's field offices have been on a regional basis from the beginning. Through these offices, ten Regional Advisory Committees could provide more meaningful input to the Commission's total planning process, than could 51

separate State committees. The Commission would be better able to focus its resources to reflect its national objectives at the regional, State, and local levels. Regional problems could be more readily recognized and addressed. And, finally, liaison and communications—now conducted between the Commission and 51 individual committees—would be improved.

This recommendation was made to the leadership of OMB. As you know, we had no inherent power under the Federal Advisory Committee Act to abolish any committee or to require its consolidation. The Commission was the deciding factor. With this in mind, we met with Chairman Flemming and some of his staff to discuss the recommendation in detail.

The Commission then carefully considered our recommendation, and came back to us and said that they concurred.

After the August announcement, and a meeting of the Commission with the chairpersons of the State Advisory Committees in September, the chairpersons expressed substantial concern about the impact of the consolidation. They met with staff at the White House. They asked for, and we had, a two and one-half hour meeting with Acting Director James McIntyre and myself and other people from OMB, to discuss their concerns and to get more information about the action.

We promised them a very careful reassessment of the recommendation, in light of their concerns.

We performed that reassessment and, after further consultation with the Commission, reaffirmed our recommendation in mid-November.

It has not been an easy decision to make, nor is it one we would have made at all if we felt it would in anyway impair the abilities of the Commission to operate effectively. We firmly support the Commission, and the need for ending all forms of discrimination.

Rather than hampering the Commission's efforts, we believe the proposed restructuring offers an opportunity for the Civil Rights Commission to have a more manageable advisory committee structure, which has a broadened national perspective but which retains the capability to know, and meet, State and local needs, and thereby to strengthen the Commission's capabilities to perform its vital role.

Thank you.

Mr. GRANQUIST. Thank you, Mr. Chairman.

TESTIMONY OF WAYNE G. GRANQUIST, ASSOCIATE DIRECTOR FOR MANAGEMENT AND REGULATORY POLICY, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY WILLIAM BONSTEEL, SENIOR MANAGEMENT ANALYST, OFFICE OF MANAGEMENT AND BUDGET

Mr. GRANQUIST. My colleague is Mr. William Bonsteel, who is a senior management analyst at the Office of Management and Budget.

I have a very brief statement, Mr. Chairman, which I will read as quickly as possible.

I am pleased to appear before you today to testify in support of legislation which would amend the Civil Rights Act of 1957 with respect to the United States Commission on Civil Rights.

The Commission is an independent, factfinding agency which provides a unique perspective on civil rights problems and recommended remedial measures.

Accordingly, the Office of Management and Budget supports the 5-year extension of the Commission proposed by H.R. 10831, and the expansion of the Commission's jurisdiction to include discrimination against the aged and the handicapped, and the removal of the statutory ceiling on its annual appropriations.

Mr. Chairman, I have been asked to discuss the planned consolidation of the Commission's 51 State advisory committees into 10 regional committees.

I think I might do this best by first describing briefly the review process which lead to this proposal, and then the specific reasons behind the recommendation concerning the State advisory committees.

As you all know, a year ago the President directed a review of all advisory committees as a part of his overall effort to streamline the Federal Government and make it more efficient and effective.

To carry out the review, the Office of Management and Budget issued guidelines which restated the President's directive, and also the requirement of the Federal Advisory Committee Act that each committee be reviewed annually to determine if:

One, it is carrying out its purpose;

Two, its responsibilities should be revised;

Three, it should be merged with other advisory committees;

Or, four, whether it should be abolished.

The departments and agencies which use advisory committees to obtain advice and recommendations have primary responsibility for them. Accordingly, OMB's guidelines directed each Department and agency to review all of its committees, regardless of the authority under which the committees were established, and to submit its recommendations to OMB. Those recommendations proposed an overall reduction of 26 percent in the number of advisory committees.

The President indicated that he believed more could be done. He asked the agencies to review again the need for their remaining committees.

Our staff in OMB, the budget divisions and the committee management secretariat, reviewed the recommendations and worked with the agencies.

The resulting recommendations, announced by the President on August 25, 1977, would reduce the number of advisory committees reviewed from 1189 to 709, or 40 percent. Specifically, the President recommended that 261 committees be terminated and that 297 committees be consolidated into 78.

The State advisory committees of the Commission fell into the latter category.

Mr. EDWARDS. Mr. Granquist, I am sorry to have to interrupt you. There is a vote on the floor. We have 9 minutes to get there. It will be done in 10 minutes, there will then be a 5-minute wait and we will have another vote. We will come back right after that.

We thank you for your patience and regret this delay.

[Recess.]

Mr. EDWARDS. The subcommittee will come to order.

The House is now finished for the day. Please proceed, Mr. Granquist.

Mr. GRANQUIST. We had just commented that the President's recommendations were that 261 advisory committees be terminated and that 297 advisory committees be consolidated into 78. And the State advisory committees of the Commission fell into the latter category; not to be terminated but to be consolidated, as were the 63 district advisory committees of the Small Business Administration, which

also were to be consolidated into 10 regional committees, and the 34 National Science Foundation committees which were to be consolidated into 9, and many others.

The effect of these recommendations, as of the end of 1977, will be reflected in the President's Annual Report on Federal Advisory Committees, which is to be submitted to the Congress on March 31.

While that report is still in preparation, I can say that there has been a significant reduction in the number of advisory committees, and that most of the recommended terminations, and many of the consolidations, have been completed.

With regard to the State advisory committees to the Civil Rights Commission, the Commission's initial recommendation was that they should be continued. OMB staff reviewed that recommendation but, while recognizing the contributions of the State committees, believed that the Commission's capability to meet its responsibilities could be strengthened by substituting 10 regional committees instead.

More specifically, the Commission's field offices have been on a regional basis from the beginning. Through these offices, 10 regional advisory committees could provide more meaningful input, we believe, to the Commission's total planning process, than could 51 separate State committees.

The Commission would be better able to focus its resources to reflect its national objectives at the regional, State, and local levels. Regional problems could be more readily recognized and addressed.

And, finally, liaison and communications, now conducted between the Commission and 51 individual committees, could be improved.

This recommendation was made to the leadership of OMB. As you know, we had no inherent power under the Federal Advisory Committee Act to abolish any committee or to require its consolidation.

The Civil Rights Commission was the deciding factor. With this in mind, we met with Chairman Flemming and some of his staff to discuss the recommendation in detail. The Commission then carefully considered our recommendation, and came back to us and said they concurred.

After the August announcement and a meeting of the Commission with the chairpersons of the State advisory committees in September, the chairpersons expressed substantial concern about the impact of the consolidation. They met with staff at the White House. They ask for, and we had, a 2½-hour meeting with Acting Director James McIntyre and myself and other people from OMB, to discuss their concerns and to get more information about the proposal.

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It has not been an easy decision to make, nor is it one we would have made at all if we felt it would in any way impair the abilities of the Civil Rights Commission to operate effectively.

We firmly support the Commission, and the need for ending all forms of discrimination.

Rather than hampering the Commission's efforts, we believe the proposed restructuring offers an opportunity for the Civil Rights

Commission to have a more manageable advisory committee structure, which has a broadened national perspective but which retains the capability to know, and meet, State and local needs, and thereby to strengthen the Commission's capabilities to perform its vital role.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Granquist.

The gentleman from Massachusetts.

Mr. DRINAN. Thank you, Mr. Chairman. I thank you for your testimony. I am sorry about the delay. The machine broke down.

But I wonder, Mr. Granquist, whether any mathematical or financial facts are available?

I am not necessarily opposed to a consolidation if this would save a significant amount of money, but what are the facts?

Mr. GRANQUIST. The facts are that the money considerations were not a part of the decision, that as far as we are aware, there will be no savings of cash.

Mr. DRINAN. There will be no savings; that is categorical.

Well, do you have any evidence that the regional one will achieve the purposes that the President's directive, said? It asked: Are the responsibilities now being carried out and could they be carried out in a better way?

What evidence do you have that the regional groupings in 10 areas would, in fact, achieve the purposes better?

Mr. GRANQUIST. It is our belief that the Commission itself——

Mr. DRINAN. Who is the "our?" It is you and somebody else at the OMB?

Mr. GRANQUIST. It is the OMB.

Mr. DRINAN. But did you get experts or is there anybody else besides "us," you and the other guy?

Mr. GRANQUIST. Well, the ultimate decision, Congressman, was made by the Commission itself.

Mr. DRINAN. We had the chairman here the other day. He didn't quite say it, but he wasn't thrilled about the decision, I gathered. He made it, but they originally said no, and it was a very firm no. They came out against you people first, the initial recommendation, and then you people came back.

But I am just looking for information that you gave to them. Who says it is a good idea besides OMB?

Mr. GRANQUIST. I can only speak for OMB.

Mr. DRINAN. All right.

Did you have a hearing? Did you ask the civil rights community?

Mr. GRAQUIST. We had a meeting, as I said in my statement.

Mr. DRINAN. Well, nobody really came out for the OMB position, did they?

Mr. GRANQUIST. It has been hard to find support, except from the Commission itself.

Mr. DRINAN. Did you consider other options? For example, I was the chairman of the State advisory committee for Massachusetts—so maybe I am not entirely objective—but it was my impression then and now that many of these State advisory committees don't seem to find very much to do.

I wonder if you people considered the possibility of going back over the record of all these State advisory committees and say that

we will suspend, at least for the present, advisory committees, in let's say, Montana, because they don't seem to find things to do, but keep the ones as in California and New York, where a lot of things are happening.

Mr. GRANQUIST. While we did not consider recommending the suspension of individual State advisory committees, we did consider their performance.

What we are concerned about is that the Commission continue to have the flexibility, rather than have individual State committees mandated by statute, as the bill would propose.

Mr. DRINAN. Well, once again, I ask the question. Is there any evidence that they will do the job better if they are put into 10 rather than 50?

Mr. GRANQUIST. The evidence is only judgmental, it seems to me.

Mr. DRINAN. Judgmental, yes. On page 3, you propose that the 34 National Science Foundation State committees be consolidated into 9. Are you having a hassle over that, too?

Mr. GRANQUIST. No, sir.

Mr. DRINAN. So they haven't——

Mr. GRANQUIST. We didn't have any hassles about any consolidations.

Mr. DRINAN. Except this one.

Mr. BONSTEEL. No substantial ones.

Mr. DRINAN. Except this one?

Mr. GRANQUIST. Except this one.

Mr. DRINAN. By almost everyone. It is you people against the world. [Laughter.]

I am just trying to be objective about it. What evidence is there?

Mr. GRANQUIST. It seems to me, Congressman, that the basic choice you have to make is this:

I suspect that 10 are better than 51 if the Commission is to have a national perspective, and communicate to its advisory committees national concerns, and get these advisory committees to give them advice about concerns, actions, and forms of discrimination in various States.

If, on the other hand, the true mission of those 51 State advisory committees it to largely operate without Commission guidance from the centralized perspective, then perhaps we shouldn't have 10 committees.

Our sense is that the central guidance and the central role of the Commission is important. That's why we opt for 10.

Mr. DRINAN. And effectively destroy the possibility of meetings in, for example, the six New England States. What would be the regional grouping for the six New England States.

Mr. GRANQUIST. New York, New Jersey, and the six New England States. That is the regional grouping that we have indicated, in the structure itself.

Mr. DRINAN. I know from my limited experience in the past and my present recollection, we were never able to get anything going in that region, the eight States, with totally separate, disparate, problems.

Mr. GRANQUIST. It is worth noting that one of the causes, occasionally, for problems is the operation of the Federal Advisory Commit-

tee Act itself, because the advisory committees, these State committees, cannot act in an official capacity; take notes, make findings, unless there is a Federal staff member there from the Commission.

Mr. DRINAN. I remember it all too well.

And that is another rule. That was made up by the Commission, not by Congress.

Mr. GRANQUIST. I believe that is the result of the operation of the Federal Advisory Committee Act.

Mr. DRINAN. Well, I don't know.

I am just looking for something to support the OMB belief that the Commission's capability to meet its responsibilities can be strengthened by substituting 10 for 50.

You say it is judgmental. It is their judgment against the OMB.

Did you find anybody who thought maybe it would be a good idea?

Mr. GRANQUIST. Yes; Chairman Flemming, upon reflection, believed it was a good idea. He sat in a meeting with us and said yes, he believed that was true, that we were correct in the recommendation, that from the perspective of the Commission itself, that there would be a greater ability to exercise a national perspective in a regional committee system.

Mr. DRINAN. My problem is that all of that is oral. The Commission originally turned down the recommendation for the consolidation.

Was there anything in black and white on that? Any correspondence?

Mr. GRANQUIST. I can submit that for the record. I don't have it with me.

Mr. DRINAN. It does exist?

Mr. GRANQUIST. I believe so.

Mr. DRINAN. I would like to know that.

Was there anything subsequent to that where the Commission acquiesced? Was there an exchange of letters?

Mr. GRANQUIST. I believe there is, sir.

Mr. DRINAN. Mr. Chairman, I reserve the balance of my time.

Mr. EDWARDS. The gentleman from Virginia, Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman.

We appreciate your testimony here.

I am concerned about the concept of zero base budgeting. I would like you to explain briefly just what that is, and whether that principle has been applied to the request to continue the Civil Rights Commission and the advisory committees.

Mr. GRANQUIST. The principle of zero base budgeting, Congressman, is the principle of looking into all the activities that an entity of the Government does, rather than just new things that they propose from time-to-time.

In other words, if an agency is going along with a budget of $10 million and a certain size staff, what you do in zero base budgeting is go back and look at everything they do, not just the new things they want to do any particular year.

The other, the opposite to zero base budgeting is incremental budgeting.

In terms of the extension of the Civil Rights Commission, first of all, the budget process did review the Commission in a zero-based

way, so the recommendation to continue the Commission is founded upon a zero-based analysis.

In terms of the State Advisory Committees themselves, as I said to Congressman Drinan, they have little significant budgetary impact, so that the decision to recommend 10 regional committees instead of 51 State advisory committees was not really based upon a zero base budgeting concept. It is really a management perspective.

Mr. BUTLER. Did you have a zero base functioning analysis of the advisory committees? What useful purpose do they in fact serve in terms of the overall concept of the Civil Rights Commission?

Mr. GRANQUIST. They are factfinding. They can extend the eyes and ears of the Civil Rights Commission into communities, into States, into regions.

Mr. BUTLER. That is their mission. Now, do they accomplish that? Did you examine that in your——

Mr. GRANQUIST. Yes, they do.

Mr. BUTLER. And it is your view that their mission can be accomplished equally as well if advisory committees were on a regional instead of a State basis?

Mr. GRANQUIST. Yes, sir, because we believe that in addition to their factfinding mission in the States and local communities, there is another responsibility of advisory committees: that they be a part of a national effort, led by the U.S. Civil Rights Commission, to end discrimination.

Mr. BUTLER. So it is the national——

Mr. GRANQUIST. The national——

Mr. BUTLER [continuing]. That justifies the regional proposal?

Mr. GRANQUIST. That is what we believe.

Mr. BUTLER. Going back to the question of the zero-base budgeting, your analysis indicates that there is no function of the Civil Rights Commission which you would recommend be terminated?

Mr. GRANQUIST. There are no recommendations that we have at this time. We will, in the President's Reorganization Project, Congressman, be looking at the operations of the Civil Rights Commission and produce some recommendation about a year from now.

The first phase of that study was completed last week when the President announced his plans on the EEOC. We will have a similar study that looks at civil rights activities in other areas, including the Civil Rights Commission.

But we have no recommendations for change at this time.

Mr. BUTLER. In view of the fact that you are really analyzing the usefulness of the Commission and its functions, is it wise at this time to extend it for another 5 years?

Mr. GRANQUIST. We believe very strongly that it is.

Mr. BUTLER. Please explain to me why you believe it should be extended.

If you are considering terminating the Commission, why should we extend it for a period beyond which you are considering its termination?

Mr. GRANQUIST. The options that we are examining do not include termination of the Commission. We believe the Commission fulfills a unique position in the Government structure, and it does not do

things that are duplicative or can be done effectively by other entities in the Federal structure.

Mr. BUTLER. And you are satisfied that no other agency performs the same functions?

Mr. GRANQUIST. We are satisfied of that, sir.

Mr. BUTLER. Dr. Flemming testified that the Commission estimates the need for an additional $2.8 million in the first year if the Commission's jurisdiction is expanded to include studies of discrimination against the aged and the handicapped.

Does the OMB endorse the provision which would expand the Commission's jurisdiction in this regard?

Mr. GRANQUIST. I do not believe that the Office of Management and Budget has officially received that proposal, Congressman, so we have no position on it.

Mr. BUTLER. You have not examined the budgetary impact of the aged or handicapped proposal?

Mr. GRANQUIST. I do not believe so, sir.

Mr. BUTLER. If you do not know, I cannot think of anyone else that would.

Mr. GRANQUIST. There are other people who would.

Mr. BUTLER. Within OMB?

Mr. GRANQUIST. I am Associate Director for Management and Regulatory Policy at OMB. The budget examination responsibilities are those of another associate director.

Mr. BUTLER. Well, Mr. Chairman, are we going to hear from the OMB on this?

Ms. DAVIS. This is the only OMB witness we have scheduled.

Mr. BUTLER. Mr. Chairman, would it be appropriate to go into that aspect of it, since we are considering the expansion of the Commission's jurisdiction?

Would it be possible for OMB to supply us with information in this area——

Mr. GRANQUIST. Yes.

Mr. BUTLER. On the budgetary impact of the expansion in the area of discrimination against the aged and the handicapped?

Mr. GRANQUIST. We could do this, Congressman and Mr. Chairman, in whatever way you desire.

Mr. BUTLER. Please submit a statement, and I reserve the right to ask for witnesses.

Mr. EDWARDS. Without objection, so ordered.

Mr. BUTLER. During our hearings last year, we noted that the OMB was attempting to reduce the widespread use of consultants in the Government.

Now, has the Commission reduced its number of consultants, or is this someone else's responsibility at OMB?

Mr. GRANQUIST. To be quite candid, Mr. Congressman, I am not familiar with the use of consultants by the Commission.

We have recently circulated throughout the Government new guidelines on the use of consultants, in recognition of the problem, from time-to-time, of their improper use.

Mr. BUTLER. Here again, could we have a statement from OMB?

Mr. GRANQUIST. Yes.

Mr. BUTLER. Does the OMB examine the number of projects begun in fiscal year 1978, which will not be completed by the end of that fiscal year?

Mr. GRANQUIST. By the Commission?

Mr. BUTLER. Yes. Did the OMB examine these projects?

Mr. GRANQUIST. I would only say I assume so and we would submit that for the record, sir.

Mr. BUTLER. Thank you very much.

I have one other question, Mr. Chairman, on the zero base budgeting concept. This legislative proposal before us proposes to extend the Commission's existence, without an authorization ceiling. The Commission has had a ceiling since 1968, I believe.

Does an open-ended authorization coincide with the principle or the concept of zero base budgeting procedures?

Mr. GRANQUIST. It is not in opposition to it, Mr. Congressman, because the budgetary process will determine the appropriation to be requested from the Congress and will not be affected by the lack of an appropriation ceiling.

Mr. BUTLER. Does the OMB have an official view on the desirability or lack of desirability of open-end authorizations in a situation of this nature?

Mr. GRANQUIST. As a rule, we prefer specific authorizations that are consistent with the President's budget. However, we believe that it would be desirable to remove the constraints of this appropriation ceiling to avoid the need for special legislation each time a minor increase is necessary.

Mr. BUTLER. Mr. Chairman, I yield back the balance of my time.

Mr. EDWARDS. The gentleman from Missouri, Mr. Volkmer?

Mr. VOLKMER. Yes. I am sorry I am late.

I have reviewed your testimony and you note that the proposal from OMB to change the advisory committees to the Commission from a State to a regional network was done to insure better management. As a result of this structural change, the States will work out their areas of concern through the Regional Advisory Committee and the Commission will have local issues filtered up to it from these regional committees therefore, instead of 51 State advisory committees there will be 10 regional committees. It that correct?

Mr. GRANQUIST. That is correct, sir.

Mr. VOLKMER. In your evaluation, did you determine how many of the State advisory committees actually made recommendations throughout the period of a year to the Commission?

Mr. GRANQUIST. I do not have that with me, Congressman. We can provide that for the record.

Mr. VOLKMER. I would like to have that. That kind of information is important. It will determine the need for the proposed regionalization.

I believe the Commission testified that it will not do away with the State advisory committees. They will remain but they are going to have work through the region.

Mr. GRANQUIST. It is a change in structure. There is no intention to abolish a presence at the State level.

Mr. VOLKMER. Right. You are still going to have the State levels, but you are going to impose the regional committees as another level in the decision making process. Is that correct?

Mr. GRANQUIST. There will only be regional committees. There will not be 51 individual State committees.

Each of those regional committees, however, will have representation from each State: Chairman Flemming has said at least five members from each State, plus other members.

Mr. VOLKMER. Well, my point is: You can call it what you want but let's look and see what we have.

What are the five people back in the State going to be doing, just meeting on a regional level and never worrying about what goes on in their States?

Mr. GRANQUIST. No, sir; that is not the intention at all. That's why I said there will be a State presence.

Mr. VOLKMER. There has got to be a State presence. Now, if you want to call it an advisory committee, fine. If you just call them, members of the regional committee, fine. But in fact, they are to continue to perform some of the duties that are now being carried out by the State committees are, they not?

Mr. GRANQUIST. That is correct.

Mr. VOLKMER. Call it what you will.

Now, let's review the levels of activity under the proposed change. As I understand it, there will be a State body to still look into and investigate what is going on locally; each State body will be meeting on a regional level and reviewing the complaints, et cetera, or ask for investigations for the States, on a regional level before going to national. Aren't you really just imposing the regional level of government there?

Mr. GRANQUIST. There will be a regional level of those committees, and they will be the only committees.

Those regional committees will be made up of members who represent the concerns of their individual States.

Mr. VOLKMER. Well, who is going to be checking into what goes on in the individual States? Will that be done by volunteers?

Mr. GRANQUIST. The individuals in those States.

Mr. VOLKMER. From the regional advisory committee?

Mr. GRANQUIST. Yes, sir, who are members, in turn, of a regional advisory committee.

Mr. VOLKMER. Right.

So the mere fact that they are members of the regional advisory committee; you are not trying to tell me that they aren't also de facto, a State committee?

Mr. GRANQUIST. That would be their choice, as to how they wish to view their responsibilities, Congressman.

Mr. VOLKMER. All right.

Then if their responsibilities are that they would not look into, investigate and question State actions and matters going on within the State, then I ask you this question: Who is going to do it if they are not going to do it?

Mr. GRANQUIST. The hope is that we accomplish two things, Congressman:

One is that the individual members of the regional advisory committees from the States would have access to and concern with things that went on in their own States.

Second, because they are members of a regional advisory committee, they would have a broader perspective because they would

know what is going on in other States at the same time. They would be meeting as a regional advisory committee; they would be able collate, if you wish, or put together, some of their concerns on a more representative basis across State lines, and be able to get their information and their recommendations up to the Commission from 10 routes instead of 51.

Mr. VOLKMER. At present, the State of Missouri, has a State advisory committee. Now, if I think that something is not being taken care of, or there is discrimination in a certain area within a certain part of that State, I can, as an individual, contact the State advisory committee—they look into it, and then they will inform the Civil Rights Commission of the problem. That is basically what goes on today.

Mr. GRANQUIST. Yes, sir.

Mr. VOLKMER. Now, let's look at the practical aspects of it again. We start with the premise that something goes wrong in my local community in Missouri.

Now, under your proposal I would contact the region, let's say, in Chicago?

Mr. GRANQUIST. Your contact would be with somebody in your State, Congressman, whoever you would contact today, that was a member of a advisory committee. You could contact somebody else, of course, you would have that choice, but I assume that you would call the person you call today, a Missouri member of the advisory committee.

Mr. VOLKMER. And in all reality, the present members of the Senate advisory committee could very well remain members of the regional advisory committee. Is that not correct?

Mr. GRANQUIST. That is correct.

Mr. VOLKMER. There is nothing in here that says it ought to be 5, or 10 or 15 or any number?

Mr. GRANQUIST. There is nothing in our directive; there is nothing in the President's directive or in the decision that limits the number of people. It is the Commission's responsibility—and their decision—as to how they will organize those regional committees.

Mr. VOLKMER. You are saying that under the restructuring we would still have what we have now, except there would also be a regional advisory committee operating, as well as what we presently have, to funnel the matters through?

Mr. GRANQUIST. The basic difference would be that the committees, the regional advisory committees, when they met as official bodies, would have more representation from the other States around them.

Mr. VOLKMER. That's correct; that's one thing——

Mr. GRANQUIST. And if you want to call it a funnel, I guess you could call it a funnel.

Mr. VOLKMER. Right, call it a funnel.

I yield back the balance of my time.

Mr. EDWARDS. Questions, Ms. Davis?

Ms. DAVIS. Thank you, Mr. Chairman.

I would like to follow up on the authorization issue for the Commission. In your review as to whether you endorsed the open-ended authorization, did you give any consideration to other temporary

agencies similar to the Commission that have open-ended authorizations or ceilings?

Mr. GRANQUIST. I did not participate in that review, so I cannot answer your question, Counsel.

Ms. DAVIS. Could we ask that, in addition to the other information you submit, would you submit that as well?

Mr. GRANQUIST. Yes.

What you want is a comparison with other Commissions like this one?

Ms. DAVIS. Yes.

One other question: Do you recognize that in addition to providing grassroots policy data to the Commission, the advisory committees, in some States, have substantial impact on civil rights legislation within their States? Do you think that such local impact is important, and would it continue under the proposed regional plan?

Mr. GRANQUIST. Where advisory committees have had that kind of impact, it is not our intent to stop that from taking place.

I think it is important that we be able to have a voice in State levels, expressing a very serious national concern about antidiscrimination efforts throughout society.

Ms. DAVIS. Do you think that could be continued under the regional plan, or could it best be done with an advisory committee on the local level?

Mr. GRANQUIST. I don't think that our proposal would change that, that it would be any more difficult or any more easy to do.

Ms. DAVIS. Thank you.

Mr. DRINAN. Mr. Chairman?

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Let me just follow up on the point that was made by counsel.

It doesn't seem to me that anything is going to happen on the State level. If you have five people from a State they can't act as you yourself suggested unless there is a Federal shepherd there to support the action.

I think that you are going to lose a lot of input. The present statute reads:

> The Commission may constitute such advisory committees within States composed of citizens of that State.

The original intent of Congress was very, very clear in 1957 that the Commission has to get down to the State level and work with citizens within one State.

You are suggesting a complete tearing up of that particular item.

If you had some rationale, I might be inclined to go along. For example, if you proposed that in a certain State which has a State human rights commission, you don't have an advisory committee; that would be a rational classification.

There is a gentleman from Texas who is going to testify later today, and he said, "Most States in our region have no State human rights commission."

By replacing the State advisory committee with a regional organization, you would in effect remove the one, vital civil rights organization.

How do you respond to that? Was that considered?

Mr. GRANQUIST. We were not intending to replace any kind of a presence at the State level by our proposal, so that when you said that we are somehow through our proposal replacing a State presence, I just must respectfully disagree.

Our intention is to organize the individuals differently.

Mr. DRINAN. Obviously under your plan, there would never be another meeting of the State advisory committees at all, in New England. They would meet in New York, or if they met in Maine, it would be just once a year, or once every other year.

It is silly to say that you are not doing away with and eroding sharply, the impact of a State advisory committee. There is no State advisory committee any more, sir. There just isn't. That is what your bill says.

So what you just said to counsel here is not really so. You are eliminating them; there is going to be one regional group; far fewer people will participate. Do you have an estimated number of the persons who now participate, and under your scenario, how many will participate?

Mr. GRANQUIST. It is now 800 across the country. And our understanding is, under the new structure, it would be somewhere around 450.

Mr. DRINAN. It is obvious that the impact isn't going to be the same.

It is not for money. If these people were getting a per diem or travel was excessive, that would be a different matter. But it is not. You are just eliminating 350 people from grassroots organizations, just so that the chart looks a little prettier.

Now, try to give some rational classification. Why did you chose this, and not some other way? Did you think of going to the Commission and saying: Listen, you have to cut back on the expenses of giving some services to 800 volunteers and that the rules mandate that you have to cut back a million.

The Commission then decides what is the most effective way of utilizing the reduced resources that it has.

Mr. GRANQUIST. In view of the mandate that the President gave to us, to reduce the number of units of government as he has pledged to do, when we looked at activities, including the Commission on Civil Rights activities, we looked to see if the application of a regional structure might be appropriate. It has been in many other areas of government.

It was decided by the Commission, after we made the recommendation, that: Yes, in fact, a regional structure of the committees would, from their point of view, improve their ability to transmit their policy considerations to the States and to local communities.

That is the underlying rationale, Congressman, for our recommendation.

Mr. DRINAN. You are trying to put the burden on the Commission on Civil Rights. I feel absolutely certain they never would have suggested this if OMB hadn't pressured them the second time.

That is my feeling. That is probably historically true. They never would have thought of diminishing 800 volunteers to 450.

Mr. GRANQUIST. That was their decision, Congressman.

You know, we have no inherent power to change that. We made a recommendation which they had the right to turn down or to accept.

Mr. DRINAN. I thank you very much.

Mr. BUTLER. Mr. Chairman?

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. I wish to state that I believe the OMB is discharging its appropriate functions in making recommendations in this area.

I appreciate your tenacity in this regard, and of course, the authorization is now a matter for the committee, which has the benefit of your judgment and the recommendation of the Civil Rights Commission.

Of course, the ultimate decision rests with us. I do not think you ought to be abused for what you believe to be an improvement in the efficiency of the Government operations.

I hope that you will not be deterred by future aggressions from the——

[Laughter.]

Mr. DRINAN. If the gentleman would yield.

I didn't mean to abuse him. I just wanted a few facts, just like one or two facts.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. I have no questions.

Mr. EDWARDS. I have no questions.

We thank you very much, Mr. Granquist.

Could we have a commitment from OMB to forward the requested information to the subcommittee by next Monday, a week from today? We do have problems in voting next week.

Mr. GRANQUIST. Would Tuesday be appropriate, Mr. Chairman? I will be out of town until Monday.

Mr. EDWARDS. Tuesday would be fine.

Thank you very much.

Mr. GRANQUIST. Thank you.

Mr. EDWARDS. Our next witness is Mr. Drew S. Days, III, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice.

Mr. Days, we welcome you. We are all acquainted with your statement. If you so desire, you can summarize, or you can proceed as you see fit.

Without objection, Mr. Days' full statement will be made a part of the record.

[The prepared statement of Mr. Days follows:]

STATEMENT OF DREW S. DAYS, III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today on behalf of the Department of Justice to testify in support of H.R. 10831, a bill which would amend the Civil Rights Act of 1957 with respect to the United States Commission on Civil Rights.

The Department of Justice supports the five-year extension of the United States Commission on Civil Rights beyond 1978, the expansion of its jurisdiction to include discrimination against the aged and the handicapped and the removal of the statutory ceiling on its annual appropriations.

Since its creation in 1957, the Commission has served the nation with distinction, as a leader in our efforts to combat discrimination against American minorities. As a result of its labors and uncompromising commitment, the

Civil Rights Commission, through its factual reports and recommendations, has contributed significantly to the enactment and enforcement of the Civil Rights Acts of 1960, 1964, and 1968, the Voting Rights Act of 1965 and its subsequent extensions, and more recently to the Equal Credit Opportunity Act, the Civil Rights Attorneys' Fees Act, and nondiscrimination provisions of the State and Local Fiscal Assistance Act.

As you know, the Commission's responsibilities are manifold. It was originally established as an independent fact-finding agency to investigate complaints of voting rights deprivation, to study and collect information concerning fourteenth amendment violations, and to evaluate federal laws and administrative policies. In 1964 the U.S. Commission on Civil Rights was further authorized by Congress to serve as a national clearinghouse of information, and, in 1972, its substantive jurisdiction was expanded to include sex discrimination.

Indeed, the Commision, over the years, has matured as its expertise has grown, until today it represents one of the most influential and effective civil rights organizations in the country. Through its published reports and recommendations, the Commission has provided guidance and direction to agency offices preparing to assume new enforcement responsibilities and has forcefully monitored and evaluated on a continuing basis the scope and effectiveness of their efforts.

In its role as a national clearinghouse of civil rights information, the Commission has been of inestimable value to the agencies of the federal government and to the public at large. It has collected and disseminated information which has served to increase public understanding of the issues, promote sensitivity to the problems, and consequently influence the national attitude. Moreover, it plays a unique role among federal agencies in its capacity to reach through its advisory committees to the grass roots where it taps the resources of public sentiment and local opinion. With respect to these state advisory committees, the administration favors their reorganization into regional groups—a change for the sake of efficiency that will not diminish their effectiveness or usefulness.

The Commission's factual reports have been of considerable use to the Department of Justice and the Congress. They helped lay the foundation for the passage of the Voting Rights Act of 1965, and provided much of the basis for the 1970 and 1975 extensions of the Voting Rights Act. In fact, the *Voting Rights Act: Ten Years After*, published by the Commission in January 1975, is printed in its entirety in the 1975 Congressional extension hearings and has been utilized extensively by our Voting Rights Section.

Another example of the Commission's research is its publication, *Minorities and Women as Government Contractors*, issued in May, 1975. This study analyzes the extent to which minorities and women share in federal, state and local government contracts and the problems encountered by firms owned by minorities and women who seek government contracts. This publication has been very helpful to the Employment Section of the Civil Rights Division in successfully defending a number of recent lawsuits which seek to enjoin implementation of the minority business enterprise provisions of the Federal Public Works Employment Act of 1977.

In the area of Indian rights, the Commission's state advisory committees have published seven major reports from which our Indian Rights Office has developed several investigations. In addition, the *American Indian Civil Rights Handbook*, which the Civil Rights Division has mailed to citizens, has proved to be an extremely helpful consumer guide, while *The Southwest Indian Report* has been widely used within the Division.

The reports of the Civil Rights Commission have also provided assistance to the Task Force on Sex Discrimination, established in the Civil Rights Division in 1976. Directed to develop a plan for the elimination of sex discrimination from all federal laws, regulations, and policies, the Task Force, as an initial step, prepared a computer survey of federal laws contained in the United States Code, for the purpose of identifying provisions which use unnecessary gender-specific terminology or which substantively discriminate on the basis of sex. During this initial phase of the project, the Task Force found most helpful, and relied heavily upon, a study prepared by the Civil Rights Commission entitled, *Sex Bias in the U.S. Code*. Although the *Sex Bias* study was not published in final form until April of this year, the Commission was kind enough to let us use their working drafts of the study while we were

preparing our computer search last year. Another publication of the Civil Rights Commission which the Task Force has used quite extensively is, *A Guide to Federal Laws and Regulations Prohibiting Sex Discrimination*, published in July, 1976. We have found this publication most helpful as a tool in training attorneys both inside and outside the government, regarding the various federal laws that prohibit sex discrimination. Most recently, the Task Force is studying a third publication of the Civil Rights Commission entitled, *Window Dressing on the Set: Women and Minorities in Television*, published in August, 1977, to determine whether we should adopt any of the recommendations in conjunction with our review of the federal laws and policies relating to the Federal Communications Commission.

Another important responsibility of the Civil Rights Commission is to serve as a monitoring agency of the federal civil rights enforcement effort. Although the views of the Civil Rights Division are not always consonant with those of the Commission, and, despite the fact that no agency delights in criticism directed toward its administration, the Commission's publications are widely circulated in the Division, and its recommendations are carefully considered.

In 1973 the Civil Rights Division created a temporary Task Force on Hispanos with the objective of identifying the extent and type of discrimination against Hispanic-Americans. Its study was completed the same year, and a final report was prepared with recommendations for improved enforcement. The research and reports of private and public organizations, including the Civil Rights Commission, in addition to general criticism of the federal government's enforcement effectiveness in the area of discrimination against Hispanics, contributed significantly to the decision to create that special task force. The Commission's criticism of federal agency inaction and ineffectiveness has often been an important factor in initiating improvement in a federal civil rights compliance program. In fact, the Attorney General's December 1, 1976, Title VI regulations setting forth minimum standards to improve federal agencies' Title VI enforcement efforts were issued, in substantial part, in response to Commission recommendations.

Recently, a certain amount of criticism has been directed toward the Commission itself. We fundamentally disagree, for example, that the Commission's factual studies are merely duplicative of the work of other agencies. Although some of its data are derived from other agencies, the Commission brings this material together, analyzes it with impartial scrutiny, issues recommendations designed to improve effectiveness and coordination, then publishes this material in a form accessible to the general public. No other single agency performs this function. Nor does any other agency have the broad perspective, the long-term interest, experience or expertise of the Commission in civil rights matters.

I believe that, while the problems we face today are different from those in 1957 when the Commission was created, or even in 1967, the need for an independent fact-finding agency to investigate, report, and monitor nationwide discrimination and federal enforcement efforts has not diminished.

With respect to voting rights, prior to August 1982, when many states and political subdivisions will become eligible to "bail out" from the coverage of the special provisions of the Voting Rights Act, the Commission might consider making a thorough and objective study of the continued need for this coverage or of the need for any changes in the provisions and coverage of the Voting Rights Act. In addition, within the next five years the Commission might consider conducting a study of the implementation, effect, and enforcement of the minority language provisions of the Voting Rights Act, which Congress enacted in 1975.

With respect to Title VI enforcement there is still much work to be done in assuring that the programs which this Congress authorizes and provides appropriations for are available to all Americans without regard to race, color or national origin. It is estimated that somewhere between 65 and 70 billion dollars a year are disbursed to recipients through about 400 federal assistance programs covered by Title VI. To secure compliance in these vast federal assistance programs, we need the concentrated efforts of all parties, including the federal agencies, the Attorney General in his coordinating role, OMB as the federal government's program evaluation and management advisor for budget purposes, the private interest bar and the Civil Rights Commission.

In our efforts to combat sex discrimination, the Commission is needed to continue the identification of the impact of discrimination on the basis of sex

upon American society. Its national network of contacts is of vital importance in investigating sex discrimination.

And finally, the proposed expanded jurisdiction of the Commission to include discrimination against the aged and the handicapped follows legislation already enacted, which includes the Age Discrimination in Employment Act of 1967 and the Rehabilitation Act of 1973, and will require considerable research, investigation and experienced personnel to lay the groundwork for effective civil rights enforcement and agency performance. In fact, Congress, when it passed the Age Discrimination Act of 1975, expressed confidence in the Commission's capacity to assume additional responsibilities by authorizing the Commission to undertake a special study on age discrimination, which will soon be released. Because the federal agencies are new to this enforcement field, there will be a need for the unique and comprehensive guidance that the Commission can give.

As you know, on December 15, 1977, I testified in support of a similar bill, S. 2300, during hearings before the Senate Judiciary Subcommittee on the Constitution. In response to a request by the Chairman of that Subcommittee, Senator Bayh, I subsequently prepared a comment on the effect of *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976) on the proposal in S. 2300, also contained in the House bill we are considering today, that the Commission be empowered to study issues related to age discrimination under the Equal Protection Clause. I have attached a copy of that letter, dated February 13, 1978, to this statement.

Based upon the work of the U.S. Commission on Civil Rights thus far in the field of sex discrimination, and its continuing productivity and assistance in the other areas of civil rights enforcement, the Department of Justice recommends to the Congress the five-year extension of the Commission and the expansion of the Commission's jurisdiction to include discrimination on the basis of age and handicap.

TESTIMONY OF DREW S. DAYS III, ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION; ACCOMPANIED BY KAREN SIEGEL, OFFICE OF LEGISLATIVE AFFAIRS, DEPARTMENT OF JUSTICE

Mr. DAYS. Thank you.

Mr. Chairman and members of the subcommittee, I am pleased to appear before you today on behalf of the Department of Justice to testify in support of H.R. 10831, a bill which would amend the Civil Rights Act of 1957 with respect to the U.S. Commission on Civil Rights.

With me today is Karen Siegel, a member of the Department's Office of Legislative Affairs.

Perhaps I could summarize my statement which is somewhat extensive, and just highlight some of the points in that statement with respect to why we feel that further extension of the life of the Civil Rights Commission is appropriate; indeed, it is necessary, to insure that the Federal Government is doing all it can to protect civil rights and to make certain that it is doing what it should do to vindicate the Constitution and laws of the United States.

Since its creation in 1957, the Commission has served the nation with distinction as a leader in our efforts to combat discrimination against American minorities.

As a result of its labors and uncompromising commitment, the Civil Rights Commission, through its factual reports and recommendations, has contributed significantly to the enactment and enforcement of the Civil Rights Acts of 1960, 1964, and 1968, and the Voting Rights Act of 1965 and its subsequent extensions, and more recently to the Equal Credit Opportunity Act and the Civil Rights

Attorneys' Fees Act, and the nondiscrimination provisions of the State and Local Fiscal Assistance Act.

As you know, the Commission's responsibilities are manifold. It was originally established as an independent factfinding agency to investigate complaints of voting rights deprivation, to study and collect information concerning 14th amendment violations, and to evaluate Federal laws and administrative policies.

In 1964, the U.S. Commission on Civil Rights was further authorized by Congress to serve as a national clearinghouse of information, and, in 1972, its substantative jurisdiction was expanded to include sex discrimination.

Essentially what we have seen in the work of the Civil Rights Commission is its ability to grow with the nature of the problem and to deal with new issues in the civil rights area in a way that we believe is unique and is not carried on by any other agency in the Federal Government.

In its role as a national clearinghouse of civil rights information, the Commission has been of inestimable value to the agencies of the Federal Government and to the public at large.

As was indicated in my statement, it plays a unique role among Federal agencies in its capacity to reach down through its advisory committees to the grassroots, where it taps the resource of public sentiment and local opinion.

You asked us specifically to comment on the question of the State advisory committees. And, of course, as I have indicated in my statement, the administration favors their reorganization into regional groups; we see this as a change for the sake of efficiency that will not diminish their effectiveness or usefulness.

I am reluctant to even read that section of my statement after the exchange with the prior witness. But let me indicate the perspective of the Justice Department:

We really are not in a position to comment knowledgeably on whether a consolidation will impair the work of the Civil Rights Commission, or whether, in fact, having State agencies is the way to go. We think that a number of these issues can be resolved through effective administration of the Commission, and we don't really want to pronounce upon that particular issue. There is room for honest disagreement on that issue.

What we would not like to see is the Commission becoming another agency in Washington with no outreach, with no identification in local communities at the grassroots level, because that is how we at the Justice Department have been able to get a great deal of information about the problems around the country and about ways perhaps in which we can be more effective in conducting our litigation responsibilities.

I have set out in my testimony a number of reports that have come from the Commission; the voting rights area, issues with respect to minorities and women as government contracts, Indian civil rights, sex bias, the role of minorities, and women in television.

All of these reports have provided us with a very clear and concise statement of the problems confronting minorities and women in these areas and some helpful suggestions as to how the Justice Department, among other agencies, could perhaps make a meaningful contribution in dealing with these problems.

It is also important to understand that the Civil Rights Commission serves as a monitor, a kind of ombudsman, for other civil rights agencies.

We in the Civil Rights Division of the Justice Department think we are doing a good job, that we are doing all we can to enforce the statutes given over to us to protect the rights of Americans to free access to all facilities of the Government and to nondiscrimination.

But it is helpful to have something like the Civil Rights Commission every once in awhile say you are not doing exactly what you should be doing, or should be doing more, or what you are doing doesn't quite get at the problem. It is very difficult for any institution, even the most well-meaning and even with people at the head who have a very profound commitment to vindicating civil rights, to do that type of self-analysis and to be adequately critical of one's own performance, to make the types of changes that are necessary.

And certainly, the Civil Rights Commission has not pulled many punches in this regard. They have criticized where criticism is due. And I think we have gained in the Justice Department from that attitude on the part of the Commission.

For example, in the area of housing discrimination against Hispanics, there was some indication that the Federal departments were not doing what they should be doing. There was criticism of the Attorney General's role in enforcing title VI, and carrying out coordination responsibilities.

And certainly, it was in the forefront of my mind and of other people in the Civil Rights Division and on the mind of the Attorney General, when in December of last year, December of 1977, I issued a directive to the grant agencies of the Federal Government requiring them to come forward with enforcement plans for title VI, the first one that had ever been done since title VI was enacted by Congress.

It was precisely that type of activity that the Civil Rights Commission recommended many years earlier.

Some people have charged the Commission with engaging in duplication and overlap in terms of its reports. That has not been our experience. Given all the things that are going on in the Federal Government and all the potential matters of civil rights concern in this country, it is very helpful to have the Civil Rights Commission holding hearings, going around and collecting information and synthesizing that information into manageable documents that then can be used by the enforcement agencies to determine what they need do to improve performance.

This information is not readily available elsewhere. The Commission certainly provides that significant function.

In terms of the future responsibilities of the Commission, certainly the problems of discrimination are ever changing and becoming more complex. As we deal with some of the old problems, new problems arise.

And certainly in the voting rights area, with respect to the language minority provisions of the Voting Rights Act, as amended in 1975, we think the Civil Rights Commission can do a very helpful study of the impact of those provisions and whether there is some additional need on the part of Congress to deal with that problem.

There is also a problem in terms of title VI enforcement. Although we are making vigorous efforts to bring the Federal Government into line and make it more sensitive to its responsibilities under title VI, we are talking about a very large responsibility; $70 billion being expended each year through about 400 Federal assistance programs in about 28 agencies.

And the Civil Rights Division of the Justice Department is not really geared to performing the type of function that the Commission might perform in holding hearings and getting at the base for perhaps more concentrated efforts to make the Federal Government a better enforcer of title VI regulations and requirements.

In the sex discrimination area, we are also trying to bring the Federal Government into line, and certainly in the area of the aged and handicapped.

These pieces of legislation will take some time to flesh out and to become understood in terms of their reach and impact.

And to have the Civil Rights Commission looking into these matters and providing information about their application and perhaps their limitations would be very helpful to us.

As my testimony reflects, when I testified before the Senate Judiciary Committee, there was some concern about the impact of a recent Supreme Court decision, Massachusetts Board of Retirement against Murgia, upon the provisions of 2300, which is a Senate counterpart.

And I provided with my testimony here today copies which I provided the Senate subcommittee on that issue.

Mr. EDWARDS. If you will permit me, Mr. Days, the letter is not attached. You will furnish the letter?

Mr. DAYS. I have.

We do have mixups every once in awhile in the Justice Department.

[The letter referred to follows:]

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., February 31, 1978.

Hon. BIRCH BAYH,
Chairman, Subcommittee on the Constitution, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR BAYH: In response to the request made of me during testimony before your subcommittee on December 15, 1977, concerning S. 2300, a bill to extend the United States Commission on Civil Rights, I wish to expand my analysis of the effect of *Massachusetts Board of Retirement* v. *Murgia*, 427 U.S. 307 (1976) on the proposal in S. 2300 that the Commission be empowered to study issues related to age discrimination under the Equal Protection Clause.

Because the bill would simply authorize the Commission to "study and collect information concerning legal developments constituting a denial of equal protection of the laws . . ." with regard to age, the *Murgia* decision, or for that matter any equal protection decision, would not affect the ability of the Commission to carry out this limited proposed responsibility. On the other hand, the Supreme Court in the *Murgia* case permitted a state requirement that state policemen retire at age fifty, and declined to make age groupings a "suspect" classification, subject to the kind of close judicial scrutiny that, for example, racial classifications receive. There may be, therefore, some feeling that the case portends a denial in future cases of judicial protections to arbitrary legislative age groupings. Should this be the course of future decisions, there may be little for the Commission to study. While I do not read the *Murgia* case so broadly, I do see some advantage in clarifying the proposed charge to the Commission with regard to its age discrimination studies.

In this regard, Committee Print #1 and Committee Print #2 appear to be improvements over the language presently in Section 3 of the bill.

I hope this is responsive to your request, and if you believe I can be of any further assistance in the consideration of this bill, please feel free to contact me again.

Sincerely,

DREW S. DAYS, III,
Assistant Attorney General,
Civil Rights Division.

Mr. DAYS. One other thing in the area of sex discrimination is the Equal Credit Opportunity Act, and the fact that that statute has brought in a number of newer agencies into the fight for enforcement of equality in the civil rights area.

And we think the Civil Rights Commission can play a significant role in moving us forward in that area, as well.

Based upon the work of the U.S. Commission on Civil Rights thus far in the field of sex discrimination and its continuing productivity in the other areas of civil rights enforcement, the Department of Justice recommends to the Congress the 5-year extension of the Commission and the expansion of the Commission's jurisdiction to include discrimination on the basis of age and handicap.

I would be happy to entertain your questions.

Mr. EDWARDS. Thank you, Mr. Days.

Mr. Drinan?

Mr. DRINAN. Thank you, Mr. Chairman.

And thank you, Mr. Days.

On page 8 you say: "Recently, a certain amount of criticism has been directed toward the Commission itself."

Is that in print? I haven't seen anything adverse. We have never had an adverse witness in these hearings. Or is that just in the civil rights community?

Mr. DAYS. Well, I haven't seen anything in print, either. But there have been discussions along these lines. I think the resolution of the discussions and of the criticism has been that these reports are not duplicative, but that question has been posed every now and again. And I think it is a fair question to have posed and to have answered.

Mr. BUTLER. Would the gentleman yield?

Mr. DRINAN. Yes.

Mr. BUTLER. While we are on that point, what have you done to back up this statement: "We fundamentally disagree that the Commission's factual studies are merely duplicative of the work of other agencies."

Have you or your office prepared an analysis or a memorandum along those lines that might be——

Mr. DAYS. There is nothing readily available, Mr. Butler, but I can tell you that in the course of preparing litigation and preparing briefs in a number of our cases, we often find that the most helpful document to look to is something by the Civil Rights Commission. That is a document that is readily available and has the types of information that we need to make our point.

For example, in litigation that we are handling on the Public Works Act of 1977, having to do with minority set-asides, the information provided in a report by the Commission on Minorities and Women in Government Contracts was a very helpful piece of information in providing the courts with a sense of the problem that

Congress was trying to address in legislation with respect to public works contracts.

Mr. BUTLER. If you will still yield?

Mr. DRINAN. Yes.

Mr. BUTLER. Along that line, I seem to remember someone stating that there are several actual duplications of this report. I am sure that there are some reports which are not duplications which you have been using in your litigation. Have you seen a statement that these are the ones that we consider duplicative? Have you endeavored to dispute that?

Mr. DAYS. I have not seen such a list.

Mr. BUTLER. Thank you.

Excuse me.

Mr. DRINAN. I suppose in a certain sense they should duplicate because the fourth purpose by statute is to serve as a national clearinghouse for information with respect to denials of equal protection.

But I think that this subcommittee, or I at least, would be interested to know of any serious criticism that should be communicated to the Commission as to any defects in carrying out its several mandates.

I hate to go back to the advisory committees, but that is the only point in contention, I guess, today.

Would you elaborate on the one, careful sentence that you have? [Laughter.]

At the bottom of page 3, you subscribe to this and you think that this is: "* * * a change for the sake of efficiency that will not diminish their effectiveness or usefulness."

And then you have a caveat: "We cannot really pronounce knowledgeably on this."

I frankly would like to give the Commission a bit more flexibility. If they do not want to establish an advisory committee in some forlorn State, then maybe we should say that they should have up to 40 or no more than 40, or something like that.

But we are changing something that has worked rather well. All I am saying is there must be other options that weren't apparently considered by OMB.

Maybe the Justice Department did think of some other things.

Mr. DAYS. We did not think of other things.

My careful language in my statement is really designed to reflect the fact that we don't have a position on this issue, and are perfectly willing to watch armies fight over this and perhaps make observations from time to time.

But we want to underscore the value of the Commission, how ever it is structured, in getting this type of information forward.

Mr. DRINAN. Let me squeeze that statement just a bit. So that you really don't agree with the OMB which favors a reorganization into regionals groups. Are you telling me that the Department of Justice has no position?

Mr. DAYS. We simply defer to an agency that spends more time looking into these matters than we do.

Mr. DRINAN. You did beautifully.

Thank you very much. [Laughter.]

Mr. EDWARDS. Mr. Butler?

Mr. BUTLER. I thank you, Mr. Days. The last time you testified, I protested at the lateness of the receipt of your statement.

Mr. DAYS. I hope we remedied that this time around, Mr. Butler.

Mr. BUTLER. As a matter of fact, the committee got it on Friday and it got to my office this morning, so I guess you are proceeding with deliberate speed. But I did have a chance to read it, and I appreciate your comments.

I believe that your analysis is fair. I would question you about one particular part of your statement, found on page 9:

> With respect to the voting rights, prior to August 1982, when many states and political subdivisions will become eligible to "bail out" from the coverage of the special provisions of the Voting Rights Act, the Commission might consider making a thorough and objective study of the continued need for this coverage.

From the point of view of these covered States, what do you think the odds on the objectivity of such a study may be?

Mr. DAYS. You mean, how would the covered states regard being reported by the Civil Rights Commission?

Mr. BUTLER. Yes, sir.

Mr. DAYS. I think the odds are good. I have never seen the Civil Rights Commission take a position that supported maintaining some type of Federal presence where it wasn't necessary.

In its presentations in support of the 1975 amendments, I think that the Commission provided the Congress with information and case studies with respect to which no other agency seemed to have such a grasp.

And I would expect that on this particular matter the Commission would come forth with fair and very thoughtful comments.

Mr. BUTLER. How often are you finding voting rights violations and, enforcement problems in the covered States? Is it a continuing problem?

Mr. DAYS. Quite frequently in some areas.

Mr. BUTLER. Are you still finding problems in the Commonwealth of Virginia?

Mr. DAYS. I have not seen the problems in Virginia. The entire State is not covered. There are no problems that I have been aware of in Virginia as such, but certainly in some of the other States there have been problems.

Only before coming over here, I was confronted with a prospective lawsuit against a school board in Texas that had completely ignored our objections to certain changes in the electoral process, even though there was a ready alternative, namely coming to the District of Columbia and filing a suit to get the procedure declared not in violation of the Voting Rights Act.

We see this quite frequently.

Mr. BUTLER. By that, do you mean ignoring the act?

Mr. DAYS. That's right.

Mr. BUTLER. I thank you.

I yield back the balance of my time, Mr. Chairman.

Ms. DAVIS. At page 1 of your prepared statement, you indicate that the Department of Justice supports removal of the statutory ceiling on the Commission's annual appropriations.

Would you set forth the reasoning for this endorsement.

Mr. DAYS. Well, in that respect, we see no reason for limitation. We think that the Civil Rights Commission has over the years demonstrated its ability to perform its functions in a way that more than justifies the appropriations that it has received, and we do not think it would be wise to establish some type of arbitrary limitation, particularly in light of some of the new responsibilities that I think it will be expected to discharge, if it is continued.

I simply don't see any basis for imposing any ceiling at this time.

Ms. DAVIS. I have one additional question Mr. Days, and it goes to the present language in H.R. 10831 which expands the Commission's jurisdiction. Does the holding in the *Murgia* case suggest new language is necessary? Please summarize your letter to the Senate Judiciary Committee and the facts in the *Murgia* case.

Mr. DAYS. Yes.

Well, in 1976 the Supreme Court was confronted with a challenge to mandatory retirement by the Commonwealth of Massachusetts with respect to the State police agency.

And the Supreme Court upheld a requirement that State police officers retire at age 50 and declined to make age groups suspect classifications, subject to the kind of close judicial scrutiny that, for example, racial classifications receive.

There may have been some feeling after the *Murgia* case was decided that there might be very little to study on the part of the Civil Rights Commission insofar as equal protection denials or of discrimination with respect to age.

We don't share that. We still think it has a significant role to play and that the Supreme Court will be confronting a number of age discrimination cases, particularly under statute, that deserve to have the same type of overview and anlysis of the Civil Rights Commission, that other forms of discrimination have enjoyed.

Ms. DAVIS. Let me just follow up on that a bit. Our bill talks about: "Study and collect information concerning legal developments constituting unlawful discrimination***."

Would you suggest that unlawful be eliminated and that the word discrimination, by itself, is sufficient, or is there any problem with it, as presently written?

Mr. DAYS. I don't have any problems with the word "unlawful." I think that is fine. We did have some trouble with some earlier drafts that talked merely in terms of "equal protection," because that would seem to bring the statutory responsibility of the Commission into some type of conflict with the role of the Supreme Court, to determine what is equal protection.

But I think this language is sufficiently broad to give the Commission a significant responsibility in this area.

Ms. DAVIS. Thank you.

I have nothing further.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Thank you, Mr. Chairman.

I just have one question.

With respect to the additional jurisdiction to study discrimination against handicapped and the aged, the language in the bill says that handicapped individuals are defined pursuant to section 7(6) of the Rehabilitation Act of 1973.

I do not know if you are familiar with the language of that statute; but it has been the subject of some controversy because it contains a rather broad definition of a handicapped individual.

HEW has included within the scope of that definition, alcohol and drug dependent persons, to the consternation, I would say, of certain physically handicapped individuals.

I wonder if the Justice Department does indeed support the language which would define handicapped persons pursuant to the language in the Rehabilitation Act of 1973?

Mr. DAYS. Yes, we do. We start from the assumption that when we talk about handicapped workers, even in these categories, we talk about people who are presently capable of working.

We think, for example, of people who are on methadone maintenance, or people who had a history of alcoholism but are being maintained through medication or some type of other therapy. They are presently able to do the job, and for employers to discriminate against them because of their past history, because of the fact that they are dealing with what many people directly regard as a medical disability, would in our estimation, conflict with the broad objective of the act.

This is not to say that the act would require employers to hire people who are inebriated or people who are on some type of narcotic high. That is not the intent at all.

Mr. STAREK. Do you see any merit to the concept of separating persons with physical handicaps from persons with alcohol and drug-related handicaps?

Mr. DAYS. Certainly, a distinction can be drawn. But I think that to deal with the concept of handicap more broadly will permit us to really learn more about what constitutes handicapping conditions. And I think the Civil Rights Commission can be very helpful in that regard.

Mr. STAREK. Thank you, Mr. Days.

Mr. EDWARDS. I have just one question, Mr. Days.

I notice on page 7 you point out that the Commission is sometimes critical of even your own effort at enforcing the Federal civil rights laws.

What type of grade are they giving you these days?

Mr. DAYS. I think we are doing a bit better. But I would not want to boast about it. I think we have a long ways to go.

Mr. EDWARDS. Well, we will have a hearing one of these days and you can come up and tell us about it.

Mr. DAYS. I would be happy to do that.

Mr. EDWARDS. Thank you very much, Mr. Days, for your very helpful testimony.

Mr. DAYS. Thank you.

Mr. EDWARDS. Our final witnesses today are Mr. Ted Nichols, chairperson of the Florida State Advisory Committee, and representatives of various State Advisory Committees who are accompanying Mr. Nichols.

We have asked these representatives to summarize their statements for us.

Mr. Nichols, we welcome you and the members of your panel and you may introduce them.

Without objection, all of your statements will be made a part of the record.

[The prepared statement of Mr. Nichols follows:]

STATEMENT OF TED NICHOLS, CHAIRPERSON, FLORIDA STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

Chairman Congressman Edwards and distinguished members of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, I would like to begin this panel presentation with some general comments and then have a brief presentation from the several members present from the State Advisory Committees of different States.

I am Ted Nichols, Chairperson of the Florida Advisory Committee to the U.S. Commission on Civil Rights and an administrator at the University of Miami in Florida.

INTRODUCTION OF PANEL MEMBERS

On the panel with me today are Senator Carlos Truan from Texas, a member of the Texas Advisory Committee; Ms. Dorothy Jones, Co-Chairperson of the Massachusetts Advisory Committee; former Senator William Gluba of the Iowa Advisory Committee; Ms. Sylvia Chaplain, Chairperson of the New Hampshire Advisory Committee.

After my opening statements, the testimony will be presented in the following order: Ms. Chaplain will speak and will be followed by Senator Truan; then, Senator Gluba who will be followed by Ms. Dorothy Jones.

Congressman Edwards and members of the committee, we are not professional lobbyists. We are individual American citizens who are interested in the status of civil rights in our nation. We work as volunteers. We believe the civil rights of American citizens should no longer be deferred. We believe the constitutional guarantees should now be fulfilled.

We are not members of any so-called Washington establishment or special interest group and do not have any party lines to present. We do have convictions as individual citizens, and it is out of those convictions that we appear here today.

We want to speak generally in support of House Bill 10831 which has been introduced to extend the life of the Commission on Civil Rights. We want to urge for good cause the revised language in that bill as it applies to the continuation of State Advisory Committees.

SOCIAL UNREST LED TO CREATION OF COMMISSION

The Commission on Civil Rights, which was created in 1957, is perhaps today one of the Federal agencies best known to the American people. This independent, bi-partisan arm of the Federal executive branch of the government has exerted significant influence in its mandate to study and appraise equal protection of the laws of the United States for all Americans without consideration to race, color, sex, religion, or national origin.

Twenty years ago, it was the tremendous social unrest and violent racial strife within the United States which had tarnished the nation's image at home and abroad that convinced the Congress to create the Commission. Millions of people in America are haunted today by the question: Will this nation recognize every man, woman, and child as equal under the law and finally adhere to the long-cherished universal principles set forth in the Declaration of Independence, in the Bill of Rights, and generally in the Constitution?

DISCRIMINATION TODAY

Subtle and blatant forms of discrimination still continue. America still experiences open racial hostilities and violence. The law is still applied unequally, as witnessed by the nation's jail and workforce populations. Women still largely remain sex symbols and are not expected to achieve in positions that require thinking and decision-making. Access to education and dignity still remain a mere hope and dream for millions because of race, sex, and other physical or social characteristics over which individuals have no control.

Therefore, the Commission on Civil Rights, which is empowered with the authority to investigate the denial of civil rights in the application and protec-

tion of the laws, must be continued until the impact of these daily injustices subsides. The Commission's recommendations to the President and to various branches of government and its behavior at large in the nation represent standards of leadership to which millions can repair.

Since 1975, new and growing reaction to the progress of women and minority group members is generating more conflicts in our country. The Commission is needed to help minimize the polarization already seen in many regions. The Commission is the single body that has a national network capable of bringing opposing positions and views to the discussion table in a credible and respected forum and, therefore, meets these national needs.

STATE ADVISORY COMMITTEES

Soon after the Commission began its work 20 years ago, State Advisory Committees were appointed in each State and in the District of Columbia. These Committees literally became the eyes, ears, and arms of the Commission throughout the nation at the grassroots level in matters of civil rights, whether the issues affected American Indians who until then were a wholly forgotten group, Mexican Americans in the Midwest, Blacks in the South, or other groups.

The six Commissioners without the State Advisory Committees would have had no chance for reasonable involvement with the lives of the millions of Americans whose plights it later forced the nation to recognize and begin to ameliorate.

If the Commission has credibility in America today at the grassroots level, and it does, it is because of these State Advisory Committees. If the Commission on Civil Rights is a meaningful household word for millions across this nation, and it is, that is true because of these State Advisory Committees.

Recently, the Commission on Civil Rights announced, after abolishing State Committees and setting up regional committees, that State Advisory Committees will be continued through October 1978. Does this mean a continuation just long enough to cloud the issue while the Congress and Senate act on legislation to continue the Commission? What happens to State Advisory Committees after October 1978?

The State Advisory Committees are effective because they are part of the communities they serve and are coterminous with the State, county, and municipal networks of government and agencies which impact the daily lives of American citizens.

It is because of this already established structure that State Advisory Committee leaders can do much to support the thrust of the Federal Government in this important field at the grassroots level. In fact, State Advisory Committees are often referred to as the "Federal presence" within the State and local communities. They provide leadership on many critical issues within the States.

OMB MOVE TO DISMANTLE SAC'S REJECTED

These State Advisory Committees, from the beginning, set examples of cooperation, communication, and commitment within the State and local communities that could not be ignored and, indeed were often emulated in many regions. It is, therefore, ironic and extremely short-sighted that in the first year of a new administration which has proclaimed a commitment to human rights both at home and abroad, the Office of Management and Budget should call for and force the elimination of the State Advisory Committees on Civil Rights as we know them today.

In September 1977, a group of 150 civil rights leaders meeting in Washington were confronted with the dismantling of this vital civil rights mechanism across the nation. More than 50 of these leaders from the various States waited in line to voice their objections from the floor of the meeting.

SAC VOLUNTEERS RESPECTED IN STATES

State Advisory Committees are composed of volunteers. Historically, the government has left many of its civil rights initiatives underfunded, understaffed, and under-supported, but never has it taken deliberate action to dismantle a significant widely recognized and respected voluntary effort to help achieve a national civil rights objective.

We feel that the repeal of the State Committees is symbolic of a repeal of the individual American's rights to openly and directly assist in the advancement of his own local and national good government. The unique composition of the State Advisory Committees, reflecting the various racial, political, and age groups and women within the States, has ensured their credibility.

Even when the findings of State Advisory Committee investigations have caused unhappiness or reaction, they have still enjoyed general respect at the local level. There has never been one reported scandal or successful challenge to the veracity of the hundreds of reports and other documents that have been produced. State Advisory Committees, because their members live and work among the people they serve, have provided the organismic roles capable of making civil rights a reality for millions of Americans.

RAO'S: MORE TAX DOLLARS BUT NOT EFFECTIVE

This action to dismantle the State Advisory Committees and replace them with 10 regional committees was undertaken by the Office of Management and Budget on the theory of "reducing or cutting back on bureaucracy" and providing a "cost-efficient" and "more effective" structure. When the figures were in regarding the costs of moving from State Advisory Committees to regional committees, OMB then switched to the term "streamlining." In fact, the regional committees will be far less accessible to the people being served. As a consequence, they are more likely to produce the quality of performance which has been so widely criticized with respect to many other regional arms of the government.

In addition, the regional committees will result in a greater expenditure of tax dollars to obtain a diminution of the daily influence within the States which is already feasible and operative through the State Advisory Committees. This conclusion was based on Commission staff findings and, though often repeated during the Washington meeting, was not once denied or challenged.

Regionalization will mean a further postponing of rights and protections long ago promised to all the American people but which continue to be systematically denied to millions. Regional committees will be neither cost-efficient nor programmatically effective. Regional committees will have a discouraging effect on Americans at the grassroots levels where their hope for civil rights must be realized.

The Commission on Civil Rights has already announced that it expects to hold only one, perhaps two, regional committee meetings per year because of the increased costs. An attempt by several States to discuss problems, which in many cases will be unique within their own boundaries, is guaranteed to heighten frustration as each seeks to fairly represent the reasonable needs of Americans at the grassroots level.

A NUMBERS GAME VERSUS PROTECTING CIVIL RIGHTS

In 1977, the important work of the State Advisory Committees suddenly became obscured by an apparent overriding bureaucratic concern for a numbers game illogically equated with efficiency—that is, large numbers equal inefficiency; fewer numbers equal efficiency. This thoughtless numbers game should not apply to the rights of the American people but it has been used to refute both the logic and the facts of human behavior. It is a weakening of the Administration's announced commitment to human rights.

The switch from State Advisory Committees to regional committees has already been accomplished without the consultation of the Congress or the Senate. The switch will not bring the government closer to the people—another announced position of the Administration. In fact, the regional committees will have a chilling effect on the average American's willingness to assert his constitutional rights, in the same way that the hostile conditions in America predating the Civil Rights Commission and the State Advisory Committees did over 20 years ago.

It is particularly discouraging in the 1970's that the constitutionally-guaranteed rights of individual Americans have been equated with and given the

same status by the Office for Management and Budget, in its efforts to reduce Committees, as the transportation symbols committee and others on grasslands, tea tasting, and the like. On the basis of numbers alone, the basic equal protection and due process concerns of the American people are being, at best, overlooked if not disregarded.

Therefore, we urge this Congressional subcommittee and the members of the Congress that it is in the best interests of millions in our nation to continue the State Civil Rights Advisory Committees as they were originally established under the legislation that created the U.S. Commission on Civil Rights.

Few Americans look forward, more than members of the State Advisory Committees themselves, to the time when State Advisory Committees will no longer be needed in this Country. We want to have that feeling of pride that they are no longer needed. But today, it is the State Advisory Committee member's telephone that may ring any time, day or night. They are the ones who are commonly called upon by fellow Americans who are seeking to redress their grievances or simply to acquire the enjoyment of those rights guaranteed to them as members of the American family. Consequently, we urge that HR. 10831 be passed, as amended, to read that the Commission "shall appoint State Advisory Committees" to carry on this critical work.

FLORIDA: AN EXAMPLE OF DIVERSITY WHICH SAC'S CAN HANDLE

Mr. Chairman, I would like to very briefly comment on Florida as an example of the kind of diversity within a single state which State Advisory Committees, because of their composition, knowledge, and immediate access, can effectively address but which the proposed regional committees cannot hope to address.

Our population in Florida totals more than eight million people. Among these eight million, Blacks comprise the largest single so-called minority group. In addition, more than 10 percent are foreign born from 68 countries and of that group, 80 percent are English-speaking, 8 percent speak Spanish and approximately 3 percent speak German. There are approximately 24 languages spoken throughout the population.

In addition to the groups already described, there are two Indian tribes: the Seminoles and the Miccosukes. We must then add to this diverse population the implications of the migrant workers throughout the State of Florida.

Within what is already defined by the Commission on Civil Rights as its Southern Region, there are eight States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

While I will not comment as to the specific components and the nature of issues and problems within those States, I think it becomes immediately apparent that in a regional forum where we are likely to meet once, perhaps twice per year, the likelihood of responsibly addressing significant issues within these eight States will be greatly minimized, if possible at all.

The Florida Advisory Committee meets approximately three times per year, not including subcommittee meetings, as we work on specific problems and issues inside the State. This means there are three meetings of the entire Committee within a year, focusing solely on civil rights matters inside Florida.

Under a regional committee structure, we would be forced to compete with seven other States for attention and action on the legitimate civil rights concerns of citizens in Florida. In addition, the highly representative composition of our State Committee in terms of age, sex, ethnic groups, political affiliation, etc. would be lost under regionalization, in spite of the Congressional mandate to have representative committees.

The results I am describing for Florida would obviously befall the other 49 State Advisory Committees, plus the District of Columbia.

Therefore, we strongly urge passage of HR. 10831 as proposed by Congressman Edwards. Thank you for the opportunity to present this statement on behalf of many members who could not be present. At this time, I would like to ask you to hear from the other members of our panel.

TESTIMONY OF TED NICHOLS, CHAIRPERSON, FLORIDA STATE ADVISORY COMMITTEE; ACCOMPANIED BY DOROTHY JONES, CO-CHAIRPERSON, MASSACHUSETTS ADVISORY COMMITTEE; WILLIAM GLUBA, IOWA ADVISORY COMMITTEE; AND SYLVIA CHAPLAIN, CHAIRPERSON, NEW HAMPSHIRE ADVISORY COMMITTEE

Mr. NICHOLS. Thank you.

We were advised that we had 5 minutes. But we didn't mind that. We still flew in from different parts of the country to speak to this very critical issue, to Chairman Edwards and distinguished members of the subcommittee on civil rights.

I would like to begin this panel presentation with some general comments, and then have a brief presentation from several members who are present from different States.

I am Ted Nichols, chairperson of the Florida Advisory Committee to the U.S. Commission on Civil Rights and administrator of the University of Miami in Florida.

On the panel with me today are Senator Carlos Truan from Texas, to my left, a member of the Texas Advisory Committee.

Next is Dorothy Jones, co-chairperson of the Massachusetts Advisory Committee, to my far right. Former State Senator William Gluba from Iowa.

And Ms. Sylvia Chaplain who is chairperson of the New Hampshire Advisory Committee.

After my opening statements, the testimony will be presented in the following order by these persons.

Congressman Edwards and members of the committee, we are not professional lobbyists. We are individual American citizens who are interested in the status of civil rights in our Nation. We work as volunteers.

We believe the civil rights of American citizens should no longer be deferred. We believe the constitutional guarantees should now be fulfilled.

We are not members of any so-called Washington establishment or special interest group and do not have any party lines to present. We do have convictions as individual citizens and it is out of those convictions that we appear here today.

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The Commission on Civil Rights, which was created in 1957, is perhaps today one of the Federal agencies best known to the American people. This independent, bipartisan arm of the Federal Government, executive branch, has exerted significant influence in its mandate to study and appraise equal protection of the laws of the United States for all Americans without consideration to race, color, sex, religion, or national origin.

Twenty years ago, it was the tremendous social unrest and violent racial strife within the United States which had tarnished the Na-

tion's image at home and abroad that convinced the Congress to create the Commission.

Millions of people in America are still haunted today by the question: Will this Nation recognize every man, woman, and child as equal under the law and finally adhere to the long-cherished universal principles set forth in the Declaration of Independence in the Bill of Rights and generally in the Constitution?

We find today subtle and blatant forms of discrimination still continue. America still experiences open racial hostilities and violence. The law is still applied unequally, as witnessed by the Nation's jail and workforce populations.

Women still largely remain sex symbols and are not expected to achieve in positions that require thinking and decisionmaking.

Access to education and dignity still remain a mere hope for millions because of race, sex, and other physical or social characteristics over which the individuals have no control.

Soon after the Commission began its work 20 years ago, State advisory committees were appointed in each State and in the District of Columbia. They are often referred to as the "Federal Presence" within the States.

These committees literally became the eyes, ears, and arms of the Commission throughout the Nation at the grassroots level in matters of civil rights, whether the issues affected American Indians who until then were a wholly forgotten group, Mexican Americans in the Midwest, blacks in the South, or other groups.

Without the State advisory committees the six Commissioners would have had no chance for reasonable involvement with the lives of millions of Americans whose plights it later forced the Nation to recognize and begin to ameloriate.

The State advisory committees are effective because they are part of the communities they serve and are coterminous with the State, county, and municipal networks of government and agencies which affect the daily lives of American citizens.

In fact, State advisory committees are often referred to as the "Federal presence" within the State and local communities. They provide leadership on many critical issues within the States.

It is therefore, ironic and extremely short-sighted that in the first year of a new administration which has proclaimed a commitment to human rights both at home and abroad, the Office of Management and Budget should call for and force the elimination of the State Advisory Committees on Civil Rights, as we know them today.

In September of 1977, a group of 150 civil rights leaders meeting in Washington, were confronted with the dismantling of this vital civil rights mechanism across the Nation. More than 50 of these leaders from the various States waited in line to voice their objections from the floor.

And as one of the people present in that meeting, I can tell you that only one person, as a matter of fact, out of the 150, spoke in favor of the regionalization. And that gentleman's rationalization for favoring regionalization, was because he felt the Commission had not listened well enough to the State Advisory Committees and might listen to the regional committees.

So if that was a plus, then that was the basis for the plus.

We feel that the repeal of the State committees is symbolic of a repeal of the individual American's rights to openly and directly assist in the advancement of his own local and national good Government.

The unique composition of the State Advisory Committees, reflecting the various racial, political and age groups and women within the States, has insured their credibility.

It is impossible to have this kind of representation on a regional configuration because of the limited number of such members. In the beginning, when the action was initially taken by OMB to dismantle State Advisory Committees and replace them with 10 regional committees, it was undertaken by the Office of Management and Budget on the theory of "reducing or cutting back on bureaucracy," and providing a "cost-efficient" and "more effective" structure.

When the figures regarding the costs of moving from State Advisory Committees to regional committees were in and they were going to be significantly higher than operating State committees, OMB switched to the term "streamlining."

In fact, the regional committees will be far less accessible to the people being served. As a consequence, they are more likely——

Mr. EDWARDS. OMB didn't mention in their testimony that they had changed their definition.

Mr. NICHOLS. That's correct. I should have brought the press release, the one that was sent out of that office. I am referring to the official news release that was mailed by OMB, which indicated that cost efficiency was one of their concerns.

The cost efficiency story was changed after it became very obvious that regional committees would be more expensive, as a matter of fact, to operate.

In addition, the regional committees will result in a greater expenditure of tax dollars to obtain a diminution of the daily influence within the States which is already feasible and operative through the State Advisory Committees. This conclusion was based on Commission staff findings and, though often repeated during the Washington meeting, was not once denied or challenged.

Regionalization will mean a further postponing of rights and protections long ago promised to all the American people but which continue to be systematically denied to millions.

In 1977, the important work of the State Advisory Committees suddenly became obscured by an apparent overriding bureaucratic concern for a numbers game illogically equated with efficiency; that is, large numbers equal inefficiency; fewer numbers equal efficiency. And once applied, this meant that we were moving from 50 State committees, plus the District of Columbia committee, to 10 regional committees.

And I would like to clarify one very important factor which came up. The Commission on Civil Rights already has operating and in place nine regional offices right now. And it is these regional offices that act as the arm of contact to the State Advisory Committees.

I would like to briefly discuss Florida as an example of the kind of diversity which would be completely lost in terms of giving attention to problems, if we move to a regional structure.

Our population in Florida totals more than 8 million people. Among these 8 million, Blacks comprise the largest single so-called minority group. In addition, more than 10 percent are foreign born from 68 countries and of that group, 80 percent are English-speaking, and 8 percent speak Spanish with approximately 3 percent who speak German. And there are approximately 24 languages spoken throughout the population.

In addition to the groups already described, there are two Indian tribes: The Seminoles and the Miccosukes. And believe it or not, Mr. Chairman, we were able to have representation from these various groups throughout the State. And it becomes immediately obvious and apparent that with a very limited number of members on a regional committee, in this case only five people, there is just no way to maintain that representation. Within our region, there are eight states: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

And these states have their own unique problems; their own uniques concerns. But we think, more importantly, the people who live within these states, who work there, who know the issues and the problems, have a right to have those issues and problems reviewed immediately by persons most familiar with them.

Mr. Chairman, a handful of regional committee members from each of these states should not be forced to come to a regional committee meeting, perhaps only once-per-year, to debate regional priorities.

I think it is a ridiculous outcome of OMB's recommendation.

Therefore, we strongly urge the passage of H.R. 10831 as proposed by Congressman Edwards.

And we thank you for the opportunity to present these comments before you today.

At this time, I would like to continue with presentations from other members of the panel, or answer questions.

Mr. EDWARDS. I believe we will continue with the presentations by the other members of the panel.

Ms. Chaplain?

Ms. CHAPLAIN. Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify on H.R. 10831, to extend the existence of the U.S. Commission on Civil Rights.

I am Sylvia Chaplain, chair of the New Hampshire Advisory Committee to the U.S. Civil Rights Commission, hereinafter referred to as SACs.

I don't want to repeat any of the testimony given by Mr. Nichols, except to say I am in complete accord with all of it.

I would rather speak in a personal, narrower way, as a 15-year member of the SAC in the New Hampshire, and as a representative of one of the smallest States.

I was appointed to the SAC in 1963. This was a period in New Hampshire when Mrs. William Loeb Satterfield and John Cynon were spending, we estimate, a quarter of a million dollars on the

blackjack, what we called the blackjack ads, in attempt to kill the 1964 Civil Rights Act.

This was the period when the Manchester Union Leader was editorializing that Mississippi was right.

New Hampshire has a population of less than 1 million people. In 1976, there were 2,505 blacks—I don't think that the number has changed much—a handful of Spanish-speaking Americans, which as of now, we have no idea how many, but it is beyond the black population and still probably less than one-half of 1 percent.

We have one of the highest percentages of working wives in the country, and some of the lower salaries for the Northeast. We have an usually high percentage of elderly.

Racism existed; seeds were sown early and intensified by this kind of editorializing. But we haven't had the kind of agitation, because racism in New Hampshire is not profitable for the white population. The numbers are too small, so nobody feels threatened.

But if you are black, if you are Spanish speaking, all of the problems exist in New Hampshire that exist in other States in major metropolitan areas. And it goes without saying, if you are a female, things aren't very different in New Hampshire, maybe a little worse.

I served on the SAC; when I was first appointed, the idea then was to make sure you had a representative Catholic, Protestant, Jew, and no blacks were considered necessary to be on the SAC. We filed reports. I am not sure what happened to them in those early days. This was also during the period when Congressman Drinan was Chair of the Massachusetts SAC. We went into a period of benign neglect.

At that time, Mr. Schlitt, who was here—and I have forgotten the name of his predecessor—were field officers for the whole region, operating out of Washington.

But the problems escalated in Boston and Connecticut, as I recall, to the extent where it was not possible for our Federal shepherd to come to New Hampshire. And therefore, there was a period of 3 or 4 years where, indeed, nothing happened in northern New England States as far as the SAC was concerned. It doesn't mean that nothing happened. There was continuing racism and everything else was continuing, but we were not active, and that is what happens when your small State and region is limited, and that is one of the fears that we have—the budget is not anticipated to be increased for the activities of the regions. If it stays the same, we get lost in the shuffle. When the Commission established regional offices, we became reactivated and we have managed to do a lot. I won't go through all of it, but because of regional staff support—we operate through that New York City, northeastern regional office—there is field staff which does come to New Hampshire. We cooperate with other Federal agencies.

What I would like to do is cite two projects in New Hampshire that where basically factfinding; they started out as factfinding. Let me point out—and I am not sure if it is quite clear—most SAC's, I think, operate as we do. Projects fall into three categories.

Some are initiated on our own. When I say on our own, there is one or another committee member who has gotten a call that said: Do you know that this is happening?

Well, we say: No; we don't know. Why don't you come to a meeting and tell us about it? Then we get other people to come and find out if there is a basis for holding an open meeting, taking testimony, issuing a report, or doing something more in-depth.

Or we have the same clearinghouse function that the Commission does, referring that caller or that issue to another agency that can more appropriately deal with it; for instance, we notified HEW of a problem with bilingual education in the city of Manchester. We did not issue a report. We referred that to the Office of Civil Rights.

The third kind is one in which the Commission says: We want your help. We want you to work with us on a national project. I will give two examples of the last two.

We did a study called, "The State of New Hampshire as an Equal Opportunity Employer," where we looked at employment by the State of blacks, women, and Franco-Americans, which is our largest ethnic majority—or minority, approximately 30-odd percent.

The results—we predicted the results for blacks and women, of the better paying jobs, something like 1.9 or 2.1 percent.

We didn't know what we would find with Franco-Americans. We found about the same, that Franco-Americans in New Hampshire are not in the best paying jobs in the State.

But in the course of that investigation, we learned a few other things. We learned, for instance, that New Hampshire was the only State that was not filing EEO forms. As you know, those are the forms that have to be filled out giving ethnic and racial breakdowns of the employees.

The Governor of New Hampshire had ordered all heads of departments to fill in, "American." And the last time—that was in 1973—EEOC sent it back as incomplete, and they didn't bother after that. The head of personnel told me: What is the point of doing it and sending it down when it is going to come back incomplete?

So we contacted—and when I say "we," we went through the steps established by the Commission, to Mr. Wilmore; our northeastern regional office director to Mr. Buggs, the staff director for the Commission who contacted the Department of Labor, saying: Hey; here is one State out of all 51 States that isn't filing the employment data on sex and race required by the EEOC. We would like you to bring an action.

The Labor Department brought it to Justice. And again, through that same channels, we kept monitoring what was going on. Every couple of months we would call up the Justice Department to find out what was going on.

Justice did bring suit against the State of New Hampshire. Our Governor brought the suit all the way to the Supreme Court at the right time; the Justice Department won the suit against the State of New Hampshire, and now ethnic identity is filled in on the Federal EEO–1 report.

In addition, on that same project, we decided that it would be proper to look at the city's department of employment security. Their method for handling inquiries, and to determine whether the city had changed its jobs to nonsexist categories.

In that instance, we worked with the Department of Labor. The Department of Labor sent two staff members and the U.S. Com-

mission on Civil Rights sent two staff members, and me. I want to make clear that when we worked on a project like that, I was gone for 3 days, and I got $25 a day to cover room, board, and motel. Fortunately, it was out of season in Portsmouth, so I could manage. I don't know what we would have done in July.

And we did prick the conscience of that office at least. They did institute a training procedure. More importantly, the Department of Employment Security in New Hampshire claimed they had an affirmative action officer who had been on leave for 8 months, on sick leave for 8 months.

Somehow, mysteriously, though not admitting they were wrong and threatening our committee, they did manage to find an affirmative action officer.

The second project was one that was at the request of the Commission. We were asked to be 1 State out of 10 in the Commission's prison study. The Commission was doing its own hearings, and in addition, they asked for cooperation from 10 States.

New Hampshire was chosen as a State because it had—it is a small State that had one State prison—only one facility, maximum security facility, and virtually no minorities ever incarcerated, maybe one or two blacks at a time, maybe somebody Portuguese speaking or Spanish speaking, but it was not a factor.

They wanted to see what commonalities there were with States that weren't dealing with those additional problems.

We were the only State where we had a great deal of trouble with the State government. The Governor ordered all staff of the prison not to speak with us, and would not permit any interviews of inmates. We were asked to do a 10-percent sample of inmates.

Well, I won't bore you with the details, but several months later, through the intervention of the Federal court, the inmates brought suit for access, those of us in New Hampshire were subpenaed, and Tony Creswell of the Commission's Washington staff was subpenaed to New Hampshire, and again, access was granted.

We helped open the door for access to inmates within the prison system.

Now, I think Congressman Drinan mentioned: What if there is a State human rights commission? Well, we have one in New Hampshire. I wrote and lobbied and got the legislation passed in 1965 and the Governor appointed me a member of that commission and I served on it for 4 years.

And even under an enlightened—or a more enlightened—Governor than the present Governor, the Commission limited itself to handling individual complaints only.

The two cases that I have just cited, examining the State as an employer, and looking at the State prison system, are not possible as the Human Rights Commission is presently constituted. They might take the case, and even that is dubious, if it is against the State. They will do no class action. They will do no educational projects. They will not look at areas or patterns of the discrimination.

In a small State like mine, we feel once again that if there are RAC's, regional committees, that we will once again be in a period of benign neglect.

We will have to compete on a regional basis with more powerful States. States with problems, certainly such as the school problem in Boston, are even more urgent. Life and death are involved in such situations but that is not yet the case in New Hampshire. We will have to compete with Connecticut and Massachusetts. Our projects may never make the agenda, or if they do, there will not be enough free labor to do the work.

OMB has talked about a cut of 50 percent. In New England, it would be more than 50 percent. As the arrangement is now set up, New Hampshire would go from 12 to 5. That is more than 50 percent.

I therefore urge that the Commission—that the legislation be changed so that the Commission on Civil Rights shall keep the State advisory committees, so that we may continue in New Hampshire and in other States. We would reap our rewards—at 17 cents a mile—and reap the reward of being abused on a regular basis by the Manchester Union Leader for our SAC activities, but at least we will continue to be viable, we will continue to be available to all of the citizens in our State, and we won't get lost in the regional structure.

Thank you.

Mr. EDWARDS. That was very fine testimony. Thank you very much.

I believe Senator Truan from Texas is next.

Mr. TRUAN. Thank you, Mr. Chairman and subcommittee members.

TESTIMONY OF CARLOS F. TRUAN, STATE SENATOR FOR THE STATE OF TEXAS, AND MEMBER OF THE TEXAS ADVISORY COMMITTEE, U.S. COMMISSION ON CIVIL RIGHTS

Mr. TRUAN. Mr. Chairman and members of the subcommitee, I am Carlos Flores Truan, State senator from Texas, and a member of our State Advisory Committee to the U.S. Commission on Civil Rights. My mailing address is Box 5545, Corpus Christi, Tex. 78405.

I thank you for the opportunity that you have given me to present my views in full support of your legislation, H.R. 10831, designed to extend the life of the U.S. Commission on Civil Rights.

I have been active in Mexican American affairs; I have served as national executive director of the League of United Latin American Citizens, "LULAC," the oldest and largest Mexican American organization in the country.

I am currently serving my 10th year in both the Texas Legislature and the State Advisory Committee to the Commission on Civil Rights. I am a former chairman of the Mexican American legislative caucus in the Texas Legislature, and I am authorized here to testify on their behalf also, in support of this legislation.

As a legislator, I have authored numerous pieces of legislation, including the Texas Bilingual Education Act and the State Adult Education Act for Texas. In five legislative sessions, however, I have attempted unsuccessfully to pass legislation designed to create a civil rights commission for the State of Texas. This is one very im-

portant reason for requiring the State advisory committees to be appointed by the Commission.

Texas has a population of over 12 million people. Without the U.S. Commission on Civil Rights, and particularly the State advisory committee, in existence our citizens would undoubtedly suffer greater injustices. The passage of this legislation is a must.

Probably no other agency in the Federal Government has influenced the improvement of the lives of the Hispanic American in Texas and the southwestern part of the country more than the U.S. Commission on Civil Rights.

Although the Commission ignored the problems of Hispanics for its first 10 years of existence, it was the Commission's national office and its State advisory committees that first recognized and reported the exclusion of Hispanics from full participation and enjoyment of equal opportunity in our section of the country.

The initial effort to correct the inequities came with a public hearing conducted by the U.S. Commission on Civil Rights in San Antonio, Tex., in December of 1968. These hearings documented for the first time the severe discrimination in employment, public accommodations, voting rights, housing, administration of justice, and education that Mexican Americans have historically suffered.

Since these hearings, the Commission has not let up in its efforts to document these inequities and make recommendations for their correction.

Many Commission studies and reports have aided in the effort to identify and correct discriminatory practices that directly affected the people living in the Southwest. To cite a few: "Mexican-Americans and the Administration of Justice in the Southwest."

This study gave evidence that equal protection of the law in the administration of justice was being held from Mexican Americans. It also gave evidence that Mexican American citizens were being subjected to unduly harsh treatment by law enforcement officers; that they were being arrested on insufficient grounds, received physical and verbal abuse, and that penalties were disproportionately severe.

During the farm workers strike in the Rio Grande Valley of Texas, I was one of five State advisory committee members that were asked by the U.S. Commission to conduct a hearing in Rio Grande City because of the allegations of police brutality against the striking farm workers and the countercharges by growers and local and State law enforcement officers. Our hearings had a neutralizing effect on the problems confronting the people. This would not have been the case without local citizens of the State, with ties to the U.S. Commission on Civil Rights, taking part.

Another study was entitled "Mexican-American Education Study." This study investigated barriers to equal educational opportunities for Mexican Americans in the public schools of the Southwest. The study did much toward influencing the Federal Government to turn its attention toward the problem of assuring equal educational services for Mexican American students.

The *Rodriquez* case in Texas challenged successfully in the lower courts the method of financing public education. Even though the

U.S. Supreme Court overturned this case by a 5 to 4 decision, it set in motion a study of school financing in Texas by the State advisory committee which resulted in legislation being introduced in the Texas Legislature which spoke to equity in the financing of public education.

I introduced this bill—that was H.R. 1715—and was joined as cosponsors by the entire membership of the black and Mexican American legislative caucuses. This legislation failed to pass, but we were able to effectively present our case on behalf of a more equitable system of financing education because of the outstanding research and technical assistance given this project by staff of the U.S. Commission on Civil Rights.

And another case, *Cisneros* vs. *Corpus Christi I.S.D.*, the local district was charged with perpetuating a system of both de facto and de jure segregation. This was the first time that the Mexican American was officially recognized as an "identifiable minority group."

It's interesting to note that blacks and Mexican Americans made up one-third of the population in Texas. Yet, two-thirds of them fall below the poverty level; 11.5 percent of the blacks, and 19.2 percent of the Mexican Americans in Texas over the age of 25 are considered functionally illiterate. This compares with only 2.9 percent of the Anglos.

Another study was the "Federal Civil Rights Enforcement Efforts Series." This study documented the laxity on the part of the Federal Government in the enforcement of civil rights laws throughout the country.

The exclusion of the Hispanic in employment by the Federal Government, and the failure of the Federal Government regional offices to meet the needs of the Mexican American was revealed in this study. Efforts to correct the exclusion have intensified since the publication of these reports.

On "School Desegregation," through reports of the State advisory committees and reports of the national office, the Commission has contributed a great deal to attempts to desegregate the schools of the Southwest.

This desegregation includes the integration of racial and ethnic groups living in the area. In addition, these desegregation efforts have contributed much more toward bicultural and bilingual education in our region—and, as I indicated, I authored this legislation in Texas.

"Immigration," probably the most difficult current civil rights questions involve immigration law and policy. Poverty and rampant inflation in Mexico have driven Mexican nationals into the United States. This trend is especially pronounced in the Southwest.

While it is difficult to gage accurately the economic effect of this so-called silent invasion, the growing concern about "the problem" had divided the people of Texas and many fear it will lead to a wave of racism. The Texas advisory committee recently initiated a project to evaluate the existing data and will conduct an investigation to further define the problem.

A major disappointment that we have with the U.S. Commission on Civil Rights is their lack of commitment in conducting a comprehensive voting rights project involving Mexican Americans.

Federal preclearance was first made applicable to Texas in the 1975 amendments to the act. During the first 12 months that it was covered by the preclearance requirement, Texas submitted 4,668 changes—more than 3 times as many as the 11-year total of any of the States which had been covered since 1964.

In addition, during its first 12 months of coverage under the Voting Rights Act, Texas received 30 objections from the U.S. Department of Justice—far more than any other State in a single year. The previous high was Louisiana with 19 in 1971. Only three States—Georgia, Louisiana, and Mississippi—have had more objections in 11 years than Texas received in 1 year.

More specifically, "State Advisory Committees." While we recognize the merit of President Carter's review of governmental advisory committees and its goal of improving the organization and effectiveness of government, nevertheless the reduction should not include our State advisory committees, for these volunteer organizations have contributed greatly in enhancing the civil rights of our citizens.

Implementing reorganization of government agencies for their own sake, without scrutinizing the effects of that reorganization in particular circumstances, can be devastating. We are sure it is not the President's policy to take a sweeping approach to reorganization which, while it may reduce the number of advisory committees, on the other hand it increases the cost and decreases the effectiveness of the agency.

The following are some of the reasons I oppose the regionalization:

One, the argument of cost effectiveness and cost savings in switching from 51 State advisory committees to 10 regional committees is false. Currently, advisory committees are usually paid only for travel expenses and per diem for attending meetings. The new setup requires extensive travel, since the committee is regionwide and as a result, requires that most members attending stay overnight for meetings and travel greater distances, thus increasing costs.

Two, replacing the 51 State advisory committees with 10 regional advisory committees will impair the vital and essential citizen participation and community representation State advisory committees have so appropriately embodied: (a) regional advisory committees will dilute the grassroots participation that the structure of State advisory committees provide; and (b) State advisory committees relate to an existent political entity—namely, the State.

Many civil rights problems derive from the lack of responsiveness of State government. In Texas, our SAC has been able to effectively identify and respond to State problems. On the other hand, an arbitrary structure such as a regional advisory committee, does not correspond to State boundaries and to related problems within those boundaries; (c) fewer people would participate in regional advisory committees, thus reducing democratic participation so essential to the Commission on Civil Rights work.

Three, most States in our region have no State human rights commission. By replacing the advisory committees with a regional organization, you would in effect remove the vital civil rights impact

that State advisory committees have provided in filling the vacuum caused by dearth of law.

Federal law and Federal judicial edicts, rather than State legislative acts, have corrected inequities in such areas as the poll tax, annual voter registration, excessive filing fees, use of multimember districts, apportionment of congressional as well as legislative districts, gerrymandered county commissioner districts, and use of at-large elections for cities.

Other areas such as bilingual education, public accommodations, school integration, fair housing, and equal employment have received the greater support from the Federal level.

Four, there is a great need to revitalize the State advisory committees, rather than to be thinking they should be replaced by regional efforts. The civil rights movement has been stagnant, mostly because it has been ignored by previous administrations. On the contrary, the Carter administration is seen by most of us as an administration that should give civil rights a great and new impetus.

In conclusion, I support H.R. 10831 and urge the extension of life for the U.S. Commission on Civil Rights with the specific requirement that advisory committees be appointed by said Commission in each State.

Thank you.

Mr. EDWARDS. Thank you very much, Senator Truan.

Mr. Gluba, of Iowa, we welcome you and you may proceed.

TESTIMONY OF WILLIAM E. GLUBA, SCOTT COUNTY SUPERVISOR, DAVENPORT, IOWA, MEMBER, IOWA ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS

Mr. GLUBA. Thank you, Mr. Chairman.

Mr. Chairman Edwards, and distinguished members of the Subcommittee on Civil Rights of the Committee on the Judiciary, I would like to commend your committee for the long hours and effective work your committee has done in behalf of the human rights of the American people.

I am here also to support your committee bill, H.R. 10831. As a former State representative and State senator, and chairman of a legislative committee, I can identify with and really appreciate the nitty-gritty committee work that must go on into developing good legislation. It is very difficult, often, to separate the wheat from the chaff, and to separate bureaucratic rhetoric from reality.

I might add, Mr. Chairman, as a former chairman of a committee, I know the difficulty in even maintaining a quorum. I also realize that you get reams and reams of paper, and volumes of information on almost every subject under the Sun, and often you hardly have time to read little more than the title, or a summary, and it is amazing that Congress works as well as it does, with the vast amount of information it must have to absorb.

Therefore, I will leave it to others to present you with the great heaps of printed detail which help build our case for retaining the State advisory committees to the U.S. Civil Rights Commission.

Also, knowing that you probably have other meetings to attend this afternoon, and more than likely tons of mail and other work

awaiting your attention in your office, I wil try to be brief and to the point.

First, what is the issue? What is the problem? Why are we here?

I am here as a member of the Iowa Advisory Committee to the U.S. Civil Rights Commission. As part of the Central States Region, included in this region are the States of Iowa, Missouri, Kansas, and Nebraska. In September of last year, this region unanimously passed a resolution opposing the move by the Office of Management and Budget to do away with State advisory civil rights committees.

Letters stating our opposition, and the reasons for opposing this move, were sent to congressional delegations from each of these States.

The reasons for opposition from these various States I represent were numerous and varied. Generally, they came down to the following:

We, as volunteer citizens, put in a great deal of time, free, gratis, to work in the efforts of bringing about and maintaining equal justice under the law for the minority of the people of our country.

We were very opposed when we saw a press release come out——

Mr. EDWARDS. Mr. Gluba, if you will excuse me, Senator Truan has informed me that he must catch a plane. Please permit me to ask him a few questions and we will get back to your testimony.

Mr. TRUAN. I apologize to Mr. Gluba.

Mr. EDWARDS. That's perfectly all right.

I can't help but take this opportunity to ask someone from Texas how the Voting Rights Act is working.

Mr. TRUAN. I believe it is working because now we have had the opportunity to have legislation passed at the State level, reviewed by the voting rights section, and we have been able to correct some of the inequities that unfortunately people had to go to Federal court and spend countless hours and dollars to resolve problems that now are being resolved by the preclearance.

And we feel so fortunate, and really we want to express appreciation to all of you who voted to include Texas under the Voting Rights Act.

Mr. EDWARDS. Well, we met many objections from high officials in Texas, but I think we did the right thing—very much to the credit of Barbara Jordan and Bob Krueger and several others—very few Members of Congress from Texas approved the bill, but there were some who did, and they were eloquent in their defense of the bill.

Mr. TRUAN. Let me say that several of those, including the Governor and the former secretary of state, are now in a sense apologizing for the opposition—that it wasn't "opposition," as such, that it was just that they wanted an opportunity to do the things for Texas that Texans are capable of doing, quote, unquote.

But the truth is in the record, and I have served in the legislature long enough that I welcome the opportunity to have our laws in Texas reviewed and cleared by the Federal voting rights section—or, rather, the voting rights section of the Justice Department.

Mr. EDWARDS. Of the 4,000 preclearances you mentioned, there were 30 objections by the Justice Department. Do you mean to say that 3,670 of the submissions were not discriminatory?

Mr. TRUAN. It appears to me that that was the case. These are statistics that I specifically received from the regional office of the Civil Rights Commission, so I didn't realize we had passed—that we had that many changes. But when you take local governments into consideration also, the numbers are multiplied.

Mr. EDWARDS. Would Texas members of the Commission's State advisory committees be alert to what was going on in their own communities as to voting changes which would have to be precleared by the Attorney General?

Mr. TRUAN. Would we be? Or were we, in the past?

Mr. EDWARDS. Naturally, in a State as large as Texas there must be someone there, ready to say, "hey, this is wrong."

Mr. TRUAN. You're asking how it was before?

Mr. EDWARDS. I'm asking: Is it valuable to have members of your local State advisory committees scattered throughout Texas so they——

Mr. TRUAN. Very much so, sir. It is so important to do that, especially in a State as big as Texas is, and with over 12 million people we have a very good committee. We have 26 members of the advisory committee in Texas, and it is even difficult, many times, for us to understand some of the problems that people have from south Texas compared to east Texas, compared to west Texas. It is 700 miles just from Corpus to El Paso, as an example; from one part of the State to another.

And I don't see how we could do justice to the needs of the people in a State as big as Texas is with no State civil rights commission. We just couldn't do justice with a regional concept, a regional setup.

Mr. EDWARDS. My last question goes to the bilingual language requirements of the Voting Rights Act. Would you say that they are working in Texas?

Mr. TRUAN. They are not working, to a large degree, because for one thing we have not had the assistance of the Office of Education, because in previous administrations they seem to have neglected this area.

We passed legislation at the State level, but it is not as strong a statute as it should be in following up, or in the accountability feature. And unfortunately, the school districts are implementing programs of bilingual education which, in too many cases—far too many—it is window dressing, and is not an effective program in implementing a viable bilingual educational program.

We have taken some steps in that direction, but by and large, there is a lack of total commitment in this area.

Mr. EDWARDS. Are the election materials in both languages?

Mr. TRUAN. The election materials are in both languages.

Mr. EDWARDS. Statewide?

Mr. TRUAN. As I understand, it is.

Mr. EDWARDS. And does that work? Is it used by the Spanish? Are these Spanish-language materials used by the Spanish-speaking population?

Mr. TRUAN. I think that there is a lack of followthrough in trying to explain the materials, and trying to get people on staff to spread the materials out for a better explanation.

The materials are available, but I think it is just like a lot of things that come across—that it is there, "but if people don't take advantage of it," you know, "what are we going to do? We can't force them."

But there seems, again, to be a lack of commitment toward implementing the intent of the law to get people to understand better their rights in the electoral process. That is the problem. Materials can be pointed out; we have bilingual materials. It is in the follow-through in getting people to become more aware, and to participate more fully.

Of course, you know, it has been years of discrimination against the non-English-speaking population, and it is hard to resolve those problems that have been so embedded over the years.

Mr. EDWARDS. Well, you support this legislation as written?

Mr. TRUAN. Yes, sir.

Mr. EDWARDS. Do you think the U.S. Commission on Civil Rights could improve itself and become a better organization?

Mr. TRUAN. Yes, sir. I definitely think, like I said in my testimony, during the first 10 years of its existence little notice was given to the specific peculiar problems that the Spanish-speaking have—particularly in Texas and the Southwest. In Texas, we are the largest minority group—20 percent of the population—and too many times we had to wait until a disaster occurred before the Commission would get involved in specific problems of the Spanish-speaking.

It would appear to me that one of the large areas that has been neglected is a followthrough on a study of the voting rights of the Mexican-Americans in Texas. I think this is one area in which the Commission definitely needs to follow through and get involved in and conduct a comprehensive voting rights study.

Mr. EDWARDS. How about the Department of Justice? Are they enforcing Federal statutes against police crimes against Spanish-speaking people, for example, like we ran into in Houston?

Mr. TRUAN. The Houston problem in the Moralis case, before that in Castroville, are examples of problems that we have to dramatize so much to get certain officials, including the Justice Department, involved. There seems to be a reluctance to get involved, for fear that the State officials will be embarrassed. It would appear to me that there could be a greater participation by those in the Justice Department to see that the rights of the people are not violated.

We have had to push and shove to get the Justice Department involved in a lot of cases. I had to come here, for example, last year regarding the Moralis case, and it would appear to me that I, as the volunteer, ought not to have to do that, since we already have full-time staff of the Justice Department taking note of what has transpired who should be moving quickly before things get out of hand.

Mr. EDWARDS. I agree with you, and I would also tend to agree with you that the Justice Department traditionally, and even today, has not been as diligent as it should have been in enforcing certain Federal statutes with regard to local police, local officials, and violating these old civil rights statutes under color of law, and so forth.

Are there questions by counsel?

Ms. DAVIS. No.

Mr. STAREK. No.

Mr. EDWARDS. Senator Truan, thank you very much. I appreciate your testimony.

Mr. TRUAN. Thank you, very much.

Mr. EDWARDS. Keep in touch with us. It is important that we know what is happening in the field.

Mr. TRUAN. Thank you, very much.

Mr. EDWARDS. Mr. Gluba, we apologize.

Will you continue?

Mr. GLUBA. I would like to bring to the attention of the subcommittee a press release that was prepared by—it is a memo "For Editors, News Directors, from Media Liaison Office, the White House," and this was prepared, as I understand it, by the Office of Management and Budget. This was a followup to the directive by the President to go out and reorganize and do away with as many needless committees around the country as possible.

I think that, in itself, is a valid activity, and something that should be pursued, and being a Carter supporter, and one who went to the Democratic Convention in support of the President, I can appreciate the need for a certain amount of reorganization of government.

However, when you read the press release, I think perhaps there may be more a posturing in it and rhetoric than what reality requires.

For example, it states that:

> On May 25th, the White House announced initial review of the Federal departments and agencies, resulting in a reduction of 304, or 28.6 percent, in the 1089 committees reviewed. President Carter then directed the Federal department agency heads to intensify their review and return, with additional recommendations on the needs for committees left remaining.

Now I am sure the Office of Management and Budget meant well, but I am not sure that they realized the impact of their actions. And quite frankly, what I resented the most about this press release is that one of the items contained in this five-page statement is the question: "What are some of the examples of advisory committees that are recommended for elimination?" In other words, in this press release they provide criteria for committees, and mention a number of committees that would be abolished or altered.

In this same release, they point out: "Here are some recommended for elimination," picked at random examples, and they list such "important," to use the word loosely, committees as the "Board of Tea Experts, the Administrators Advisory Committee on Cemeteries and Memorials, the Lyndon Baines Johnson National Grasslands Advisory Award, the National Peanut Advisory Committee, the Hot Springs National Park Examining Board of Technicians."

Now granted, those committees ought to be eliminated; they've probably long outlived their usefulness. But I resent the Office of Budget and Management, through the White House, throwing in among those and other committees the 51 State Advisory Committees to the United States Civil Rights Commission.

Mr. EDWARDS. But they didn't do it in the press release?

Mr. GLUBA. Yes; it is mentioned in here in the same release with these ones I just read. And I will leave this here.

Mr. EDWARDS. Without objection, I think it ought to be made a part of the record.

Mr. GLUBA. I would be glad to leave it. You've got to read this as a whole, but again part of the whole is the mentioning of other significant committees. Don't get me wrong—they've got the "National Aeronautics and Space Administration," but I just don't like the flavor of a release which looks good for printing purposes, showing a 26-percent reduction in committees, and throwing us in as part of the "National Tea Expert Board."

Then the release goes on to point out: "In this reduction are a number of advisory committees, consistent with the administration's emphasis on openness and citizen participation."

And you have to read this in light of the Civil Rights Commission being reduced. It says: Yes, it is consistent with the emphasis to eliminate committees which have outlived their usefulness to obtain advice or open meetings, rather than through standing committees.

Quite frankly, I don't think they really meant to suggest—although they did, by their action—that the Civil Rights Commission's committees have outlived their usefulness.

Another point in this release that I took exception to, and I understand it was pretty much prepared by the Office of Management and Budget—it says:

"*Question:* Isn't the establishment of new committees inconsistent with the efforts to terminate committees?"

In fact, between the time they instituted the reorganization, they established—Congress and the President, I guess—some 20 new committees, from the time they started this study until the time this release came out. They list 20 new committees that were established since this release.

But they suggested, again in this answer to the question about new committees, the release read, quote: "The objective was to terminate unnecessary committees." And again, I don't think they meant to suggest that Civil Rights activities is an "unnecessary activity."

Excuse me, Mr. Chairman. It's cold in Iowa; I'm coming out with a cold.

Let me just hit a few other high points, and then just move on to the next speaker.

When you really look at the issue of what is happening here, it is obvious that there is no reduction in the cost, or no cost savings in going from 51 to 10 committees.

As a matter of fact, it will cost more. Right now I can drive from Davenport to Des Moines to attend State committees at virtually little expense to the State; whereas, if I have to fly to Kansas City, or Leavenworth, Kan., or Nebraska, or some other city outside of the region, I have to stay overnight; I will have to incur the cost of more expensive flights; and consequently, well, it will end up costing the Federal Government more to invite and to have people in from the various States to a regional group.

In addition, as a legislator I guess I used to detest, quite frankly, "governmental reorganization." Generally, what they really amount

to is simply changing the names on doors; changing nameplates on peoples' desks; and essentially rewriting and reprinting of letterheads.

Normally, there is no reduction in the number of people in government employ. Quite frankly, sometimes there is more.

Furthermore, this move simply centralizes the administration, or oversight of a responsibility to a regional office, and takes it—quite frankly—out of the States. And we are not a nation of "regions." We are still a nation of States. And these State advisory committees—like in Iowa, we have 19 members—would be reduced to 5, for example. That is the first suggestion.

It is very difficult to include in even a large committee—and if you cut it down to five, for example—women, minorities, black, white, brown, American Indian, Chicano, disabled people, various mixtures of religious groupings, Protestant, Catholic, and Jewish. It would just be impossible to create a State committee that is really reflecting the State as a whole.

And finally, I think more than ever perhaps now we need the State advisory committees, because they serve as sort of the eyes and ears of Congress.

It is awfully impressive, quite frankly, when a State advisory committee can go into a community where they have reason to believe a great deal of discrimination exists, by some major Federal program such as CETA, for example—and we are pouring more and more money into the CETA program, rightfully so, across this Nation, and employment programs to put people back to work.

Too often, Congress, or public officials, wake up several months or years later and find out they have committed large sums of money to a program that didn't really reach the people it was supposed to reach. The State advisory committees can play a key role in this area. In Iowa, for example, we are keying in on areas of new Federal money for review. One of those areas is CETA. We held a hearing and invited the "planning bureaucrats" that exist in every community, and, quite frankly, just dragged them over the coals as to what they are doing in managing CETA programs. We looked to whether they were putting minorities to work, rather than college kids temporarily out of work. We also wanted to know how they were reaching the hard-core unemployed? Were they getting to the minorities in fair percentages?

If nothing else, the fact that we are called "the U.S. Commission" scares the hell out of a lot of local bureaucrats. I think that is one of our purposes: In a very tactful, but firm way we remind them of the intent of Congress as reflected in the Civil Rights legislation that our body adopts. And we remind them that they have responsibilities to comply with it.

They don't know whether we have any powers or not. Generally, however, local officials—Federal bureaucrats at the local level, manpower planning kinds of groups, job service groups—don't know whether we have any clout or not.

They know we have something to do with the Federal Government, and they are fearful, quite frankly, that they might lose lots of Federal money unless they comply.

In my mind, we are an effective arm of the Congress. Our activities and presence help to insure effective compliance. We can simply

ask the right questions to let local people, and bureaucrats at a local level, be they State, county, Federal, or what, know that somebody is watching them. Then they move, and shuffle, and shake, and try to get in compliance with whatever they might be out of compliance with at the time.

So let me just end by saying I think the effort by the Office of Management and Budget is quite a bit like a shell game. They are really not reducing, when you get right down to it.

As the gentleman from the Office of Management and Budget said, they are going from 51 to 10. However, they are going to have maybe five members in each State remain. So it is sort of a shell game; now you see it and now you don't. But underneath the shell, there are still the committees. So let's just call them State advisory committees, what they are called now. Let's let them continue to function the way they have, very effectively, over the years, and not play a numbers game with the civil rights of the American people.

Though they mean well, they are accomplishing little and simply disrupting the whole mechanism on civil rights enforcement or nonenforcement, making local groups comply with local civil rights legislation.

These committees are doing a good job. In many States, they have suggested State civil rights legislation. In Iowa, for example, I am a sponsor of a bill to create a Spanish-speaking people's commission to address the problems of Spanish-speaking people in my State.

The idea for that did not come from me; it came from the Iowa State Advisory Committee of the U.S. Civil Rights Commission.

As you know, fact-finding studies sometimes lead to necessary legislation. Our State advisory committee found, for example, that there was a loophole in our migrant working camp law that camps with less than five residents were exempt from coverage. We subsequently removed that loophole.

These advisory committees perform a useful function at little or no cost to the people of this country and should be continued. We should not let a numbers game take over the Civil Rights of the American people.

Thank you.

Mr. EDWARDS. Thank you, Senator Gluba. And I might add that your being here today is certainly not a waste of our time. I have been doing this work on the committee for a number of years. It is the first time I have had the privilege of meeting, face-to-face, members of the State committees and it is really very helpful. I am not going to let you escape too easily.

The last statement will be made by Ms. Dorothy Jones of Massachusetts. Ms. Jones, we welcome you.

Ms. JONES. Thank you, Mr. Chairman.

One of the advantages of speaking last is there are many things I don't have to say but one of the disadvantages is there are inevitably fewer people to listen to it.

I am Dorothy Jones, acting co-chairperson of the Massachusetts SAC. And I am attempting, with Dr. Bradford Brown, to fill the shoes of Julius Bernstein who died suddenly in November, who was

himself preceded by Mr. Drinan. We have a great tradition to live up to. I apologize for not having a prepared text for you. Unfortunately, in my position as director of community services for ABCD, our local CAP agency, I have been up to my eyebrows in emergency assistance and disaster relief ever since the great blizzard of 1978. If it is helpful, I will get you one next week for the record.

I want just to touch on some of the things that came up in previous testimony and then give you one specific example, from our experience in Massachusetts, why I think the Commission itself as well as the Nation needs the advisory committees in the States.

What I heard earlier confirmed what I had long suspected, that the Office of Management and Budget really does not understand the role, function, the effectiveness of the myriad volunteers across this Nation who serve on the advisory committees.

They talked, for example, of the need to focus a national perspective through regional committees, and I submit that we do now operate under, but also participate in forming that national perspective. And I will explain. First of all, we are bound in the things we get involved in by the mandate the Congress has given to the Commission. We don't get beyond that. We deal with those same issues established initially by Congress. We operate under rules and regulations established by the Commission. We respond to their recommendations or their specific requests for help. They aren't usually couched in terms of orders but we respond to them. When the Commission says we need to do thus and so, we do it.

At the same time, I think it is very clear, and I think the one example I will give you in a little bit of detail, will show that; that without us as their eyes and ears on the local scene, six Commissioners, however great, however knowledgeable, however dedicated and committed, cannot know what is happening on the streets of our cities and the roads of our rural areas throughout this country. There is no way they can know unless we provide them the information that we get from our friends, our neighbors, our colleagues. They can not do the task that Congress has mandated. To abolish these 51 State advisory committees and establish the 10 regional committees will dilute this function.

There is no way that New England, for example, and I should have remarked that I have been authorized to speak for New England, not just Massachusetts, could effectively perform this function under the proposed formula set forth in the regional plan. The committees would not be large enough to get the cross section we presently have.

Rights are enacted into law by Congress. There are many agencies, and I think, first and foremost, the Commission on Civil Rights itself that are charged with overseeing these rights. But violations occur locally. The individuals and the groups whose rights are violated don't turn to the National Commission, they don't turn to Congress in great numbers; they turn to people they know.

The reason that the State committees are effective as they are is that throughout the State there is always somebody that a person knows. When we cut down our representation to the 14 that Massachusetts would have on a regional committee, there is no way that the little people of the State, and it is little people whose rights get

violated, not big people, will be able to know—they don't know anything about a region. How do they reach a person who may not even be in a structure and not even based in the State? The fact that we have people in New Bedford, in Worcester, in Springfield, in Boston, down on the cape, everywhere in every part of the State, in all walks of life, we have people in the universities, we have people who are housewives, we have people who are clergymen, we have people who serve many different kinds of roles within the communities, and it makes us accessible, and through us, the Commission is accessible.

That is what we would lose in regionalization that I think is more important than anything else. I don't need to deal with the question of increased costs, I think that has been well covered. The argument that the Commission has to deal directly with 51 entities is fallacious. The Commission does not deal with 51 entities on a day-to-day basis. It deals with its nine regional offices. Each of the regional offices deals with the State advisory committees within the regions.

We funnel things to the National Commission, except in a moment of crisis, through the regional office. And even in a moment of crisis, we bypass them, and it is with copies to the regional office. That is our first point of contact. That is the point of coordination.

So the Commission does not now have to deal with 51 entities. In terms of regional coordination, in active regions such as New England, it does that, also. We periodically, at least once a year, meet regionally and exchange information. But, we do not attempt to use that awkward mechanism to deal with the day-to-day problems of the citizens in our State. It simply would not work.

We exchange information. We talk about things we have in common, so that I have some awareness of what is happening in terms of the Indians up in Maine or in Vermont, of whom I wouldn't know anything otherwise. But to try to put all of those things on a regional agenda and to prioritize, would mean that the concerns, the legitimate concerns, and the rights of a lot of important individuals and groups within the region would get short shrift.

There is no way we could do it.

There has been discussion of whether in the State with a human rights agency there is need for a State advisory committee. In Massachusetts we have, if not the oldest, one of the oldest and I think it is the oldest such agency, the Massachusetts Commission Against Discrimination. We do not duplicate each other's work; we complement each other.

As a matter of fact, last year and a number of times in its history, the life and the ability to function, of the Massachusetts Commission Against Discrimination, was threatened by a legislative action kind of a backlash, regarding some of the controversies around school discrimination and so forth.

And the members of the Commission—the members of the State advisory committee, and some of the recommendations of the Commission itself, helped to keep MCAD not only alive, but helped in a reorganization that made it continue to function. They were threatened with a reorganization that would have totally crippled their ability to function at all.

I think that is one of the things that we can do as a knowledgeable people who are seen as a Federal presence. Most people know that we do not ourselves have power. But they have the feeling that we can invoke the Commission when necessary, and they think we can invoke it more often than we actually can.

And that gives us the clout that we would not have as individuals, to be active in our States, without the connection with the Commission.

In terms of—I do not want to discuss the Justice Department, because I think when I discuss this one example, which is my final statement, you will see what our relationship with Justice has been.

All of you have heard of the problems of school desegregation in the city of Boston. And a number of members of the Advisory Committee have had involvement one way or another in that controversy.

When Judge Garrity first issued his court order and the battle lines began to be drawn—and I use that analogy advisedly; that's what it amounted to—our SAC felt very strongly that there was need for the Commission itself to come to Boston and hold hearings.

As desegregation began to be implemented, the newspapers across this Nation and across the world, in fact, carried headlines and pictures of violence, of opposition, very vocal, very visible.

The press, in its role of reporting what is news; that is, what is sensational, did a good job of it.

Very few people outside of most of us who were really trying to take an objective view of the situation, realized that out of the entire school system, the violence was concentrated in about five schools.

We knew there was another side to the picture. But that was not getting across to the press. And there was no way that those of us who felt that a more balanced picture should be presented to the city and to the Nation, could accomplish that. That was one of the important reasons we wanted the Commission to come.

Now, the Commissioners also were viewing our situation through general knowledge, without our specific local knowledge, and the response to our request was that they could see no constructive result in holding a hearing in Boston.

It took some weeks trying to bring in the Commission, during which we frankly became a pain in the neck. We refused to listen to their "no," and we finally persuaded them to send three members of the Commission to meet with us to discuss why we felt there should be a public hearing and why they felt there should not be.

We planned for that meeting. We brought together citizens, a cross section of people, to explain to the Commissioners why it was necessary.

Among the people who were present was a woman who is a member of the State Board of Education who lives in east Boston, one of the areas strongly in opposition to the court order. She described the experiences that she was having because; one, she was a member of the State board, which had taken a position prodesegregation, and also, as a parent who was sending her children to school when her neighbors were boycotting; the harassments, the threats, the intimidation and the lack of protection on the part of city, State

and the Federal enforcement agencies. We had similar testimony from two women from south Boston, which was the center of most of the violence.

We had testimony from clergy, from business, from parents of all kinds. We had quite a very interesting meeting at a table about the size of this one, and we went around the table one by one, everybody explaining the situation. The result of that was the Commissioners decided they would indeed hold a hearing in Boston.

The hearing was, I think, extremely well handled. I really must congratulate the staff work that was done, working with the State Advisory Committee for some weeks prior to the hearing. The national staff and the regional staff did a factfinding of what was going on, what kinds of questions the Commissioners needed to ask, of whom they needed to ask them.

It was a very good example of volunteers and professional staff working together to develop the hearing. I think it was an excellent example of how that can be done. Without our local knowledge, they wouldn't have known where to start. They came with professional expertise of the kind that we did not have. And the combination was effective.

I am not sure whether some of the witnesses were subpoenaed, or whether the threat of subpoena was sufficient to bring them there.

But we had parents who were prodesegregation, parents who were against desegregation. We had people from the city government, from the Boston School Committee, members of the media were present, clergy, businessmen, community leaders, various organizations, and members of the various law enforcement agencies.

Even before the Commission's formal report was issued, we saw some constructive results: One, because the Commissioners were there, the press covered the hearings; television and newspapers and radio.

For the first time, the public—in Boston in the first place and in the Nation as a whole—began to see that there were two sides of the story, that it was not true that the vast majority of people in the city of Boston were violently opposing desegregation.

We had all gradations. We had people violently opposed, the people who opposed but wanted to do it through legal channels, the people who didn't—the people who opposed but kept their mouth shut because they didn't think they could do anything about it, people who didn't care, and the people who were on the side of the court order and constructively trying to support it. We had all of these view points and all of them were expressed in the hearing.

The reason we felt this was so very important was because of the perception people had had of Boston, its peculiar position in our Nation. It is seen as the cradle of liberty; it is seen as a great liberal city. Actually, it is a city like any other. It is my city, but I know its faults as well as its virtues.

We felt—and I think we were correct—that if it were perceived that it would be actually impossible to desegregate the schools of the city of Boston without a bloodbath, then there would be a reconsideration of the possibility of desegregation anywhere in this Nation. It would be set back not only to 1954, but prior to that. We felt

it was extremely important to the Nation that this be put in proper perspective, and I think that hearing did so.

We got the kind of press coverage we needed. We began to see an instant improvement in the functioning of the law enforcement agencies. The city police began to do their job more effectively. The State and Federal authorities began to do their jobs more effectively, including their job of keeping an eye on what the city police were doing.

Remember; the city police came out of the same communities as the rest of the citizens, and had an emotional involvement in these issues that had nothing to do with what their job was.

We began to see the—some of the people in the city and State government find the courage to take a stand. We began to see people in the broad community, that broad, liberal community which is an important part of Boston who had been sitting back and not doing anything, we began to see an involvement on their part.

One of the immediate results was a group of clergy requested that our state advisory committee help them to organize a conference where clergy and other religious leaders could discuss their possible constructive role in supporting desegregation of the Boston Public School.

That conference was held. There are still clergymen involved in these issues in very constructive ways as a result of that conference.

The report that the Commissioners did issue, finally had some recommendations to the judge and to various other agencies and some of them have been implemented.

I cannot claim that desegregation in the city of Boston is pleasing everyone. There is still an occasional outbreak of violence. It is a very minor thing. It is still limited to an occasional situation in an occasional school.

The vast majority of the schools of the city of Boston have been desegregated successfully, even if unwillingly, and I think that the city is going to find that it is far more important to deal with the issues of how children learn instead of fighting over who they are sitting next to and how they get to school.

We have succeeded in establishing, I think, that the yellow school bus is not an educational tool; it is simply a means of transportation.

I think that was perhaps one of the most important things that has happened recently in Massachusetts, that points up the vital role of the State advisory committee. No regional committee could have been as intimately involved with as large numbers in that Boston situation, which was only one of many city situations throughout the entire region.

As it was, we even had to put some other important things on the back burner within our State during that period, that we have now gone back to; things like affirmative action in county government and a number of other issues.

I don't want to talk too long. I probably have already. I think I have made my point that it is throwing the baby out with the bath water to eliminate, not only ineffective and unnecessary advisory committees of the Federal Government, but to throw out also effective, committed volunteers who have been and can be doing a job.

One argument that I have heard is that this is true of a number of these State advisory committees, but there are some that are not so good.

With all due respect, I would submit that while I think that Congress is a great institution, there are some Congressmen who are probably not effective. I wouldn't want to propose to eliminate Congress because some Congressmen are less than effective.

I would hope you would give the same consideration to the State advisory committees.

Thank you.

Mr. EDWARDS. Thank you, Ms. Jones.

All of you as State advisory committee members have given very strong arguments why the bill should be supported. The bill, of course, mandates the continuation of the State advisory committees and we are very grateful for your testimony.

Ms. Chaplain, why do you suppose; or would you care to speculate as to why the U.S. Commission itself recommended approval of the OMB suggestion?

Ms. CHAPLAIN. I don't know quite how to answer that, particularly since some of the conversations that I had with both Commissioners and members of the OMB staff were over the telephone without witnesses.

Frankly, I got the impression during those few days in September that there was a great deal of buck passing back and forth.

OMB in a round about way was saying: We really don't care as long as somehow it is more efficient, and Commissioners wanted it this way. And the Commissioners seemed to be saying: We are all for you, but the OMB wants it this way.

It has been suggested that there were some implied threats. I have no documentation, no first-hand evidence, whatsoever. This is in conversations, speculation; that they were trying to cut a deal to support the continuance and perhaps an increased budget, if you would, at least, up here.

And I think Ted put it so eloquently, or somebody did, the numbers game: We want to make it look as though we have made it more efficient; therefore, cut off half your numbers.

I don't know. I cannot substantiate any of this kind of chatter. I think there were very probably some Commissioners who really don't like to be bothered with those folks out there. They would rather not deal with an uppity Massachusetts group, even though I think they now deservedly take a great deal of credit for a job extraordinarily well done.

But they had to be pushed and shoved into it. Of course, I am sympathetic; they, too, are volunteers. They have a larger per diem. Most of us in the smaller States, our customary way of operating is, for instance, I will meet with staff over dinner before a meeting that will start at 7 and go to 10 p.m. I have to pick up my own tab. Staff can't pick it for me, nor I for them. But I do get the 17 cents a mile. It doesn't quite pay for dinner.

But I think there are Commissioners who really don't want to deal with those folks out there who sometimes make them uncom-

fortable, sometimes push them to do some things they really don't want to do.

In the incidents that I mentioned, when I said we were threatened; during the previous administration, threats went from within the State and from the White House, to the Commission, over one of the staffers; claiming that that staffer lived at an address—where two people on the Veramose Brigade have lived, and therefore, was a subversive person.

The regional director backed up the staffer. And in that instance, the matter went up to John Buggs, Commission staff director, who backed up the staffer.

But I am sure—I don't know if this has happened in other States—that we were threatened politically by the White House.

It is important, I think, to have a presence that is immune to pressure by the White House. That no longer is a factor.

But what is more important is, to be immune from pressures within the State. I happened to live in a State that is perhaps at an extreme at this historical moment. There are not many Governors like ours. But even if he is replaced, the very fact that we are appointed by Commissioners who are appointed by the President gives a certain immunity, if you are not concerned about what the paper says or your reputation being off-the-wall—and none of us are or we wouldn't have accepted the appointments—there isn't much anybody in the State can do to us. But I think that is an important factor, that Federal presence.

We play our own shell games. They don't know quite what we can do and what we can't do. I had an incident with the University of New Hampshire president who didn't want to meet with us and discuss allegations of discrimination. And I finally had to say: Gee; I hate to call in the Commission, if the Commission wishes it can subpoena. We had an appointment the next day.

I knew that the Commissioners weren't going to come up to New Hampshire. Their agenda is too full. But he didn't know that they weren't going to come. That kind of interplay, threatening perhaps, but not if they are doing their jobs.

Mr. NICHOLS. I would like to make a general comment, if I may, to that same question. Historically, the civil rights area has generally been understaffed and underfunded and undersupported by the Federal Government, in spite of the fact that it was from the Federal Government the mandate first went forward.

But never before has there been an effort to literally dismantle a group of volunteers who as a matter fact, in the typical case, spend their own money to help get this job done. I have not, myself, and I don't know anybody who has come out even financially, working as a member of an advisory committee.

But to respond more directly to your question, by indirection I believe what we really see at this juncture in the life of the Civil Rights Commission, as a commission of six members, is perhaps a need for a more systematic review of the role and term of the individual members of the Commission.

And I am not making a careless statement as an effort to throw any shadows or cast any doubts, but just as a practical fact of life as human beings. I think that if I had run around Washington for a

long time, I could go to certain offices and impress upon individuals, certain preferences, let's call them, and these may or may not reflect what is happening out in the field, in Florida, for instance, or in Massachusetts.

And it is really not just possible for six people—well, in a recent administration, there was another kind of White House administration review of the term of the Civil Rights Commission chairman and many of you know of the effectiveness of that chairman who was given a rest.

So I think that is another kind of response to the same question.

Mr. EDWARDS. That is very helpful.

I believe I will now yield to Ms. Davis.

Ms. DAVIS. I am trying to understand the proposed regional plan a little better. I understand there has been some memoranda back and forth to the advisory committee members, setting out how this regional plan would take effect. I believe, each State will have at least five members on the regional committee, some States will have more than five members. Has OMB or the Commission indicated what these five or more members are supposed to do in their home State? Are they to function as an ongoing committee, to have meetings periodically, to hold hearings, or what?

Ms. CHAPLAIN. May I respond to that. I made the suggestion that if all was lost—this was early on, you know, during these meetings in September, just one-on-one with one of the Commissioners—that a reasonable approach might be to allow the State entities to be smaller, perhaps through attrition, rather than off with their heads.

You know, for instance, in my State, there are 12. Three haven't been showing up for meetings for a year. Well, don't replace them. In addition, appoint the chair of each State a vice chair in the regional structure, but still allow some sort of State identity.

What came back was a flat "no." It was—one of the things that was mandated; no person who is currently a chair could be chair of the region, Somebody from outside, not even on a SAC committee, somebody totally new, who would have to go through probably a year's education, would chair the regional committee. There would be only regional meetings. It was left kind of fuzzy—I said: Well, couldn't you call them State subcommittees. That came back as a "no."

There was a little implication that if you were working on a project, you could possibly meet in a State, but it would have to be a project recommended and approved by the regional committee.

Is that the understanding you all have of how it would function?

Ms. JONES. Another point that needs to be made is that action can only be taken at an official meeting.

Ms. CHAPLAIN. Which has to have our Federal shepherd——

Ms. JONES. Yes.

There is nothing that would prevent us from meeting as, say, State caucuses within the region, but we couldn't do anything. We could only bring back suggestions to the regional meeting.

If the agenda was too full or our priorities were outvoted, there we are.

Ms. DAVIS. Do the SACs presently have subpena power, or is that only with——

Ms. JONES. No; we do not have subpena power. We have the power to fact-find, to make recommendations within the limitations of the policies of the Commission.

We can take some local actions in terms of holding open meetings. And we can even issue some reports with Commission approval, or we can send recommendations to the Commission, and they then can hold hearings with the subpena and issue formal reports.

States can issue reports, but we cannot subpoena.

Mr. NICHOLS. I think what is significant with respect to the question of our subpoena power is the fact that most State Advisory Committees have not really needed that arm, that authority.

As Sylvia pointed out, it is possible to remind a group that the Commission does have subpena power.

On the other hand, when we were holding the review of police community relations in Dade County, which is right now the 15th largest population area in the country and by virtue of that and other factors they really felt it was much too big to be reviewed by people who:

One, were not policemen;

Two, whose definition about what a review ought to be might not already be adopted by this particular safety department.

But there was a thorough review and I might add, very recently, this report was published last year in October and the Miami Herald, to our astonishment, in an editorial made the reference, not to our specific report, but the recommendation was directly out of the report, that maybe the time has now come to have a citizen's review board review police matters.

Now, this was at least 360 degrees in turnaround from a position that was held throughout that community only two years prior, when the issue had been hotly debated.

Ms. DAVIS. One other question which I raised earlier. Under the proposed plan, there will be at least five representatives from each state to the regional committe? Under what circumstances will additional representatives from a state be appointed?

Ms. JONES. It is by population; the larger states will have more representation. I have forgotten the exact formula, but in Massachusetts——

Ms. DAVIS. Would each member of the regional committee have an equal vote in setting priorities.

Ms. JONES. Yes, and it is very unfair to the smaller states.

Ms. DAVIS. Yes. So it appears.

Ms. JONES. Massachusetts and Connecticut would dominate New England.

Ms. CHAPLAIN. If they do not permit any form of State committee under the new setup, the regional setup, but the committee members wish to meet as a State caucus, this becomes a very elitist thing.

I can afford it. That means no 17 cents a mile, because you can't collect the 17 cents unless you are on specific assignment or going to an official meeting. It means that some of my committee members can't possibly do it, because as little as it is, the mileage does help sometimes to pay the babysitter. It does help pay for the gasoline, if we happen to be meeting 30 miles away. I am fortunate. I can

afford the 60 miles round trip and not bill the Commission, and in fact, I am very apt to forget to bill them anyway.

But if we had to make all of our committee members people who can afford the luxury, it becomes a different committee.

Ms. DAVIS. Thank you.

Ms. JONES. There is another factor in that, too. There is the time factor. As it is now, meeting in the States, people take a few hours off.

Even when I was living in Martha's Vineyard and traveling to Boston, it took me less than a day to go to a meeting and come home again.

Now I am living back in Boston and it is no problem at all. If we are meeting regionally, it means that the people who are working have to be able to take at least a full day and probably more. And again, that restricts the opportunity of people to participate to those who can afford this.

People on a daily or hourly wage, obviously, could not afford to do this, and we are again restricting the opportunity for people to serve and restricting the representativeness of the advisory committee.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Thank you, Mr. Chairman. Mr. Gluba, I would like to follow up a question from counsel. Iowa is slated for a reduction from 19 to 5 members. That leads me to believe that there must have been some sort of a submission to the State advisory committees of the reorganization plan.

I would like to ask if any of you happen to have that with you, or know of such a document that could be supplied for the record. If not, Mr. Chairman, I would like suggest that it would be beneficial to the committee to obtain this from Iowa.

Mr. EDWARDS. It is important, and without objection, let's proceed to get it.

Mr. GLUBA. Congressman, there is a formula, or some rhetoric they put out in mimeographed form. We had a meeting in Kansas City to talk about it. I can't remember the exact formula for every State.

And then there was a big nationwide conference held in Washington, D.C., which as Ted pointed out, 153 or 152, or 153 were present. And this is really your civil rights activists across the Nation, who are vehemently opposed to messing around with these State committees.

And that whole meeting and purpose was to sort of lay it out and see what it is going to be.

And I found it quite a waste of time. I am afraid, for the last several months, at least almost 6 months, there has been a preoccupation, I am sure, by the staff, by the volunteers, drifting away from our real mission, and that is to try to oversee the civil rights laws of this Nation.

That is why I sort of detest reorganization. It seems to me when agencies get fat, restful, and complacent, they turn on each other and decide to shuffle paper and names. And that is sort of what we are supposed to be doing.

I can see a lot of people, staff people, in the U.S. Civil Rights Commission regional offices cranking out reams of rhetoric and paper, totally devoid of the real issue of civil rights.

We ought to be, in my opinion, hammering in on, zeroing in on, CETA money, millions and millions of dollars coming down the pike. And we haven't met on that issue in several months.

But there some of these reams of material around. I think you can get it from the U.S. Civil Rights Commission office. Again, that is meaningless. How are you going to take five people out of Iowa—not that it is that diverse, but it is diverse, as we have got a certain percentage of Mexican Americans. We have got about 1.5 percent of black population. We have senior citizens population.

You can't just make five people that reflective, and again, you would have to be economically more selective. But when they are willing to drive halfway across the State, as has been pointed out, and then get back home the same night, so then I find I don't have to stay overnight, because I would rather spend that time with my family. But if I must fly to Kansas City or somewhere, that is going to cost a lot more, plus you lose—I don't know that much about Missouri; I know very little, if anything, about the Indian situation in Kansas or Nebraska. I know a little bit about the civil rights in my community and maybe some other communities in Iowa.

But by dissipating my effectiveness, and then when you bring in—I can see really a difficult situation or an anti-Federal situation, a regional group from Missouri, Kansas, Nebraska, would come to Fort Dodge, Iowa, and talk about the local sheriff or the local police department. Then you have got some big Federal presence, some big arm of the Government that people resent.

But if it is local folk from Davenport, Des Moines, or Fort Dodge coming in, it is more of a conciliation, sort of 1-on-1 discussion. I think it really accomplishes a great deal to sit down and talk about our problem. We did this in Fort Dodge. They reappointed and reestablished the Civil Rights Commission directorship which they had let go.

The chief of the police department got moved and shaken on things that they were going to accomplish. The area community college was trying to bring more blacks into the school system. And we didn't do much more than hold a public hearing there.

And I think that is testimony to the effectivness of our group.

Ms. CHAPLAIN. On the question of the document. I think, unfortunately, I guess none of us brought a file of all these letters.

But I think I would just like to briefly state the sequence of events, that particularly go for chairpersons, but others as well, that kind of stay in touch.

One of the privileges we have is the use of an FTS code number, so we don't have to spend money calling the New York office, at least, and stay in touch.

We had heard the rumors about this disbandment, that it was being suggested. But the first thing most of us knew, particularly members who weren't in constant touch, was what we now call the so-called "thank you" letter that arrived in August. And I don't know if you have a copy of that. People got it out of the blue:

Thanks a bunch, fellows; you have been swell by being on the Commission, and you are no longer going to exist.

At the same time, then, the chairs and one or two people per se, were being summoned to Washington in September for one of our periodic missions with—communications with the Commissioners.

The agenda was changed and scrapped, as I understand, from the original agenda. And we were to come down there to work on how the reorganization would work and to be instructed.

To my knowledge, not one single State advisory committee member was ever contacted by the Commission as to what we thought about the pending change.

And I frankly find that almost unforgivable, that nobody had the basic courtesy to the people who had served for years to say: Look; there has been this suggestion—if they wanted to call it that; order, however they wanted to term it—from the Office of Management and Budget: You know, what do you guys think out there, who have been serving this long?

It was deliberate. I felt very guilty at those 2 days. I have an overactive conscience; that if the Federal Government is paying my way to Washington, I find it behooves me to go to each and every session that I am supposed to attend. Well, I didn't go to any. A few of us spent a great deal of time whipping up press releases and coordinating opposition. I don't feel that guilty about it. It was time well spent.

But it is a heck of a way to do things.

Ms. JONES. I received that letter that she talked about just a matter of weeks after I had received a letter reappointing me to the committee. And there was nothing in between. I got my letter saying that I had served well and my term was up and I was being reappointed. And then the next thing I got was: As of X date, there will be no more State advisory committees, and there will be 10 regional committees, and you will be notified who will be on them, et cetera, et cetera; very cold and abrupt, and completely out of the blue.

Mr. STAREK. This is a followup to the chairman's inquiry of a moment ago.

All of you, I know, were here when the OMB testified. It seems as though we have a discrepancy here which I wish to explore a little further.

Mr. Nichols, in your testimony you mentioned that OMB made the reorganization suggestions and was primarily responsible for this proposal. I think that is a fair statement of your testimony.

OMB, on the other hand, has gone to great lengths here to explain that they do not have any power under the Advisory Committee Act to make these changes. They have gone to great lengths to explain that the Commission concurred and certainly participated in this reorganization.

I think everyone in this room understands that OMB takes its marching orders directly from the White House. I would like to solicit your opinions as to where the recommendation for the abolition of the State advisory committees came from.

Mr. NICHOLS. On September 19, several of us who were quite concerned about what had occurred on September 18 in the meet-

ing called by the Civil Rights Commission which several of us referred to, held in Washington at the International Inn, where we just—well, our opinion about the need for State advisory committees had been thoroughly overlooked. Several of us requested and got a meeting with Ms. Costanza for the purpose of pursuing just this same question.

And at that meeting was Mr. Bonsteel, who was sitting to the left of Mr. Granquist today. Subsequently, we met with the then acting director of OMB, Mr. McIntyre, on the same issue, basically.

The Commission, on the other hand, had led us to believe that it had been OMB who had brought this issue up.

Now, I think—I don't know the value of pursuing the question to any great length at this point—but I think it is pretty obvious that OMB initiated inquiries with regard to the status of advisory committees generally and included among those state civil rights advisory committees, and ultimately made a recommendation to reduce the number of SAC's, at which point the Commission itself folded in, or just said: Well, we will give up; yes, we will do this; is very, very unclear.

I know the Commission initially made a rather substantial effort to persuade OMB otherwise.

Then later on, it became apparent that part of our issue as interested State advisory committee members, had a whole lot to do with where the Commission stood on this.

And there is at least written evidence of what we did, trying to keep each other advised and informed.

Mr. STAREK. Let me explain to you why I think this is extremely relevant.

When the Congress has to decide down the line whether or not to make the establishment of State advisory committees mandatory, it will look at a recommendation from the White House through OMB differently than a recommendation from the Civil Rights Commission.

Ms. JONES. I think it is clear to me that the initial recommendation came from OMB.

As Mr. Nichols has said, it is not easy to determine at what point the Commissioners agreed to go along with it.

I am told that initially the Commissioners opposed this recommendation. What caused them to change their minds, I don't know, because I was not privy to the primary discussions. But that is clearly what did happen, for some reason the Commissioners changed their position and decided to go along with OMB.

And you know, here we are.

Mr. NICHOLS. I think there probably has been a grand misinterpretation of what ever the mandate might have been from the President, frankly.

I think, and it has already been pointed out here by Senator Gluba, I think that a mandate to review the work of the advisory committees, to review their current usefulness, is a good mandate.

I think the way you interpret and apply that mandate to specific committees is another question, and I believe that is where the difference came in.

If your question is whether or not the President said: Do away with these particular advisory committees, I think not. I am not even sure how aware he is of it.

Ms. CHAPLAIN. The reason why we pushed very hard and finally got a meeting with Midge Costanza was that our perception was that the White House didn't know what was going on with the advisory committees.

And if any of us had any inner doubts, we still chose to pursue it in that matter, that there has been a big misunderstanding, and that OMB, perhaps, did not take a very careful look and didn't understand our function, that it was not upon orders of the President but under the overall instruction to cut out useless committees.

And it is—you know, I wish we could be more definitive, but much of this was discussed in private. I don't think even staff were privy to some of the conversations between OMB and the Commissioners.

I don't know. All I know is that in several conversations, the buck has been passed back and forth: It is not us; it is those guys.

Mr. GLUBA. Another point: In this report that they show, that the press release shows; it is great, it looks good. They can wave it around. It will reduce committees by 23 percent.

It shows some of the other major ones. It shows that the Energy Research and Development Administration; they reduced theirs 33 percent; Environmental Protection Agency, 38 percent reduction; General Services Administration, 28 percent.

Then you get down here to the U.S. Civil Rights Commission, it is an 80-percent reduction. I mean, percentages are what ever you believe, but I think it is more than peculiar, perhaps, or curious, that there just happened to be just 10 regions.

You can conclude that the reason for 10 is that it is much simpler for them, the regional staff, that way. You know, the bureaucracy sort of runs the system that way. They don't have to fly to Davenport, or drive clear out to Kansas, or Nebraska, or some where in Missouri. It makes their job a little easier. They can spend some more evenings home with their families, but then they expect volunteers from all over the state of Iowa to drive clear to Kansas City.

I have been around Government bureaucracies long enough to know that they are going to look out for No. 1, if they get a chance, frequently. I think that might be one reason.

In addition, I think the U.S. Civil Rights Commission just got drawn into this thing without looking at it, quite frankly, closely.

The White House is so busy, obviously, with today, the coal strike; they are not fine-tuning these things.

It is a press release cranked out to the public. It looks great. Go onto the next issue, and not really be too concerned with what really happened.

I don't think that the Carter administration wants to be remembered as the one that made a retreat a step backward, and reduced its commitment to civil rights.

But that is the only way the people in my State can interpret it, that are involved in the civil rights movement, when you, in fact, cut back on a thing—and you don't save any money—there is not a dime's worth of savings. As a matter of fact, it is going to cost more

if I have to fly to Kansas City, when our five people meet down there.

And you just take away that local initiative, or that local responsiveness. So I think OMB got carried away, and I think the presentation here today before this congressional Subcommittee by, the Office of Management and Budget, was not real gung-ho. They didn't know how it happened. And the other group didn't seem to know and they weren't really sure in the Justice Department: Well, they didn't really have any hard feelings on it.

So OMB was carried away. It was done. And it is over. And you know, now we are here trying to untangle it.

Maybe we ought to be going the other way. Maybe we ought to have one civil rights commission in every congressional district. I mean, there are 450,000 plus in each district. And a lot of counties don't even have local civil rights commissions.

There is no "oomph" in Congress or around the White House or anywhere to push in the other direction on civil rights. In the 1960s, they would probably have been picketing and raising all kinds of hell. Today, it is another bureaucratic shuffle.

I think that is kind of unfortunate, because as many people at the national meeting we had in the District of Columbia pointed out, I think there is a seething discontent in our major metropolitan areas; Detroit, Philadelphia, Newark. And when it is going to explode again, I don't know. But hopefully, you know, you do not retreat at a point in time in history when we are at a crossroad. We ought to be strengthening the commitment to civil rights, not backing away from it.

Now we are going to bring in perhaps the disabled and the aged, or the other groups under the civil rights commitment, and we are having fewer people to volunteer their services to oversee that. I think it makes a lot of poor sense to move in this direction.

Mr. EDWARDS. Maybe in organizations like OMB there is a lessening of commitment. For all we know, this whole thing was done on purpose; not carelessness, not anything else, just the fact that they think that you people are getting uppity.

Ms. JONES. I think that is always possible, but the impression I get is that they just are mechanically applying a mandate that they got from the President, and not looking at what is happening. That is the way I see it; that it is a mechanical thing. And I am usually much more paranoid than that.

[Laughter.]

But in this instance, I don't really see it.

Mr. EDWARDS. Well, maybe you have some airplanes to catch, too, and——

Mr. NICHOLS. I was just about to suggest, Mr. Chairman, that you probably are the one who is going to have to decide who has the last word here.

But we came because we wanted to appeal to the only other place we know to appeal, and that is to the House of Representatives and the Senate.

And we cannot afford to lose that issue, you know—and of course, we are in Washington, in this case, thoroughly satisfied supporting what your committee has recommended. We believe that will do the job.

Mr. EDWARDS. Well, you have some strong friends on this subcommittee, on the full committee, and in the House.

I think you have made a very good case, and I think you are going to get a lot of support for your case.

Thank you all for coming.

It has really been a valuable experience for all of us. I appreciate it very much.

Congratulations for the work that you are doing now out in the hills and valleys of America, the suburbs, and you name it. We all should be very grateful to you, for this kind of work.

As Senator Truan said a few minutes ago and it is so true; this country doesn't have it made at all. We have to work much harder than we have worked in the last 15 or 20 years. And it is up to all of us to do it.

But I am especially proud that we have volunteers like you. It makes us feel very good.

It was a great feeling when a couple of days ago we were able to get a two-thirds vote in this House of Representatives for representation in Congress for the District of Columbia. A lot of people voted for that when it meant nothing to them or to their constituents at all, except that it was the right thing to do.

We had the whole North Carolina delegation, almost the entire South Carolina delegation. We had 69 Republicans, and that is significant when you consider that representatives from the District of Columbia will most certainly be minority and Democrat; yet about half the Republicans voted for it. It just makes you feel pretty good.

Mr. GLUBA. Let me add, the chairperson of our committee in Iowa is a very active Republican. It is as bipartisan as can be.

Mr. EDWARDS. That's right.

Mr. GLUBA. We are with them and they are with us.

It is unfortunate we have to spend our time doing this other——

Mr. EDWARDS. The ranking Republican of the House Judiciary Committee was the most eloquent supporter of this D.C. representation, as he was for ERA, and for all civil rights laws.

So thanks again.

[Whereupon, at 5:25 p.m., the hearing was adjourned.]

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION EXTENSION

THURSDAY, MARCH 9, 1978

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2141 of the Rayburn House Office Building, Hon. Don Edwards, chairman of the subcommittee, presiding.

Present: Representatives Edwards, Drinan, Butler, and McClory.

Staff present: Ivy L. Davis, assistant counsel, and Roscoe B. Starek III, associate counsel.

Mr. EDWARDS. The subcommittee will come to order. Today we are going to continue hearings on House Resolution 10831 to extend the life of the U.S. Commission on Civil Rights.

This morning we will hear testimony from advocates for the handicapped and the elderly. These groups, outside the Commission's current jurisdiction, would, under both H.R. 10831 and its Senate counterpart, be under the Commission's future jurisdiction.

We will also take testimony a little later from a panel of legal defense organizations representing groups which the Commission has had jurisdiction to review.

Our first witness is Deborah Kaplan, director of the Disability Rights Center. Ms. Kaplan, I believe you will in your statement set forth in more detail the goals and purposes of the center. Without objection, your full statement will be made a part of the record. You are welcome, Ms. Kaplan, and you may proceed.

[The prepared statement of Ms. Kaplan follows:]

disability rights center inc

STATEMENT OF DISABILITY RIGHTS CENTER

Mr. Chairman and members of the Subcommittee, as director of the Disability Rights Center (DRC), I am very grateful for the opportunity to appear before you today to testify on proposed legislation to expand the jurisdiction of the U.S. Commission on Civil Rights to cover the handicapped. The Disability Rights Center is a nonprofit public interest organization committed to assuring that the human and civil rights of this nation's 36 million disabled citizens are enforced. Our Board of Directors consists of disabled individuals each with a history of involvement in the disability rights movement. As a tax-exempt charitable organization, we receive our funding from private foundations and individual donors. Our general goals and objectives are to ensure the protection of our rights as they are implemented by the federal agencies which have the authority to do so, and to provide disabled citizens with information about their rights under the law and how they can act to protect them.

The fact that so few people understand the growing need, indeed the urgency, for civil rights protection for the millions of disabled people in this country is a strong indication of the very valuable work that the Commission on Civil Rights can contribute in this area. While most Americans still associate disability with charitable giving and medical research for cures to disabilities, there are literally millions of people with disabilities who are subjugated to discrimination in education, employment, housing, public accomodations, social services, transportation, voting rights, insurance, credit and other areas. For many, especially people with severe disabilities, the results of these various forms of discrimination are poverty, isolation, and needless segregation.

The White House Conference on Handicapped Individuals, held last May has issued as a very high priority the recommendation that the Civil Rights Act

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of 1964 be amended to include disabled people. The basis for this recommendation is the strong conviction of almost all of the delegates representing disabled people across the country that disabled people are a minority group, victims of the same types of discrimination as other minorities which currently are covered by the Civil Rights Act.

Presently, the only federal legislation which protects the civil rights of disabled people is found in Title V of the Rehabilitation Act of 1973, as amended in 1974, 29 U.S.C. §§ 791 to 794. Section 501 of the Act mandates affirmative action in the federal government for disabled applicants and employees. Section 502 creates the Architectural and Transportation Barriers Compliance Board to enforce the Architectural Barriers Act of 1968, Public Law 90-480. Section 503 requires that federal contractors engage in affirmative action. Section 504 prohibits discrimination against disabled people by federal grantees.

During the previous administration very little was done to implement or enforce Title V of the Rehabilitation Act. Regulations and complaint procedures were very slow in coming. Fortunately, the present administration is focusing more attention on these Congressional mandates. The Civil Service Commission will soon issue a set of regulations for processing complaints of discrimination based on disability. The Architectural and Transportation Barriers Compliance Board is beginning to bring complaints against agencies and institutions that are building illegally inaccessible structures. The Department of Labor is expanding its enforcement effort with respect to federal contractors. Last Spring, Secretary Califano finally issued a set of regulations to implement Section 504 for H.E.W. funded programs, and earlier this month the Secretary issued regulations to guide other federal agencies in issuing their own Section 504 regulations. The timetables for other federal agencies to issue their regulations is acceptable to the disabled community, and we are generally pleased with H.E.W.'s efforts to oversee this area. However, we will remain vigilant in our own efforts to monitor federal enforcement of all of Title V.

The point I wish to make is that the federal government is stepping up its activities with respect to civil rights for disabled people. This is a good beginning. The need for the type of in-depth research and investigations that

are conducted by the U.S. Commission on Civil Rights is indeed very great. In our Center's research on federal affirmative action programs for disabled people, we have relied on The Federal Civil Rights Enforcement Effort volumes heavily for general background information. However, we have only been able to analogize, since the Commission did not cover any programs pertaining to disabled people. If the Commission were to include an analysis of civil rights enforcement as it concerns disabled people, I can guarantee you that it would be extremely useful and valuable for all attorneys and advocates working in this area, and I would hope that the applicable federal agencies would make use of it as well.

Disabled people are treated in an unfair and discriminatory manner in almost every facet of their lives. From birth until death, disabled people are the victims of degrading stereotypes and lables which make it virtually impossible for them to be treated as individuals rather than as less than human. Most people who have worked with civil rights issues are aware of our society's tendancy to segregate and ostracize people who are different. For disabled people, the differences are used as an excuse for exclusion, segregation or inadequate treatment.

Parents and advocates of disabled people had to fight local and state school systems in the courtroom over the provision of education for disabled children. Even though the issue has been settled by litigation and legislation in most states, and more recently by federal law, many school systems continue to exclude disabled children or provide them with inadequate services in unnecessarily segregated facilities. Many school systems have obstinately resisted providing equal educational opportunities to disabled children, prompting more law suits to bring about compliance with the new laws.

Employers across the country use illegal and outdated medical standards to screen out disabled applicants and employees. Oftentimes the medical standard bears no relationship to the actual job requirements. Employers also deny jobs to disabled people giving no consideration to available methods of modifying the work environment, restructuring the job or allowing for flexible work hours, as required by state and federal laws.

Many landlords refuse to consider disabled people in renting or leasing housing. The federal government continues to subsidize large developments for disabled people only, which results in "handicapped ghettos". Most other housing projects are totally inaccessible to disabled people. As a result, many severely disabled people have no choice but to live in nursing homes or in very unsaft or totally segregated buildings.

Mass transit is mostly inaccessible to people with physical disabilities as well as those with sensory disabilities. Most city buses do not have lifts or ramps, although the Transbus (a low-floor ramped bus) will be required for all new bus purchases after 1979. Most subway systems are totally inaccessible, as well as most light and heavy rail systems. Many airplane companies still refuse to accomodate people with severe disabilities. Most cities have very few curb cuts to facilitate wheelchair riders.

In most cities and towns, voting places are inaccessible as well as many voting boothes. Disabled people are given no alternative but to file absentee ballots, which usually must be filed several days before the regular election. The disabled voter then has no means of allowing last-minute developments to influence his or her vote. Many other disabled people have refused to file absentee ballots in order to register protest at not being able to vote in the same manner as other citizens.

In many localities disabled people are excluded from sitting on juries. This exclusion occurs not because of the disabled person's involvement with the parties of any particular case but because of an irrebuttable presumption made by the courts that disabled people are incompetent to serve on juries. This policy is a tremendous insult to disabled people, and it is also a disservice to the local community involved. Since juries are required to include a representation of all people in the community, the absence of disabled jurors can only have a negative effect on the adminstration of justice in the courtrooms.

Disabled people are often denied access to community social and health services solely because of their disabilities. Many buildings that house the service providers are inaccessible. Interpreters for deaf people and TTY's are often not

available, prohibiting the deaf person from making appointments or coming in for the service without help. Printed materials, often in small print, are often the only form of communication for general information, making it difficult for blind or visually impaired people to receive help. Even more often, the social serv service and health professionals have had little or no education or experience in dealing with disabled people. This often serves to make the provision of services inadequate or meaningless.

Public facilities and accomodations such as hotels, restaurants, theatres and stores are often inaccessible to disabled people. Even if physical access is no problem, overt discrimination can still occur. Two restaurants in Berkeley, California have recently been sued by disabled people who were either denied service altogether or forced to sit in a back corner of the restaurant.

Disabled people are often denied credit and/or insurance solely because of their disabilities. Automobile insurance companies often refuse to insure disabled drivers or force them to pay exhorbitant rates even though the experience rating of disabled drivers is better than average. Health insurance is often unavailable for disabled people. Credit is often withheld for no reason other than the disability of an applicant.

As you can see there are many areas that deeply touch the lives of disabled people which the Commission could investigate. Many of these practices are prohibited by federal or state law. Since we are still waiting for Section 504 regulations for agencies other than H.E.W., we can only speculate about Section 504's effect on some discriminatory practices. We do know that it will go far to eliminate many. Many state laws prohibit the above-mentioned practices. Yet there is no doubt that disabled people face these forms of unfair treatment every day.

There are several reasons that litigation in this area has been slow, although it is now increasing at a steady rate. The major reason is that the Civil Rights Attorneys Fees Awards Act of 1976, P.L. 94-559, does not include Title V of the Rehabilitation Act of 1973 as a covered statute. Another reason is that the

Legal Services Corporation has only recently become interested in this area. The private bar has also been slow to take up disability discrimination cases, although this is changing as public awareness of the issue increases. Legal backup for attorneys who become involved in this sort of litigation is not centralized and is meager.

Thirty states have already added coverage of disability-based discrimination to the jurisdiction of their Human Rights Commissions or Fair Employment Practices Commissions. Those States which have are:

Alaska	Alaska Stat. § 18.80.010 to 18.80.300
California	Cal. Labor Code § 1410 to 1433
Connecticut	Conn. Gen. Stat. § 31-122 to 31-128
District of Columbia	D.C. Title 34 (Human Rights Law), Chap. 11 and 29
Hawaii	Hawaii Rev. Stat. § 378-1 to 378-10
Idaho	House Bill 336, amending Idaho Code § 67-5901 et seq.
Illinois	Ill. Rev. Stat. Chap. 48, § 851 et seq.
Indiana	Ind. Code § 22-9-1-4
Iowa	Iowa Code § 601A.1 to § 601A.17
Kansas	Kan. Stat. § 44-1001 to § 44-1038
Kentucky	Ky. Rev. Stat. Chapter 207
Maine	Me. Rev. Stat. § 4551 to § 4613
Maryland	Md. Code Art. 49B, § 1 to § 20
Massachusetts	Laws of Mass., Chap. 149, Section 24K
Michigan	Senate Bill No 749 (effective 3/30/77)
Minnesota	Minn. Stat. § 363.01 to § 363.14
Montana	Mont. Rev. Code § 64-301 to § 64-312
Nebraska	Neb. Rev. Stat. § 48.1101 to § 48.1125
Nevada	Nev. Rev. Stat. § 613.310 to § 613.430
New Hampshire	N.H. Rev. Stat. § 354-A:1 to § 354-A:14
New Jersey	N.J. Stat. § 10:5-1 to § 10:5-28
New Mexico	N.M Stat. § 4-33-1 to § 4-33-13
New York	McKinney's Consolidated Law Chp. 18, § 15-290 to § 15-301
Ohio	Ohio Rev. Code § 4112.01 et. seq.
Oregon	Ore. Rev. Stat. § 659.400 to § 659.435

Pennsylvania	Pa. Stat. Tit. 43, § 951 to § 963
Rhode Island	R.I. Gen. Laws § 28-5-1 to § 28-5-39
Washington	Rev. Code Wash. § 49.60.010 to § 49.60.330
West Virginia	W. Va. Code § 5-11-1 to § 5 11-16
Wisconsin	Wisc. Stat. § 111.31 to 111.37

We are pleased to note that many of the members of this Subcommittee represent states that have passed this type of legislation. They are:

Representative Edwards	California
Representative Seiberling	Ohio
Representative Drinan	Massachusetts
Representative Beilenson	California
Representative McClory	Illinois

One issue that is of primary importance to the disabled community, with which the Commission could be of great assistance to us, is the definition of "handicapped" or "disabled" with respect to the many federal and state statutes which use these terms. There are a multitude of statutes which use these terms for a variety of purposes. Some statutes deal with benefit programs, some with fair employment practices, and others have other unrelated purposes. As a result, there is no uniformity in the definition of "handicapped". Many disabled people are at a loss to understand the differences and have a very difficult time trying to deal with an overly complicated system. A thorough study of all relevant statutes and the definitions that they use, with local research on the effect that this has on disabled people, would be extremely useful.

The definition of "handicapped individual" that is found in the Rehabilitation Act of 1973 as amended in 1974, is supported by the Disability Rights Center for the language of H.R. 10831. That definition is the most inclusive, and should be used in order to achieve uniformity with Title V of the Rehabilitation Act.

TESTIMONY OF DEBORAH KAPLAN, DIRECTOR OF THE DISABILITY RIGHTS CENTER

Ms. KAPLAN. Thank you very much, Mr. Chairman. As director of the Disability Rights Center, I am very grateful for the opportunity to appear before you today to testify on proposed legislation, H.R. 10831, to expand the jurisdiction of the U.S. Commission on Civil Rights to cover the handicapped. The Disability Rights Center is a nonprofit public interest organization committed to assuring that the human and civil rights of this Nation's 36 million disabled citizens are enforced.

Our board of directors consists of disabled individuals, each with a history of involvement in the disability rights movement. As a tax-exempt charitable organization we receive our funding from private foundations and individual donors. Our general goals and objectives are to insure the protection of our rights as they are implemented by the Federal agencies which have the authority to do so, and to provide disabled citizens with information about their rights under the law and how they can act to protect them.

The fact that so few people understand the growing need, indeed the urgency, for civil rights protection for the millions of disabled people in this country is a strong indication of the very valuable work that the Commission on Civil Rights can contribute in this area. While most Americans still associate disability with charitable giving and medical research for cures to disabilities, there are literally millions of people with disabilities who are subjected to discrimination in education, employment, housing, public accommodations, social services, transportation, voting rights, insurance, credit, and other areas. For many, especially people with severe disabilities, the results of these various forms of discrimination are poverty, isolation, and needless segregation.

The White House Conference on Handicapped Individuals, held last May, has issued as a very high priority the recommendation that the Civil Rights Act of 1964 be amended to include disabled people. The basis for this recommendation is the strong conviction of almost all of the delegates representing disabled people across the country that disabled people are a minority group, victims of the same types of discrimination as other minorities which currently are covered by the Civil Rights Act.

Presently, the only Federal legislation which protects the civil rights of disabled people is found in title V of the Rehabilitation Act of 1973, as amended in 1974. Section 501 of the act mandates affirmative action in the Federal Government for disabled applicants and employees. Section 502 creates the Architectural and Transportation Barriers Compliance Board to enforce the Architectural Barriers Act of 1968, Public Law 90–480. Section 503 requires that Federal contractors engage in affirmative action. Section 504 prohibits discrimination against disabled people by Federal grantees.

During the previous administration very little was done to implement or enforce title V of the Rehabilitation Act. Regulations and complaint procedures were very slow in coming. Fortunately the present administration is focusing more attention on these congres-

sional mandates. The Civil Service Commission will soon issue a set of regulations for processing complaints of discrimination based on disability.

The Architectural and Transportation Barriers Compliance Board is beginning to bring complaints against agencies and institutions that are building illegally inaccessible structures. The Department of Labor is expanding its enforcement effort with respect to Federal contractors. Last spring secretary Califano finally issued a set of regulations to implement section 504 for HEW-funded programs, and earlier this month the Secretary issued regulations to guide other Federal agencies in issuing their own section 504 regulations. The timetables for other Federal agencies to issue their regulations is acceptable to the disabled community, and we are generally pleased with HEW's efforts to oversee this area. However, we will remain vigilant in our own efforts to monitor Federal enforcement of all of title V.

The point I wish to make is that the Federal Government is stepping up its activities with respect to civil rights for disabled people. This is a good beginning. The need for the type of in-depth research and investigations that are conducted by the U.S. Commission on Civil Rights is indeed very great. In our center's research on Federal affirmative action programs for disabled people we have relied on "The Federal Civil Rights Enforcement Effort" volumes heavily for general background information. However, we have only been able to analogize, since the Commission did not cover any programs pertaining to disabled people. If the Commission were to include an analysis of civil rights enforcement as it concerns disabled people, I can guarantee you that it would be extremely useful and valuable for all attorneys and advocates working in this area, and I would hope that the applicable Federal agencies would make use of it as well.

Disabled people are treated in an unfair and discriminatory manner in almost every facet of their lives. From birth until death, disabled people are the victims of degrading stereotypes and labels which make it virtually impossible for them to be treated as individuals rather than as less than human. Most people who have worked with civil rights issues are aware of our society's tendency to segregate and ostracize people who are different. For disabled people the differences are used as an excuse for exclusion, segregation, or inadequate treatment.

Parents and advocates of disabled people had to fight local and State school systems in the courtroom over the provision of education for disabled children. Even though the issue has been settled litigation and legislation in most States, and more recently by Federal law, many school systems continue to exclude disabled children or provide them with inadequate services in unnecessarily segregated facilities. Many school systems have obstinately resisted providing equal educational opportunities to disabled children, prompting more lawsuits to bring about compliance with the new laws.

Employers across the country use illegal and outdated medical standards to screen out disabled applicants and employees. Often-

times the medical standard bears no relationship to the actual job requirements. Employers also deny jobs to disabled people giving no consideration to available methods of modifying the work environment, restructuring the job or allowing for flexible work hours, as required by State and Federal laws.

Many landlords refuse to consider disabled people in renting or leasing housing. The Federal Government continues to subsidize large developments for disabled people only, which results in "handicapped ghettos." Most other housing projects are totally inaccessible to disabled people. As a result, many severely disabled people have no choice but to live in nursing homes or in very unsafe or totally segregated buildings.

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if physical access is no problem, overt discrimination can still occur. Two resturants in Berkeley, Calif., have recently been sued by disabled people who were either denied service altogether or forced to sit in a back corner of the restaurant.

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As you can see there are many areas that deeply touch the lives of disabled people which the Commission could investigate. Many of these practices are prohibited by Federal or State law. Since we are still waiting for section 504 regulations for agencies other than HEW, we can only speculate about section 504's effect on some discriminatory practices. We do know that it will go far to eliminate many. Many State laws prohibit the above-mentioned practices. Yet there is no doubt that disabled people face these forms of unfair treatment everyday.

There are several reasons that litigation in this area has been slow, although it is now increasing at a steady rate. The major reason is that the Civil Rights Attorneys Fees Awards Act of 1976, Public Law 94–559, does not include title V of the Rehabilitation Act of 1973 as a covered statute. Another reason is that the Legal Services Corporation has only recently become interested in this area. The private bar has also been slow to take up disability discrimination cases, although this is changing as public awareness of the issue increases. Legal backup for attorneys who become involved in this sort of litigation is not centralized and is meager.

Thirty States have already added coverage of disability based discrimination to the jurisdiction of their Human Rights Commissions or Fair Employment Practices Commissions. The States which have are listed in my written testimony.

We are pleased to note that many of the members of this subcommittee represent States that have passed this type of legislation. They are: California, the State of Representatives Edwards and Beilenson; Ohio, the State of Representative Seiberling; Massachusetts, the State of Representative Drinan; and Illinois, the State of Representative McClory.

One issue that is of primary importance to the disabled community, with which the Commission could be of great assistance to us, is the definition of "handicapped" or "disabled" with respect to the many Federal and State statutes which use these terms. There are a multitude of statutes which use these terms for a variety of purposes. Some statutes deal with benefit programs, some with fair employment practices, and others have other unrelated purposes. As a result, there is no uniformity in the definition of "handicapped." Many disabled people are at a loss to understand the differences and have a very difficult time trying to deal with an overly complicated system. A thorough study of the effect that this has on disabled people would be extremely useful.

The definition of "handicapped individual" that is found in the Rehabilitation Act of 1973 as amended in 1974, is supported by the Disability Rights Center for the language of H.R. 10831. That definition is the most inclusive, and should be used in order to achieve uniformity with title V of the Rehabilitation Act.

Again, I cannot reemphasize how important it is to disabled people that we be included in legislation that considers other minorities and women in a civil rights context. To us it is extremely important that the U.S. Commission on Civil Rights recognize disabled people as a minority and begin very, very much needed research in this area. We therefore, are very much in support of the provisions of H.R. 10831 adding disability to the jurisdiction of the U.S. Commission on Civil Rights.

With that I would like to finish my testimony, and I would be happy to answer any questions that you have.

Mr. EDWARDS. You make a very strong case, Ms. Kaplan, and we thank you very much for excellent testimony.

The gentleman from Virginia.

Mr. BUTLER. I would like to join with the chairman and say that this is the finest argument I have heard on behalf of the handicapped. You make your point very strongly.

I was of the view that the Civil Rights Commission was not in a position to really render a great deal of service in commensurate with the cost in this area, but I would have to admit that you make quite a good case.

I assume you have no qualms with the proposal to expand the jurisdiction of the Civil Rights Commission to charge them with the responsibility of protecting both the handicapped and the aged?

Ms. KAPLAN. Right. Many of the aging are also handicapped as well. We've formed coalitions on many issues.

Mr. BUTLER. I am quite sure you do. Suppose we increase the jurisdiction without increasing the funding; that would put you in competition with existing obligations of the Commssion on Civil Rights. Do you still believe, under those circumstances that we should expand the jurisdiction, or that we should not expand it without increasing the funding?

Ms. KAPLAN. Well, it's my understanding that a lot of the Commission's present work could simply—like the volumes on the civil rights enforcement effort, just continue that existing work and add handicapped. Since a lot of that work has been done, I would imagine that adding the handicapped and doing research on that wouldn't necessarily entail a lot more expenditure. And again, since other research projects on other minorities and women have already been completed or are in the process of being completed, I would imagine—and I haven't talked with people at the U.S. Commission on Civil Rights exactly on this issue—that it wouldn't take much more funding to take on a new area since previous work has already been done.

Mr. BUTLER. Well, I thank you very much. I have no further questions, Mr. Chairman.

Mr. EDWARDS. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman I am likewise interested in this issue. As a matter of fact, the proposed amendments to the

statute would include the authority to handle and review problems of the handicapped as well as the aged, would establish two new categories which the Civil Rights Commission will presumably undertake.

I am particularly interested in the subject of discrimination against women. A problem which has recently been the subject of attention is battered women or women who find themselves in a crisis situation where some special attention is needed. A domestic crisis center has been developed in my congressional district in which women are cared for on a short-term basis during crisis situations. I do not know whether to call them handicapped or whether they should be considered to merely call them the object of extreme discrimination insofar as their welfare is concerned.

Do you have any thoughts on that either from the standpoint of reviewing the subject in terms of women being the object of discrimination and mistreatment, or whether you would consider them as individuals experiencing a handicap which needs attention.

Ms. KAPLAN. Well, I'm sure that women with various physical or mental handicaps would come to the same types of centers as women who don't have those types of handicaps. One point that many people miss until they think about it is that handicapped people fall into every category of groups of people. There are black handicapped people; handicapped women; all types of handicapped people. I am sure that there are numbers of handicapped women who have great need of the type of crisis center that you were mentioning.

Handicapped women in general also have problems as well as men with battering or abuse in institutions that are supposed to be serving them: mental institutions, institutions for the retarded. I think there is need to look into that issue as well. But I would be pretty certain that any type of service for women would necessarily cover handicapped women as well. And I think we would be in favor of a recognition that there are handicapped women who are in need of services for women as well as services just because they are handicapped.

Mr. MCCLORY. The Judiciary Committee is studying the subject of the welfare of institutionalized persons in state institutions of various types, and considering legislation which would permit the U.S. Attorney General to intervene on behalf of those persons who suffer mistreatment in those institutions. It is your view, I would judge, that even though he may not be institutionalized, a person who is experiencing mistreatment should be a subject of concern to the Civil Rights Commission.

Ms. KAPLAN. Most definitely. We are very much in favor of the legislation to give the U.S. Atorney General authority to intervene in those cases. The U.S. Attorney General has in the past gotten involved very effectively and brought about change in those areas that most of us have wanted to see for a long time.

Mr. MCCLORY. I might say that Representative Lindy Boggs of Louisiana and Representative Newton Steers of Maryland are the sponsors of legislation which would establish a program to study the subject battered wives and domestic crisis situations in which the wives and children frequently experience hardship. Would that be consistent with your view?

Ms. KAPLAN. Certainly.

Mr. MCCLORY. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. McClory.

I would imagine that numerous families in the United States have been touch by the immense problems confronting the handicapped, because these families have disabled children or relatives. I know that I have, and the discrimination starts within a few months, if the handicap is a birth defect, and it continues throughout the life of the person. One of the sad results is that the discrimination is so severe that there is great difficulty in developing the ego. That is a tremendous problem in an ego-oriented society, such as ours, where people need drive and ambition and all kinds of acceptance to move ahead.

Ms. KAPLAN. I think that has happened traditionally with other minorities and women who have been told over and over again, either verbally or nonverbally, that they are not worth very much. After a while you began believing that yourself.

Mr. EDWARDS. I hope this provision of the bill is a good step forward. I am optimistic the Congress will expand the Commission's jurisdiction—one of the reasons is because you were kind enough to come here today with this splendid testimony, and we thank you very much.

Are there questions from counsel.

Ms. DAVIS. Thank you, Mr. Chairman. I would like to explore some of the factors which would justify an increase in the Commission's appropriations if their jurisdiction is extended to include the handicapped. Could you discuss the need to house the Commission's offices in a physical structure which is accessible to the handicapped?

Ms. KAPLAN. I was in the Commission's offices last week for a meeting. The Commission was interested in meeting with handicapped leaders, setting priorities and getting an idea of what they might be getting into. The offices seemed fairly accessible. I would certainly hope, and I made this point to the head of the Commission—I would certainly hope that they would begin hiring more handicapped people to begin working on these issues themselves.

Accommodations need to be made on an individual basis, and accommodations could very well need to be made for individuals that were hired. The space seemed fairly accessible as I saw it. I'm not sure about the bathrooms. But there is always room for improvement in those Federal buildings. I would imagine it would be nice to have a reserve of money just in case that's necessary. And if there could be more funding made available for more studies on disability we would of course be in favor of that. But I think it should be undertaken even if the funding is minimal.

Ms. DAVIS. You note in your prepared statement that the Disability Rights Center represents a number of organizations which work with handicapped individuals. Could make available to the committee a listing of those organizations. Since this is a newly developing area it is important that we have input from as many individuals and organizations as possible.

Ms. KAPLAN. Surely.

Mr. EDWARDS. Yes. Without objection, that list will be received and made a part of the record.

Mr. Starek.

Mr. STAREK. Thank you, Mr. Chairman. I have a couple of questions. The first concerns the definition of a handicapped individual in the language of H.R. 10831 pursuant to section 7 of the Rehabilitation Act of 1973. I note that you state on the final page of your testimony that definition is most inclusive and should be used in order to achieve conformity with title 5 of the Rehabilitation Act.

Ms. KAPLAN. Yes.

Mr. STAREK. Is the disabled community unanimous in that feeling, or are there certain individuals who are not necessarily satisfied or pleased with the definition of handicapped individuals in the Rehabilitation Act?

Ms. KAPLAN. Almost everyone I come in contact with is in favor of that definition and is in favor of using that definition uniformly in the civil rights context. Some people are not happy with the definition as it's to be used in other contexts, not civil rights. But for this context almost everyone I speak with is in favor of it.

I can't really think of any conversations in the last few months that have been negative about that definition.

Mr. STAREK. What I am referring to is the expression of concern which was generated by the issuance of HEW's regulations. This concern was not from within but rather from outside the disabled community?

Ms. KAPLAN. Are you referring to the number and different types of groups that are covered by the definition?

Mr. STAREK. Yes, particularly the inclusion of alcohol dependent and drug dependent persons with physically disabled persons.

Ms. KAPLAN. I think the disabled community is in support of those groups being included in the Rehabilitation Act. A lot of the furor and clamoring about inclusion of those groups in the definition was the result of a misunderstanding about the use and inclusion of those groups in that definition. The Attorney General's opinion is that Congress did intend those two groups to be included in the definition.

The HEW regulations and that opinion make it very clear that substance abusers are to be included so long as there is no behavior problem associated with the substance abuse that would render a person not qualified for employment or too disruptive to receive services or would cause other problems. I think that the legislation is intended to cover people who have records of substance abuse or are current substance abusers, but for whom there are no behavior problems that would preclude provision of services or employment.

Mr. STAREK. I understand. I have one final question. It is my understanding that in the hearings in progress in the other body on this same issue—the extension of the Commission—there have been several representatives of various ethnic groups who have testified that they are somewhat disappointed with the Commission because they feel that the Commission has failed to address their concerns. They have stated that they believe the Commission is inter-

ested particularly in problems of discrimination against blacks and not necessarily against other ethnic groups.

My question to you is: Do you think that you and your constituency will be placed in the same position 5 years from now?

Ms. KAPLAN. The indications we have so far from the Commission are that they are interested in getting into this area, and I think we are taking that on good faith right now. We have no other experience. I think that the position we are coming from is that anything is better than nothing. Recognition of disabled people as a minority group, inclusion in works of the Commission is certainly better than what's been happening in the past, which is no work directed specifically at people with disabilities. And we are willing to prod along the Commission and to monitor the Commission's efforts and work it with respect to disabled people to let the Commission know that we intend, if they get this jurisdiction, that they take it very seriously.

Mr. STAREK. Thank you very much.

Ms. DAVIS. One more question. In your recent meeting with Commission personnel, was there some consensus among those present as to what the priority issues would be if their jurisdiction is expanded to include the handicapped?

Ms. KAPLAN. There were a variety of people there. There was consensus on some issues such as employment and transportation that affect a broad variety of disability groups. And there was also consensus that the issues that should be addressed should be issues that do cut across disability lines and do not focus more on one group than others and that the issues ought to be broad enough to really have impact on the variety of types of disabilities that are covered in the definition.

Mr. EDWARDS. Thank you very much, Ms. Kaplan.

Ms. KAPLAN. Thank you.

Mr. EDWARDS. Our next witness is Edward C. King, an attorney with the National Senior Citizens Law Center. Mr. King we are delighted to have you here today. Without objection your full statement will be made a part of the record.

I understand your statement also sets forth the purpose and goals of your organization. You may proceed with your statement.

[The complete statement follows:]

STATEMENT OF EDWARD C. KING AND ROBERT GILLAN OF THE NATIONAL SENIOR CITIZENS LAW CENTER

We are Edward C. King and Robert Gillan, attorneys with the Washington, D.C. office and the Los Angeles office, respectively, of the National Senior Citizens Law Center.

The National Senior Citizens Law Center is a national support center, specializing in the legal problems of the elderly poor, funded by the Legal Services Corporation, and the Administration on Aging of the Department of Health, Education and Welfare. Pursuant to the Center's Administration on Aging grant, we provide technical assistance to state and local offices on aging, with a view toward expanding the delivery of legal services to the elderly.

Under our Legal Services Corporation grant, our principal function is to provide support services to legal service attorneys throughout the country on the legal problems of their elderly clients. In this connection, we respond to requests from legal service attorneys for assistance, and also represent clients directly, in areas of the law which substantially affect the elderly. One of these areas, of course, is age discrimination. Since H.R.10831 would authorize the United States Commsssion on Civil Rights to study discrimination on the basis of age, the bill is of potential importance to present and future older persons and we are pleased to have this opportunity to comment upon it. In commenting here, we may also allude from time to time to S.2300, a similar bill presently under consideration in the Senate Committee on the Judiciary.

Summary of Conclusions

Briefly, our conclusions are that:

1. The bill would represent Congressional recognition that the right to be free from discrimination on the basis of age is a civil right, and would therefore constitute an important victory in the battle against age discrimination.

2. The Commission's present authority should be expanded to include the study and collection of information, and the appraisal of federal laws and policies, which implicate the rights of the elderly under the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.

3. To avoid any question as to whether the Commission's authority would be sufficiently broad to authorize investigation of all age discrimination as a general societal phenomenon - not just discrimination now violative of federal law - consideration should be given to possible expansion of the authorizing language.

Discussion

A. Civil Rights Implications of Age Discrimination Must be Faced-This nation has squarely recognized the fundamental immorality of discrimination against persons on the basis of race, creed, sex or national origin. See, e.g., 42 U.S.C. Section 2000e-2 (employment); 42 U.S.C. Section 3604 (housing). The national psyche has not, however, accepted the parallel truth that the right of elderly persons to be free from discrimination on the basis of age is likewise a civil right,

essential to the opportunity of older persons to participate fully in our society and to contribute to the nation's productivity and well-being. In large part because we have not grasped the civil rights implications of age discrimination, we continue to consider with equanimity contentions of employers, economists and labor unions that discrimination on the basis of age is justifiable for reasons of economic or business policy, or as part of a collective bargaining package. Consequently, this nation and its decision making institutions have failed to come to grips with the nature of age discrimination and its impact upon persons in our society.

The result has been a confused and, in some instances, inconsistent policy concerning age discrimination. Thus, prohibitions against age discrimination as set forth in the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621 et seq., are policed by the Department of Labor rather than by the Equal Employment Opportunity Commission, which has responsibility for enforcement of prohibitions against civil rights violations in other areas. More important, the statute actually serves to legitimate age discrimination against older persons in some circumstances, for example, where the retirement plan so provides, or where the persons involved are above prescribed ages. Even the new initiatives against age discrimination passed by both Houses of the United States Congress in the preceding session of this Congress, laudable as they are, continue to permit discrimination on the basis of age against persons over age 70.

It has become apparent that the right of older persons to be judged on the basis of their own ability and individual merit, a right fundamental to all persons in our society, is not likely to be protected fully by federal law until this Congress and other lawmaking institutions accept the fact that such a right is indeed a civil right.

Thus, in our judgment the enactment of H.R.10831 would be an important step in the battle against age discrimination because it would recognize that old persons, as well as the rest of us, are entitled to be free from arbitrary discrimination, and that this freedom is not a privilege doled out to the elderly, with certain prescribed conditions, but instead is a civil right of the same nature as the rights to be free from discrimination on the basis of race, sex, creed or national origin.

At the same time, the bill is nonthreatening to those who may have reservations about the "creation" of a new civil right. This bill would neither create nor recognize any rights beyond those already existing under the law but would nevertheless establish a means for gathering information concerning age discrimination and for assisting the Congress and the nation better to understand the frequency and impact of such discrimination.

B. The Civil Rights Commission Should Be Given Authority To Study Discrimination Against The Elderly - It is our conviction, based upon experience under existing laws relating to age discrimination, that the Commission's authority should be expanded to include the study and collection of information, and the appraisal of federal laws and policies, which implicate the rights of the elderly under the equal protection clause of the Fourteenth Amendment. Because the United States Supreme Court has yet to recognize that age-based classifications are "suspect" and unlawful unless justified by compelling reasons, Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976), and because the latitude of Congress under Section 5 of the Fourteenth Amendment exceeds in scope interpretations by the Supreme Court, Katzenbach v. Morgan, 384 U.S. 641 (1966), the need for congressional vigilance of age-based practices is great. The authority of Congress to implement the Fourteenth Amendment and protect the constitutional rights of the elderly, Remmick v. Barnes County, 435 F.Supp. 914 (D.N.D. 1977); Usery v. Board of Education, 421 F.Supp. 718 (D.Utah 1976), will be most effectively exercised if complemented by an on-going mechanism for the collection of information.

Many examples of the need for investing the Commission with the added authority exist, and we will discuss a few of them. In 1967 Congress enacted the federal Age Discrimination in Employment Act which, after defining the practices made unlawful, authorized the Secretary of Labor to "establish such reasonable exemptions to and from any or all provisions

of this chapter as he may find necessary and proper in the public interest." 29 U.S.C. Section 628. In 1969 the Secretary excepted, from the requirements of the Act, apprenticeship programs on the ground that they have "traditionally been limited to youths under specified ages" and that they are "an extension of the educational process to prepare young men and women for skilled employment." 29 C.F.R. Section 860.106. In view of the facts that apprenticeship is the only means of access to many skilled occupations, and that mid-life career change and mid-life entrance into the labor market (particularly by divorcees, widows, and women whose families have been raised) are now widespread, the regulation is clearly inconsistent with the intent of the Act. If the Commission on Civil Rights is given the authority to "appraise the laws and policies of the federal government" with respect to age-based classifications, as envisioned by S.2300, regulations such as the above would be subjected to closer congressional scrutiny.

The Age Discrimination in Employment Act also gave employers the privilege of discriminating against newly-hired older workers by not enrolling them in pension plans if the cost would be prohibitive, 29 U.S.C. Section 623(f)(2), and the Secretary of Labor thereupon promulgated an interpretive regulation stating that the Act "authorizes involuntary retirement irrespective of age," if a pension plan contained a mandatory retirement provision. 29 C.F.R. Section 860.110(a). That interpretive regulation, which was inconsistent with

all recorded legislative history, inspired widespread confusion, caused a split among United States Circuit Courts of Appeal, and culminated in a recent decision of the United States Supreme Court which was also inconsistent with legislative intent. In United Air Lines v. McMann, 46 U.S.L.W. 4043 (December 12, 1977), the Court held that forced retirement of an employee whose age entitled him to protection under the Act was permissible if authorized by a pension plan which pre-dated the Act. Aside from various other legal questions involved in the McMann case, it is indisputable that Congress intended the Act to embrace both "new and existing employee benefit plans." H.R. REP. NO. 850, 90th Cong., 1st Sess., 2 U.S. CODE CONG. & ADMIN. NEWS, 2213 at 2217 (1967). Again, if the interpretive regulation had come under scrutiny by the Commission on Civil Rights when first enacted, the confusion and misunderstandings which resulted in the McMann case could have been avoided and bills which have recently passed both the House and the Senate to remove the problem would have been unnecessary; more important, the many injustices which resulted from that regulation could have been avoided.

In 1974 Congress amended the Age Discrimiation in Employment Act to embrace federal government employees, and authorized the Civil Service Commission to establish "reasonable exemptions" but limited that authority to determinations that "age is a bona fide occupational qualification necessary to the performance of the duties of the position." 29 U.S.C. Section 633a(b) (emphasis added). Also in 1974, Congress authorized a designee of the President to fix maximum age limits for hiring law enforcement officers and firefighters,

5 U.S.C. Section 3307(d), and by Executive Order 11817, November 5, 1974, President Ford designated the Civil Service Commission as his agent for that purpose. In June of 1975 the Civil Service Commission concurred in a recommendation by the Department of Justice that no person over the age of 34 years be hired for employment in federal penal and correctional institutions, regardless of the nature of the job. In other words, despite the requirement of the federal Age Discrimination in Employment Act, that exceptions in the form of lower maximum ages be based on bona fide occupational qualification necessity, the Civil Service Commission has apparently ordained that no individual may be eligible for hiring as, e.g., a cook or nutritionist, if over 34 years of age. Furthermore, it is our understanding that the rulemaking procedures required by the Administrative Procedure Act were not complied with and thus a broad exception to the Age Discrimination in Employment Act was carved out with no formal public notice. Aside from the merits of such an exception, it does seem clear that they would at least have been debated had the Civil Rights Commission been empowered to "appraise the laws and policies of the federal government" with respect to age-based discrimination.

A striking example of an age-based denial of equal protection by virtue of laws and policies of the federal government was uncovered by the court in Bradley v. Vance, 436 F.Supp. 134 (D.D.C. 1977), in litigation involving, in part, the constitutionality of a federal law requiring

that foreign service employees be involuntarily retired upon reaching the age of 60. On technical legal grounds the court found the Age Discrimination in Employment Act inapplicable in judging the validity of the statute requiring early retirement and the case was decided under the Equal Protection Clause of the Fourteenth Amendment. In the course of the litigation a letter from the Department of State to the Civil Service Commission was produced which stated, in part:

> The mandatory retirement age is fixed at 60 because of the need to maintain the foreign service as a corps of highly qualified individuals with the necessary physical stamina and intellectual vitality to perform effectively at posts throughout the world, including those in isolated, unhealthful and dangerous areas. It is essential that foreign service employees be capable of serving at any post as the needs of the service may dictate. As employees and their spouses become older, they tend to become disqualified for assignment to the more difficult posts such as those at high altitudes or in undeveloped areas where they are unable to obtain necessary medical care.

It goes without saying that the above excerpt is a classic statement of the stereotyped notions which give rise to discrimination against the elderly. Naturally, the court in Bradley v. Vance found the Department of State's raison d'etre factually unsupportable and held the 60 year old retirement law to be in violation of the equal protection clause. In that case, it took litigation to rectify an injustice which, perhaps, could have been spotted and corrected earlier had the Commission on Civil Rights been empowered to include age among the bases for classification subject to its investigation and study.

Another example of a federal age-based policy which arguably implicates the Fourteenth Amendment, or the federal Age Discrimination in Employment Act which implements it, is the so-called White House Fellowship Program. In 1964, by Executive Order, President Johnson established a program of temporary federal service for individuals in private occupations finding that:

> "Whereas it is in the national interest that our future leaders in all walks of life have opportunities to observe at first hand the importance and challenging tasks of American government;
>
> and
>
> "Whereas participation in government service early in their careers will help young persons with high qualifications to become well-informed and public-spirited citizens;..."

The maximum eligibility age fixed for the program was 35 years. Despite the 1974 amendments to the federal Age Discrimination in Employment Act, which extended its application to federal employment, the White House Fellowship Program still exists with the same age limitations and the U.S. Civil Service Commission has placed thereon its stamp of approval upon the ground that the program does not involve "employment." Perhaps the distinction is justified, and perhaps sufficient reasons exist for the age-based policy, but the question is one which should at least be addressed by an entity possessing the objectivity and authority which H.R.10831 would invest in the Commission on Civil Rights.

Finally, the Commission's December 1977 report of its study conducted by the Commission pursuant to the Age Discrimination Act of 1975 contains many examples of improper age discrimination in the distribution of benefits provided in federally funded programs. This report confirms that some degree of age discrimination exists in every one of the programs investigated by the Commission and highlights the need for such a continuing study of age discrimination as is contemplated by H.R.10831.

C. Expansion Of The Authorizing Language May Be Advisable - In enacting H.R.10831, Congress would presumably be acting under Section 5 of the Fourteenth Amendment,[1/] where the power plainly exists to authorize investigation of age discrimination which is not itself violative of the equal protection clause.

> "Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibition they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

Katzenbach v. Morgan, supra at 650, quoting from Ex Parte Virginia, 100 U.S. 339, 345-46 (1880).

Thus the scope of the area subject to investigation under this legislation need not be affected by the United States Supreme Court's narrow application of the equal protection clause to age discrimination claims. Massachusetts Board of Retirement v. Murgia, supra.

1/ See Remmick v. Barnes County, 435 F.Supp. 914 (D.N.D. 1977) and Usery v. Board of Education, 421 F.Supp. 718 (D.Utah 1976).

To appraise the effectiveness of existing laws and evaluate the need for new laws and policies, the Commission must have authority to study all forms of age discrimination, even discrimination which is presently legal.

The Commission should be given authorization which will enable it to make broad studies of age discrimination in the United States, dispense information concerning all such discrimination and assist the nation in its appraisal of laws and policies concerning age discrimination. This authorization must not be limited to discriminations which constitute violations of the equal protection clause or even to discrimination already recognized as unlawful, for the Commission's role in that event would be largely superfluous to that of the courts and private litigants.

The language in the present version of H.R.10831 would permit the Commission to:

> ...study and collect information concerning legal developments constituting unlawful discrimination or a denial of the equal protection of the laws under the Constitution on account of age...and appraise the laws and policies of the Federal Government with respect to such discrimination or denials on account of age...and serve as a national clearinghouse for information in respect to such discrimination or denials on account of age...

This is an improvement over the present language of S.2300 in that it would permit the study of unlawful as well as unconstitutional discrimination. However, the policy appraisal and clearinghouse functions, to be of maximum benefit, should consider all age discrimination, in its

various forms, not just unlawful and unconstitutional discrimination. Deletion of the word "such" in both instances where it appears between "respect to" and "discrimination" would remedy this problem and assure that the Commission could consider even those age discrimination policies that are not presently unlawful with an eye toward possible changes in the nation's policies and laws with respect to age discrimination. Limitation of the study of "legal developments" to "unlawful discrimination" would pose no problem, since the language would not then limit the policy appraisal and clearinghouse functions to unlawful discrimination.

Conclusion

Passage of H.R.10831 would be a useful step, both symbolically and practically, in combatting age discrimination, by recognizing that freedom from discrimination on the basis of age is a civil right and by authorizing the Commission on Civil Rights to investigate such discrimination. We urge enactment of the legislation either in its present form or, preferably, amended as suggested in the preceding section of this statement.

We appreciate the opportunity to testify concerning this significant legislation.

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TESTIMONY OF EDWARD C. KING, ATTORNEY, NATIONAL SENIOR CITIZENS LAW CENTER

Mr. KING. Thank you, Mr. Chairman, members of the committee and staff. As you have said, I am an attorney with the Washington, D.C. office of the National Senior Citizens Law Center, which is a national support center, funded by the Legal Services Corporation, and the Administration on Aging of the Department of HEW.

Under our Legal Services Corporation grant, our principal function is to provide support services to legal service attorneys throughout the country on the legal problems of their elderly clients. In this connection, we respond to requests from legal service attorneys for assistance, and also represent clients directly in areas of the law which substantially affect the elderly. One of those areas, of course, is age discrimination.

Since H.R. 10831 would authorize the U.S. Commission on Civil Rights to study discrimination on the basis of age, the bill is of potential importance to present and future older persons, and we are pleased to have this opportunity to comment upon it.

Others in previous days of these hearings have given examples of useful activities of the Commission on Civil Rights concerning civil rights violations in the areas of the Commission's present jurisdiction, such as discrimination on the basis of race, sex, creed and national origin. They have also given reasons why the Commission's efforts in those areas should be continued and even accelerated. We fully support the thrust of that testimony, but I would like today to emphasize and confine my remarks to section 3(a) of H.R. 10831 insofar as it would expand the Commission's general jurisdiction to allow it to study and collect information concerning age discrimination.

Our consideration of this section as it pertains to age discrimination has led to three basic conclusions which I will state here briefly, and then expand on them a bit more fully. The conclusions are these: First, passage of the bill would be at least a step toward congressional recognition that the right to be free from discrimination on the basis of age is a civil right, and would therefore constitute an important victory in the battle against age discrimination.

Second, there is a great need for expansion of the Commission's present authority to include the study and collection of information, and the appraisal of Federal laws and policies concerning age discrimination.

Our third point is about the language. To avoid any question as to whether the Commission's authority would be sufficiently broad to authorize investigation of all age discrimination violative of Federal law, consideration should be given to a couple of brief amendments, which we have mentioned in our written statement, that would have the effect of possibly expanding the authorizing language.

I will expand briefly on each of those three points. The first point is the need for recognition of freedom from age discrimination as a civil right. In the past 25 years or so this Nation has for a variety of reasons undertaken a fundamental reevaluation of its

attitudes and polices towards discrimination on the basis of race, sex, creed, and national origin. I don't suggest by any means that we have obliterated such discrimination nor even that all of our citizenry or Federal or local agencies are working effectively to continue to reduce the instances of racial or sexual discrimination.

The fact remains, however, that we as a Nation have faced the basic issues in those areas, and we have set ourselves upon a direction. As a matter of national policy, we have recognized that discrimination on the basis of race, sex, creed, or national origin is immoral and violates basic civil rights. This Congress and other lawmaking bodies on State and even local levels have so spoken, and so have the courts.

Our approach to the issue of age discrimination nationally has been in stark contrast to that. Instead of examining this issue fully and fairly, we have been tentative and hesitant, even inconsistent. For whatever reasons, whether because of an unwillingness on the part of each of us to face our own aging or for some other reason, we simply have not yet faced the issue of age discrimination in an open, searching, and full way. The results have been rather schizophrenic. Examples of this are manifold. One is that we have not recognized the right to be free from discrimination on the basis of age as a civil right. We have not assigned age discrimination enforcement, for example, to the Equal Employment Opportunity Commission, the agency responsible for policing antidiscriminatory laws in other areas, but instead it has been assigned to the Department of Labor.

I point this out not to imply that the Department of Labor has done poorly with the rather meager resources it has been allocated to do the job, nor to suggest, on the other hand, that the EEOC has done somehow a superior job, but merely to indicate the different kind of treatment accorded the victims of age discrimination as opposed to those other kinds of discrimination.

Second, in considering age discrimination legislation this Congress itself actually gives serious considerations to arguments that would be rejected in other areas of discrimination. For example, it considers arguments that abolition of age discrimination would complicate operations and policies of employers an argument that is very similar to arguments that have been made in other contexts concerning other types of discrimination and rejected out of hand; or the argument that the abolition of age discrimination would increase competition for jobs or impinge upon the areas to be covered in collective bargaining agreements, as though any or all of those considerations would somehow justify or could potentially justify policies of discrimination against all persons who reach a certain age wholly aside from their own merits or abilities, and capability to perform the jobs.

A third example is that the Federal Age Discrimination in Employment Act today represents in effect a Congressional statement that discrimination on the basis of age is wrong if visited upon persons of certain ages, 40 to 65, but perfectly all right against persons of other ages. It in effect, ironically, is discriminatory on the basis of age.

The Supreme Court in the recent case of *United Air Lines* vs. *McMann* has read that act as saying even further that discrimination

against a protected age is permissible so long as that discrimination is called for by the company's written retirement income plan rather than, for example, by the company's personnel manual.

Even the amendments to the Age Discrimination in Employment Act passed by both Houses during the first session of this Congress and hailed as landmark steps, rightfully, against age discrimination, would nevertheless legitimate age discrimination against persons over age 70 and would fall far short of recognizing a fact thought to be obvious in other fields: that all persons have a basic civil right to be judged on their own merits and abilities to do jobs rather than judged on the basis of the demographic group they happen to fall in.

We see passage of H.R. 10831 with section 3(a) as important as a step to remedy this problem. There are two basic thoughts then: The first is that the bill by including age discrimination with the Commission's purview would by itself at least recognize that freedom from age discrimination is a civil right.

Second—and this is the second basic point that I referred to earlier—the resources of the Commission on Civil Rights, which should be as sophisticated about discrimination in its many forms as any body or group in the Nation, would be brought to bear on the issue of age discrimination by this bill. This in turn should be invaluable in carrying out another extraordinary function, the education of the Nation, assisting the Nation to finally understand the frequency, impact, and immorality of age discrimination, to undergo that fundamental reevaluation that is taking place in other areas, and to recognize the necessity for abolishing all age discrimination against the elderly.

There is today a demonstrable need for the kind of investigatory work contemplated by H.R. 10831 in the area of age discrimination. We have given numerous examples of that in our written statement, which I won't repeat, but I will touch upon just two or three here. A glaring example of course is the White House Fellowship Program which is avowedly disrriminatory on the basis of age. That program searches out useful workers for future talent and future leadership in this nature, setting a maximum of age 35 for participation. It's a sad fact that when the Carter Administration began its stint in the White House statements were made that the administration was seeking new, young, fresh talent that had not been in positions of leadership in the past. It was clear that they were seeking youths and were not seeking age at that point, a very important example of lack of leadership in the area of age discrimination, which is not—I should emphasize—restricted to the Carter administration.

We also pointed out in our written statement that the Secretary of Labor issued an exemption under the Age Discrimination in Employment Act exempting apprenticeship programs despite the fact that older women, in particular, such as widows, divorcees, and people who have raised their families, no longer have young children in the household and have at that very point a tremendous need for apprenticeship work and an opportunity to move into the career that they have not been able to pursue in the past.

A third example simply is the Commission's recent report on its study on age discrimination. That report in itself list a number

of examples of discrimination on the basis of age, and is a useful guide for the kinds of activities that should be conducted by the Commission.

In addition, with the amendment of the Age Discrimination in Employment Act, if the conference committees do report that out, and if it does ultimately become law—and I understand that it is on the threshold—there is going to be a need for considerable adjustment by employers of their practices. Employers that have been accustomed to getting rid of people at age 65 for one reason or another have to reevaluate their policies and determine standards for dealing with the ability of people to work up to age 70 at least. So, there needs to be a reassessment in this entire area, and the assistance of the Commission could be useful in that regard.

In addition, the Age Discrimination Act of 1975 will become effective on January 1, 1979, outlawing discrimination in federally funded programs. That too calls for some kind of mechanism, such as the Commission on Civil Rights, to review the kinds of practices discussed in the Commission's age discrimination study, and give guidance to Federal agencies in their efforts to implement the requirements of the act.

I might point out that there was also a similar meeting to that described concerning handicapped groups held by the Commission on Civil Rights recently involving national aging organizations and the national aging organizations were in fairly general agreement that there is an enormous need for education of the Nation concerning the impact and frequency of incidents of age discrimination. The groups in that meeting supported the concept of H.R. 10831 and that is I think, of interest to the subcommittee.

The third basic point is the need for expansion of language. I believe that we have expanded upon that or discussed that sufficiently, and I don't know that there is a necessity for going further. Our basic point of course is that it's extraordinarily important in age discrimination, given the Supreme Court's rather limited construction of the utility of the equal protection clause for elderly persons, that the authorization not be restricted to age discrimination violative of equal protection, because such discrimination is practically nonexistent. Consequently, the House bill, H.R. 10831, is distinctly superior to S.2300 in its present form in the Senate.

At the same time the House bill would seem not only to limit the study and collection of information concerning legal developments to incidents of unlawful discrimination, but also seems by its language to refer back to unlawful discrimination in setting out the extent of the Commission's proposed authority with respect to appraisal of the laws and policies of the Federal Government, and with respect to the clearinghouse function. The authority of the Commission in those two latter areas in particular should be considerably broader so that you can look at all kinds of age discrimination in order to effectively appraise the laws and policies of the Nation, against the background of the various forms of discrimination that do occur.

In summary, we support the bill; we appreciate the opportunity to testify here today in support of it and to file our statement, and I would be open to any questions you have. Thank you.

Mr. EDWARDS. Thank you. It is a very helpful statement.

The gentleman from Illinois, Mr. McClory.

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

And thank you, Mr. King, for your statement. I want to express my complete agreement with you regarding the merits of the House-passed bill against age discrimination, in contrast to the bill passed in the other body. I am particularly disturbed about the conference report which the House will receive shortly.

I see no basis for the exemptions reportedly embodied in the conference report pertaining to any academic immunity and executive positions above a certain wage or salary level. With regard to the executive exemptions, I have had considerable experience with hardship in that area. A person who has devoted virtually his whole life to a single company, and has come up through the ranks, attained an executive position and knows no other business or profession, is then summarily thrown out. This poses a tremendous hardship and tremendous trauma on the individual and his family.

I have known several individuals in similar situations who have had to find new careers, and I cannot think of any activity which is more inimical to the entire private enterprise system than this practice which persists in the business community.

Why some of the leaders of big business want to persist in that kind of age discrimination, I am at a loss to ascertain. It raises questions as to the influence which they are undertaking to impose or advance and the effect it has on legislation. It indicates that there should be special exceptions for the business community, particularly big business, and I think it is most unfortunate.

I am pleased that we are becoming more enlightened, and that we are recognizing people's worth on the basis of their own merits and abilities. We are trying to eliminate these artificial barriers that we have established, which are detrimental to the lives and careers of individuals.

Mr. EDWARDS. Will the gentleman yield? I just want to say that I agree with the gentleman from Illinois and will even go one step further: I think it's costing American corporations billions of dollars to continue their present policies toward their older executives.

In today's world, where international competition is so important, where we face the problems of balance of payments, a balanced trade, and a declining dollar, we need the very best managers possible, regardless of age, and we just don't necessarily get them with these artificial rules.

Mr. MCCLORY. My observation has been that, in our society a person who is at one point the greatest proponent of the private enterprise system becomes its greatest antagonist when he loses his job due to an arbitrary retirement age. I cannot understand how the private business community can fail to recognize that.

If the private business community were to take a poll of the number of people that they remove from jobs under this age discrimination practice, they would realize that they are adhering tenaciously to a practice that is contrary to their own best interests.

Mr. KING. Obviously, I'm pleased to have these expressions of opinion from both of you, and I'm in full agreement. I think this particular bill could be an important first step, as I've said, in that

the kind of arbitrariness that exists right now in the business world is not necessarily dissimilar from the kind of arbitrariness that used to exist when there was more, and more open, race discrimination and sexual discrimination.

The Nation went through a painful educational process in order to reevaluate its policies in those areas. It is difficult, I think, for business, or at least they believe it will be difficult, for them to reevaluate their policies entirely and change.

And the Congress, Federal Government, local governments, obviously do need to nudge business, even though, as you point out, Representative McClory, it would be in the long run to the benefit of our productive capacity in the Nation and to the benefit of each individual business to get the most use out of the abilities of older members of our society, just as it is to utilize the full talents and abilities of minority groups and females.

So, I'm very pleased, of course, with the comments of both of you. We are certainly in agreement.

Mr. McCLORY. Thank you.

Ms. DAVIS. The Age Discrimination study recently done by the Commission, focuses on discrimination against the elderly, although there are some examples of discrimination at the lower age levels. In your view, would the Commission be permitted to review discrimination against younger persons, as well as the elderly under H.R. 10831 as presently drafted?

Mr. KING. I think it's clear that the Commission would have that authority, just as it did under the Age Discrimination Act of 1975, to conduct this report.

There is no limitation to discrimination against elderly persons, although there should be recognition of the tremendous need for allocation of efforts and resources for elderly persons. Age discrimination is, at least in our own perspective, the most glaring example of discrimination in our Nation today and I believe it requires a more urgent response than other forms of discrimination that exist today, although it's very difficult and treacherous to start comparing forms and victims of discrimination.

The important point is that the right to be free from discrimination, whether it be on the basis of youth, elderliness, race, creed, sex or handicap or whatever is a basic fundamental civil right. Passage of this bill would reflect the unity of concern that these various groups do have.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. You commented in your prepared statement and your remarks today about the language of section 3.

Mr. KING. Yes.

Mr. STAREK. I did not quite understand, exactly which version you support and the reasons why. I think you are familiar with the differences between the House bill and the Senate bill. There are two basic differences.

Mr. KING. I am.

Mr. STAREK. Would you tell us which version you support and why?

Mr. KING. If I had to compare S. 2300 and H.R. 10831, and was told that I had my choice of those two, but no other choices, H.R. 10831 plainly is superior. H.R. 10831 is superior, because, as I said, S. 2300 creates ambiguities by using language suggesting that the authority of the Commission would be limited to violations of the equal protection clause. The U.S. Supreme Court has held that age discrimination, unlike other forms of discrimination within the Commission's present purview, is permissible so long as there is a rational basis for it. That is, such "rational" discrimination does not violate the equal protection clause. Consequently, only two cases have ever been handed down by the federal courts finding a particular form of age discrimination to violate the equal protection clause.

For that reason, I believe that H.R. 10831 is plainly superior, because it uses the broader language constituting unlawful discrimination.

Even so, we suggest two slight revisions of H.R. 10831.

The first clause of H.R. 10831 provides for study and collection of information concerning legal developments constituting unlawful discrimination. That seems to be satisfactory, because the term, "legal developments", necessarily implies a study of what does, in fact, constitute unlawful discrimination. Presumably, that would be a study of various statutes across the Nation, of regulations by administrative agencies as to what is unlawful age discrimination of court decisions, and so on.

The second clause, however, would authorize the Commission to appraise the laws and policies of the Federal Government with respect to "such" discrimination. Well, "such" can only refer, as I see it, to the term, "unlawful discrimination," in the first clause.

Our suggestion is that "such" be deleted so as to allow the Commission to appraise the laws and policies of the Federal Government with respect to all forms of discrimination or denials on account of age. The Commission should be able to go beyond unlawful discrimination in considering new policies.

In fact, this is practicably a matter of definition. It's almost tautological to say that in order to appraise the laws you have to be able to think beyond presently unlawful discrimination. So, we believe, for that reason, "such" should be deleted.

Similar considerations apply to the clause concerning the national clearinghouse for information. Clearinghouse efforts of the Commission should be wide ranging, covering age discrimination in all its forms, even those forms presently considered to be legal, so that the impact of those particular kinds of discrimination can be assessed. This clearinghouse activity would be corollary to the appraisal of policies and the laws, as well as part of an educational program by the Commission.

Our suggestion, here also, then is that the word "such," which, again, would presumably refer back to unlawful discrimination, should be deleted.

So, the only suggestion we make respecting language is deletion of the two words "such" on lines 19 and 24 of page 2 of the bill.

Mr. STAREK. What if you were not confined to an "either-or" proposition, as to the two versions? What would you suggest?

Mr. KING. If the words "such" were deleted, as we've suggested, we have no other suggestions in language. We think it would do everything we feel should be done.

Mr. STAREK. I have one final question, Mr. Chairman, and it is similar to a question that I asked the previous witness, availability of resources and time for the Commission to include age discrimination in their work.

As you are well aware, the Commission had a special mandate and was awarded a specific appropriation to conduct an age discrimination study, which was released at the end of last year.

The study took well over 2½ years, and cost, I believe about $3 million. The Commission has been appropriated $10 million every year, and I wonder whether you believe that the Commission is adequately prepared to take on the task which this new jurisdiction would require?

Mr. KING. Well, my response is—would be very similar to what my predecessor, Ms. Kaplan, said in response to the same question.

First, I believe the Commission is in a much better position to assess its capability to carry out the mission assigned to it. It's very difficult for me in my own position to assess what can be done with x or y amounts of dollars.

Second, I think the principle, stating in Federal legislation that age discrimination should come under the purview of the Commission on Civil Rights, and the inherent suggestion there that civil rights include freedom from age discrimination, is a very important principal. Even if the Commission didn't have the money and resources to do a good job in the area of age discrimination, that federal legislative statement would still be useful.

A third proposition is that we have nothing to lose. It is difficult to see how passage of the bill could be harmful to the battle against age discrimination, unless all other enforcement groups and agencies were to abdicate their own responsibilities to the Commission. Then, if the Commission didn't have adequate resources, it could be harmful, I suppose. We don't anticipate that as being the situation.

Finally, the Commission has not expressed a resource concern to us. Although the Commission has not been lobbying for this bill so far as I'm aware it has taken fairly a neutral position in the meeting with elderly groups—there was no expression to us of a concern about a lack of resources.

So, we must assume that the Commission has assessed its own ability to carry out the mission and has concluded it will have the resources to work effectively in the area and in assessing its own.

Mr. STAREK. Thank you very much.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Mr. EDWARDS. Our last witnesses have graciously agreed to appear together as a panel.

Before I introduce the panelists, let me note that Jorge Batista and E. Richard Larson of the Puerto Rican Legal Defense and Education Fund and the ACLU, respectively, are unable to participate in this panel this morning and have asked that their statement be inserted in the record.

Without objection, their statements will be inserted in the record.

[The prepared statements follow:]

AMERICAN CIVIL LIBERTIES UNION

22 East 40th Street New York, New York 10016 (212) 725-1222

STATEMENT OF E. RICHARD LARSON ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

My name is E. Richard Larson. I am a National Staff Counsel for the American Civil Liberties Union. I appreciate the opportunity to submit this statement on behalf of the American Civil Liberties Union.

The ACLU firmly believes that the important work of the United States Commission on Civil Rights must be allowed to continue. The ACLU also believes that the Commission's work should be expanded.

I. SENATE TESTIMONY

Two months ago, on January 25, 1978, I testified and submitted a statement on behalf of the ACLU before the Senate Subcommittee on the Constitution. In my testimony and my statement, I urged that the companion bill to H.R. 10831, S.2300, be enacted. I urged that the bill be enacted, in general, because the work of the United States Commission on Civil Rights has been voluminous, excellent, and absolutely

necessary to the effective enforcement of civil rights throughout the United States.

In my testimony and statement before the Senate subcommittee, I specifically urged that the Commission's life be extended and expanded for three reasons: (1) the Commission's investigations and reports on the federal civil rights enforcement effort by the Office of Revenue Sharing, The Federal Civil Rights Enforcement Effort--1974--Vol.IV, To Extend Federal Financial Assistance (Feb. 1975), and by the Law Enforcement Assistance Administration, The Federal Civil Rights Enforcement Effort--1974--Vol. VI, To Extend Federal Financial Assistance, pp. 270-393, 773-777 (Nov. 1975), provided an important impetus toward enforcement by those agencies and for oversight by Congress; (2) the Commission's investigations and many reports on school desegregation have assisted numerous communities in achieving peaceful desegregation, and have identified continuing and growing problems in the area of segregation; and (3) the Commission is the only agency with the experience and a proven record to be able to undertake the important task of investigating and reporting on discrimination based upon handicapped status and age.

Instead of elaborating on the foregoing three reasons, as I did before the Senate, I would like to focus here upon the Commission's proposed study of age and handicapped discrimination.

II. AGE AND HANDICAPPED DISCRIMINATION

The ACLU believes that the Commission should be authorized to investigate, study and report on all facets of age and handicapped discrimination. Although §3(a) of H.R. 10831 authorizes the Commission to study, etc., age and handicapped discrimination, it severely limits the scope of the Commission's work in that area.

Specifically, §3(a) authorizes the Commission to study, etc., "legal developments constituting unlawful discrimination or a denial of equal protection of the laws" on account of age or with respect to handicapped individuals, and authorizes other activities "with respect to such discrimination or denials." (Emphasis added.) Pursuant to recent court decisions, which unfortunately have severely restricted the breadth of unlawful discrimination and denials of equal protection on account of age and handicapped status, §3(a) of the bill may similarly restrict the proposed new activities of the Commission. Accordingly, the ACLU proposes that §3(a) be amended to authorize the Commission to study, etc., not just unlawful or unconstitutional age and handicapped discrimination but rather all age and handicapped discrimination.

A. RECENT CONSTITUTIONAL DECISIONS

In Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976), the Supreme Court held that elderly people do not constitute a suspect class under the Fourteenth Amendment, and that a classification based upon age accordingly need not

be given strict scrutiny and need not be satisfied by a compelling state interest in order to be constitutional. Instead, a classification based upon age may be found constitutional if there exists merely a rational basis for the discrimination. Applying this standard, the Court upheld as constitutional the involuntary retirement of Massachusetts police officers at the age of 50 on the grounds that there existed some rationality between increasing age and the inability of a police officer to perform his/her physical duties.

Subsequent to Murgia, the Seventh Circuit in Gault v. Garrison, 46 U.S.L.W. 2347 (7th Cir. Dec. 20, 1977), applied these standards to an involuntary retirement policy for teachers. Although the court did not uphold that policy (because the state had not yet in the case offered its rationale for the policy), it remanded the case to the trial court to determine whether there was a rational basis for the policy. Significantly, the dissenting Seventh Circuit judge suggested to the trial court that the surplus of young teachers in itself was a sufficient rational basis for the mandatory retirement policy.

These two cases illustrate the problems of limiting the Commission to "unconstitutional" age and handicapped discrimination. For example, it is widely acknowledged that the most severe form of age discrimination is mandatory retirement. Indeed, as a former President of the American Medical Association has stated: "Death comes at retirement." M. Barron,

The Aging American, 76 (1961). Yet, is the Commission supposed to blind its eyes to this form of discrimination, or to guess which forms of discrimination may or may not be constitutional under the rational basis test? A more realistic course would be simply to authorize the Commission to study, etc., all forms of age and handicapped discrimination.

B. RECENT STATUTORY DECISIONS

In a decision similar to Murgia, the Supreme Court several months ago in United Airlines, Inc. v. McMann, 46 U.S.L.W. 4043 (U.S., Dec. 12, 1977), held that an involuntary retirement policy was not violative of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621, et seq. Interpreting one section of that Act which exempts "any bona fide employee benefit plan such as a retirement...plan," 29 U.S.C. §623(f)(2), the Court stated that any plan adopted prior to the Act is presumed to be bona fide and hence lawful.

Although the Supreme Court thus was able to give legal sanction to a wide variety of involuntary retirement plans, the lower federal courts have been struggling with another issue--that of maximum age limits for specified jobs. One section of the Age Discrimination in Employment Act of 1967, 29 U.S.C. §621(f)(2), permits age discrimination where age is a "bona fide occupational qualification" ["bfoq"] for the job. Interpreting this section, two courts of appeals have held that a hiring age limit of age 35 for the position of a bus driver is a "bfoq" and thus is lawful, Usery v. Tamiami

Trails Tours, Inc., 531 F.2d 224 (5th Cir. 1975); Hodgson v. Greyhound Lines, Inc., 449 F.2d 859 (7th Cir. 1974); while another court of appeals has held that the transfer of a test pilot at age 52 to another position does not constitute a "bfoq" and thus is unlawful, Houghton v. McDonnell Douglas Corp., 553 F.2d 561 (8th Cir. 1977).

The area of handicapped discrimination has not yet been widely litigated. A recent Supreme Court decision concerning religious discrimination, however, may have a substantial impact upon what the courts determine to be lawful or unlawful under §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794. In Trans World Airlines, Inc. v. Hardison, 45 U.S.L.W. 4672 (U.S., June 16, 1977), the Supreme Court interpreted language in one section of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e(j), which allows religious discrimination where the employer "demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship." Interpreting that language, the Court held that requiring an employer to bear any more than a de minimus cost is an undue hardship. Although Hardison does not have a direct impact upon the interpretation of the Rehabilitation Act, it is expected to have an impact nonetheless--expecially because the regulations under the Act adopted the Title VII language (before the Hardison decision) of "reasonable accommodation" and "undue hardship." 45 C.F.R. §84.12(a). It thus may be that the courts will find most handicapped discrimination

not subject to a reasonable accommodation and therefore lawful.

The foregoing court decisions illustrate the problems of limiting the Commission to "unlawful" age and handicapped discrimination. Is the Commission to be expected to blind its eyes to severe problems of age and handicapped discrimination which the courts have or may find to be lawful? Similarly, will the Commission have to anticipate what may or may not be lawful? A more realistic course would be simply to authorize the Commission to study, etc., all forms of age and handicapped discrimination.

C. H.R. 10831

Section 3(a) of H.R. 10831, as introduced, limits the Commission to studying, etc., "legal developments constituting unlawful discrimination or a denial of equal protection of the laws under the Constitution on account of age or with respect to handicapped individuals." Section 3(a) also authorizes other activities but similarly limits them to the foregoing "discrimination or denials."

The foregoing limitations are inappropriate. They unduly restrict the scope of the Commission's proposed work in the area of age and handicapped discrimination.

The ACLU thus proposes that §3(a) of the bill be amended so as to authorize the Commission to study, etc., all forms of "discrimination on the basis of age or handicap."

III. CONCLUSION

Again, I wish to thank Representative Edwards and the Subcommittee for the opportunity to present the views of the ACLU on H.R. 10831. We urge that the bill, as modified herein, be enacted.

PUERTO RICAN LEGAL DEFENSE
& EDUCATION FUND, INC.
95 Madison Avenue
New York, New York 10016
212-582-8470

February 24, 1978

Mr. Peter W. Rodino, Jr.
Chairman
Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Re: H.R. 10831, Bill to Extend the Commission on Civil Rights

Dear Mr. Rodino:

I regret that I will be unable to appear personally on March 2, 1978 to present testimony at the Subcommittees hearings on Don Edward's bill to extend the Commission on Civil Rights. However, enclosed is the Puerto Rican Legal Defense and Education Fund, Inc. statement in support of H.R. 10831 bill. It is our hope you will make it part of the record.

Sincerely,

Jorge L. Batista, Esq.
President and General Counsel

JLB:mg
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STATEMENT OF THE PUERTO RICAN LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF H.R. 10831 WHICH CONTINUES THE EXISTENCE OF THE COMMISSION ON CIVIL RIGHTS AND OF THE STATE ADVISORY COMMITTEES

The Puerto Rican Legal Defense & Education Fund, Inc. is a not-for-profit organization whose objective is to protect Puerto Ricans and other Hispanic persons from victimization and discrimination in a broad range of areas including education, employment, voting rights and housing.

In the five years since the Fund opened its doors, a multitude of serious and complex problems have captured the nation's attention. The urban crisis, ecology, energy policy and integrity in goverment, among others, have emerged as major concerns. However, we at the Fund emphatically believe that as important as it is to meet these difficult problems head-on, this must not extinguish a commitment to this nation's unfinished agenda--that is, to provide equal opportunity to all Americans and to end discrimination in all its forms.

Despite the progress that has been made since the Commission was originally established, discrimination has not yet been eliminated. Not only Blacks but ethnic minorities and women still are denied equal access to opportunity. As a public interest law firm committed to improving the conditions of the second largest Hispanic minority in this nation, the some two million Puerto Ricans residing in the United States, we firmly endorse the continued life of the United States Commission on Civil Rights.

Since its establishment the Commission, through its investigatory and fact-finding functions has inquired into a broad range of concerns, including, voting, education, housing, employment, the use of public facilities, transportation and the administration of justice. As is evidenced by a review of Commission publications, a formidable array of reports have been produced by the Commission addressing each of these areas and the impact of the denial of equal access to opportunity on minority groups and women. Indeed, the Commission has produced one of the few comprehensive studies of the plight of the Puerto Rican community in the United States, a study that recognizes that "Puerto Ricans comprise a distinct ethnic group, with concerns and priorities that frequently differ from those of other minorities, even other Spanish heritage groups" and that urges that "they be given an opportunity to participate on an equal footing with their fellow citizens of the fruits and benefits of our society." United States Commission On Civil Rights, Puerto Ricans in the Continental United States: An Uncertain Future, (October 1976), at 5, ii-iii.

Although it has no adjudicatory power, with the power of the pen, the Commission has unquestionably contributed much to the furtherance of equal opportunity for persons that historically have been and continue to be victimized by discriminatory practices. As others have testified, the Commissioner's reports, testimony and recommendations are reflected in a large body of federal legislation, Presidental Executive Orders, and various court decisions.

The Fund is encouraged to see that H.R. 10831 ("The Civil Rights Commission Act of 1978") seeks to broaden the scope of the Commission's investigatory and fact-finding authority to include discrimination based on age and handicapped condition, both of which deserve close scrutiny. However, as was indicated earlier, the long struggle to eliminate discrimination from American life is not yet over with respect to the already-recognized victims of discrimination who are the current focus of the Civil Rights Commission Act of 1957. While progress has been made in rectifying some of the wrongs perpetrated upon ethnic and racial minorities and women, the bulk of which have been addressed by the Commission in its watchdog role, much still needs to be done, especially with respect to Hispanic persons as a group. There is no federal agency better suited than the Commission to airing the extent to which equal access to opportunity is denied to these traditionally unprotected groups. Its independent, bi-partisan perspective ensures an objective, diversified and in-depth view of the nation's progress in removing the barriers that impede equal access to opportunity and the performance of other federal agencies charged with implementing the civil rights laws. The Commission should be given continued life to do so, and we strongly support extending its existence.

It is our understanding that it had been proposed that State Advisory Committees be substituted by Regional Advisory Committees. According to reports in the press, this was proposed as part of an overall scheme to improve the organization and effectiveness of government and to abolish advisory committees that had outlived their usefulness. Under this economy measure, the Commission's State Advisory Committees, which are made up entirely of unpaid volunteers, were

placed on a par with such panels as the Board of Tea Experts and the Advisory Board on Hog Cholera. One glance at the work done by the State Advisory Committees, rightly referred to as the "eyes and ears of the Commission in the States," as documented in The Unfinished Business: Twenty Years Later (which the Fund hopes becomes part of the record of these hearings) belies the expendibility of these committees.

If the Commission is to meet its mandate, its work must incorporate in a meaningful way the concerns of the people at the state and local levels. The proposed regionalization of the advisory committees would be at odds with this. Regionalization of the advisory committees would be neither cost-efficient nor programmatically effective. It would significantly diminish grassroots participation from the state and local levels. Indeed, it would virtually destroy the ability to address local community needs and problems.

Regionalization would combine as many as eight separate state committees in some regions, while at the same time reducing the numbers of persons who could serve on the committees. In this structure small states would undoubtedly be dominated by larger states. Furthermore, the reduced membership would surely lead to a lack of representativeness of population among the membership that is now possible under the state structure, especially with respect to the less numerous minorities such as native Americans and Asian Americans. But most important, there would very likely be a cutback in investigations. Each State Advisory Committee now has at least two projects. If the number of persons serving on these committees were reduced, as would necessarily

be the case, this would clearly impact on the investigatory and fact-finding functions of the committees.

Moreover, regionalization would unquestionably cost more than the present structure since members would have to travel across state lines. For example, Region II includes New York, New Jersey, Puerto Rico and the Virgin Islands. Regionalization would clearly discourage and impede regular meetings as well as the flow of information from these localities to the Commission.

For all the foregoing reasons PRLDEF strongly supports the continued existence of State Advisory Committees and the mandating of such committees.

Mr. EDWARDS. Our panelists this morning are some good friends of ours: Al Perez, director of the Washington office of the Mexican American Legal Defense and Educational Fund; Charles Stephen Ralston, the first assistant counsel of the NAACP Legal Defense and Educational Fund; Ann Allen, and Sophie Eilperin, members of the Women's Legal Defense and Educational Fund.

We're delighted to have you all here this morning. You may each proceed with your statements. Have you drawn lots to see who you want to go first?

Mr. Ralston?

TESTIMONY OF CHARLES STEPHEN RALSTON, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. RALSTON. Mr. Chairman and members of the subcommittee, my name is Charles Stephen Ralston, and I'm first assistant counsel with the NAACP Legal Defense and Educational Fund. And I'd like to thank the subcommittee for the opportunity to express our views of the Civil Rights Commission.

I have submitted a prepared statement, which I would ask the subcommittee to insert in the record. I'll briefly summarize at this time.

Mr. EDWARDS. With regard to all the statements, without objection, they'll be inserted in the record at this point in full.

[The complete statements follow:]

STATEMENT OF CHARLES STEPHEN RALSTON, FIRST ASSISTANT COUNSEL, NAACP LEGAL DEFENSE AND EDCATIONAL FUND

Mr. Chairman and members of the Subcommittee, my name is Charles Stephen Ralston, and I hold the position of First Assistant Counsel with the NAACP Legal Defense and Educational Fund, Inc., in New York City.

I would like to thank the Subcommittee for the opportunity given the Legal Defense Fund to present our views on whether the existence of the Civil Rights Commission should be extended. We are strongly in favor of such an extension.

As you undoubtedly know, the Legal Defense Fund, since its founding in 1940, has been involved in combating racial segregation and discrimination through court action. In 1954, with the Supreme Court's decision in Brown v. Board of Education, */ the nation embarked on a commitment to end segregation and discrimination in all phases of American life. In the first Civil Rights Act passed since Reconstruction, the Civil Rights Act of 1957, Congress established the United States Commission on Civil Rights and gave it a number of duties. Over the years the Commission has performed such essential functions as holding hearings and preparing reports on the status of civil rights throughout the United States, making recommendations for the correction of the problems it has found, and monitoring the enforcement of civil

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*/ 347 U.S. 483 (1954).

rights statutes by the various agencies of the federal government charged with that responsibility.

Although, fortunately, the overall trend of civil rights enforcement over the last twenty years has generally followed an upward course, there have been ups and downs. From the vigorous positions taken by the Kennedy and the Johnson administration, there was a sharp decline during the Nixon administration. Enforcement of the civil rights laws by the Department of Justice and other agencies changed dramatically. The Department of Justice in particular, took positions in the United States Supreme Court and the lower federal courts in sharp contrast to those taken by Attorney Generals in prior administrations, including the Eisenhower Administration. The situation began to correct itself in the Ford Administration and the administration of President Carter has taken many promising steps in restoring enforcement of the civil rights acts by federal agencies to its former effectiveness in a way consistent with the responsibility of the federal government under the various civil rights statutes.

Throughout this period, one agency of the federal government in particular has remained constant and has never waivered or backtracked in its commitment to ensuring that the civil rights of all Americans were vigorously enforced. That agency is the United States Commission on Civil Rights. It has consistently and persistently carried out its duties, and has been unafraid to criticize any institution, including the White House itself, that it believed was taking a regressive position on civil rights

enforcement.*/ Through its published reports, the holding of hearings in communities all over the United States, and other activities it has provided invaluable data and information to the Congress, the executive, the courts and to private organizations involved in this common effort. I will in the latter part of my statement give some specific examples of how the work of the Civil Rights Commission has been of great value to my organization and to the courts in litigating civil rights cases.

Although the federal government under the new administration has so far indicated that it is going to take a vigorous and responsible role in the enforcement of civil rights, this does not mean, in any way, that the Civil Rights Commission is no longer needed. In the first place, given the best of intentions, agencies of the federal government may simply misperceive the nature of civil rights problems or their proper solution. They may adopt enforcement policies which, while seemingly adequate, in fact do not grapple with the substance of problems. Moreover, from time to time agencies may simply fail to carry out their duties, not necessarily through bad motives, but because they do not realize that they have a civil rights role to play or do not understand the negative consequences with regard to civil rights that certain policies and

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*/ See, for example, "Statement of the United States Commission on Civil Rights Concerning the 'Statement by the President on Elementary and Secondary School Desegregation.'" April 12, 1970.

practices may have. In light of these realities, it is of vital importance to have a watchdog agency such as the Civil Rights Commission to look from the outside at what agencies are or are not doing. An agency such as the Commission, which has as one of its specific functions the monitoring of all civil rights enforcement activities, is able to have a comprehensive view of the ramifications of civil rights problems across the board that simply may not be shared by a particular federal agency or department that is focused on a more narrow problem.

Further, there is no other agency which can carry out the important function of gathering information from the public at large as does the Civil Rights Commission through hearings held in communities throughout the country both by the Commission itself and through the State Advisory Committees. The Commission is able to get a perspective on the scope and nature of civil rights problems that would be difficult to achieve through any other means. This kind of geographically broad-based view is essential so that Congress, the courts, and enforcement agencies get an accurate picture of the need for remedial legislation, regulations and policies.

There is a particular reason why it is vital at this time that the life of the Civil Rights Commission be extended for at

least five years. The federal government is undoubtedly going to undergo substantial reorganization in the near future. The various Presidential task forces have already prepared preliminary reports highlighting problems and suggesting possible ways to deal with them through reorganization. As an example, recently I reviewed the option papers of the Federal Personnel Management Project which, inter alia, deal extensively with issues relating to equal employment opportunity, affirmative action, and staffing in federal agencies. When the various reorganization proposals are put into effect, there is going to be a significant revision of the machinery for enforcement of civil rights. It will be absolutely essential that there be close monitoring of the activities of the new organizations to ensure that they are carrying out their missions properly and that the overall impact on civil rights enforcement is a positive one. The job will be a massive one and will require the full attention of a specific agency. The only institution that can do a thorough and adequate job of monitoring is the Civil Rights Commission, since it alone has the background and expertise acquired over twenty years.

I would like to make one other general point. Although much progress has been made in securing equal civil rights for all Americans over the last two decades, much is still to be done. In areas such as employment discrimination, voting rights, and schools the kind of gross, overt discrimination still prevalent in the early 1960's is no longer apparent. However,

many problems still exist; in some ways they are more difficult and more intractable because they are subtle and non-obvious. For example, in the employment area there are extremely difficult and complex questions to be settled, such as the effect and validity of tests, seniority systems, job classification and promotion standards, and the like, as they relate to equality of opportunity. The sophistication and difficulty of such questions require expertise and an awareness of the many ways practices may impinge on civil rights if solutions are to be found.

In addition, new areas of concern are opening up. For example, my organization has recently begun a litigation program directed towards inequalities in the delivery of health care. It is our view that a central problem has been a lack of enforcement by the Department of Health, Education, and Welfare of existing laws and regulations designed to prevent discrimination in this area. The identification and analysis of similar new problem areas is a function that only the Civil Rights Commission can perform.

Turning now to the experiences of the Legal Defense Fund itself, as I mentioned before, we are primarily engaged in the litigation of cases under the Constitution and the various civil rights statutes in the federal courts at all levels. Although our cases are brought on behalf of specific plaintiffs against specific defendants and address particular problems, they often cannot be fully understood or effectively dealt with by the courts unless put in the context of more general concerns. To

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give an example, we have in recent years, since the passage of the Equal Employment Opportunity Act of 1972, engaged in a program of litigating cases under Title VII against federal agencies. One of the more serious problems that has arisen concerns the adequacy of the administrative enforcement mechanisms available to employees of the federal government set up by the regulations of the Civil Service Commission. This issue was of great importance where the question before the courts was whether it was necessary for federal employees to have the same broad range of remedies in court as did employees of private industry or state and local governments. While this issue was before the courts at all levels, including the Supreme Court, the Civil Rights Commission issued a comprehensive report on enforcement of Title VII by the Civil Service Commission and federal agencies. */ The report included a detailed discussion of the administrative procedures available and the various deficiencies in them as they related to providing an effective remedy. The availability of this report to the courts for their consideration in deciding the legal issues before them, was, I am sure, of great assistance, since it put the question into the context of the overall problem of the adequacy of the remedies as a general proposition as opposed to what occurred in a particular case.

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*/ "The Federal Civil Rights Enforcement Effort - 1974 Vol. V, To Eliminate Employment Discrimination." July, 1975.

In school desegregation cases the courts have often referred to and relied on reports of the Commission. To give two outstanding examples, in Keyes v. School District No. 1,*/ the landmark case on northern school segregation, the Supreme Court cited and relied upon two reports dealing with discrimination against Mexican Americans in education.**/ The Court noted (413 U.S. at 197):

> The United States Commission on Civil Rights has recently published two Reports on Hispano education in the Southwest. Focusing on students in the State of Arizona, California, Colorado, New Mexico, and Texas, the Commission concluded that Hispanos suffer from the same educational inequities as Negroes and American Indians.

A Court of Appeals had cited those same reports in concluding that Chicano students had been discriminated against in the Austin, Texas, public schools.***/ Earlier, in the seminal case of Green v. School Board of New Kent County,****/ in which the Supreme Court held that so-called "freedom-of-choice desegregation plans did not comply with constitutional requirements if they did not in fact bring about full integration, the Court referred to two recent Commission reports that documented the

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*/ 413 U.S. 189 (1973).

**/ United States Commission on Civil Rights, Mexican American Education Study, Report 1, Ethnic Isolation of Mexican American in the Public Schools of the Southwest (Apr. 1971); United States Commission on Civil Rights, Mexican American Educational Series, Report 2, The Unfinished Education (October 1971).

***/ United States v. Texas Education Agency, 467 F.2d 848, 862 n.n. 19, 20, 879-81 (5th Cir. 1972).

****/ 391 U.S. 430 (1968).

general failure of freedom-of-choice.*/

In another case, San Antonio Independent School District v. Rodriquez,**/ the Supreme Court referred to a Commission report***/ in ruling on the question of whether expenditures of tax monies had to be equal between school districts. The result in that case was unfavorable to the position civil rights groups, including the Legal Defense Fund, had taken, demonstrating the objectivity and thus utility of the Commission's reports.

In short, there have been many instances in which reports of the Commission have proved invaluable to courts and litigants by providing information and analyses essential to the proper resolution of the often complex issues raised in civil rights cases. The Fund has used Commission reports and hearings in cases involving school desegregation, jury and employment discrimination, and voting rights. This public education function of the Commission is essential, and no other agency that I am aware of has its resources and broad expertise.

With regard to the question of whether the State Advisory Committees' should be retained, we strongly urge that they should. The Committees are perhaps unique in the federal

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*/ Southern School Desegregation, 1966-1967 (1967); Survey of School Desegregation in the Southern and Border States 1965-1966 (1966).

**/ 411 U.S. 1 (1973).

***/ Inequality in School Financing: The Role of the Law (1972).

government, in that they provide a truly grass roots link to local communities. They are composed of persons who represent a broad cross-section of each state, serving without compensation, and who have an interest in developing and reporting information concerning civil rights at the local level. Various committees have held hearings and produced reports of great value to the Commission and to the public because of the members' close ties with their communities.

I have reviewed the reasons given for their abolition, and I found nothing persuasive except for assertions that all factors had been reviewed and that it has been decided that regionalization would be better. It is unlikely that any funds would be saved. The notion that regional committees would be more "efficient" is both irrelevant and unconvincing. Truly representative, democractic institutions do not tend to be particularly efficient by their very nature, and there is no reason why they should be. I do not see how regional committees -- necessarily much further removed from the local scene -- could perform the same function as do the state committees now. If some degree of regionalization is desirable, this could be accomplished by having regional meetings of representative of the state committees from time to time.

Finally, with regard to the extension of the Commission's jurisdiction to include the aged and the handicapped, we would support such an extension <u>provided</u> that sufficient additional resources are given the Commission so that it would not have

to divert existing funds and personnel.

For all of these reasons, the NAACP Legal Defense and Educational Fund, Inc., strongly urges that the life of the Civil Rights Commission be extended.

STATEMENT OF ANN E. ALLEN AND SOPHIE C. EILPERIN OF THE WOMEN'S LEGAL DEFENSE FUND ON BEHALF OF THE FEDERATION OF ORGANIZATIONS FOR PROFESSIONAL WOMEN, NATIONAL ORGANIZATION FOR WOMEN, NATIONAL WOMEN'S POLITICAL CAUCUS, WOMEN'S EQUITY ACTION LEAGUE AND WOMEN'S EQUITY ACTION LEAGUE FUND

Good morning, Chairman Edwards and members of the Civil and Constitutional Rights Subcommittee. My name is Ann Allen and I am a member of the Women's Legal Defense Fund. I am substituting for Judith L. Lichtman, who is unable to be here today. I am testifying today on behalf of the Federation of Organization for Women, the National Women's Political Caucus, the Women's Equity Action League and the Women's Equity Action Leaque Fund.

The Women's Legal Defense Fund is a non-profit, tax-exempt corporation organized in 1971 to secure equal rights for women by providing volunteer legal representation as well as sponsoring informational and educational activities on legal issues of special interest to women. Through the volunteer activities of its 300 members, the Women's Legal Defense Fund has become a major legal voice for women in the Washington, D. C. metropolitan area. In addition, its location in the Washington, D. C. area gives the Fund the opportunity to have input on Federal legislation and programs which are of particular concern to women.

The Federation of Organizations of Professional Women was founded seven years ago and has as affiliates approximately 104 women's groups working for equal opportunity for professional women. This affiliation represents 1/2 million women who are members of various organizations that are committed to achieving equal education and employment rights.

The National Organization for Women is the largest and oldest women's rights organization of the new feminist wave. The National Organization for Women has over 70,000 members both female and male and over 700 chapters existing in all 50 states. The National Organization for Women was founded in 1966 and has always been deeply concerned with the enforcement of Civil Rights legislation.

The National Women's Political Caucus started in 1961 is a multi-partisan organization with 35,000 members and supporters This organization is dedicated to increasing the number of women in government and to promoting public policies which accurately reflect women's rights and concerns.

The Women's Equity Action League was founded in 1968. The Women's Equity Action League is a national membership organization dedicated to improving the social, economic and legal status of women though education, legislation, and litigation.

The Women's Equity Action League Fund is a non-profit tax exempt organization that works to secure the legal and economic rights of women by carrying on educational and research projects in the area of sex discrimination, by monitoring the implementation and enforcement of civil rights. and other laws, and by initiating and supporting law suits in the field of equal rights.

Representatives of many civil rights groups who have testified before the Senate Judiciary Subcommittee on S. 2300, the Civil Rights Commission Act of 1978 which is very similar to H.R. 10831, have commented at length on the significant role that the Commission on Civil Rights has played in protecting and promoting the rights of minorities during the past twenty years. I know those who testify here today will support these views. Through its public hearings, studies and reports, and testimony before both houses of Congress, the Commission has helped shape the course of development of civil rights enforcement in this country. The U.S. Commission on Civil Rights has been a constant advocate for equal justice and opportunity. Were the Commission's life not extended, a void would be left which could not be filled by any existing Federal agency.

Speaking as I am on behalf of the women's rights organizations, I would like to direct my remarks to the importance of the Commission on Civil Rights in the field of women's rights and interests.

The U.S. Commission on Civil Rights has had jurisdiction over sex discrimination issues only since October 1972. In the succeeding 5 1/2 years, it has made a remarkable beginning in establishing itself as a national source of information on women's rights. It has advocated and worked to achieve equal treatment of women in many critical areas, has influenced major legislation affecting women, such as the Equal Credit Opportunity Act, and has monitored the actions of the Federal agencies themselves in prohibiting sex discrimination in the administration of Federal programs.

Let me give a few examples of the Commission's activities in the area of women's rights. The Commission's major output in implementing its sex discrimination jurisdiction has been in its publication of reports dealing with a wide range of subjects, such as minority and women contractors, mortgage financing, and a Guide to Federal Laws Prohibiting Sex Discrimination. The last is a particularly useful publication. Several of the State Advisory Commissions have reported on local problems of sex discrimination. In the summer of 1974, the Civil Rights Commission held open hearings in Chicago, Illinois, on the subject of women and poverty. In addition, the 1974 Federal Civil Rights Enforcement Effort report, a critique of Federal anti-discrimination programs, included coverage of efforts to eliminate sex-discrimination in Federally assisted programs and within Federal agencies themselves.

There is no other organization, governmental or private, which serves as a national repository of information on legal issues critical to women in the way that the Civil Rights Commission does. The U.S. Commission on Civil Rights is a unique source of information of women's issues on which many local and national groups such as the WLDF, NOW, FOPW, WEAL, WEAL Fund and NWPC, rely.

Although I believe that the Commission has achieved a great deal purusant to its sex discrimination jurisdiction, I would like to see the Civil Rights Commission devote even

more resources to implementing its sex discrimination jurisdiction than it has in the past. As yet, the Commission has not issued a report on its 1974 Chicago hearings. This delay is one that severely weakens the import of the hearings, for statistics and much of the data will be out of date by the time it is issued, and therefore not very useful. The Commission needs to commit more person power to women's issues so that there can be more efficient dissemination of information.

There are many areas of concern to women which I would like the Commission to study and report on. Among these subjects are discrimination against women in the insurance field both as beneficiaries and employees and detailed studies of sex discrimination in employment. An enforcement study of the Equal Credit Opportunity Act would stimulate more widespread enforcement of that legislation. In addition, the Commission should increase its efforts to disseminate expertise in specialized areas in which women are particularly involved. Last month, the Commission held a consultation on abused women, drawing together experts in this area and leaders of organizations attempting to help abused women. This type of technical assistance to women's groups is exactly what many women's organizations need, but do not have the resources to provide themselves. By offering needed expertise and training on specialized topics, the Commission has great indirect impact on women issues throughout the country.

Let me touch very briefly on two other issues. H.R. 10831 would give the Commission jurisdication over discrimination against the aged and handicapped. I support this proposal fully. Obviously, women, are included within

both groups, and the handicapped and the elderly have long been overlooked in the administration of Federal programs. Although they are "victimized" groups of peoples, as are other minorities, adequate attention to their needs has not been given, and it is time the Federal Government undertook a sustained, ongoing position to support the handicapped and the aging. Elderly women greatly outnumber men in comparable age brackets, and as persons who have been burdened with two "handicaps" -- sex and age, I hope that the Commission will give special concern to their situation.

Finally, I would like to affirm my support of the present organization of the Commission's State Advisory Committees. These serve an invaluable role in providing for grass roots participation in anti-discrimination efforts. If the 51 State Advisory Committees were abolished in favor of regional ones, there would be less local involvement, a lack of focus on state laws would occur, and the effectiveness of these units would be weakened, I believe.

Let me conclude by saying that the U.S. Commission on Civil Rights has performed a valuable ongoing function in working to assure equal rights for all. It has been a watch-dog agency, a disseminator of information, an advocate for equal justice. The need to have all this done is never-ending; the Commission's work, by definition, is never over. To fail to extend the Commission would leave a vacuum which cannot be filled by existing organizations. And the victims of the cutoff of the Commission would be the minority group individuals, and women, who have benefitted from the Commission's activity in the past. Although I feel that the Commission

on Civil Rights has not done as much as it could to implement its sex discrimination mandate, it has made a strong and useful beginning in the field of women's issues and must be allowed to continue this work.

STATEMENT OF MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

My name is Al Perez and I'm the Director of the Washington, D.C. office of the Mexican American Legal Defense and Educational Fund (MALDEF). I want to thank you and members of your Subcommittee for this opportunity to present testimony on H.R. 10831 extending the authority of the U.S. Commission on Civil Rights.

GENERAL

MALDEF is a leading organization in pursuing the civil and constitutional rights of the Mexican American community. In this effort, our work is closely related to the duties of the Civil Rights Commission as spelled out in 42 U.S.C. 1975c. The work of the Commission in struggling for the civil rights of people has been admirable; this is particularly true in the research the Commission has provided to the Congress, the President, and to public interest organizations such as MALDEF. We support H.R. 10831 extending the life of the Commission. However, MALDEF does have some concerns with the policies adopted by the Commission and with the operation of the Commission.

POLICIES

It has been a source of concern to MALDEF that the Commission makes policy decisions without fully considering the views of the Mexican American community. MALDEF is also concerned about the apparent disregard that the Commission shows for issues of vital concern to the Mexican American community.

It would appear that the Commission's input from the Commissioners and from the state advisory committees would provide a forum by which Mexican Americans could articulate their concerns to the Commission. However, it is evident that the Commission has a third connection that constitutes a major influence on the Commission's policies and operations. The third connection is comprised of civil rights organizations that traditionally have not represented the interest of Chicanos. It has been our experience that the Commission's antennae is very much tuned in to these civil rights groups. This, per se, is not a problem; it only becomes a problem when the Commission is influenced by outside interest groups to take a course of action that is detrimental to the interest of the Hispanic community. For example, in late 1974, the Commission decided to terminate the portion of a voting rights project that dealt with the voting problems of Mexican Americans and Puerto Ricans. I refer you to Exhibit A (attached) wherein the decision to terminate is discussed in a staff memorandum. The only way that we can interpret Exhibit A is that the Commission does have sensitivity for Mexican Americans; it does have knowledge of Mexican Americans; it does have an understanding of Mexican Americans; however, the Commission just doesn't care enough about Mexican Americans.

OPERATIONS

MALDEF's concern with the operations of the Commission centers on the lack of aggressive action on issues identified for the Commission by Mexican American organizations. While no one expects the Commission to respond to every request for assistance that it receives, we do expect the Commission to aggressively pursue issues that present broad elements, that appear to show a prima facie case of voting discrimination, and that can result in an immediate and substantial improvement in the civil rights of people. MALDEF presented such an issue on June 22, 1977; unfortunately, the Commission, after acknowledging that a problem existed, passed the buck to the Department of Justice.

This issue involved a request by MALDEF to the Commission for assistance in remedying a major problem concerning gross malapportionment in some Texas counties. MALDEF had received complaints from Mexican Americans that in some Texas counties there were severe violations of the one-person, one-vote principle; the complainants alleged that the violations were due to malapportionment and alleged further that the malapportionment was directed at Mexican Americans. MALDEF spent a considerable amount of time collecting information on these complaints and we came up with a list of approximately 40 counties in Texas wherein there appeared to be major

violations of the one-person, one-vote principle and wherein there appeared to be malapportionment against Mexican Americans. The list of counties is set out in Exhibit B–1; one of these counties had not reapportined since *1884*. This list was sent to the Commission along with our letters (Exhibit B–2) asking for assistance. Forty seven days later (on August 8, 1977), the Commission responded. The Commission's letter of reponse which is (Exhibit B–3) stated *inter alia* that "there appears to be significant under-representation of Spanish-surnamed citizens" and that it was "also apparent that some counties have failed to live up to the Constitutional requirement of periodic reapportionment on one-person, one-vote principles." After the evidence presented by MALDEF and the conclusions drawn by the Commission, one would have expected the Commission to vigorously investigate the complaints; this, however, did not occur. The Commission, instead, passed the buck to the Department of Justice by asking the Department to investigate.

This issue had all the elements that would call for aggressive action by the Commission. It involved a voting issue and as this Subcommittee knows, investigating allegations of voting rights violations is the first duty imposed on the Commission by 42 U.S.C. section 1975c(a)(1); the allegations were supported by substantial documentation that had already been prepared by others; the Commission acknowledged that an apparent voting problem existed; the allegations could be proven by the simple acquisition of data from the Bureau of the Census; and a vigorous Commission investigation would have resulted in an immediate and dramatic improvement in the voting rights of Mexican Americans in Texas. The Commission just did not care enough to do anything about it. The Commission's voting rights work must continue; for example, a good report is needed on the Department of Justice's implementation of the 1975 Amendments to the Voting Rights Act.

Presently, Mexican Americans are extremely concerned about the issue of immigration. We understand that the Commission has a project underway in this area. We strongly suggest that if the Commission does field research or holds field hearings it should give top priority to the Southwest where the immigration issue is having a major impact on the civil and constitutional rights of Mexican Americans. It is also my understanding that the Commission has held hearings in New York and it is now holding hearings in the Southwest.

Mexican Americans are also very concerned with the wave of police brutality that has swept over the barrios. In the past two years, four Mexican Americans have been essentially murdered by police officers in Texas. We understand that the Commission has authorized a police brutality study; it is paramount that the Commission expedite this study and that cities such as Houston where both blacks and Chicanos have experienced police abuses be given priority. Attached is Exhibit C which lists 30 cases including 16 killings, of police brutality against Mexican Americans in the Southwest.

This Subcommittee needs the research the Commission will do in these two areas and it needs it timely. I would urge therefore, that this Subcommittee exercise close oversight over the progress of these two projects.

This concludes my testimony and will answer any questions you might have.

EXHIBIT A

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., August 30, 1974.

Subject: Changes in the voting rights project.
To: John Buggs, staff director.
Thru: Caroline F. Davis.

This memorandum seeks to set down my understanding of the decisions which have been reached about the Voting Rights Project in the past several meetings with you.

Following consultation with members of the Leadership Conference and Commission staff members working on voting rights, the decision was made that the report of this project would confine itself to problems of blacks in covered jurisdictions of the South. The single exception to this position was that minority voting problems as they relate to language might be studied in California (Los Angeles) and South Texas (La Salle and Uvalde counties).

Inasmuch as there was insufficient data showing overt interference in registration and voting processes gathered in the covered jurisdictions of the South by Commission staff, it is your view that additional field trips are necessary to obtain more definitive information of this kind.

The staff has a number of serious reservations concerning these decisions which we voiced at the time. John Hope who called me while on vacation also shares our concern. Moreover, the decisions have a number of consequences and implications which were not fully discussed in the meeting with you and of which our staff believes you should be aware.

1. *The study will contain no information on voting problems of minorities outside of the covered jurisdictions in the South.*—You indicated that data concerning voting problems of blacks and Puerto Ricans collected in five sites in the North, Hoboken and Elizabeth, New Jersey; Mt. Vernon, New York; Wilmington, Delaware; and Youngstown, Ohio will not be used in the study. A sixth site, Rochester, where we had scheduled a trip in early September, will not be visited. A good deal of time and effort was expended gathering this information. Expectations of minorities, particularly those of Puerto Ricans, who have faced serious obstacles in obtaining full enfranchisement, have been raised by the fact that the Commission was looking at their problems. These individuals will be disappointed if we do not use the material gathered,

The decision presumably means that we will not look at redistricting problems in three New York city counties covered under the Voting Rights Act i.e., Bronx, Kings and New York. Redistricting in these counties can have the effect of seriously diluting the minority vote.

It is also likely that by excluding all but the South from the study we will be asked "what has happened in other parts of the country?" A response of "we don't know," could be embarrassing. It may be more difficult this time to convince Congress that the South is the only place in which blacks have voting problems.

2. *The study would limit the investigation of minority voting problems to language in South Texas and Los Angeles.*—The field trip to South Texas has already been completed. I would estimate that 95 percent of the barriers to an effective ballot by Chicanos in this region are due to factors other than language. Such things as failure to deputize Mexican Americans as assistant registrars, use of economic intimidation to keep Mexican Americans off the ballot, and redrawing the lines of commissioners districts so as to minimize the effect of the Chicano vote are but a few measures used by the dominant Anglo community to limit the participation of Chicanos. Language difficulties are not viewed by most Mexican Americans as having much to do with their problems in winning elections. Therefore, since language is not a central issue of enfranchisement questions in the Southwest, it is recommeded that South Texas be dropped from the study unless you direct otherwise.

In Los Angeles the major barrier to Chicano voting rights appears to be redistricting rather than language difficulties. Therefore, under these circumstances, we plan no field trip to Los Angeles unless you require it. The field trip in South Texas has raised high expectations among Chicanos and Chicano organizations like the La Raza Unida party that the Commission is concerned with their voting rights problems. In addition, in Los Angeles the preliminary notification of the Chicano and Asian communities that we planned to look at their voting problems have raised expectations that are now dashed leaving in their wake some hostile feeling toward the Commission.

3. *Excluding Arizona counties.*—Several counties in eastern Arizona are covered jurisdictions. A field trip has been made to this area and data has been obtained on discriminatory practices relative to Native American voting rights. Although Arizona was not mentioned in our discussions with you, it is presumed that you wish it dropped from the Voting Rights Study.

In the past year or two this area has probably witnessed as large an amount of discrimination against a minority groups' voting rights than any area of the country. I recommend that it be included in the study.

4. *Exclusion of all southern States not covered by the Voting Rights Act.*—Four southern States—Florida, Arkansas, Tennessee and Texas—though not covered under the Voting Rights Act still contain areas where blacks have some voting problems. A field trip was made to one of these areas, East Texas (Waller County) and considerable data was obtained primarily on

registration problems which effectively deny blacks political power. If we do not change the previous decision, this data will not be used. Plans to visit two north Florida counties have been cancelled.

In the South the Leadership Conference does not want information on areas outside the covered jurisdictions included since it could be charged that we are "picking on the South." There is a good possibility that some blacks in uncovered southern jurisdictions may have more severe voting problems than many of their counterparts in covered jurisdictions; do we not have some responsibility towards these people? In addition, the Leadership Conference suggestions may subject the Commission to the charge that it is "picking on the covered jurisdictions" as noted at some length in a recent Commission meeting.

5. *The questionnaire and future trips.*—Your discussions with Clarence Mitchell suggests that there is more overt interference with registration and voting than our data gathering has thus far found leading to your position that we visit more sites in covered jurisdictions. It was requested that we send a questionnaire to all NAACP leaders in the South who would then obtain information on these voting problems. The questionnaire was approved by you and hand carried to Mr. Mitchell's office on August 23. It was to be sent to NAACP Headquarters in New York and then mailed to NAACP leaders in the South as soon as possible. Originally we were to hold off making additional field trips to the South until we obtained responses from the questionnaires. However, because of our very tight schedule and the need for timeliness, we have planned field trips to Alabama, Georgia, South Carolina, Louisiana, and Mississippi for the week of September 2. Any delay pending receipt of NAACP questionnaire forms would seriously impede the report's completion. If responses to our questionnaire reveal particular problem areas that merit further investigation we will send staff to these areas at a later date.

6. *The Commissioners.*—I believe that it should be a matter of record that the Commissioners will be expecting a different type of report than, it now appears, the Voting Rights staff will produce. They approved a proposal that is at great variance with our current plans for the study. Dr. Horn has been concerned that we use data from the Institute for Social Research at the University of Michigan to indicate the attitudes of those who don't register and vote. Because of our concentration on covered jurisdictions it seems less likely that we will be able to use any of this information in our study.

7. *A permanent ban on the literacy test.*—Currently the use of literacy tests to determine who votes has been suspended until 1975. If the Voting Rights Act expires it is possible that some States would reimpose the test. This could be disastrous particularly in some southern States where there are large numbers of illiterate voters. It has long been Commission policy to advocate a permanent ban on literacy tests. The Voting Rights Project has planned a short study of the use of literacy tests in conjunction with the main report, calling for their permanent ban. The status of this study now seems in doubt since the Voting Rights Project is being confined to covered jurisdictions in the South. Many of the States that have literacy tests are in the North and West.

8. *The schedule.*—The inclusion of additional sites as well as major revisions in the study's design will necessarily affect the completion dates of the project. At this time we cannot accurately estimate how much time it will take.

9. *Conclusion.*—Although our planning reflects the decisions made in our meetings of Aug. 20, Aug. 23, and particularly Aug. 26. I would like to reiterate several points: Our entire project staff continues to hold the view that the study should not be limited to covered jurisdictions in the South. If the decisions is irrevocable to so limit the study, I would like to urge a modification of this policy. May I suggest that we visit the uncovered jurisdictions previously scheduled and prepare the materials from covered and uncovered jurisdictions already visited so that the material would be available for substantial inclusion in Congressional testimony. If this alternative also is untenable, a third alternative would be to utilize this material in a publication following Congressional action on the Voting Rights Act.

FRANK KNORR,
Director, voting rights project.

EXHIBIT B–1

County	Redistricting date	Population	Percent SSN population (percent)	Number of SSN personnel in Commissioners court
Aransas	November 1969	8,902	26.6	0
Bastrop	1931	17,297	14.0	0
Brooks	January 1969	8,005	79.9	3
Calhoun	1967	17,831	33.4	0
Castro	1967	10,394	35.4	0
Coke	1969	3,087	16.6	0
Collingsworth	1966	4,755	9.1	0
Comal	1969	24,165	29.0	0
Dallam	1968	6,012	17.5	0
Dewitt	1913	18,660	21.8	0
Dimmitt	1965	9,039	81.6	3
Edwards	1959	1,922	48.0	0
Floyd	1962	11,044	23.2	0
Guadalupe	1947	33,554	27.1	0
Haskell	1963	8,512	13.1	0
Hill	Circa 1900	22,596	6.3 [1] −12.8	0
Jackson	1966	12,975	17.7	0
Jim Hogg	1968	4,654	91.8	5
Karnes	1969	13,462	40.9	0
Kenedy	Circa 1969	699	75.9	0
Kerr	1969	19,256	13.4	0
Kimble	1969	3,904	23.0	0
Kleberg	Circa 1966	33,173	43.7	1
La Salle	1969	5,014	78.4	3
Live Oak	1969	6,697	40.4	0
Loving	1962	164	40.3	0
Lynn	1951	9,107	30.3	0
McCulloch	1969	8,571	23.0	0
McMullen	1969	1,267	58.6	0
Matagorda	1969	27,913	18.5 [1] −19.2	0
Martin	1951	4,774	37	0
Medina	Circa 1951	20,249	48.5	0
Menard	1969	2,646	30.2	0
Mitchell	1969	9,073	24.6 [1] −6.7	0
Parmer	Circa 1967	10,509	20.6	0
Nueces	1969	237,542	43.6 [1] −4.7	1
Nolan	1964	16,220	14.0 [1] −4.4	0
Reagan	1969	3,239	12.8	0
Reeves	1969	16,526	[1] 53.2 [1] −3.1	2
Refugio	1952	9,494	38	0
Scurry	1884	15,262	11.9 [1] −3.1	0
Sterling	1943	1,127	22.6	0
Swisher	1968	10,373	21.2 [1] −4.0	0
Val Verde	1969	27,471	63.6 [1] −2.9	3
Ward	1969	13,019	23.2 [1] −3.4	0
Yoakum	1965	7,344	17.9	0

[1] Black.

MEXICAN AMERICAN LEGAL DEFENSE EDUCATION FUND,
San Francisco, Calif., June 22, 1977.

Mr. JOHN BUGGS,
Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.

DEAR JOHN: You have occasionally written to me asking for issues of priority to the Mexican American community. MALDEF presently is facing an issue with which you might be able to assist.

There are many counties (46) in Texas that are seriously malapportioned, resulting in violations of the "one man-one vote" principle of the minority communities. Litigation cannot be pursued because of the lack of data for

commissioner's precincts (wards). The Bureau of the Census does not publish these data. The Census, however, is able to do a special review of its data and acquire the information; this, though, is done on a fee basis and MALDEF cannot afford it. Can the Commission be of assistance in acquiring the information?

I've looked at Section 207(a)(ii) of the Voting Rights Act; this Section provides that the Census shall do surveys in jurisdictions designated by the Commission. These surveys, however, are limited to counting citizens of voting age, etc., and do not provide for counting persons generally.

Your assistance in this matter would contribute greatly to the voting rights of minorities in Texas; I do hope you can be of assistance. If you are interested in this, please have your office contact Mr. Al Perez in our Washington, D.C. office at 659-5166.

Atentamente,

VILMA S. MARTINEZ,
President and General Counsel.

MS. VILMA S. MARTINEZ,
President and general counsel, MALDEF,
San Francisco, Calif.

DEAR MS. MARTINEZ: I am writing in response to your June 22, 1977 letter concerning apparent malapportionment in 46 Texas counties and the difficulty of obtaining detailed population data to support appropriate litigation.

A member of the staff has been in touch with Al Perez of your Washington office about your need for 1970 enumeration district data for these counties. Unfortunately, we are not in a position to obtain the data on your behalf. As you surmised, the section 207 surveys will not provide the detailed information you require, so the data would have to be purchased from the Bureau of the Census. The cost to us would be about $100 for each enumeration district, the same amount, I believe, Census would charge MALDEF. In the absence of a fully budgeted project requiring acquisition of the data, we are not able to allocate the resources needed for such a purchase.

It is possible that at least some of the data you need are available from other sources. For example, a State agency such as a development commission or a State university research bureau may already have purchased enumeration district data and be able to make them available at a reduced cost. Also, given its size, there may be block data available for Nucces County.

After reviewing the information supplied by your Washington office, however, we agree that there appears to be significant under-representation of Spanish surnamed citizens on some of the county commissioner courts. It also is apparent that some counties have failed to live up to the Constitutional requirement of periodic reapportionment on one-person, one-vote principles. In the enclosed letter, therefore, we have asked the Department of Justice to investigate the situation in those counties. You may find them willing to share whatever statistical information they develop in their investigation.

My letter to Assistant Attorney General Days, you will note, also discusses the problem raised in a MALDEF complaint regarding past-election purges of non-voters in Arizona. Although our understanding of this situation is based on a review of the original complaint and conversations between members of our staffs, it is not clear that implementation of the purge law constitutes a "change affecting voting under the Voting Rights Act, just as many other current aspects of holding elections have not previously been considered changes. Under the circumstances, however, it is also not clear that these purges should not be considered changes and thus be subject to section 5 clearance. At the very least, we believe MALDEF is entitled to determination from the Department of Justice.

Thank you for bringing these matters to our attention. We will appreciate your keeping us informed of the status of both problems.

Sincerely,

JOHN A. BUGGS,
Staff Director.
LOUIS NUNEZ,
Deputy Staff Director.

Enclosure.

EXHIBIT C

BRUTALITY BY LAW ENFORCEMENT AGENCIES: CASE SUMMARIES—BY STATE

Name, date, and location	Case type	Legal status
California:		
Barlow Benavidez, June 11, 1976, Oakland, Calif.	Benavidez' car stopped in relation to stolen car investigation by officer Michael Cogely. In "spread-eagle," Benavidez searched by officer with cocked shotgun in one hand to his head. Gun fired, Benavidez killed. Eyewitness arrested for same car robbery, charges later dropped. Officer violated all of Oakland police department's procedures for such a search, and there is evidence of a police department coverup.	Civil suit by Benavidez family in Alameda County Superior Court for wrongful death, Federal cause of action ($3,000,000). Current efforts to get Federal indictment. Since June 1977 Justice Department and FBI investigations. Drew Days in Washington has committed the Justice Department to expedite proceedings. Benavidez' attorney is Ed Roybal of Centro Legal de la Raza.
David Dominguez, Feb. 28, 1977, Los Angeles, Calif.	Dominguez was known gang member. Lured into the home of retired police officer (LAPD) Billy Joe McIlvain, who had had many runins with local gang members while with LAPD. McIlvain held Dominguez hostage, and attempted to make it seem as if Dominguez had kidnapped him. He shot (9 times) and killed Dominguez, reporting to investigators that he had pulled out a hidden gun. Reports show that Dominguez was shot with two (2) different weapons.	McIlvain found guilty of 1st degree murder and kidnapping. Sentenced to life in prison by Los Angeles Superior Court Judge William B. Keene. McIlvain's attorney is Charles Gangloff. No information on Federal involvement.
Jesse Hernandez, Adolfo Reyes, Mar. 20, 1977, San Fernando, Calif.	Victims arrested for some street disturbance. City police officer Eric Kahmann beat Hernandez and Reyes with baton and fists, with Lt. William Trachsel (acting police chief) looking on. Beatings occurred at the city jail.	Charges against Hernandez later dropped for lack of evidence. Reyes guilty of misdemeanor charge of carrying a loaded firearm. Los Angeles grand jury indicts officers on charges of assault in the beatings of the 2 jailed prisoners. Each officer faces 2 felony counts. Trachsel fired after a 1 mo police investigation. Investigation of Kahmann still pending. No Federal inquiry.
Crescencio Ramirez, Oct. 29, 1977, Wasco, Calif.	Verbal exchange resulted in the arrest of 5 youths, who were beaten and handcuffed tightly causing wrist bruises. Mr. Ramirez, a friend of one of the youth's father, attempted to investigate the processing of the youths, which was carried out in secrecy. A couple of days later, officers Emerson and Snead arrived at Ramirez' home without warrants, entered the property, and began to beat Ramirez with clubs when Mrs. Ramirez attempted to hold her husband. Officers began to beat Mrs. Ramirez, and tossed her children into some rosebushes when they also attempted to aid their parents.	Miguel Garcia is the attorney for Ramirez and the youths. Ramirez was never charged with anything, and it was never specified why the officers had gone to his house. Youths, and the father of one of them, were charged with the California law of lynching, but all charges have been dismissed. Bakersfield district attorney investigated and concluded that the only negative behavior he found on the part of the youths was foul language. Garcia has filed a petition with the supreme court (State) dealing specifically with violations by parole officials with respect to 1 of the youths. He hopes to bring attention to the abuse generally faced in Wasco.
Edward Ramirez, Apr. 16, 1977, Los Angeles, Calif.	Undercover officers in Downtown Los Angeles dressed like hoboes, beating a suspect as Ramirez approached. Unaware that they were officers, Ramirez went to the aid of the suspect. Without identifying himself, Officer Lony Hammond fired, killing Ramirez.	Informational source is the Coalition Against Police Abuse in Los Angeles. Family has no money to file suit, but have filed a formal complaint with the LAPD. LAPD reports incident as justifiable homicide. No Federal inquiry.
Texas:		
Noe Beltran, Oct. 21, 1977, Brownsville, Tex.	Beltran was eyewitness to the shooting of Ventura Flores (See Flores, Ventura). Officers Hess and Avitia handcuffed him and threw him to the ground. When he heard the shot that wounded Flores, he raised his head to get up, and Officer Hess kicked him in the face, causing abrasions.	Beltran taken to the police station where he gave his statement. He requested that the abuse by Officer Hess be included in the statement. Officer taking the statement refused to include this, stating that the matter would be taken care of in court. Beltran was immediately released. Ruben Bonilla of LULAC is actively involved with this case. FBI investigating.
Ventura Flores, Oct. 21, 1977, Brownsville, Tex.	Warrant was issued for Flores' arrest by justice of the peace, Ed Sarabia, for felony charge of retaliation. Detectives Robert Avitia and Chris Hess arrived at the scene at which Flores and others were talking. There was an altercation, and Hess shot and wounded Flores in the chest. Flores, drunk at the time, was reported to have attacked Avitia. While in ICU, Flores remained handcuffed. Reports conflict as to whether police used proper identifying procedures upon arrival at the scene.	Police investigation in progress. Grand jury indicted Flores for aggravated assault on a police officer (misdemeanor). Original felony charge received no indictment. Grand jury investigating police abuse, but the affidavits of 8 eyewitnesses were all lost, never received by the grand jury. Evidence of a police coverup. FBI investigating as of December for possible civil rights violation, at the request of U.S. Attorney Canales. Attorney for Flores is Jerry Davidson.

BRUTALITY BY LAW ENFORCEMENT AGENCIES: CASE SUMMARIES—BY STATE—Continued

Name, date, and location	Case type	Legal status
Texas—Continued		
Juan Galaviz, December 1977, Big Spring, Tex.	Police report that Galaviz abducted a woman, robbed her, then led police on a chase. When trapped between 2 police cars, Galaviz reached for his coat pocket, and Sgt. Leroy Spires fired and killed Galaviz. His pocket contained a pocketknife.	District Attorney Rick Hamby investigating the shooting. Texas Rangers also investigating, and will present results to Howard County grand jury. Report by Journalist Carlos Morton, states that Galaviz had been harrassed by police previously, and "were out to get him." Witnesses who claim police abuse, not testifying because of fear of reprisal. No Federal involvement.
Pablo Garza, Mar. 23, 1976, Bexar County, Tex.	Garza arrested for drunken driving by San Antonio police. Garza charges that three Bexar County Jail guards, Charles Harris, Robert Collins, and James Lovings threw him into a small cell and kicked him repeatedly, beating him severely. He was hospitalized only after his release from jail. Defense states that upon his arrest, Garza took a swing at the arresting officer, who struck Garza repeatedly to subdue him. Once in jail, guards claim that Garza was abusing other inmates.	Misdemeanor assault indictment by Bexar County grand jury. Guards fired. Judge, County court at law, Raymond Wietzel, finds guards not guilty of any wrongdoing. Guards reinstated, with back pay, by the Civil Service Commission. Garza began proceedings (served notice) for filing of civil suit, but no further action taken. Reportedly, Garza is an alcoholic, and epileptic, perhaps being a problem in securing support for his case. No Federal inquiry into the matter.
Ricardo Morales, Sept. 14, 1975, Castroville, Tex.	Castroville marshal, Frank Hayes, picked up Morales at his home on an arrest warrant regarding an investigation into a series of burglaries. Another marshal was with Hayes, but left after Morales was picked up. Hayes drove out to the country, and shot and killed Morales on a deserted road. Hayes' wife, Dorothy Hayes, with the collaboration of a friend, Alice Baldwin, took the body and buried it some distance away from the scene.	Hayes found guilty of aggravated assault, sentenced to 10 yr. His wife given 1 yr sentence, probated, for burying the dead body. Tremendous community pressure, including that of Governor Dolph Briscoe, prompts Federal grand jury probe for violation of civil rights. Case presented to Grand jury by Assistant U.S. Attorney John M. Pinckney and two Civil Rights Division attorneys from Washington, Dan Rinzel and Karen Moore. Attorney for Hayes is Marvin Miller. There was a change of venue to San Angelo for the civil rights trial. Hayes convicted on September 1977 for civil rights violation for the murder of Morales and sentenced to life by Chief U.S. District Judge Adrian Spears. He is presently not serving sentence due to psychological tests to determine Hayes' ability to withstand the punishment (90-d testing period ordered by Judge). Mrs. Hayes and Alice Baldwin were also convicted as accessories after the fact. No information on their sentencing.
Eduardo Prieto, Apr. 3, 1977, El Paso, Tex.	Officers received a call for disorderly conduct at a bar. Complaint against Prieto, who officers escorted out of the bar. Officers claim that Prieto offered confrontation, so Francisco J. Gonzalez kneed him in the groin, and battered him repeatedly with his flashlight in order to get the already seriously injured Prieto into the car. Prieto hospitalized for ruptured testicle, only after he was taken to police headquarters and refused medical care until his release on bail hours later.	Upon leaving the hospital, Prieto filed complaint with police department. Officer Gonzalez dismissed from the force. El Paso County grand jury investigate and no-bill Gonzalez on aggravated assault complaint, Attorney for Prieto is L. Taylor Zimmerman who is presently still considering filing a complaint with the FBI, or a civil suit.
Santos Rodriguez, 1973, Dallas, Tex.	Police officer Darrell Cain stopped and questioned Rodriguez about a service station robbery. In the back seat of his car, "Russian roulette" style, Cain put a loaded gun to his head, pulled the trigger and killed Rodriguez.	Cain's trial had a change of venue to Austin Convicted, got 5-yr sentence for criminally negligent homicide. He appealed to the Court of Criminal Appeals in Austin. Judge Ed Gossett confirmed the lower court decision in March 1977. A community committee has formed to pressure for a Federal grand jury investigation. Dan Rentzel, from the Civil Rights Division at the Justice Department, is also investigating.
Tiburcio Santome, Nov. 6, 1977, Glasscock County, Tex.	Santome picked up for drunk and disorderly, reportedly pulled out a knife and went after Sheriff Royce Pruit who was driving the car. Retired west Texas deputy sheriff, G. B. Therwanger, a passenger in the back seat, shot and killed Santome. Santome was not handcuffed, and police report that a patdown search was done before Santome entered the car, although Mrs. Santome stated that there was no patdown search. Santome was a Mexican national from Juarez. Four shots were fired.	Texas Rangers investigating the shooting. Don Richard, assistant district attorney in Big Spring, Howard County, is presenting the case to the grand jury, but he is not recommending any charge against Therwanger. Special assistant to the U.S. Attorney General, Ed Ibar is investigating possible civil rights violation.

BRUTALITY BY LAW ENFORCEMENT AGENCIES: CASE SUMMARIES—BY STATE—Continued

Name, date, and location	Case type	Legal status
Texas—Continued		
J. Campos Torres, May 5, 1977, Houston, Tex.	Officers received a complaint from cafe owner about drunken Torres. Police arrest for disturbance and take Torres to the jail. En route, police report that Torres used abusive language and began to kick windows on car, so took him to parking lot, and beat him severely, kicking, hitting with flashlight, while Torres handcuffed. Six officers were involved. Upon arrival at the jail, duty sergeant ordered Torres to hospital. En route to hospital, officers took Torres to bayou, and officer Terry Denson pushed him in. Body found drowned in bayou several days later.	Attorney for Torres is Percy Foreman. Officers given 1 year probated sentence for criminally negligent homicide. Community outcry brings Federal grand jury indictment for violation of Torres' civil rights (October 1977). Federal judge of U.S. district court is Ross N. Sterling. Jury convicted Officers Denson, Stephen Orlando, and Joseph Janish (Feb. 8, 1978) for violation of civil rights leading to the death (felony), and for beating and intimidating, a misdeameanor. Sentencing will be March 28. Officer Louis Kinney received severance for his role as state witness, and will be tried at a later date. Jurors rejected charges that Denson pushed Torres into the bayou, and that there was a conspiracy to cover up. Federal prosecutors were Brian McDonald and Mary Sinderson.
Danny Vasquez, Jan. 22, 1978, Moon City, Tex,	Deputy sheriff called to Moon City reported fight in progress. Officer began to frisk a friend, and Vasquez attempted to explain that this individual had not been involved in the fight. The officer, Sergio Guzman, pointed his shotgun at Vasquez. Vasquez attempted to push the barrel away from himself. Officer stepped back and fired, killing Vasquez. There is evidence of negligent delay in taking Vasquez to the hospital since he did not die immediately. Vasquez had not been involved in the fighting.	El Paso sheriff, Mike Sullivan suspended Guzman with pay, pending a department investigation. Grand jury will investigate, Chicanos Unidos spokesman, Ramon Aroyos demands murder charge against the officer. No Federal involvement at this point.
Albert Zaragoza, Aug. 15, 1977, San Antonio, Tex.	Police officer Eloy Gonzalez was shot and killed. When officer George Castenada arrived at the scene, Zaragoza was there holding a police revolver. He was arrested and handcuffed. Zaragoza had been trying to capture a suspect in the killing. This other suspect was also arrested by Sgt. Richard E. Dominguez, and both were ordered to strip naked. A female witness was brought to identify nude suspects and both were taken to headquarters still nude. Zaragoza received beating.	Zaragoza eventually released and credited with assisting in the capture. Juan Garza illegal alien indicted for capital murder and is awaiting trial. There was a police investigation. Castenada was suspended for 15 d without pay and Dominguez was given a 30-d suspension. No suit has been filed.
Juan Zepeda, Feb. 20, 1977, Bexar County, Tex.	Zepeda arrested at a disturbance at a bar. Arresting officers, Michael J. Henderson, and Clifford Cedotal beat him with blackjacks, reportedly to subdue him. Once at the jail, four guards carried Zepeda into a cell, threw him in, and kicked and beat him. Zepeda was later found dead in his cell.	Bexar County medical examiner Dr. Ruben Santos ruled homicide, that death was caused by a blunt force to the abdomen. Police and prison investigation. FBI investigation, forward reports to the Civil Rights Division of the Justice Department. D.A. investigation (Bill White) after Chief Deputy Sheriff Rudy Garza, finished his investigation. Probe also continues by Justice Department.
Juan Veloz Zuniga, May 19, 1977, Hudspath County, Tex.	Zuniga detained at Sierra Blanca 4 days before his death. Police arrested him for drunken driving. Sheriff Claymon McCutcheon reported that Zuniga went "berserk" in his cell, actually striking another inmate in the Hudspeth County Jail. Sheriff McCutcheon struck Zuniga repeatedly over the head with a sawed-off pool cue. Witnesses report that beating was unjustified. Zuniga died as a result of the beating.	Hudspeth County grand jury investigation Texas Department of Public Safety investigation. No action taken or recommended by grand jury against McCutcheon. FBI investigation indicates possible violation of civil rights. Report forwarded to Washington by Jamie Boyd, U.S. Attorney for Western District of Texas. Entire Hudspeth County investigation a sham. State representative Paul Moreno and community pressuring Justice Department for action.
New Mexico:		
Chris Barreras, Nov. 19, 1977, Albuquerque, N. Mex.	Barreras' wife called police to report a fight she was having with her husband. Upon their arrival Barreras was driving out, and high speed car chase ensued. Car broke down, and Barreras ran on foot until police surrounded him and began to strike on the head. Berreras was handcuffed while he was being beaten.	Barreras booked on felony assault on police officer, resisting arrest, drunk driving, and assorted other charges. There has been an internal affairs investigation by Albuquerque police. It has been completed and is now in the hands of the police chief for his decision regarding any wrongdoing by the officers. Berreras has not yet come to trial in the Bernalillo County District Court. District attorney is Ira Robinson.
Larry Corriz, September 1976, Rio Arriba County, N. Mex.	Corriz and friends arrested on heroin charge. Corriz told to get into his car and leave the scene. As he was driving away, Deputies Steve Martinez and Canuto Martinez opened fire on Corriz, 1 of the bullets striking Corriz in the back. Two deputies made no attempt to help Corriz after they had shot him.	Corriz charged with trying to escape, but suit for $350,000 in damages. Suit assigned to District Judge Edwin Mechem. Suit pending.

BRUTALITY BY LAW ENFORCEMENT AGENCIES: CASE SUMMARIES—BY STATE—Continued

Name, date, and location	Case type	Legal status
New Mexico—Continued		
Jose L. Davis, Daniel P. Hembree, Aug. 20, 1977, Albuquerque, N. Mex.	Officers respond to call about a loud party. An altercation ensued involving both Davis, and Hembree. Officer James Babich beat both with flashlight.	Davis and Hembree have misdemeanor charges pending against them in magistrate court, for assault on a police officer, and resisting arrest. No charge filed against the police officer.
Antonio Devargas, September 1976, Rio Arriba, N. Mex.	Devargas, Raza Unida Party leader, challenged with a gun at a bar by off-duty officer Anthony Griego. Devargas knocked Griego down and punched him. Devargas sent to the State penitentiary for safekeeping. One of the prison guards told Devargas to shave moustache and sideburns. Since Devargas was a county prisoner, State guards had no jurisdiction over him, so he refused. Eight of the guards then knocked him down and beat him.	Devargas charged with aggravated battery against prison staff, but Santa Fe County grand jury dismissed those charges in June 1977. Attorney for Devargas is Richard Rosenstock, who has filed a civil suit against the State penitentiary. Suit is now pending. According to Rosenstock, the arrest and jail incident are very political since Devargas very active in trying to oust political boss, Sheriff Emilio Naranjo, and was candidate for Rio Arriba county commissioner.
Jose Gamboa, Virginia Gamboa, Simon Gamboa, Raymond Trigueros, and Romona Trigueros, Mar. 1, 1974 Columbus, N. Mex.	These individuals crossing the border, ordered to halt by customs and border patrol agents. The 5 were then beaten by these agents.	These individuals have filed a $10,000,000. suit for damages. Suit is pending. The 5 were charged with assaulting Federal officers, taken before the U.S. Magistrate in Deming. Then taken to Albuquerque for trial, and charges were dismissed. Part of the suit by the 5 involves the harrassment and inconvenience caused by these unfounded Federal charges.
Alven Montoya, August 1975, Albuquerque, N. Mex.	Montoya and his son were working on their pickup truck. Officers investigating an auto burglary. Montoya charged that police officer knocked down his son and kicked a tire into the boy's stomach. A skirmish evolved and Dr. Keith Harvie testified that his examination showed that Montoya had 3 broken ribs and a bruised lung the next day as result of beating.	Montoya filed a $200,000 civil suit charging city police officers James Rogers, Cliff Jenkins, and John A. Sanchez with the beating. The Federal jury ruled in a unamious verdict that officers were not liable. Attorney for the officers was Mark Meiering, and for Montoya, Manny Aragon, who has filed an appeal.
Andrew Ramirez, Nov. 10, 1977, Albuquerque, N. Mex.	Ramirez' mother called police to have them remove her son from the house since he was drunk and being abusive. In the house, police began to beat Ramirez repeatedly over the head with flashlight (Officer James Babich). Ramirez was dragged out of the house, administered no first aid by the officers, and was dead on arrival at the hospital.	No suspension of Officer Babich. Internal affairs division conducting an investigation. A preliminary autopsy by the medical examiner shows that Ramirez died from brain hemorrhage, "possibly" from blow to the head. Results of investigation pending. Babich has definite history of such behavior (See Davis, Jose, above).
Colorado:		
Arthur Espinoza, James Hinojos, July 30, 1977, Denver, Colo.	Officers arrive at park after reports of shootings. Witness state that plainclothes, vice officers John O'Dell, Gary Graham, and David Neil, with no identification, jumped out of their cars, shooting at Espinoza and Hinojos who were lying on the grass. Both were killed. Officers say that Espinoza moved as if drawing for a gun. Both victims were well over the legal level of intoxication.	Community uproar over the killings, calling for Justice Dept. investigation. Grand jury has indicted David Neil, but cleared both O'Dell and Graham. Neil has not been suspended from the department. Investigating District Attorney Dale Tooley, has had a poor record concerning Chicano-Anglo matters. Attorney for victim's families, Kenneth Padilla, has called for a special prosecutor. Children of Espinoza have filed a civil rights damages suit of $4,000,000. Attorney handling this suit is Walter Gerash. Similar suit expected for Hinojos. Community convinced of coverup. Detectives who did shooting, left the scene immediately.
Robert Fernandez, Aug. 26, 1977, Pueblo, Colo.	Fernandez' wife called police to enforce restraining order she had obtained to keep her husband away when he was abusing her. Officers Henry Chapman and Timothy Pepin arrived and placed Fernandez under arrest. Wife states that Fernandez indicated that he was going to put down his beer can and in the process accidentally touched the sleeve of 1 of the officers. At this point officers began to beat with clubs and did not stop until Fernandez was dead.	District Attorney Joe Losavio filed criminal charges against patrolmen for criminally negligent homicide, based on coroner's inquest. Trial set for March 1978. Community outcry at the lesser charge, a misdemeanor. Widow has filed a $16,000,000 civil suit for wrongful death against the city of Pueblo, the district attorney, the chief of police, and the officers involved. The district attorney was at the scene of the killing shortly after, and he is accused of collaborating with police to cover up the evidence. There is presently a motion to recall the district attorney. Attorneys for the widow are Edwin K. McMartin and Michael Kelly. Officers Chapman and Pepin transferred to desk jobs, generally considered a promotion. No Federal involvement.

BRUTALITY BY LAW ENFORCEMENT AGENCIES: CASE SUMMARIES—BY STATE—Continued

Name, date, and location	Case type	Legal status
Colorado—Continued		
Dennis Lucero, May 5, 1976, Denver, Colo.	Lucero was walking home, and had an exchange of words with James Connely. Connely, a private citizen, went into his house, brought out his shotgun, shot and killed Lucero. State law enforcement whitewash ensued (see opposite).	Judge ignores community pressure to change original manslaughter charge. Police department melted the shotgun used to kill Lucero, so charges against Connely were dropped, since shotgun was the main piece of evidence.
James Montoya, Roger Montoya, and Robert Montoya, Apr. 10, 1976, Denver, Colo.	Reported fight at LULAC Club 2823. Officer claims that Robert Montoya, the father of James and Roger, attacked him. Chief of detectives for Bernalillo County Sheriff's office, Orlando Padilla, shot and killed Robert and James, and shot and wounded Roger.	On November 13, 1976, Padilla acquitted for the killing of Robert, but convicted by the jury of voluntary manslaughter in the shooting death of James, and for aggravated battery in the wounding of Roger. District Judge Joseph Baca sentenced Padilla to 2 concurrent prison terms of 2–10 yr. Padilla out on $25,000 property bond pending appeal. Padilla's attorney is Leon Taylor. The chief deputy district attorney is Robert Martin.
Joe Roy Sanchez, June 2, 1977, San Luis, Colo.	Sanchez, who had been drinking, was in a local store waving around a .22 he had in his possession. Deputy Dave Marcus arrived at the scene, and there was a verbal exchange between the deputy and Sanchez. The officer purchased a pack of cigarettes. The girl at the counter testified that the deputy had his gun in hand while he was paying for the cigarettes. Marcus struck Sanchez in the head with the gun. Sanchez fell back, and his gun discharged. Marcus fired 6 shots, striking and killing Sanchez.	Coroner's inquest ruled that there was no cause for charges. Community felt that the testimony allowed was biased in favor of the deputy since court presented personal background of Sanchez in detail, but none at all on Deputy Marcus. The Sanchez family will file a civil suit in the State court for the sum of $1,000,000, naming the county commissioner, the sheriff, and Marcus. Petition for suit has already been filed. Deputy Marcus was reinstated into the department after having been on temporary leave with pay.

Mr. EDWARDS. You may proceed, Mr. Ralston.

Mr. RALSTON. Thank you, Mr. Chairman.

We have set out in our statement generally some of the considerations that we think show that the Civil Rights Commission should be extended for at least another 5 years.

We come to the question from the perspective of an organization involved in litigating cases in the civil rights area. The work and the reports of the Commission have been extremely useful to us in a number of ways.

One way in particular—has been reports regarding the status of civil rights in a variety of areas. I give particular examples in my prepared statement of school desegregation cases, where reports of the Commission have been utilized by litigants and by the Supreme Court and other courts in judging and deciding some extremely important issues.

The reports have given to the courts and to those involved in litigation a broader perspective than may appear simply from the facts of a particular case. This public information function is of great use, and no one else, no other institution that I know of, has the capacity to do it or, has the kind of experience and expertise in the area to produce the kind of reports that the Commission has.

Another of our chief concerns in recent years has been the proper enforcement of the civil rights laws by the various agencies of the Federal Government that have been given this responsibility by Congress.

The reports of the Commission have been detailed, extensive, and extremely helpful in pointing out what it has found, through its investigations, to be deficiencies and strengths in these enforcement areas.

Again, I give an example in my statement. We have been, over the last 5 years, involved in litigation concerning discrimination in employment by Federal Government agencies. There have been some very difficult problems and questions concerning the adequacy of enforcement by the Civil Service Commission, which was given the authority and responsibility to enforce employment discrimination prohibitions with regard to Federal agencies. The Civil Rights Commission, as part of its comprehensive studies and reports on the enforcement effort, produced a very detailed analysis of what was going on in the Civil Service Commission, and I think those reports were certainly of help to us and to the courts in resolving some of the legal issues.

Now, this monitoring function, we believe, is going to be extremely important in the next 5 years. I have to update my statement, since at the time it was prepared, the President's reorganization proposal for EEO enforcement had not been presented. It now has been presented and it contemplates extensive reorganization of the entire Federal EEO enforcement machinery.

We think it's imperative that the machinery that is set up under that reorganization plan, assuming that it is not disapproved by the Congress, be monitored carefully by the one agency that is equipped to do that, the Civil Rights Commission. It's been doing it for a long time. It has the expertise and knowledge of the background of civil rights enforcement and what the problems are, and has an overview of the problems and issues that no other agency has.

Hopefully, under the reorganization plan, everything will operate smoothly. But I believe it's essential that monitoring go on and that the Civil Rights Commission be able to prepare reports that will give the information necessary to the Congress, to the courts, and to the public so that an informed judgment can be made as to the adequacy of the new reorganization machinery that's been set up.

With regard to the State advisory committees, just very briefly, I have looked at some of the materials that have been put out giving the reasons why it's been decided to abolish the State advisory committees and set up regional committees. And quite frankly, I've not been overwhelmingly impressed by them. I don't see any articulated rationale as to why the job the advisory committees have been doing at the State level can now be done as well on a regional basis. I doubt if it can.

Mr. EDWARDS. Mr. Ralston, it's an idea that has very few friends.

Mr. RALSTON. Yes. For that reason, we strongly support the language of the House bill, which would mandate the retention of the State advisory committee.

My last comment is really in relation to the question asked by counsel of the last witness regarding the extension of jurisdiction over age and handicapped discrimination. We support that. We would like to see sufficient additional resources provided the Commission so that that job can be done without detracting from the job it is already doing in the areas over which it has present jurisdiction.

Mr. EDWARDS. Thank you, Mr. Ralston.

Our next witness is Mr. Perez.

TESTIMONY OF AL PEREZ, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

Mr. PEREZ. Thank you.

My name is Al Perez, and I'm the director of the Washington, D.C. office of the Mexican American Legal Defense and Educational Fund, MALDEF. I want to thank you and members of your subcommittee for this opportunity to present testimony on H.R. 10831 extending the authority of the U.S. Commission on Civil Rights.

MALDEF is a leading organization in pursuing the civil and constitutional rights of the Mexican American community. In this effort, our work is closely related to the duties of the Civil Rights Commission as spelled out in 42 U.S.C. 1975 c.

The work of the Commission in struggling for the civil rights of people has been admirable; this is particularly true in the research the Commission has provided to the Congress, the President, and to public-interest organizations such as MALDEF.

We support H.R. 10831 extending the life of the Commission. However, MALDEF does have some concerns with the policies adopted by the Commission and with the operation of the Commission.

It has been a source of concern to MALDEF that the Commission makes policy decisions without fully considering the views of the Mexican American community. MALDEF is also concerned about the apparent disregard that the Commission shows for issues of vital concern to the Mexican American community.

It would appear that the Commission's input from the Commissioners and from the State advisory committees would provide a forum by which Mexican Americans could articulate their concerns to the Commission.

However, it is evident that the Commission has a third connection that constitutes a major influence on the Commission's policies and operations. The third connection is comprised of civil rights organizations that traditionally have not represented the interest of Chicanos.

It has been our experience that the Commission's antennae is very much tuned in to these civil rights groups. This, per se, is not a problem; it only becomes a problem when the Commission is influenced by outside interest groups to take a course of action that is detrimental to the interest of the Hispanic community.

For example, in late 1974, the Commission decided to terminate the portion of a voting rights project that dealt with the voting problems of Mexican Americans and Puerto Ricans. I refer you to exhibit A, attached, wherein the decision to terminate is discussed in a staff memorandum.

The only way that we can interpret exhibit A is that the Commission does have sensitivity for Mexican Americans; it does have knowledge of Mexican Americans; it does have an understanding of Mexican Americans; however, the Commission just doesn't care enough about Mexican Americans.

MALDEF's concern with the operations of the Commission centers on the lack of aggressive action on issues identified for the Com-

mission by Mexican American organizations. While no one expects the Commission to respond to every request for assistance that it receives, we do expect the Commission to aggressively pursue issues that present broad elements, that appear to show a prima facie case of voting discrimination, and that can result in an immediate and substantial improvement in the civil rights of people.

MALDEF presented such an issue on June 22, 1977; unfortunately, the Commission, after acknowledging that a problem existed, passed the buck to the Department of Justice.

This issue involved a request by MALDEF to the Commission for assistance in remedying a major problem concerning gross malapportionment in some Texas counties. MALDEF had received complaints from Mexican Americans that in some Texas counties there were severe violations of the one-person, one-vote principle; the complainants alleged that the violations were due to malapportionment and alleged further that the malaportionment was directed at Mexican Americans.

MALDEF spent a considerable amount of time collecting information on these complaints and we came up with a list of approximately 40 counties in Texas wherein there appeared to be malapportionment against Mexican Americans.

The list of counties is set out in exhibit B–1. One of these counties had not been reapportioned since 1884. This list was sent to the Commission, along withour letters, exhibiting B–2, asking for assistance.

Forty-seven days later, on August 8, 1977, the Commission responded. The Commission's letter of response, which is exhibit B-3, stated inter alia that—

> there appears to be significant underrepresentation of Spanish-surnamed citizens and that it was also apparent that some counties failed to live up to the constitutional requirement of periodic reapportionment on one-person, one-vote principles.

After the evidence presented by MALDEF and the conclusions drawn by the Commission, one would have expected the Commission to vigorously investigate the complaints; this, however, did not occur. The Commission, instead, passed the buck to the Department of Justice by asking the Department to investigate.

This issue had all the elements that would call for aggressive action by the Commission. It involved a voting issue, and, as this subcommittee knows, investigating allegations of voting rights violations is the first duty imposed on the Commission by 42 U.S.C. section 1975c (a)(1); the allegations were supported by substantial documentation that had already been prepared by others; the Commission acknowledged that an apparent voting problem existed; the allegations could be proven by the simple acquisition of data from the Bureau of the Census; and a vigorous Commission investigation would have resulted in an immediate and dramatic improvement in the voting rights of Mexican Americans in Texas. The Commission just did not care enough to do anything about it. However, the Commission's voting rights work must continue. For example, a good report is needed on the Department of Justice's implementation of the 1975 Amendments to the Voting Rights Act.

Presently, Mexican Americans are extremely concerned about the issue of immigration. We understand that the Commission has a project underway in this area. We strongly suggest that if the Commission does field research or holds field hearings, it should give top priority to the Southwest where the immigration issue is having a major impact on the civil and constituional rights of Mexican Americans.

It is my understanding that the Commission has held hearings in New York and it is now holding hearings in the Southwest.

Mexican Americans are also very concerned with the wave of policy brutality that has swept over the barrios. In the past 2 years, four Mexican Americans have been essentially murdered by police officers in Texas. We understand that the Commission has authorized a police brutality study; it is paramount that the Commission expedite this study and that cities such as Houston, where both blacks and Chicanos have experienced police abuses, be given priority. Attached is exhibit C which lists 30 cases, including 16 killings, of police brutality against Mexican Americans in the Southwest.

This subcommittee needs the research the Commission will do in these two areas and it needs it timely. I would urge, therefore, that this Subcommittee exercise close oversight over the progress of these two projects.

This concludes my testimony, and I will answer any questions you might have.

Thank you.

Mr. EDWARDS. Thank you, Mr. Perez.

I might suggest that your organization should have gotten in touch with us right away. As you know, we wrote the bill that included Texas in the Voting Rights Act and we also are most interested in the police brutality cases.

So, when you advise the Commission or the Department of Justice about something, if you would also advise us, we can be of considerable assistance.

Mr. PEREZ. We have sent the information to your office, sir.

Mr. EDWARDS. Recently?

Mr. PEREZ. Recently.

Mr. EDWARDS. But only most recently. It would have helped if it was in the beginning. We are very anxious to have that Voting Rights Act work, and there is no way we can find out if it's working unless we are advised as to the experience of minorities in various parts of the country, and especially in Texas, where the whole State is covered, much to the distress of a number of State officials.

Mr. PEREZ. We try to work with the agencies initially, Congressman Edwards, assuming good faith on the part of the Commission and on the part of the Department of Justice. We don't like to resort to the Congress unless it's absolutely necessary.

Mr. EDWARDS. Well, you're most welcome.

Now our next witness is Ms. Allen.

Ms. ALLEN. Good morning, Chairman Edwards, and members of the subcommittee.

My name is Ann Allen, and sitting next to me is Sophie Eilperin. We're both members of the Women's Legal Defense Fund, and are

substituting today for Judith Lichtman, the executive director of the fund, who is not able to be here.

We are also testifying on behalf of the Federation of Organizations of Professional Women, the National Women's Political Caucus, the Women's Equity Action League, and the Women's Equity Action League Fund.

Together, these organizations represent over half a million women and are concerned with a wide range of forms of discrimination against women.

All the women's representatives support the extension of the Civil Rights Commission, as proposed in H.R. 10831. Speaking on behalf of the women's rights organizations, we would like to direct our remarks to the importance of the Commission on Civil Rights in the field of women's rights and interests.

The U.S. Commission on Civil Rights has had jurisdiction over sex discrimination issues only since October 1972. In the succeeding 5½ years, it made a remarkable beginning in establishing itself as a national source of information on women's rights. It has advocated and worked to achieve equal treatment of women in many critical areas, has influenced major legislation affecting women, such as the Equal Credit Opportunity Act, and has monitored the actions of the Federal agencies themselves in prohibiting sex discrimination in the administration of Federal programs.

Let me give a few examples of the Commission's activities in the area of women's rights.

The Commission's major output in implementing its sex discrimination jurisdiction has been in its publcation of reports dealing with a wide range of subjects, such as minority and women contractors, mortgage financing, and a guide to Federal laws prohibiting sex discrimination.

The last is a particularly useful publication.

Several of the State advisory committees have reported on local problems of sex discrimination, and in the summer of 1974, the Civil Rights Commission held open hearings in Chicago, Ill., on the subject of women and poverty.

In addition, the 1974 Federal Civil Rights Enforcement Effort Report, a critque of Federal antidiscrimination programs, included coverage of efforts to eliminate sex discrimination in federally assisted programs and within Federal agencies themselves.

We feel that the function of the Civil Rights Commission in the area of discrimination does not duplicate the work of other organizations in its field. There is no other single organization, either governmental or private, which serves as a central depository of information critical to women in the way that the Civil Rights Commission has done and continues to do.

Ms. EILPERIN. We definitely feel that the Commission has not fulfilled all of its responsibilities that are under its jurisdiction in sex discrimination.

For example, the Commission has not yet issued a report on its 1974 Chicago hearings. This delay, severely weakens the import of the hearings because the statistics and the data would be out of date by the time the report is completed.

The Commission needs to commit more staff power to this issue. It should also act more expeditiously on such a major project.

There are other areas of concern where we feel the Commission must do more work. Among these are discrimination against women in insurance, both as beneficiaries and as employees. An enforcement study of the Equal Credit Opportunity Act would be extremely useful in monitoring enforcement of that law.

The Commission should also increase its efforts to disseminate expertise in specialized areas in which women are particularly involved.

For example, last month the commission drew together experts on abused women and the leaders of organizations that attempt to help such women.

This type of technical assistance to women's groups is exactly what our organizations need but do not have the resources to provide themselves.

H.R. 10831 would give the Commission jurisdiction over discrimination against the aged and handicapped. We support that proposal.

The Commission has done such useful work for other groups that have needed assistance that we feel that age and the handicapped should also be included in their efforts.

Since elderly women greatly outnumber men in higher age bracket, and since they're persons who have been burdened with the double handicap of age and sex, we hope that the committee will give special attention to their situation.

Finally, I would like to affirm my support of the present organization of the Commission's State advisory committees. These serve an invaluable role in providing for grassroots participation in anti-discrimination efforts.

Let me conclude by saying that the U.S. Commission on Civil Rights has performed a valuable function in working to assure equal rights for all. It has been a watchdog agency, a disseminator of information, an advocate for equal justice.

There is no other governmental agency which analyzes the context of social problems with the sympathy and the accuracy and the scope of the Commission's reports.

There is also no other Federal agency monitoring the other agencies which perform civil rights functions, although the Civil Rights Commission has not done as much as it could to implement the sex discrimination mandate.

Yet, it has made a useful beginning in the field of women's issues and should be allowed to continue in this work.

Mr. EDWARDS. We thank all of the witnesses.

The subcommittee will recess for 10 minutes for a vote on the floor.

[A brief recess.]

Mr. EDWARDS. The subcommittee will come to order.

We thank all of the witnesses for very helpful statements. Except for Mr. Perez, the members of the panel all thought that the Civil Rights Commission was doing a pretty good job. But you have identified some real problems, Mr. Perez, and think that the Commission should pay quite a lot more attention to our second largest minority in the United States, the Spanish-speaking people.

Correct?

Mr. PEREZ. That's correct, Mr. Edwards.

And, essentially, we feel this way because there's Hispanic problems and we anticipate that it's going to increase in severity, as opposed to decreasing in severity.

So, I think right now is the time to lay the groundwork to tackle the issues of civil and constituional dimensions, particularly when, as you know, the Congress, now faces the Carter plan on immigration. And we feel that the increasing Hispanic population, particularly the illegal alien, will lead, inevitably, to a lot more problems for us.

Mr. EDWARDS. Does your organization have a position on illegal aliens?

Mr. PEREZ. Since January of 1976, we have been working with the administration, the Domestic Council, the Departments of State, Labor, and the Attorney General's office on this question. And after it released the bill to the Congress on the undocumented alien issue, MALDEF did a 45-page analysis which states our position quite clearly and quite analytically.

Mr. EDWARDS. While immigration is not within the jurisdiction of this subcommittee, we do have a keen interest in constitutional and civil rights of all people.

I know that a number of members of the subcommittee have expressed great concern over some of the legislative proposals which would probably result in discrimination of persons with Mexican-American backgrounds who might be discriminated against, even if they are legal residents or citizens under this legislation.

But what about the Civil Rights Commission itself? Does it have an appropriate number of Mexican-Americans or Puerto Ricans in high positions on the staff?

Mr. PEREZ. Well, right now, as you know, the Acting Director is a Puerto Rican and the person who runs the General Counsel's Office is Mexican-American.

We have one Commissioner on the Commission. I think we'd lack representation at the overall Commission composition and I think we'd like representation at the midmanagement positions of the Commission, where many of the policy determinations start and are sent up to the Director and to the Commissioners.

I have been meeting regularly with some Hispanic people at the Commission whose main complaints are two: One, the representation in the Commission, employmentwise; and two, the operations of the Commission.

Mr. EDWARDS. These brutality cases that you have documented and which are a part of the record, I know of some of them, of course, and we have been working on some of them.

Are these cases that your organization feels are violations of Federal criminal code—more particularly, title XVIII, section 241 and 242?

Are all of these cases violations of these Federal statutes, to the best of your opinion?

Mr. PEREZ. Yes, it is.

As you know, the Department of Justice has acted on some cases, particularly the Torrez case in Houston and another case in San

Antonio, on the basis of Federal statutes. And we feel that it has the authority to act on those also along the same lines.

Mr. EDWARDS. Well, then, we trust that you will keep in touch with members of the subcommittee and members of the staff on this particular issue, because there is always a danger of widening the jurisdiction of the Civil Rights Commission, which will result in less attention to issues which go to the very basis for its formaton.

Mr. Ralston, I'll direct this question to you.

For many years, the NAACP had reservations about extending the jurisdiction of the U.S. Commission on Civil Rights because it was the opinion of the NAACP that this would result in less determined effort to right the wrongs of black Americans in the United States.

How do you feel about that now?

Mr. RALSTON. Mr. Chairman, I just might say for clarification, I do represent the NAACP Legal Defense Fund, which generally takes its own position. I'm not familiar with earlier position of the NAACP itself. I think our view is that civil rights are indivisible; if any substantial group in the country is denied civil rights that affects the civil rights climate, generally.

I think our concern, though, and I think this is probably the consideration that led to the NAACP's views, is that if the Commission's jurisdiction is going to be expanded, that it be given the resources necessary to handle that expanded jurisdiction, that the same staff and the same amount of money is not expected to do more and more and more because there comes a point where everything gets diluted and nothing gets done effectively.

That's what essentially we said in our statement. I think that everybody would agree that if the resources are not there, then no one is going to get any benefit from an expansion of jurisdiction, or relatively little benefit.

Mr. EDWARDS. I will yield to counsel now.

Ms. DAVIS. I'd like to follow up on the chairman's question to Mr. Perez regarding the Commission's staffing and the representativeness of the State advisory committees.

I address the following question to each panelist as to whether, one, the staffing within the Commission itself, both its Washington office and its regional offices, is representative of the groups that it seeks to review, and second, how representative are the State advisory committees?

Ms. EILPERIN. I'm afraid we don't have the information to answer that question directly. But would you mind if I made a statement about the composition of the Commission itself?

There is one vacancy on the Commission, and although Commissioner Freeman has been wonderful in emphasizing sex discrimination issues in the Commission and in helping the Commission make difficult decisions, it would be a great help if the other appointment was of a person who's also equally concerned about sex discrimination.

So although I'm not familiar with the staffing of the Commission itself, I understand that the Commission itself could be improved in that respect, of having more women representatives.

Ms. DAVIS. My question is directed to whether the Commission's record is better than other Federal agencies or departments—do you have a sense of that at all.

Ms. EILPERIN. Probably from the point of view of women, yes.

Ms. DAVIS. Mr. Perez?

Mr. PEREZ. Just in relation to the last question, I also agree that its record compared to other agencies is more admirable.

However, we're also talking about a clientele. I think the commission has to structure its employment along the lines of the clientele it serves and the clientele that needs emphasis, as far as investigatory powers are concerned.

From that respect, I think the Hispanic population employment-wise, in the Commission, is underrepresented, as seen from the perspective of the problems that this community has.

Ms. DAVIS. What about the State advisory committees?

Mr. PEREZ. I have not received complaints from Chicano organizations, along the lines that they object to the composition of the state advisory committees that the Commission has, particularly in the areas of the country where you had high Hispanic population.

I have not received complaints along those lines as much as I received complaints about the employment of the Commission here in Washington.

Ms. DAVIS. I would like to discuss the issue of Commission staffing vis-a-vis the Commission's handling of the voting rights project in 1974. Is it your view that this problem might have been avoided if there had been larger numbers of Hispanics at the midmanagement level.

Mr. PEREZ. Yes. First of all, I don't want to leave the impression here that this is a black-brown issue. I think it's an issue of civil rights and constitutional rights and that's what I'm here for.

And second, it's a matter that, if you increase the policymaking representation of Hispanic, then, obviously, you're going to increase the end product as to what the Commission does.

We just haven't had the representation, either at the commissioner level—we have one, I think, out of 7 or 5, I guess.

At the present, the acting director has only been acting present director for the past 2 or 3 months. So that there's a lack of input at the different midmanagement levels of the Commission, as far as policy, which eventually results in what the Commission does.

The Commission moves when it wants to move in a direction that it wants to move. We don't have the kind of persuasion on the Commission that would say to the Commission, "Look, we have a problem here. You ought to move on this." We don't think we've got the responses to the problems I think the problems merit.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Starek?

Mr. STAREK. Thank you, Mr. Chairman.

Mr. Perez, in your statement on page 2, you make a statement on which I would like you to expand.

It says that the Commission is influenced by outside interest groups to take a course of action that is detrimental to the interest of the Hispanic community.

Please expand on what you mean and give us some examples.

Mr. PEREZ. Well, back in the early days when we got involved in expanding the voting rights in Texas, there was a study being conducted by the Commission which would investigate the problem of Mexican-Americans and Puerto Ricans in the area of registration and voting.

Many people were given high expectations that the Commission would come out with something concrete and positive as far as the problems we had in the Southwest or the Northeastern sector.

So they even went to the point of talking to people, holding interviews and talking to organizations; building up this hope, only to have that portion of the project, as far as the Hispanic problem, crossed off when they got down to writing the report.

I think it does a lot of damage to people's hopes and inspirations to tell them that something's being done as far as their civil rights and constitutional rights problem, and at the very end, dash them like was done in this instance.

Mr. STAREK. What are some of the outside interest groups that may influence the Commission?

Mr. PEREZ. Well, my statement, I think, is general enough and broad enough to satisfy your interests.

Essentially, there was a well-known civil rights subculture in Washington, D.C., and I have to say that in the past 3 or 4 years, we have made major gains as far as being able to work together with those goals in the groups in Washington, D.C.

And so, there is a problem as far as certain influences in the Commission. But since I have been working on this particular job, I think there's been great progress made in being able to deal with the legal defense here and with the women's groups and the different other civil rights groups that have their offices here in Washington.

Mr. STAREK. Since you have been involved with the Commission, you have not found outside interest groups competing or working hard to influence particular studies or particular commissioners.

Mr. PEREZ. Oh, no. There is an attempt to persuade the Commission to one thing or the other, but I think it's entirely legitimate in Washington, D.C. That's how the Government operates.

Mr. STAREK. I have one other question.

At the conclusion of your prepared testimony, you urged the subcommittee to exercise close oversight over the progress of two particular projects assume that you are referring to the Commission as a whole?

Mr. PEREZ. Yes. As you might well know, that the Senate starts its hearings on the immigration package next week. As of yet, the Commission, as far as I know, doesn't have a position on the civil and constitutional rights implications of the administration's plan to control illegal aliens.

And so it seems to me, that the Commission's immigration project should be concurrent with whatever happens in Congress. And so, I urge the subcommittee to make sure that the Commission try to finish its work in the immigration field as soon as possible, for the information to be current and be of value to the Congress.

Mr. STAREK. I notice from the testimony of the women's groups, that there were hearings held in Chicago in the summer of 1974, and, yet, we still have not received any reports.

Have any of you found this rather blatent delay to be a problem for the Commission?

Is this tardiness in receiving reports a recurring situation with the Commission?

Ms. EILPERIN. My recollection—I worked at the Commission from 1968 to 1972, and the delays got progressively worse.

I think one reason for them is that the Commission, as has been pointed out, determines its own agenda, and there is a great deal of time spent determining agenda, fighting over projects, fighting even over the completion of projects that have been started and dropping them, which I agree is a very poor practice.

I do not know exactly why it has taken so long to write up the Chicago hearing, but I'm sure this kind of problem, setting priorities, attributes to it.

I don't know how that can be solved. I suppose increased resources helps, although resources, money, is not always the answer to hard decisions. A certain pressure on the Commission to complete its work, once it's undertaken, I think is helpful. And there may be some lack of urgency now that enables it to procrastinate sometimes when it shouldn't.

Mr. STAREK. Mr. Ralston, in your statement you compliment the Commission on some of its reports and note how helpful they have been to you on certain legal issues. What is your feeling about the Commission's timeliness?

Mr. RALSTON. I don't think in the work that we've done we've run into anything like a delay, like a 4-year delay.

I think there's obviously going to be some time lag.

A couple of the reports, if you look at the dates on them, indicate 1 to 2-year delays. The particular reports that are referred to in my statement were still of value, even though there was that kind of a time lag.

I think there's always going to be a lag, in terms of when the data is collected, and when the report comes out, if it's going to be a comprehensive report.

So I'm not aware of any reports that we have used that had that kind of a delay. I think a 4-year delay, as you pointed out, is much too long, because the data is all out of date when it comes out.

Mr. STAREK. I have one final question for the group.

Do the other witnesses agree with Mr. Perez that the subcommittee should exercise vigorous oversight of the Commission? I am wondering if you are familiar with the final part—section 7—of this legislation which authorizes the Commission to be extended for 5 years without an authorization ceiling.

The Commission has had an authorization ceiling since 1968 after its last extension, the Commission came to this subcommittee on two occasions to have that ceiling increased.

Since it had to come back to the subcommittee for an increase in its authorization, the Commission's conduct and operations came under close scrutiny by the subcommittee, which I believe is of great value to the effective operation of the Commission.

Would the witnesses here today favor an open ended authorization for the Commission, or do you feel that the Commission should have a ceiling?

Ms. ALLEN. I'd like to support the open ended approach. I think putting a ceiling on the authorization doesn't really add an extra check on the Civil Rights Commission's activities or make them any more responsible than they are under the annual appropriations procedure. And I also worked on the staff of the Commission from—in my case, 1969 to 1972. And at that point the ceiling was so unrealistically low, we literally didn't have enough money at the end of a fiscal year. And we did a few projects that were not the best that we could have done, simply because it was all we could afford. So I think such a ceiling can be self-defeating.

Mr. STAREK. Would any other witnesses like to comment?

Mr. PEREZ. My view is that every agency of the Government should be subject to review periodically as to their function. And so if it can be done without destroying effectiveness of the Commission, I'd prefer that. If it can't be done like that, then I'd prefer to have more hearings periodically.

Mr. STAREK. Thank you very much.

Ms. DAVIS. I have one final question to address to the panel.

You've all worked with the Commission over a period of years, and you've seen its jurisdiction expanded to include additional groups.

Has these been an increasing tendency by the Commission to do analyses which discuss the impact of an issue on all the various groups or are their analyses limited to specific groups.

Mr. RALSTON. I think it depends on the study.

I think, for instance, the series they did on Federal civil rights enforcement efforts, they tried to deal efficiently with various groups involved. I think other times they've done specific studies, for example some of the studies that I cite in my statement dealing with Hispanic educational opportunities in the Southwest. I've had the impression, although without reviewing everything in detail, that they've been reasonably flexible, depending on the nature of the study.

Mr. PEREZ. Well, the original Commission's—back in 1969, I guess the Commission was doing studies with specific problems of certain sectors of its population. And so they did studies on blacks and the Mexican-American educational study. At some point they determined they weren't going to be doing this anymore, that from now on they would now focus on issues and cover the different ethnic groups that had problems with those issues. And so we were led to believe this was a new policy. But just more recently, for example, they have done studies on Puerto Ricans specifically. I think Puerto Ricans should be studied but it doesn't go with the policy they had set 3 years ago, as far as approaching the issues from a—or approaching their work from an issue orientation as opposed to an ethnic orientation.

The other thing is that you can choose issues which might not be germane as far as in relationship to certain ethnic groups. So that's one way to also get around the policy of approaching issues generally, and I've seen that happen in the Commission recently.

Ms. DAVIS. Unless you want to respond——

Ms. EILPERIN. The Commission has attempted to cover sex discrimination in its across-the-board studies, and where it has done that, that has been very useful. And, of course, that is the most economical way of covering all groups.

On the other hand, it fortunately has continued also to deal with specific issuese of concern of special groups, and that, I think, is also very important.

Ms. DAVIS. I have no further questions.

Mr. EDWARDS. Our thanks goes to all the witnesses for very fine testimony. We appreciate it very much.

And let me remind all of the witnesses that the subcommittee, is always anxious to hear about what's going on out there in the real world. We have a large support, not only for the legislation but for the oversight of this agency and others. We do want to hear from you, whether it's to me or to the staff.

Thanks very much for your testimony today.

Mr. RALSTON. Thank you, Mr. Chairman.

Mr. PEREZ. Thank you

[Whereupon, at 11:55 am., the subcommittee adjourned.]

U.S. COMMISSION ON CIVIL RIGHTS AUTHORIZATION EXTENSION

FRIDAY, APRIL 14, 1978

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 9:30 a.m. in room 2237 of the Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Drinan, Butler, and McClory.

Staff present: Ivy L. Davis, assistant counsel, and Roscoe B. Starek III, assistant counsel.

Mr. EDWARDS. The committee will come to order.

Today, we continue hearings on H.R. 10831, a bill to extend the life of the U.S. Commission on Civil Rights.

Our first witness this morning is Clifford J. White III, legislative representative, of the National Taxpayers Union.

The National Taxpayers Union is a privately funded, nonprofit, nonpartisan group dedicated to assuring that the legislative and executive branches of the Federal Government pursue fiscal responsibility. Most of their work involves monitoring how our taxpayer dollars are spent.

I yield to the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

Since we are considering a 5-year, open-ended reauthorization of the U.S. Commission on Civil Rights, I believe it is important for the subcommittee to receive testimony from a wide range of citizens familiar with the work of this Commission.

Thus far, the subcommittee has held 3 days of hearings and every witness has echoed resounding support for the activities of the Commission. I am not convinced that this subcommitee has received an accurate reflection of the country's view of the work of the Commission.

I do not necessarily ascribe to or disagree with the opinions which will be expressed by the witnesses today. However, I think it important that the subcommittee hear from witnesses who have views which are different from those expressed by our previous witnesses and those held by the staff of our subcommittee.

It is my hope that the testimony today will enable us to obtain a more thorough and balanced perspective on the current and prospective operation of the Civil Rights Commission.

I thank the witnesses for today taking the time to appear and share with us their ideas on the future of the Civil Rights Commission.

Mr. EDWARDS. Mr. White, we welcome you this morning and you may proceed.

Mr. WHITE. Thank you.

TESTIMONY OF CLIFFORD J. WHITE III, LEGISLATIVE REPRESENTATIVE, NATIONAL TAXPAYERS UNION

Mr. WHITE. Mr. Chairman, I suppose that it might seem strange that an organization such as the National Taxpayers Union which is already waging battle for fiscal responsibility on several fronts would concern itself with a bill to extend the life of the U.S. Commission on Civil Rights.

The reason we are involved is principle. We believe it is very important that the taxpayers' dollars be looked after carefully. The planned 5-year reauthorization of the Commission is counter to recent trends in the direction of more budgetary control. The unspecified cost is also violative of this objective.

While Federal spending continues unabated, the Congress has at least paid lip service to the idea that some control is necessary. The House and Senate have formed budget committees; sunset legislation is popular.

The authorization before this subcommittee, H.R. 10831, is counter to that trend. It represents a step backward. It is a throwback to the free-spending and free-wheeling days which I hoped had finally ended in Washington.

The NTU opposes H.R. 10831, and urges that reauthorization of the United States Civil Rights Commission, if such is deemed desirable, should be for 1 year. We further ask that the authorization should include a target funding level. This would accomplish the objective of increasing congressional oversight and reaffirming the sunset principle.

As legislative representative of NTU, I represent thousands of Americans who are organized through the National Taxpayers Union and affiliated organizations throughout the country.

While the legislative staff spends the majority of its time and resources dealing with budgetary items which are more costly than the $11 million spent annually by the Civil Rights Commission, we feel that the very concept of sunset and budgetary restraint is at stake.

Although NTU has expressed skepticism about the gains which might be accrued from the sunset principle, we are committed to limiting the lifetimes of all authorizations. We believe Congress should more frequently and more carefully review how it is spending our tax dollars. We should offer a 5-year blank check to no one.

The legislation before this subcommittee represents opposition to the objective just outlined. Upon introduction of the Senate bill which would authorize the Civil Rights Commission for another 5 years, Senator Birch Bayh lamented the supposed short duration of the authorization.

We at NTU take a different view; we lament the longevity of the authorization. NTU finds few, if any, programs and commissions worthy of such a sustained authorization. The Civil Rights Commission in particular deserves close scrutiny.

Few Federal organizations comment upon the latitude of matters which does the Commission. Few Federal bodies deal with matters as sensitive and important to the American people.

It is therefore incumbent upon the Congress to be sure that the Commission carries out its responsibilities with prudence. The Congress should strive to make the Commission as accountable as is possible.

The Commission has 288 employees, many of them lawyers. In addition, it employs a large number of consultants. To grant autonomy for 5 years to such a large group of individuals would be unwise. The Congress should seriously question the necessity of this size staff. After all, it has been said—and I think accurately—that if two lawyers are put in the same room together, World War III may very well result.

During the consideration of this authorization, Congress should recall the activities of the Commission over the last few years. In such deliberations, the Congress should entertain the notion that the Commission may not be as responsive to the public interest as it otherwise would be if it had to go before this body more often for continued authorization.

Over the last few years the Commission has been guilty of engaging in rather questionable pursuits. For example, it has asked publishers of textbooks to issue guidelines which would insure that racist and sexist implications would not appear. Certainly, the appropriateness of such actions should be subject to review.

The Commission, using the taxpayers' dollars, has been involved with some very sensitive issues before the Congress and State legislatures. There is a very fine line between the Commission's right to comment upon matters within its purview, and outright lobbying.

Two specific cases come immediately to mind. The Commission has taken a position on the issue of the passage of the equal rights amendment. Also, it has lobbied on the use of medicaid funds to pay for abortion. In the latter case, the Commission actively sought a conference committee approval of its position.

There are several other examples of these points. I am sure that others who will testify before this subcommittee will comment upon them in greater detail.

My purpose in testifying today is to plead the taxpayers' case. I am neither agreeing nor disagreeing with any specific positions or actions taken by the Civil Rights Commission. However, I am concerned that the Commission does not receive the close scrutiny which the taxpayers desire that it receive.

Closer attention must be paid to how our tax dollars are spent. Taxpayers of this country cannot afford such dereliction of responsibility. The more secure funding becomes, the less responsive to the real public needs the recipients are apt to be.

The legislation before this subcommittee won't be immediately expensive in terms of dollars, but the damage it would do in regard to the principle that our tax dollars should be closely guarded would be great. And that damage could prove to be costly in many ways, indeed.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. White.

Without objection, all of the statement in full will be made a part of the record.

[The prepared statement of Mr. White follows:]

STATEMENT BY CLIFFORD J. WHITE III, LEGISLATIVE REPRESENTATIVE, NATIONAL TAXPAYERS UNION

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As legislative representative of NTU, I represent thousands of Americans who are organized through NTU and affiliated organizations throughout the country. While the legislative staff spends the majority of its time and resources dealing with budgetary items which are more costly than the $11 million spent annually by the Civil Rights Commission, we feel that the very concept of sunset and budgetary restraint is at stake.

It is true that many more tax dollars are being spent on welfare and national defense. It is true that NTU is concerned with the President's proposed $100 billion in energy taxes. We are concerned about the White House welfare plan which would increase public expenditures by at least $20 billion. We are concerned that the Congress has not been enthusiastic enough about real tax reform—that is, tax reduction—on matters ranging from an across the board income tax reduction to tuition tax credits.

Our members are frightened at the prospects of a $500 billion federal budget and a $60 billion deficit. We are concerned about the $9 trillion which we have found to be the total public liability which the taxpayers of this country face.

Although NTU has expressed skepticism about the gains which might be accrued from the sunset principle, we are committed to limiting the lifetimes of all authorizations. We believe that the Congress should more frequently and more carefully review how it is spending our tax dollars. We should offer a five-year blank check to no one.

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Upon introduction of the Senate bill which would authorize the Civil Rights Commission for another five years, Senator Birch Bayh lamented the supposed short duration of the authorization. We at NTU take a different view. We lament the longevity of the authorization.

NTU finds few, if any programs and commissions worthy of such a sustained authorization. The Civil Rights Commission in particular deserves close scrutiny.

Few Federal organizations comment upon the latitude of matters which does the Commission. Few Federal bodies deal with matters as sensitive and important to the American people.

It is therefore incumbent upon the Congress to be sure that the Commission carries out its responsibilities with prudence. The Congress should strive to make the Commission as accountable as is possible.

The Commission has 288 employees, many of them lawyers. In addition, the Commission employs a large number of consultants. To grant autonomy for five years to such a large group of individuals would be unwise. The Congress should seriously question the necessity of this size staff. After all, it has been said—and accurately, I believe—that if two lawyers are put in the same room together, World War III may very well result.

It is important to put a lid on the number of attorneys and other high-ranking civil servants and their salaries.

The appropriations history of the Civil Rights Commission demonstrates how quickly bureaucracies tend to grow. It is the responsibility of Congress to monitor closely this growth and, if appropriate, to end it. From the initial budget of $750,000 in 1959, the cost of the Civil Rights Commission this year will be in the neighborhood of $11 million. While these sums do not represent the symptoms of a budget process which all too easily allows large funding increases to pass without question. An unlimited budget in the authorization legislation would be an invitation for an even more rapid growth both in the size of the Commission's bureaucracy and the amount of money which would be required to maintain it.

Congress has the opportunity to scrutinize closely Federal agencies only when the authorizations are due to run out. Seldom does the appropriations process allow for close examination of the cost and effectiveness of public programs. While it is true that Congress could use the appropriations process for these purposes, for a variety of reasons it usually does not. The integrity of the authorization process therefore become of the utmost importance. A five-year authorization of any government entity would not enhance this goal.

During the consideration of this authorization, Congress should recall the activities of the Commission over the last few years. In such deliberations, the Congress should entertain the notion that the Commission may not be as responsive to the public interest as it otherwise would be if it had to go before this body more often for continued authorization.

Over the last few years, the Commission has been guilty of engaging in rather questionable pursuits. For example, it has asked publishers of textbooks to issue guidelines which would insure that "racist" and "sexist" implications would not appear. Certainly, the appropriateness of such actions should be subject to review.

The Commission, using taxpayers' dollars, has been involved with some very sensitive issues before the Congress and state legislatures. There is a very fine line between the Commission's right to comment upon matters within its purview and outright lobbying.

Two specific cases come immediately to mind. The Commission has taken a position on the issue of the passage of the Equal Rights Amendment. Also, it has lobbied on the use of Medicaid fund to pay for abortions. In the latter case, the Commission actively sought a Conference Committee's approval of its position.

There are several other examples of these points. I am sure that others who will testify before this subcommittee will comment upon this in greater detail.

My purpose in testifying before you today is to plead the taxpayers case. I am neither agreeing nor disagreeing with any specific positions or actions taken by the Civil Rights Commission. However, I am concerned that the Commission does not receive the close scrutiny which the taxpayers desire that it receive.

Closer attention must be paid to how our tax dollars are spent. The taxpayers of this country cannot afford such dereliction of responsibility. The more secure funding becomes, the less responsive to the real public needs the recipents are apt to be.

No, the legislation before this committee will not be immediately expensive in terms of dollars. But, the damage it would do in regard to the principle that our tax dollars should be closely guarded would be great. That damage could prove to be costly in many ways, indeed.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman, and thank you, Mr. White.

I wonder if you would extend your principles to all Federal agencies. In other words, as I take it, you want a 1-year authorization. Would you make that rather universal?

Mr. WHITE. Well, I am not commenting upon all government entities. I am referring specifically to the Civil Rights Commission. I would say, as a general principle that is correct. Except, of course, you would have to look at the programs one by one. In general, I would say that that would be a good rule of thumb to go by. I don't think that the Civil Rights Commission is so extraordinary that we should violate that general rule of thumb.

Mr. DRINAN. Has the National Taxpayers Union testified about other bills along the same line?

Mr. WHITE. In regard to specifically the length of authorization?

Mr. DRINAN. Yes.

Mr. WHITE. I believe we have commented about the general reauthorization of——

Mr. DRINAN. But you have never testified about any other Federal agency?

Mr. WHITE. We have testified about other Federal agencies——

Mr. DRINAN. But you have never recommended specifically in testimony that another Federal agency be restricted to 1 year?

Mr. WHITE. I just don't know.

Mr. DRINAN. You have no recollection of it? This is the only agency, in other words, that you have ever testified on specifically, saying that 1 year is enough.

Mr. WHITE. I know that it is the view of the National Taxpayers Union that authorizations be for as short periods of time as is feasible. Whether this has been said directly in testimony which other of our legislative representatives presented, I don't know for sure. If you like, I could send you over specific documentation of that.

Mr. DRINAN. All right. I thank you for your testimony, and thank you for coming.

Mr. EDWARDS. The gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. White, is it your view that the oversight responsibility of Congress is sufficient to insure that agencies like the Commission do not go astray between authorizations? Is the oversight responsibility sufficient?

Mr. WHITE. Currently I would say, frankly, no. For example, when you have an authorization of 5 years, which is not unique, going back for appropriations every year is generally not sufficient. Generally the Congress gets to review only at authorization time. And that creates a lot of problems, and I think we see some of the problems with the Civil Rights Commission.

Mr. BUTLER. It is your view, then, that we are not exercising oversight responsibility?

Mr. WHITE. That's correct.

Mr. BUTLER. The way in which the subcommittee exercises its oversight responsibility is through the authorization process. Is it your view that an annual reauthorization is appropriate for the Civil Rights Commission?

Mr. WHITE. That's correct.

Mr. BUTLER. Do you believe that it is the responsibility of the authorizing committee to inform the appropriating committee how much should be appropriated for a particular agency?

Mr. WHITE. Yes, I do. I think that a target funding level is very important, and, again, it is the spirit of budgetary restraint which is at stake. I think that principle is very important. Further, it seems to me that a specific target authorization is going to have quite a bit of influence on the level of appropriations.

Mr. BUTLER. Why do you believe the Congress does not adequately use the appropriations process to examine the Federal agencies?

Mr. WHITE. I wish I knew. I guess it is because so many programs are lumped together in one appropriation. The Congress gets the opportunity to review programs in detail only at authorization time.

I wish that all agencies and programs were subject to close and intensive review more frequently than currently occurs. But quite clearly that is not the case.

Mr. BUTLER. That opportunity is presented in the appropriations process each year.

Mr. WHITE. That is correct. But generally, that is not the way it works out.

Authorization hearings usually represent the only time when programs are looked at very closely.

Mr. BUTLER. Clearly, then, it is your observation that the appropriations process is not providing adequate oversight for the Civil Rights Commission.

Mr. WHITE. That's correct.

Mr. BUTLER. You have made reference to the equal rights amendment. How deeply was the Commission involved in lobbying in the State legislatures for this amendment?

Mr. WHITE. Well, I don't know specifically. I don't know whether or not Commission members visited legislators, for example.

What I am saying is that I think the Congress should look very carefully at how closely perhaps the Commission came to outright lobbying.

I don't claim any expertise on the specifics of the Civil Rights Commission's activities with regard to the equal rights amendment debate.

Mr. BUTLER. It is your view that, clearly, the Commission has been lobbying, and that we in our oversight function should be informed as to the extent to which the Commission personnel and funds were committed to this purpose.

Mr. WHITE. That's correct.

Mr. BUTLER. We do not know and you do not know?

Mr. WHITE. That's correct.

Mr. BUTLER. What was the Commission's position with respect to medicaid funds for abortion?

Mr. WHITE. It favored medicaid funds being used for abortions, and it sent a letter to the conference committee which was considering the matter last year urging that medicaid funds be allowed to pay for abortions.

And this, again, appears to me to be an instance of coming close to perhaps overreaching the rightful bounds of the Commission's responsibilities. I would have to emphasize that NTU is a taxpayers group, and we are not expressing a position on whether or not medicaid funds should be used for abortion and we are not expressing an opinion on passage of the equal rights amendment.

What we are saying is we should look very carefully at whether or not agencies which are being funded with Federal money have a right to comment to this extent on matters before the Congress and State legislators.

Mr. BUTLER. We really do not know at this juncture just exactly how much was committed in either of these areas.

Mr. WHITE. That's correct.

Mr. BUTLER. I thank the witness.

Mr. EDWARDS. I thank the witness, too.

Mr. White, there is much in your testimony that I agree with. Obviously, the appropriation process does not include the appropriate amount of oversight that it should. Anyone who attended any of those particular hearings realizes that it is done in a few minutes without any indepth analysis.

I have a major problem with a 1-year authorization, and that it would be very difficult for this agency, or any agency, to operate efficiently if it had to spend several months of each year preparing for the reauthorization process.

Would you comment on that, please?

Mr. WHITE. Well, I would say that in the case of the Civil Rights Commission, what you would gain in oversight might very well make up for what you are going to lose in terms of efficiency. I think that the shorter the authorization, the more accountable any Federal agency or program is going to have to be to the Congress. I think that is very important, of paramount importance.

Mr. EDWARDS. Well, you might save some money and time and have a more efficient agency with 1-year authorizations, but you certainly are going to spend a lot more money in the House Judiciary Committee, in that we are going to have to have a lot more employees because we would have to reauthorize under this rule the Department of Justice and the FBI and the Drug Enforcement Administration, the border patrol, on a 1-year basis, too, if your rule is going to be followed.

Mr. WHITE. I would add, as the testimony says, that few if any Federal agencies are worthy of authorizations of 5 years. The general rule of thumb should be for 1 year.

That is not to say, however, that if in the wisdom of the Congress it is going to be an undue burden to have to review a particular bureaucracy every year, that this rule of thumb should be resolutely followed. My point is simply that a 5-year authorization is too long for most every program or agency.

As a general rule of thumb I think that 1-year authorizations are preferable.

Mr. EDWARDS. Well, thank you very much.

Ms. Davis.

Ms. DAVIS. I would just like to follow up on the chairman's question.

Have you established any criteria which you use in determining whether a program should be continued for more than 1 year?

Mr. WHITE. No; no set criteria.

Ms. DAVIS. Do you agree that there are instances where it would be necessary to authorize an agency for a period of longer than 1 year?

Mr. WHITE. That's correct. However, in looking at the Civil Rights Commission, we at the NTU have viewed the situation that the Civil Rights Commission is not one of those that might necessitate an authorization of more than 1 year.

But even more than that, I would point out that, in the case of the Civil Rights Commission, we are not just talking about a 2-year authorization. We are talking about 5 years; that is a very long time, during which a lot of money can be spent: The Commission is going to have a lot of time to engage in pursuits which the Congress might think inappropriate.

Ms. DAVIS. Does your concern grow out of the activities of that agency?

Mr. WHITE. We have reviewed the activities of the Commission and we think they are deserving of closer scrutiny.

Ms. DAVIS. Let us suppose the Congress authorizes a 5-year extension. Do you believe the Commission's activities can be effectively reviewed through more frequent oversight hearings?

Mr. WHITE. No, I don't. I think that a shorter period of authorization is necessary in order for the oversight responsibilities of the Congress to be adequately carried out.

Ms. DAVIS. Thank you.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. Thank you, Mr. Chairman.

Mr. White, the Commission, like most of the Federal agencies and departments, has begun using zero-base budgeting. Have you looked at those statistics? Are you familiar with how they compiled their budget for the upcoming fiscal year?

Mr. WHITE. Not with any great detail. I would say that at NTU we are of the view that while any of the accounting methods which are going to tend to make commissions and any Federal entities more accountable are fine, we can't help but be skeptical of all of the things put forth—zero-base budgeting, sunset, et cetera—because we are just at a loss to find out, really, what exactly it will take to get the Federal budget pared down to size.

We think that more frequent oversight in the form of reviewing authorizations would be definitely a positive step, and a more effective step than zero-based budgeting.

Mr. STAREK. Let me explore that just a little further. Would you say that in your review of the budgeting for fiscal year 1979 for other departments and agencies on a zero-base budgeting principle has been a failure, or at least a failure in terms of trying to reduce the amount of funds?

Mr. WHITE. There is no question. Just look at the $500 billion budget we have, the $60 billion deficit, and I think it is quite clear that no gimmicks have worked.

Mr. STAREK. Do you have any suggestions about what might be better, other than that the appropriation and authorization process should be improved?

Mr. WHITE. No specific suggestions at this time.

Mr. STAREK. Thank you, and thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much, Mr. White.

Our next witness this morning is Robert A. Destro, general counsel of the Catholic League for Religious and Civil Rights.

The Catholic League is a private, nonprofit, tax-exempt organization endeavoring to protect the religious and civil rights of people of all religious persuasion. Mr. Destro is an attorney and is quite familiar with the on-going work of the Commission.

Mr. Destro, we look forward to your testimony. Without objection, your full statement will be made a part of the record and you may proceed.

[The prepared statement of Mr. Destro follows:]

STATEMENT OF CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS REGARDING CIVIL RIGHTS COMMISSION ACT OF 1978

Mr. Chairman, my name is Robert Destro. I am employed as General Counsel to the Catholic League for Religious and Civil Rights which is headquartered in Milwaukee, Wisconsin. The Catholic League is a private, non-profit, tax-exempt civil rights organization which has as its purpose the protection of the religious and civil rights of Catholics and all other people of religion. On behalf of the League and its twenty thousand members, I would like to thank the Committee and its chairman for inviting me here today in order to speak on a matter which we at the League consider of great importance.

Under the terms of H.R. 10831, the Civil Rights Commission Act of 1978, the United States Commission on Civil Rights will remain in existence for another five years and receive an open-ended appropriation. Unless substantial changes are made in the scholarship and methodology by which the Civil Rights Commission deals with the weighty problems entrusted to its care, and unless the Commission ceases to function as a governmentally funded lobby group, we must go on record as opposing the extension of the life of the Commission.

This position is not taken lightly or arrived at with a minimum of thought. The Catholic League, like the United States Commission on Civil Rights, is charged with investigating and attempting to safeguard the civil rights of its constituency. Unlike the Catholic League or similar civil rights organizations, however, the Civil Rights Commission is an investigatory and advisory body—not an action organization or lobbying group. The Catholic League does not object to the Civil Rights Commission working strenuously to inform the Congress and the Executive Branch of serious violations of civil rights. Our objection is that the Commission has consistently ignored a major part of its existing mandate—to investigate religious and ethnic discrimination—and, in the process, has become a federally-funded lobbying organization which speaks with great though undeserved, authority.

I. BIAS ON THE COMMISSION: SELECTIVE SCRUTINY

The Bill currently under consideration would add to the Commission's scrutiny age and handicap-related discrimination. I would like to emphasize the Catholic League has no problem with adding additional areas of concern to the Commission's mandate. The problem is that the Commission has demonstrated a serious lack of responsibility, compassion and concern over the rights of individuals who are discriminated against on a daily basis because of their religion or national origin, and we fear that such a pattern will continue, unabated unless the Commission is specifically instructed to change its ways, or members added to give it a more balanced direction.

I refer specifically to the Commission's seemingly exclusive concern for the plight of groups who, practice shows, can be termed "governmentally approved minorities." This group includes women, blacks, persons of Spanish origin, Native Americans, Asian Americans, and other persons of non-Caucasian heritage. The Civil Rights Act does not single out special subclasses of Americans for special treatment; to do so is to perpetuate the very discrimination which prompted the laws in the first place. The law, statutory, constitutional, and decisional is designed to protect people, not specific minority or interest groups from oppression.

Why then are cases of religious and ethnic discrimination ignored by the Commission? Can it be that religious discrimination does not exist? If so either the law should be changed, or the Commission should so inform us. Is there no discrimination against Poles, Hungarians, Italians, Catholics, Mormons, Amish and other Caucasian ethnic and religious minorities? If not, why does our office receive so many complaints? My experience discloses that there is both religious and ethnic discrimination on a wide scale occurring every day in the Country, but a look through the work of the Commission over the past five years would indicate that the Commission has never issued a report with regard to either religiuos or national origin discrimination. Its mention of any ethnic minority, other than Spanish or Native American, has been so sporadic as to be hardly worth mentioning.

The examples are legion. I will refer the Committee to only a few. For example, a recent report entitled "Last Hired—First Fired: Layoffs and Civil

Rights" discusses the plight of blacks, women, Spanish and other non-white minorities with special emphasis on the problems caused by recession on black youth. White males are lumped together. No discussion is made of the foreign-born or the religious minority.

While it may be true as a whole that minorities and women lag behind white males in proportion to high paying status jobs, one might validly question the Commission's implicit assumption that all white males are treated equally. If the Commission were doing its job properly it would identify the targets of all types of discrimination and see which groups are receiving disparate treatment at the hands of employers.

A classic example of the Commission's tunnel-vision is its discussion of the fact that "both women and minority men still lag far behind white males in the proportion of holding high-paying high-status jobs." They might have added that Catholics, too, suffer in these areas. The Commission persistently ignores a study done by the Massachusetts Commissioner of Banking which indicates that while the City of Boston is predominantly Catholic, less than six percent of the middle and upper echelon workers in the Boston financial community are of Catholic origin. The Commission takes no cognizance of the fact, uncovered in the Ladd-Lipset survey of the American professoriate in 1975, that Catholics hold only 12 percent of the faculty positions at Major American universities, even though some 26 percent of all U.S. college graduates are Catholics. And while Catholics are by far the largest single religious groups in our society, Ladd and Lipset found that Presbyterians, Methodists and Jews all held more faculty positions at those major universities than Catholics did.

The Commission seems willing to close its eyes to the studies conducted by Prof. Russell Barta in Chicago and the University of Michigan Ethnic Heritage Center in Detroit, showing that people of Polish or Italian ancestry find it almost as difficult to become officers and directors of the largest corporations based in those cities as do Blacks and Latinos. Why is the Commission seeking equal treatment for some of these groups, but not for others?

Perhaps the best key to the Commission's handsomely funded myopic view of the harsh realities of bigotry is the language of its reports. Many discuss only women and racial minorities. "Last Hired—First Fired" concludes with a "frank" discussion of the interests of workers "whatever their race, ethnicity and sex." What happened to religion? Such omissions point only too clearly to the inevitable conclusion that the Commission simply does not care about any but those on the "approved" list of victims.

My association with the Catholic League has convinced me that religious discrimination does indeed exist in this country. It is, by far, the most subtle and insidious example of man's intolerance and therefore, will be the most difficult to eradicate. By ignoring the fact that religious discrimination exists in this nation, the Commission itself perpetrates a cruel hoax on all Americans by fostering the belief that only women, blacks, Hispanics, Native Americans and Orientals are victimized. How can a remedy be devised without information showing the magnitude of the problem?

One might assume that a Commission charged with investigating instances of bias and religion on ethnic grounds would report on its studies of all types of discrimination covered by the Civil Rights laws, but again, the Commission falls short.

In a 1974 document on Federal Civil Rights Enforcement issued by the Commission, one finds a lengthy discussion of several government agencies and their record on civil rights enforcement. Further study discloses that FCC's licensees are required to report the status of their employee groups with regard to race, ethnicity and sex. Religion is excluded. Why? Are not the civil rights laws written in terms of race, ethnicity, sex and religion? Has religion been dropped as a relevant concern? If so, on whose authority?

The data in the 1974 report regarding the FCC would be worthless to any scholar or legislature concerned with oppression against Catholics, Jews, Italians, Germans, Hungarians and Poles. All that would be found is data on Blacks, Spanish, Orientals and American Indians. In fact, if the enforcement report were to have any value at all, it would need to disclose what was done by each agency to eradicate each of the types of discriminations which are prohibited by the Civil Rights Laws. It should include the number and types of cases investigated, the actions taken and the nature of problems which are expected to continue. Instead, the report actually issued is a self-serving description of intended activities by federal agencies.

Another example is "The State of Civil Rights," issued in 1976 by the Commission, no mention is made of ethnic discrimination other than of against the "government approved" minorities. The ERA is discussed, the problems of Spanish Americans are discussed and abortion is given a big billing. The discussion of impact of discrimination against low income persons, although wealth is not mentioned in the Civil Rights Law, is given a short discussion with regard to the purported right to an abortion.

No mention is made of religious discrimination. Reams and reams of paper are consumed reporting on the same types of minorities and interest groups and with always the same conclusions. The conclusions themselves may well be unassailable in many instances, but why are they so limited? "Window Dressing: Women and Minorities in Television" (August 1977) deals only with Blacks, Hispanics, Native Americans, Women and Asians (i.e. the "approved minorities"). The report even recognizes that other ethnic bias exists, but thereafter ignores it!

In the Commission's publication "Puerto Ricans in the Continental United States.: An Uncertain Future," the Commission concludes with a recommendation that the Census Bureau revise its procedure to gather more data on Puerto Ricans. This recommendation is backed up with a very reasonable observation: "One obstacle to the effective implementation of government action to aid Puerto Ricans is the lack of reliable, comprehensive socioeconomic data. The paucity and lack of uniformity of available data makes it difficult to focus adequately on key problem areas, and to measure progress in the solution or alleviation of problems."

In 1976, the Catholic League made a similar recommendation to the Census Bureau, namely, that it gather data on religious affiliation so that religious discrimination can more easily be identified and corrected. The Census Bureau refused to do this, and announced that there would be no questions on religious affiliation in the 1980 cenus.

Now this, obviously is a decision that the Census Bureau is empowered to make, and for which the Civil Rights Commission cannot be held responsible. But the reason the Census Bureau gave for taking this position was that such questions would be a violation of civil rights. In view of the abundant evidence showing that discrimination exists against Catholics, Jews and other religious minorities, it would seem that it was incumbent on the Civil Rights Commission to disabuse the Census Bureau of that notion, and to advocate inclusion of questions on religious affiliation as means of combatting religious discrimination and protecting, not violating, civil rights. After all, if better data collecton can help protect Puerto Ricans from discrimination, as the Commission correctly notes, it is obvious that such data will also help to protect religious minorities. But because the Commission has failed to recognize this problem, independent efforts to protect the civil rights of religious minorities will be hampered for another decade by insufficient data.

The 230 page volume entitled "Sex Bias in the U.S. Code" (April 1977) undoubtedly consumed a substantial amount of the Commission's resources in search of "sexist" language in our statutory law. The utility of such a report is questionable, and its very issuance reflects a serious misallocation of resources. There are many people suffering from religious and ethnic discrimination every day who could be helped by an investigation into their problems. The Commission exalts form over substance and assigns its staff the esthetically valuable, but hardly helpful, chore of poring over law books to determine whether the use of the masculine pronoun is in some fashion degrading of women's rights. The Commission fiddles while the city burns.

11. BIAS AND THE COMMISSION: A CRITIQUE OF ITS SCHOLARSHIP AND IMPARTIALITY

Over the past two months, I have had the honor of participating in the adjudication of the constitutionality of the so-called "Hyde Amendment!" During that hearing I heard testimouy introduced by the ACLU, Planned Parenthood, and the Center for Constitutional Rights alleging that Catholics are "poisoning the political process" and endangering public order because they believe the unborn have civil rights too. The testimony seeks to prove that people of religion have no business influencing congressmen to vote according to their moral precepts, philosophy or view of ethics. It is alleged that persons who are

motivated by religion should not be involved by the political process. Why? Because persons who would shut off debate on the issue of abortion raise bogus First Amendment "problems" and allege that religion should not be heard in the debate over public policy. Several days of testimony calculated to defame American Catholics and issue dire warnings that the United States may turn into another Northern Ireland if abortion becomes a matter of heated national debate were served up for the Court's consideration. Why do I mention it here?

The Civil Rights Commission itself is guilty of precisely the same slur tactics against people of religion. In its 1974 report on "The Constitutional Aspects of the Right to Limit Childbearing" the Commission takes the outright pro-abortion, antireligion stand that the First Amendment is in danger by the enactment of a pro-life amendment to the Constitution. Either the Commission's lawyers are sadly misinformed with regard to the intent and genesis of a pro-life amendment (which reflects on their competence and objectivity) or they are religious bigots who do not appreciate the important role that persons of religion have played historically in the development of public policy in the United States and who should not be on public payroll.

In either case, the shoddiness of the finished product is appalling. I did not come here today to debate abortion and I shall not do so. As an individual who spent nearly two years researching the same topic, however, the lack of independent scholarship, reasoned discussion, and total disregard for opposing points of view is apparent throughout the Commission's discussion of the "Right to Limit Childbearing."

The Commission relies heavily on the scholarship of Cyril Means, an admitted abortion advocate, for its legal conclusions. I found that same work to be of dubious value in the course of my own extensive research on the subject. One would hope that the Commission itself would investigate the matter thoroughly and report its findings, not those of another who is an admitted advocate. As a lawyer I would be loathe to cite a source as gospel without some independent scrutiny. If such scrutiny was made, it surely doesn't show. The report reads like a tract published by the National Abortion Rights Action League and contains a tone of marked animosity toward religion and the Right to Life movement in general. Such conduct is not appropriate for a "Civil Rights" Commission.

If the Commission is to be truly credible and worthy of future funding it cannot pick and choose its issues; it cannot selectively ignore opposing points of view and utilize dubious scholarship to prove points. The tenor of the Commission's reports, the frequency with which it addresses the same subjects and ignores others, places the Commission in the category of a super-lobby for "governmentally approved" minorities.

If it were to close its doors tomorrow, the same functions could be carried on by NOW, AIM, the NAACP, Hispanic-American and Asian-American lobbys. It would scarcely be missed by anyone else, for it has never produced a report to help them. Those who run the Commission are apparently so committed to their notion of who should share the "good life" that they forget that others who do not share their own religious beliefs (or lack thereof), or ethnic origins may be having a rough go of it because of what they believe or how they speak. Where is the Civil Rights Commission when a Polish architect is dismissed because of the fact that he had an Eastern European accent? Where is the "white-male advantage" for this Polish-born, heavily accented speaker of English? He has been discriminated against on the basis of his national origin.

Where is the Civil Rights Commission when religious are barred from state legislatures? Where is the Commission when Fundamentalists and Amish are oppressed by the state in which they live? Where is the Commission when anyone other than an approved minority is victimized: looking for discriminatary grammatical usage?

Unless the Congress is prepared to extract a commitment from the Commission to change its ways it should not be refunded. We would oppose open-ended funding in any event, for it does not allow for periodic review of the Commission's accomplishments (or lack thereof). So I appeal to the Committee, as a practicing attorney litigating civil rights cases, to assure in some fashion that the Commission investigate and reports on religious and ethnic discrimination. Unless it does, I predict that several years from now there will be a myriad of reports on age and handicap-related discrimination and, again, none on race and religion.

Thank you.

TESTIMONY OF ROBERT A. DESTRO, GENERAL COUNSEL, CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS

Mr. DESTRO. Thank you, Mr. Chairman.

I am here today to speak to the committee and reflect the views of the Catholic League with regard to the Commission's work in the area of two of its mandated: that is, the investigation and advising of Congress on religious and ethnic discrimination.

Our organization, as you noted, is a tax exempt, private, nonaffiliated organization which represents not only Catholics but all other people of religion. Our purpose is to protect religious and civil rights, and on behalf of the league and its 20,000 members we thank you for the invitation today.

I am going to limit my views on H.R. 10831 to some fairly technical lawyers' views on the Commission's activities.

Since the bill adds two categories, aged and handicaped discrimination, we would ask that the committee seriously consider and examine the Commission's past history with regard to the enumerated types of discrimination that it was supposed to investigate before refunding the Commission and adding additional responsibilities to its mandate.

Even though its mandate does include religious and ethnic discrimination, our review of the Commission's past work indicates that there have been no reports, either on the State or the Federal level, on ethnic discrimination or religious discrimination. Instead, what you have is a constant emphasis on certain minority groups—that would be women, blacks, Hispanics, Asian-Americans and American Indians.

We have absolutely no problem with the Commission focusing in on the problems of those individuals, because all individuals, in our view, have the right to equal protection under the law and to be taken care of in their most basic needs.

We would also add to that list of problems and needs those of religious and ethnic minorities, but the Commission does not see fit to investigate those matters. Instead, you have shoddy scholarship in some of the reports, and you have, as was noted before, a Government lobbying agency on very, very controversial issues.

If the Commission is to function properly, it really must—and I speak now in terms of a practicing civil rights attorney—if it is to function properly and really be of assistance to those in Congress and those who are concerned with the rights of minorities, it must gather information which is helpful to solutions.

In two of its reports, one on school desegregation, and one on Puerto Ricans in the continental United States, the Commission makes the comment:

> One obstacle to the effective implemention of effective action to aid Puerto Ricans is the lack of reliable, comprehensive, socioeconomic data. The paucity and lack of uniformity in available data makes it difficult to focus adequately on key problem areas and to measure progress in the solution or alleviation of problems.

This is the main problem we see, that there is no data being gathered by the Commission on religious or ethnic discrimination, and as a result the Commission, in some instances, has become more a part of the problem than it is a solution.

The civil rights acts do not single out special subclasses or approved minorities. The law is designed to protect people, or specific interest groups. We cannot understand why the Commission has ignored religious discrimination. It exists. I see it every day in my own work.

We see religious discrimination in attempts to close Amish and Fundamentalist schools in Michigan and Kentucky. We see it in problems of religious people sitting in State constitutional conventions like Tennessee.

We question the validity of questioning medical students and others about their religion or ethnical views. We wonder why it is that the U.S. Civil Rights Commission has not looked into the question of discrimination against people who are opposed to abortion and euthanasia with regard to admission into medical schools. Instead, HEW has now set up a special task force study group to look into this problem with regard to Senator Schweiker's bill. Why wasn't the U.S. Civil Rights Commission involved in that?

With regard to ethnicity, there is ethnic discrimination going on in this country. I see it with regard to a Polish architect who lost his job with a major airline in this country because he had a heavy accent, with the Italian-American who cannot be promoted in a major law firm on Wall Street, with regard to ethnic stereotypes which appear in both the media and in the popular parlance.

The Civil Rights Commission has recognized in passing that ethnic discrimination exists. In fact, in some of the examples that I will give you in a few minutes, they mentioned it and then did not study it.

For purposes of scholars and lawyers who look into these problems, the following reports really were not very helpful.

For example, the Commission issued a study, "Last Hired, First Fired: Layoffs and Civil Rights." Blacks, women, Spanish, and other nonwhite minorities were mentioned; white males were lumped together.

We do not argue with the Commission's basic conclusion that white males are, as a class, generally better off, but as a lawyer, I would question the validity of the implicit assumption that all white males are treated equally; they clearly are not.

I would ask you to contrast the statement of the Commission: "Both women and minority men still lag far behind white males in the proportion holding high-paying and high-status jobs." While they may be true, it is also true that the Massachusetts banking commissioner found that while the majority of the people who live in the State of Massachusetts are Catholic and that about three-fourths of the people who live in Boston are Catholic, less than 6 percent of those banks which employed more than 50 people employed Catholics in the middle and upper echelons.

Had this state of affairs been found to exist in "approved" minority community, the Commission on Civil Rights would have done a study. The only reason we bring this up is to ask why they haven't done it when Catholics are involved.

Another example: the Commission's use of language.

In their report "Last Hired, First Fired," the Commission generally discusses the interests of workers, ". . . whatever their race, ethnicity, or sex." The Commission completely ignores religion.

To my mind, the civil rights laws have not changed, and the Commission's mandate has not changed. Why isn't religion mentioned?

With regard to the document "Federal Civil Rights Enforcement, 1974," a general discussion of Federal agencies. Again, race, ethnicity, and sex are reportable, but religion is ignored. No data is produced at all which would be of help.

In "The State of Civil Rights 1976" religion is not discussed, and ethnicity is not discussed, but the ERA is discussed, abortion is discussed, and the question of discrimination against the poor is discussed. These are all very pressing problems but, again, two very important issues, statutorily mandated issues, are being left out.

In "Window Dressing: Women and the Minorities in Television," which was issued in 1977, the Commission deals again only with the typical list of minorities. Even worse, in this report it recognizes that other minorities, other stereotypes, notably those of Italian-Americans, are continued by some of the language and programing on television, but it ignores the implications of these practices. The report mentions Italians, but doesn't go into discussing the problems that these types of stereotypes create.

Instead, we have a 230-page volume issued, "Sex Bias in the United States Code," which took up a lot of staff time, and in our view was a serious misallocation of resources. Again, we don't have any problem with correcting latent sex bias in the United States Code, but at the same time there are serious problems of discrimination which are taking place every day in this country and the Commission is spending its time flipping through the code. In this respect we feel they are exalting the form over the substance.

Again, let me emphasize that all problems of ethnic and religious minorities are real; no one is less important than anyone else, but the Commission seems to think so.

Another area, which is more serious in our view, is that the Commission expresses bias and lobbying tactics in its reporting. In at least one report—having been familiar with the area very closely myself—its scholarship is very shoddy.

Prior to coming to testify today, and over the last several months, I have been involved in the Federal litigation over the question whether or not Congress can cut off funds for abortion. The testimony in that case is mentioned for a very specific purpose here; the Commission had no involvement in the case.

The testimony itself is very interesting in the sense that one of the major issues is that people of religion should not be involved in politics, that somehow the Catholic Church is poisoning the political process in the country. There is in the case a pronounced animus toward religion and religiously motivated people.

Now, the only reason I mention this is that the same type of analysis appeared in the 1974 report of the Commission on the Constitutional Aspects of the Right To Limit Childbearing. People of religion and others who are opposed to abortion are portrayed as "these people," somehow a little less intelligent, a little less committed than their opponents in the political process.

The report, in general, is the worst—as a lawyer—I have ever seen. It relies on very questionable legal scholarship, and I say that because I spent 2 years researching the same topic. It comes to the absurd

conclusion that a constitutional amendment on the issue could be unconstitutional because it purportedly establishes a religion. There is no independent analysis of the problem, there is no report on opposing views.

All you have is a recap of law review articles, a recap of the current and ongoing propaganda on one side of the issue, and, very frankly, it reads like a National Abortion Rights Action League tract.

If the Commission is going to get into topics like this, it should report its own findings, not those of others, and since its mandate is advisory and not advocacy, it must report on both sides of the issue, if it is to be of any help to anyone outside of Congress or in, then the arguments on both sides, the legal and practical arguments on both sides should be presented.

It is extremely frustrating as a practicing attorney to see the Commission's report, on abortion cited in a brief in court. The Commission speaks with great authority, but having done a lot of research in the area myself, I would be loathe to cite or rely upon a report like that without looking into the basis for their conclusions. In the case of the report on abortion, the Commission's findings simply have no basis.

So, in conclusion, it is our position that if the Commission is to remain credible, it has to be impartial, it must engage in good scholarship, and it must be source of complete information for interested groups, and for scholars and for Congress.

We don't believe that it is currently performing those functions.

With regard to the State advisory commissions, however, I would come to a different conclusion. Some of the State advisory commission reports are excellent, and I would point to one that was issued by the Arizona State Advisory Commission which contains the type of information that I look for in a good report.

That report had a summary of what the problem was, a summary of interviews with the people who were affected, and presented both sides of the issue. What the advisory commission report did was leave you with questions, it left you with questions in your mind that needed to be answered.

And that, I think, is the kind of thing we would like to see out of the U.S. Civil Rights Commission. Since it is not performing its functions, we would be opposed to an open-ended appropriation. We feel that continuing oversight is absolutely necessary, and we very much fear that if Congress adds age and handicap discrimination, which we are not opposed to adding at all, what you will have 5 years later is many reports on these areas, and again none on religion and ethnicity.

If the Commission were to go out of existence today, we believe that its function would be taken up by other groups, notably the NAACP, the American Indian movement, the National Organization for Women, and other interested civil rights groups.

With regard to religious and ethnic discrimination, however, the Commission would not be missed by organizations which focus on those areas, it has been of no help at all.

We do feel that when a Government agency with the prestige of the Civil Rights Commission ignores a problem, people tend to forget that it exists, or people tend to ignore that it exists. And in that respect, when the Commission itself dedicated to civil rights ignores a problem,

it really does play a cruel hoax on those people who are victims of the type of discrimination that it refuses to investigate.

Thank you.

Mr. EDWARDS. Thank you very much, Mr. Destro.

Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman, and thank you Mr. Destro.

You really have two completely different complaints here. Let me just ask a factual question first. On page 11 you state: "Where is the Civil Rights Commission when religious are barred from State legislatures?" Is that an actual case?

Mr. DESTRO. Yes, sir, it is. I don't have the citation to the case, but the situation, there was a law which existed in Tennessee, which stated that——

Mr. DRINAN. I know. I am familiar with that.

Mr. BUTLER. I am not. Let him complete his answer, because I am not familiar with the Tennessee law.

Mr. DRINAN. Oh, I am sorry. Go ahead.

Mr. DRESTO. The only reason we bring that up is that there was a problem which existed in that regard in Tennessee. We did not see any reports in the existence of the Civil Rights Commission on it. That is why I bring that up.

It is just the matter that it existed, and to my mind that is a very serious problem. There are tangential problems which are akin to that. For example, in Milwaukee, Wis., where I live, it is a rule at the university that religious are not supposed to be wearing their religious garb if they teach at the university.

These are problems that I think are discrimination against people for what they believe in, and where is the Civil Rights Commission in investigating such problems? I believe those are serious problems, because even though they may look minor on the surface, I think they betray an attitude among the populace, or a certain segment of the populace, that somehow people of religion are a little different, and somehow they shouldn't be broadcasting what they believe in. So that is why I mentioned that problem.

Mr. DRINAN. Well, on page 9 you state that, "the Commission takes the outright proabortion, antireligion stand."

I assume that you would indicate that you would understand that the Civil Rights Commission has to follow up on what the Supreme Court has said. It has held that there is a constitutional right to an abortion.

Some may quarrel with that, but the U.S. Civil Rights Commission takes the position that we are going to seek to implement or help to enforce what the Supreme Court has said.

So is it really fair to state that the Commission takes the outright, proabortion, antireligion stand?

Mr. DESTRO. Yes; and the reason I say that is because one of the issues in the 1974 report was the question of how far can you go within the Supreme Court's parameters, and in addition, whether or not a constitutional amendment would be warranted to the Constitution to change the Supreme Court's ruling.

Now, from the point of view of those who are opposed to abortion—I know many people have different views on why they are opposed and

why they are in favor—well, I would say from my experience the majority of them are concerned with civil rights, too.

And if the Commission is going to investigate and advise on such a problem, it seems to me absolutely ludicrous to make the statement that a constitutional amendment establishes a religion when it does not, and that somehow the people who are opposed to abortion are against civil rights.

It seems to me that when the Commission does that, it is being bigoted itself. It is like saying that minorities in some respect are a little dumber than the rest of us.

Mr. DRINAN. Let me make an analogy. There is a minority in this country who feel that *Brown* v. *The Board* was wrongly decided. They feel that we shouldn't have busing, we shouldn't have integrated schools.

Should the U.S. Commission on Civil Rights say that these people are a minority? Should it put out propaganda on their behalf?

Mr. DESTRO. No; no; no. I am not asking that the Commission put out propaganda.

Mr. DRINAN. Delete that. But should it express the view that they have a right to be heard and that the Commission should desist from any activities praising or implementing *Brown* v. *The Board*?

Mr. DESTRO. Well, I think that if in the Commission's mind there are valid arguments which are raised by these people—now, I don't know necessarily what you might be referring to—but I——

Mr. DRINAN. You know what I am referring to.

Mr. DESTRO. No; what I am talking about—I have no problems with *Brown* v. *The Board*, and my views are not material to that issue—but of late there is some scholarship now which talks about the role of the Federal courts in such an issue.

All right, I think that if the Commission is going to express a legal opinion, that perhaps it ought to discuss that view, too. It can very well at the end come down and make a conclusion and say, "Well, we think these people are wrong." I have no problem with that.

It is just that when they either ignore their existence entirely, or call them names, then I think that is wrong, I think that is inappropriate.

Mr. DRINAN. Have you made these views known to the Commission?

Mr. DESTRO. Pardon?

Mr. DRINAN. Have you made your views known to the Commission?

Mr. DESTRO. Oh, yes.

Mr. DRINAN. In what way?

Mr. DESTRO. My understanding is, and I was looking through the files the other day for the correspondence, is that there have been complaints to Mr. Fleming with regard to the lack of reporting on religious and ethnic discrimination, and it seems to be the view of the Commission that somehow to get involved in cases of religious discrimination is going to entangle the Commission in matters of church and state.

But we don't see it that way. It is going to involve the Commission in matters of great moment for a lot of individuals who are being discriminated against. The same attitude seems to pervade the Equal Employment Opportunity Commission, when people call us and have a complaint about religious discrimination, they go to the EEOC and people treat them like they are carrying two heads. They say, "Oh,

religious discrimination doesn't exist. And, of course, people don't discriminate against Catholics."

Well, it happens, and I have a lot of cases coming across my desk where the facts just point to or involve cases of discrimination. And why is it that the Commission isn't concerned with these things?

Maybe if they looked into them, they would get concerned.

Mr. DRINAN. Mr. Destro, my time has expired, but I hope there is an opportunity to get back to the question of those terrible Protestant bankers of Massachusetts.

Thank you.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

I appreciate the degree of scholarship which you have demonstrated. It is very helpful to us. It is refreshing to have someone examine the Civil Rights Commission with some degree of objectivity, although I certainly would not say that you are prejudiced in your examination, you came out a little bit on the side I expected you to come out on when you began.

Let us talk about lobbying for a moment.

Having studied the charter of the Civil Rights Commission, what do you view its lobbying authority or responsibility to be? After it reviews a problem and makes recommendation to the executive branch of the Government, what is its responsibility with respect to becoming involved in the legislative process, if any?

Mr. DESTRO. Well, my view is that it has no lobbying authority. It may give advisory opinions to Congress, and now maybe one can argue whether or not advisory opinions are lobbying or otherwise.

Mr. BUTLER. An advisory opinion would differ from a solicited advisory opinion, would it not?

Mr. DESTRO. Yes; I would agree with that. But I also really have no problem with the Commission making its views known on legislation.

But what I do object to—and probably the classic example of it is the Commission's letter with regard to the Federal funding of abortion. Now, there really are a lot of people out there, and I represent a group of them in the Hyde amendment case——

Mr. BUTLER. I yield to the chairman.

Mr. EDWARDS. If I am not misinformed, that letter was in response to a request from Senator Brooke of Massachusetts; is that not correct?

Mr. DESTRO. My understanding of it was that it came in response to a request. But my problem was not so much with the letter itself—I have no problem with the Commission answering a request—not so much with the letter itself, but what it contained.

What it was was just, "We are opposed to cutting off any Federal money," and doesn't really discuss any other side of the question. Now, admittedly, the view of the Commission seems to be that everybody who wants to cut off this money hates poor people; and that is just not true.

I represent a group of people in this Hyde amendment controversy who just say:

> Well, we have to live with the Supreme Court for now, but we sure don't want to pay for it, because it is against our religious and ethical views to contribute in any way, shape, or form to such activity.

Now, it seems to me that forcing people to pay for that kind of activity is just as much a violation of civil rights as any other type, as in drafting a Quaker.

That, I think, should have been brought out in the Civil Rights Commission's report. In a letter to Congress, they could have said, "There are people who are opposed to paying for this, and you probably ought to consider that, too."

They didn't do that. They came out with an outright advocacy position of Federal funding. And I don't think that is appropriate.

Mr. BUTLER. If I understand you correctly, what you are saying is that if the Civil Rights Commission is posing as a Commission concerned with civil rights, then its conclusion should be accompanied by an examination of the process by which it came to that conclusion and a fair judgment of the arguments against it, even if it rejects them. Is that——

Mr. DESTRO. Well, I think that is correct. Frequently, when lawyers are being trained they are taught there is a difference between advocacy and advisory status. And when you are advising a client, you give the client on both sides of the case, and try to make a reasoned conclusion as to what the chances of success are. You must be honest and you must give both sides.

Now, if you are arguing a case in court you obviously don't argue both sides and come to a reasoned conclusion. You try and make as good an advocacy case as you can. And I think that is the distinction. I think the Commission should be an advisory board, not an advocacy body.

Mr. BUTLER. May I follow up on that, Mr. Chairman?

During this Congress, we took great pains to insure that the attorneys employed by the Legal Services Corp. would not perform lobbying functions while being paid by the Government. Do you believe such restrictions are necessary for the Civil Rights Commission employees also?

Mr. DESTRO. Oh, I would agree with that. I don't feel that it is appropriate for people who are paid by the Government to lobby. We don't—the taxpayers shouldn't be funding lobby groups that they don't necessarily agree with.

Mr. BUTLER. So it is your view that we ought to incorporate that into the legislation while we are in process of extending the Commission's authorization.

Mr. DESTRO. I would have no objection to that, no. I think it might be appropriate, in fact.

Mr. BUTLER. I have one other question. Why do you believe the Commission has exhibited an overextensive concentration on sex discrimination and women's issues?

Mr. DESTRO. No; I am not saying that it is overextensive. Admittedly, the problem exists. What I am saying is that its reports are underinclusive, that there are two other issues which exist in great number, and there are currently cases involving those issues before the Federal courts.

When I talked about the Wall Street lawyers who can't get promoted, there is a case in Federal district court called *Lucido* v. *Cravath, Swaine & Moore* which deals with that question. There is a case in Detroit called *Sklenar* v. *The Board of Education* which

simply alleges that there is discrimination going on against people of Polish descent in the Detroit Board of Education.

Now, it seems to me that those cases—and both have been accepted by the courts—have passed their early procedural obstacles, and in fact, the cases in Detroit it has been certified as a class action, the same has happened in Chicago with allegations by Polish Catholic firefighters and policemen.

These cases are going on, and the Commission just isn't discussing them.

Mr. BUTLER. Why do you think the Commission is ignoring these areas?

Mr. DESTRO. Well, I think there may be two answers to that question, one for each area.

One, I think the Commission is just not convinced that ethnic discrimination exists. I think they really are under the impression that if you are white, everything is hunky dory for you; and it is just not.

And with regard to religious discrimination, even the EEOC, as I said before, doesn't believe it even exists. I was told by a prominent civil rights attorney in New York City just last week that she thought that the person that she was representing was not a victim, she said, "Well, if he had been Jewish, I might be able to understand that he was discriminated against, but don't tell me Catholics get discriminated against." And the facts are just clear on their face.

So, again, I think that the Commission is afraid that it is going to be embroiling itself in a constitutional controversy which I believe is really an excuse; they just don't want to get involved in it. And I just don't know why they don't, and it is very frustrating for those of us who work in this area.

Mr. BUTLER. I thank the gentleman.

Mr. EDWARDS. Mr. Destro, on page 12 of your statement you point out that you are a practicing attorney litigating civil rights cases. Do you litigate those cases on behalf of your organization?

Mr. DESTRO. Well, what we do is—our organization is probably best described as an Anti-Defamation League, ACLU-type organization. We represent people; we don't represent the organization.

When a person comes in to us and asks us to represent them, we then become their attorney, and then represent them all the way through, just like the ACLU or any other Legal Services Corporation.

Mr. EDWARDS. Do you want to describe the nature of one or two of those cases?

Mr. DESTRO. Sure. One is the *Sklenar* case in Detroit, which involves an allegation that of all the administrators, looking at the administrators on the Detroit Board of Education and given the ethnic breakdown of the city of Detroit, the vast majority of the administrators are black. This breakdown just does not fit the ethnic breakdown in the city.

This type of reasoning involves turning the equal employment cases around and using them for the benefit of the ethnic minorities.

We are involved in the *Lucido* case in an amicus status with the court on the question of discrimination against Catholics in the major law firms. We are involved in a case in Pennsylvania where a woman was fired from the staff of a hospital because she refused to have anything to do with the abortion procedures in the hospital.

We are involved in this Hyde amendment case where the allegation is that there is a point at which people who are religiously motivated can't win in the political process. That is almost an exact quote from the other side of the case.

And the cases just go on and on. I could describe them; there is a whole list of them.

Mr. EDWARDS. Well, thank you very much.

Good morning, Mr. McClory.

Mr. MCCLORY. Good morning, Mr. Chairman.

Mr. EDWARDS. The gentleman from Illinois, Mr. McClory, is recognized.

Mr. MCCLORY. Thank you, and I am delighted that we have scheduled this hearing. I think the testimony we are receiving this morning is extremely important.

I have tended to be a one-man critic of the Civil Rights Commission from time to time. It is very useful, to have some testimony which is critical, which tends to analyze what the Commission is doing, what it is not doing, and what it may be doing wrong which could be corrected.

I have had the general impression that the Commission tends to concentrate on subjects that seem to have some media significance, seeking to publicize some of the rather acute problems in our Nation which, as you indicate in your testimony, often exacerbate the problem instead of helping to provide solutions.

I have the feeling that one of the distinguished former Chairmen of the Commission, Father Hesburgh, himself a Roman Catholic, perhaps has been guilty of excessive attention to media-oriented subjects instead of other subjects to which you have drawn our attention today.

I have also had the distinct feeling that the Commission has been deficient in providing any comment with regard to the successes this country has made in civil rights. It seems to me that one of the important ways to overcome racial, religious, sex, and other forms of discrimination is to provide examples of those areas where progress has been made—where there has been successful integration or where a lack of prejudice has been demonstrated. Our entire society benefits when discrimination in employment, housing, schooling, and other areas has been successfully eliminated.

Do you have any comments to make regarding one of those areas?

Mr. DESTRO. Yes, I do. As a matter of fact, there is one Commission report which I refer to in the typewritten comments on the civil rights record of certain Federal agencies. And in that report—and I am looking for the title of it right now—the Commission discussed agencies like the FCC, for example. And I use that as one of the reports I remember because they discuss the FCC's report on affirmative action.

And really, all you have in that report, if you look carefully at it, is a self-serving statement of what the agency intends to do in the future.

Well, if you are really going to report on what an agency has done to comply with its mandate, to help people who are being discriminated against.

I think what you have to do is indicate how many complaints came in, and what was done with them. Does the situation appear to be getting any better? What recommendations have been suggested and adopted? And how are they working?

If the Commission is going to be monitoring civil rights enforcement then that is the type of reporting they should do; and some of those State advisory commission reports do that. The State advisory commissions I think, sometimes have a better record than the Federal Commission.

And, again, I am just saying that. I don't necessarily disagree with the Commission's views. It is just that they are not doing the job the way they should, and they are avoiding two great areas that they should be working on.

Mr. McCLORY. I am wondering if the Commission might also prepare an analysis of some of the existing laws which are prejudicial to the interests of others.

For instance, the built-in advantages we have for veterans, tend to perpetuate discrimination against others.

I have had a recent experience with someone who is certainly highly qualified for a position with the Bureau of Indian Affairs, but since he is not one-quarter Indian, he is automatically disqualified.

Do you believe that we should inject merit into the different bureaus and departments and eliminate some of these mandated prejudices? Congress has considered legislation just in the last few weeks with regard to age which has become an increasingly important problem with me as the years went by.

With respect to other mandated prejudices that we have in the statute, do you believe the Commission might be able to provide some useful information?

Mr. DESTRO. I think they might. Again, it is my problem and the reason I was honored to come today is that I fear that the Commission is going to—or at least, has been to this point looking for just about any out of investigating the two areas that my organization is primarily concerned with.

I think that, by definition, prejudice is wrong, and that if prejudice is mandated, then somebody ought to identify those areas wherein it is mandated, and yet get rid of them. They may well find and report that certain types of mandated prejudice are not really prejudices, or they are not having a prejudicial effect. If that is the case, then it is not appropriate to call them prejudice.

I have no problem with the Commission investigating such matters and coming to conclusions on them. But if they are going to come to conclusions, I believe that they have to, in good conscience, support those conclusions with either data or some very persuasive argument. And in some instances they haven't done that, it is just conclusory language.

Mr. McCLORY. I would like to just commend you on your emphasis on the subject of enthnicity. I have mentioned many times myself that as a youngster moving into a suburban community, that being Irish why, I was really looked down upon for a long time. And it wasn't until the Bohemians moved in that we all ganged up on them.

So I realize that ethnic—the fact of ethnicity is really one of extremely significant subjects.

I also note that in my area, the Chicago area, in the general area, including communities in my district, that the tensions which seem to be developing between blacks and Hispanics and even between different groups of Hispanics is a most frightening development when we

are endeavoring—many of us who are strong civil rights proponents—are endeavoring to eliminate the discrimination against some minorities, to find that in those that we are trying to help, they are engaging in discriminatory and highly prejudicial and highly inflammatory practices, one against the other.

It really warrants a review and sort of a new problem that is related to this whole subject of minority rights.

Mr. EDWARDS. The time of the gentleman has expired.

Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

I wonder if the witness would want to comment in what the Commission is not doing about those Bohemians. We have a classic case, admitted by a member of the panel here, that he and his peers look down upon the Bohemians.

Mr. DESTRO. Again——

Mr. DRINAN. Let's talk about the Bohemians of Boston.

Is it really fair, Mr. Destro, for you to say on page 4, that, "The U.S. Commission on Civil Rights persistently ignores a study done by the Massachusetts Commissioner of Banking"? I am very familiar, intimately familiar with that study. But is that a fair statement? The Commission knows about it, but what can they do? All of the research has been done. What should the U.S. Commission do?

Six percent of the top brass in the Boston banks are Catholic, and about that same amount are Jews, or maybe even a little less. It is changing a bit, but it is a WASP establishment that can be replicated in every major city of the country. What is the U.S. Commission supposed to do?

Mr. DESTRO. Report on it. And my view is that if there is discrimination going on, and if you look at the civil rights cases that come out of equal employment cases, one of the criteria they use is what are the percentages?

And if the percentages seem awry, and there is no particular reason for it, and if there really is a WASP establishment that is keeping people out, it seems to me that is discrimination and the Commission ought to be reporting on it. That is all I am saying.

Mr. DRINAN. The EEOC and the Massachusetts Commission Against Discrimination are working diligently in the area. There is all types of sex-related litigation going on. A Boston group called "9–5" has successfully propelled women up the ladder. With the publishing outfits, for example, they have a victory against them.

I think the U.S. Commission, in all probability, looks upon Massachusetts as one of the areas where the law and Federal and State agencies are doing just about everything they can.

So why pick upon the U.S. Commission?

Mr. DESTRO. I use that as an example. If, as you say——

Mr. DRINAN. But it is a poor example. I think that maybe you have a case here: That the U.S. Commission is not as comprehensive as it should be. But this illustration doesn't prove your case.

Mr. DESTRO. Well, obviously, I think you can take the same example with regard to racial or sex discrimination, and find areas of the country where the governmental agencies are doing just about everything they can do to bend over backward to help these people.

But that doesn't disprove the case against the Commission. I chose one which we saw was a very excellent report that was done by the

Massachusetts commissioner, and our view is why wasn't something like that done by the Civil Rights Commission.

Again, it is not that I don't think the Civil Rights Commission can do anything as a Commission; it is an advisory body, it is not an enforcement agency. It is supposed to gather information and advise. And it just isn't doing it. And I use Boston as an example of an area where it was done by somebody else.

Mr. DRINAN. But do you have one specific bit of evidence that the U.S. Commission persistently ignores this study? You said earlier that they are irresponsible, and exhibit a serious lack of responsibility.

Mr. DESTRO. That's right.

Mr. DRINAN. Wait. These are serious charges, and I just come back to pinpoint this: "The Commission persistently ignores the study."

What do you mean? Obviously they know about that study. I have discussed that study with one Commissioner, who said it was excellent, and that its impact would be felt.

Is it fair to say persistently ignored? They haven't persistently ignored it.

Mr. DESTRO. Well, I haven't heard them say anything about it in print. And not only that, but if the magnitude of the problem—if it is a serious problem in the city of Boston—and I am not from the city of Boston—if it is a serious problem there, then there is a good possibility that it is going to be a serious problem other places.

And since they haven't come out with any reports on religious discrimination, then I say they are consistently ignoring the problem, they are consistently ignoring the implications of that report. Now, they may have read it, but if they haven't done anything about it, they are persistently ignoring it.

Mr. DRINAN. Now, Mr. Destro, I am certain that if the U.S. Commission had the opportunity to answer your testimony, they would say, "We want to get into that. You double our budget, and we will get into everything that Mr. Destro wants."

Mr. DESTRO. Well, they have been in existence now for quite a few years, and if you notice the charts that we drew up, there are no reports on religion or ethnically over all those years. One would have expected at least one. You have a myriad of reports on all these other things, but why couldn't they have assigned a small task force to just one?

That doesn't answer me. Doubling the budget—it seems to me that they haven't done their job.

Mr. DRINAN. You mean on the so-called ethnics.

Mr. DESTRO. Ethnics and religion.

Mr. DRINAN. How would you respond to the U.S. Commission? They would say:

> Listen, we have our hands filled with race and color and sex and women's issues in prison. If you want something more on national origin and religion, we just have to have more staff.

Wouldn't that be the affirmative way to approach it?

Mr. DESTRO. It might be, but again, it just seems to me that because they haven't done anything, that would seem to me to be an excuse to get more staff. They can assign priorities there, and to my mind discrimination is a No. 1 priority if it is practiced against anybody. It

is no answer to the poor Polish architect who gets fired. They say, "We don't have enough staff to investigate your problem." He is going to say, "Just go ahead and assign somebody."

If they were the ACLU or the Catholic League, we would take the case and you would just try and fit it into your schedule. But when they are doing nothing—and we don't see that they are doing anything. They can fit it into their schedule. They should not have been spending all that time working on sex bias in the United States Code.

Mr. EDWARDS. The time of the gentleman has expired.

Mr. Butler.

Mr. BUTLER. I have no further questions.

Mr. EDWARDS. Ms. Davis.

Ms. DAVIS. Yes; I have a followup question to one raised by the chairman.

I would like to get a better sense of your organization's activities and the kind of caseload you have.

Mr. DESTRO. Yes.

Ms. DAVIS. When was the league established?

Mr. DESTRO. We are about 5 years old. Right now we are in the process of expanding greatly our legal capabilities. We have had, as I recall, there were two predecessors before me, and much of our work was done by hiring private law firms to litigate cases, and that seriously circumscribes your ability to delegate a lot of cases.

So recently our caseload has been picking up quite a bit over the last year, and I am really not in a position to categorize them all for you, but I would be more than happy to submit a summary of them in writing.

Ms. DAVIS. Could you do that?

Mr. DESTRO. Sure.

Ms. DAVIS. I am interested, for example, in what percentage of your cases fall into religious discrimination or ethnic discrimination in housing or employment. Earlier, you mentioned in the Hyde amendment, what other abortion issues are you involved in?

Mr. DESTRO. Well, most of them—we don't litigate what I define as the "classic" antiabortion case. We don't really get involved in whether or not a statute is constitutional.

What we are involved in are cases where people are discriminated against because of their views on that issue. And when somebody gets fired because they won't work in a hospital and be forced to clean up an operating room, for example——

Ms. DAVIS. You have a number of those kinds of cases?

Mr. DESTRO. Yes.

Ms. DAVIS. OK, could you provide that kind of information?

Mr. DESTRO. Sure.

Ms. DAVIS. With a breakdown of percentages and actual numbers.

Mr. DESTRO. Sure. I would be happy to. The percentages—probably not percentages, because, as I say, we are just getting into it in a big way, but I would be more than happy to describe it for you in detail.

Ms. DAVIS. Thank you, one additional question.

You noted a few reports, done by the State advisory committees, which you found acceptable, are there any reports or recommendations from the U.S. Commission which do not fall under your category of "shoddy scholarship"?

Mr. DESTRO. Oh, yes; there are some. I am saying that when you are dealing with very, very controversial issues, you can't really afford to be shoddy. And I thought that their performance on the abortion question was very bad.

Now, some of the other reports—now, again, I don't have too much problem with them.

Ms. DAVIS. So your concerns with the Commission's reporting—are: first that there are some areas which they are not reviewing?

Mr. DESTRO. Right.

Ms. DAVIS. OK. And that as to the abortion issue, you find their reporting was "shoddy"?

Mr. DESTRO. Well, that's one. There are other ones. And, again, my basic problem with the type of reporting which is being done, is what you get, is you get a lot of generalities, but you don't get a lot of hard facts. They say, "Something is amiss in Los Angeles in the desegregation areas."

Now, that, I found, at least, was a very good report, and I had—I, together with one of my assistants went through a number of the reports at random and found some of them to be good. But some of them are not. They just don't zero in on what the practicing attorney would want to find in reports like that. And I think that those are the same kind of issues that Congress is going to have to look at in trying to fashion legislative remedies. Attorneys——

Ms. DAVIS. It seems to me, in their clearinghouse responsibility they are not required to present law review articles for the use of practicing attorneys.

Mr. DESTRO. That's right.

Ms. DAVIS. One would look to a standard——

Mr. DESTRO. No.

Ms. DAVIS. Pardon me?

Mr. DESTRO. That is not what I am talking about.

You can find all the law review articles you want in the library, and I am not asking for the Commission to write law review articles. I use as a good example of the kind of thing that I consider excellent in terms of reporting the Arizona Commission's report. That was one that immediately, when I looked at it, informed me about the problems of Mexican-Americans and justice in southern Arizona; I found that to be a superb report.

It told me exactly what the problem was, exactly where the problem existed, the parts of the State, the judges that were involved, and the types of things that were being done to remedy the problems.

Those are excellent reports, and that is what I would like to see more of out of the Commission. I am criticizing them, but I don't want it to be destructive criticism. But unless they change a bit, I don't see that they deserve an open ended appropriation.

Mr. EDWARDS. Mr. Starek.

Mr. STAREK. I have no questions, Mr. Chairman.

Mr. EDWARDS. If there are no further questions, we thank the witness for very helpful testimony. Thank you.

Mr. DESTRO. Thank you.

Mr. EDWARDS. Our last witness today is Prof. Walter E. Williams, associate professor of economics at Temple University. Professor

Williams is a familiar witness in both the House and the Senate, and has written extensively on minority education and minority employment problems.

Thank you for coming to Washington today, Professor. Without objection, your full statement will be made a part of the record, and you may proceed with your testimony.

[The prepared statement of Professor Williams follows:]

STATEMENT BY PROF. WALTER E. WILLIAMS, ASSOCIATE PROFESSOR OF ECONOMICS, TEMPLE UNIVERSITY, PHILADELPHIA, PA.

To challenge organizations charged with a moral mission always puts one in a position not entirely dissimilar to a challenger of religious doctrines. The challenger not only risks being in error but being in sin as well. Such is the risk that I take in my testimony before the House on H.R. 10831 to extend the U.S. Civil Rights Commission's life for the next five years. In consideration of this risk, let me state without reservation that I support the American value that all of its citizens are entitled to all Constitutional and Bill of Rights guarantees. Furthermore, I believe that it is the duty of governmental authorities to enforce these guarantees.

When the U.S. Civil Rights Commission was established in 1957 there was an important need to force governments at every level to recognize the most basic rights of black Americans. The Civil Rights Commission performed admirably in this role which has contributed to unprecedented racial progress in a mere span of twenty years. In later years as a result of the 1964 Civil Rights Act, Congress has established the Equal Employment Opportunity Commission, there have been several Executive Orders resulting in the establishment of Federal Contract Compliance Offices all with the general oversight of the General Accounting Office and other federal agencies. These changes on the civil rights front brings the unique contribution of the U.S. Civil Rights Commission into question.

It has been pointed out in other documents that much of what the Civil Rights Commission proposes to do in the way of research has been or is now being done through other federal agencies such as the Department of Labor, National Institute of Mental Health, Law Enforcement Assistance Administration and Housing and Urban Development. In the academic arena one can find literally volumes of highly professional research in every area that the Commission proposes to investigate in the forthcoming years. Put bluntly, this means that in terms of the on-going research into minority problems, the absence of the Commission's proposed research efforts would go unnoticed.

In part a reflection of a declining need for an agency such as the U.S. Civil Rights Commission is its expansion into areas that can only be justified using the broadest interpretation of its original mandate. Forcible rape and coerced sterilization, domestic violence and the study of public transportation are excellent examples of research activities which probably were not intended to be a part of the Commission's charge. Of course these proposed research activities can be interpreted as civil rights issues. But so is armed robbery, automobile theft, kidnap, extortion and murder. Just because these acts are violation of civil rights, violations perhaps disproportionately borne by minorities, does not necessarily imply that the U.S. Civil Rights Commission should be the agency that monitors them.

The fact that the U.S. Civil Rights Commision seeks other activities to justify its continued existence does not place it in a class all by itself. Numerous examples exist in the private sector and the federal sector. In the non-government sector the March of Dimes most readily comes to mind. Polio has been eradicated in the United States but yet the March of Dimes exists, and exists on budgets that are much larger than when polio was rampant. The Interstate Commerce Commission (ICC) is the federal counterpart who was chartered to regulate railroads and now regulates common carrier trucks, long distance busses, moving vans, some barge lines and oil shipment by pipeline.

The fact that the Civil Rights Commission duplicates the work of other federal agencies coupled with the fact of its tiny budget relative to other federal agencies suggests that no significant economy gains would be realized by its dissolution. This means that if the Commission contributed nothing not contributed by other

agencies there would be no pressing need to labor on its continued existence. However, I feel that this is not the case and the balance of my testimony will address itself to this.

SCHOOL INTEGRATION

The U.S. Civil Rights Commission has contributed significantly toward the forces for racial integration of public schools throughout the land. If the current racial mix in the schools in our major cities, compared to that in the recent past, is used as a criteria for success then the only word that can be used to describe the efforts of the Commission is failure. However, the problem is much deeper than this.

The Civil Rights Commission, and as well other agencies, perceive the educational problem that black children face as one of racial segregation in the public schools. While racial discrimination may explain some of the problem it by no means explains all or even most of the problem. However, the focus on racial integration of public schools focuses attention away from more satisfactory explanations of underachievement in education by blacks.

There is considerable evidence around that racial integration is not a necessary or even desirable conditions for black academic excellence. For example, black youngsters who attend Black Muslin schools receive a higher quality education than many of their public school peers, likewise is the case in predominantly black parochial schools which have been all but abandoned by white parishoners as neighborhoods changed, likewise is the case in an ever increasing number of community schools. No one can say, for example, that the Black Muslin schools are integrated, yet their students leave performing closer to the national average than their public school counterparts. On tops of this observation is the fact that the educational budgets of these schools are but tiny fractions of public school budgets. These two observations tell us (1) more money is not absolutely necessary for improvements in black education and (2) integration is not absolutely necessary for improvement in black education. In fact, I think that for one to suggest that blacks cannot achieve academic excellence except in the presence of whites is not only untrue but a racial insult as well. On top of all this, national polls show that the overwhelming majority of black parents are against bussing for the purposes of racial integration. This is the case in Boston too where it was not black parents who wanted their children bussed; it was civil rights organizations who felt that they had a superior view of how the world should be.

To the extent that governmental agencies such as the Civil Rights Commission continue to focus on racial discrimination in the present as the cause of black educational underachievement, the masses of black children will continue to be underachievers. Racial discrimination in the public schools is not now the problem in black education. Their problem lies more in the organizational structure within which education is delivered which creates perverse incentives for all involved.

EMPLOYMENT DISCRIMINATION

The Civil Rights Commission's approach to the unemployment problems of minorities is misguided similarly. Arthur Flemming testifies, "The Commission has continued to identify affirmative action plans as a "must" if equal opportunity goals are to be achieved . . ."[1] Citing the State of Civil Rights Report for 1977, the Commissioner say, "Black unemployment was the highest since World War II. The persistent income gap between white men as compared to minorities and women is also a disturbing fact."[2] While the Commission does not cite a cause for these statistics in his testimony, one wonders whether he would suggest that racial discrimination against blacks has risen since the end of World War II. Not many recognize that in some age groups black unemployment at the end of the war was lower than comparable whites and labor force participation rates were higher. This was at a time when racial discrimination was far more pervasive than it is now. If the Civil Rights Commission continues to look for racial discrimination as the cause of the rapid deterioration of employment opportunities for a large segment of minority workers we will never find a solution. Instead the cause of much of the unemployment problems that blacks face is due to the behavior of politically powerful interest groups who have used the coercive powers of Federal, State, and local governments to close job opportunities not in the

[1] Arthur S. Flemming, Testimony, House Judiciary Committee, March 1, 1978, page 8.
[2] *Ibid.*

name of racial discrimination but in the name of "more desirable" social objectives.

HOUSING OPPORTUNITY

Blacks, Hispanics and poor whites live in poor housing. However, the question that must be answered is does this reflect low income or racial discrimination. Overwhelming evidence suggests that nowadays the inability of most members of minority groups to secure adequate housing is a result of not having the financial means as opposed to having the financial means and because of racial preferences of landowners cannot secure adequate housing. To the extent that this is true, the housing problems of blacks do not fall under the purview of the Civil Rights Commission. It is an income problem and rests within some other agency of government, hopefully not Housing and and Urban Development. This agency has reduced the quantity of housing available to low income minorities. For example, HUD between the years 1967 and 1971 destroyed 538,000 units of housing. They replaced 201,000 units of housing. Of those 201,000 units replaced 100,000 were priced within the range that would be available to low and moderate income people. One thing that the U.S. Civil Rights Commission could do is insist that blacks not receive that kind of housing assistance. This housing program increases the rents and spreads the slums as is the case in many of our metropolitan areas.

BLACKS AND HISPANICS COMPARED TO OTHER DESPISED IMMIGRANTS

United States history is a history of discrimination against minorities. Jews, Japanese, Chinese, Irish, Polish, Italian were not excused from various levels of hostility including murder, denial of rights to own land and internment. Somehow these immigrant groups melted into the mainstream of American society en masse. The reason is that they came to our cities in large numbers and had opportunities, albethey unattractive at times, to be employed or go into business and, however, small, improve the lot of their children. When today's minorities became urbanized, they found that many of the opportunities available for yesterday's minorities were unavailable through many laws that close market opportunities for poor people in the name of some remote social good.

One, among numerous examples is the taxicab industry. Earlier immigrants could get a foothold on the ladder of upward mobility by buying a car or a horse and carriage and be a self-employed taxi or liveryman. Today, having the desire and a car is not enough. In New York City for example, one must purchase a license (medallion) which sells for $2,000 for each vehicle operated as a taxi. Such a practice discriminates against the poor entering the taxi industry while creating a monopoly for the incumbent owners. While New York's (and as well other cities) licensing law does not have a racial intent, it has a racial effect to the extent that poor people are disproportionately blacks and Hispanics. One notices that in the nation's capital black taxi cab company ownership, on a black per capita basis, exceeds that of any other city. In Washington to be an owner-operator, he only has to pay a fee of $200.

This example was brought up to show that racial discrimination does not explain as much about black/white differences in opportunities as alleged by the Civil Rights Commission and other civil rights organizations and agencies. To focus on racial discrimination as the cause of a problem when it is not does not produce a solution and may even exacerbate the situation through the generation of racial hostilities. This is a very important danger of the continued thrust of Government agencies involved with civil rights.

CONCLUSION

I recommend that the Congress authorize appropriations for the extension of the life of the U.S. Civil Rights Commission for 3 additional years. As a part of the authorization, it should be required that the Commission limit its scope of activities to those in it original charter. The activities of the Commission should be reviewed for effectiveness periodically. The Congress, in this respect, should authorize funds for outside evaluation of the activities of the Commission. Such a report should serve as the basis three years hence as to whether the U.S. Civil Rights Commission should be terminated as a governmental agency. In the near term I recommend that Congress reduce the Com-

mission's authorization to conduct non-civil rights research; I also recommend that the Commission's jurisdiction not be extended to include age and handicap discrimination. Finally, I strongly urge the Congress to recommend to the President of the United States that he appoint new Commissioners to the Civil Rights Commission.

TESTIMONY OF PROF. WALTER E. WILLIAMS, ASSOCIATE PROFESSOR OF ECONOMICS, TEMPLE UNIVERSITY, PHILADELPHIA, PA.

Dr. WILLIAMS. Thank you very much.

First of all, I have to say I am somewhat disheartened when I come to Washington, in particular, when I see things that come out of Washington. And this morning is not much of an exception to that, that is, we are concerned with issues of discrimination and quotas and things like that without really considering the fact that discrimination is a fact of life. We all engage in it.

I discriminate against ugly women. I permit my neighbors to discriminate against me. As a matter of fact, I live in an all-white, high-income neighborhood in the main line suburbs, and my neighbors know that they have the right to get me out of the neighborood if they want to. That is, all they would have to do is give me $200,000 for my house, and they would not have a black in the neighborhood any more.

And I think that people have that right to discriminate that way, but they shouldn't be able to use the forces of Government, that is, they should not make a zoning law to get me out, but they should be able to do it through the market.

So, I think that in general, we should concern ourselves a little bit less with quotas and discrimination, *per se*, and start looking at constitutional issues that are more important.

Now, having said that, let me go immediately into outlining my testimony.

I think the first thing I should say is that to challenge organizations charged with a moral mission always puts one in a position not entirely dissimilar to a challenger of religious doctrines, that is, the challenger not only risks being in error, but in sin as well.

Now, this is a risk that I take at the testimony today, and let me say first of all that I support the American value that all citizens are entitled to all constitutional and Bill of Rights guarantees. Furthermore, I think it is the duty of the governmental authorities to enforce these guarantees.

Now, when the Civil Rights Commission was established in 1957 there was an important need to force governments at every level to guarantee basic rights to black Americans and other Americans. The Civil Rights Commission performed admirably in this role in bringing a lot of this material to our attention, and perhaps as a result of some of this activity—I am not very sure—perhaps contributed to the 1964 Civil Rights Act, where the Congress established the Equal Opportunity Commission and there are several executive orders, and there are a number of agencies charged with an oversight responsibility in terms of guaranteeing Americans civil rights.

Now, the Civil Rights Commission today—there seems to be a question about the Commission's unique responsibility or the unique contribution. That is, there are many agencies that are performing the original intents of the Civil Rights agency.

Now, much of the activity that the Civil Rights Commission proposes to engage in in the coming years can only be justified in the broadest interpretation of its original mandate—that is, forcible rape, sterilization, domestic violence, and a study of public transportation are excellent examples which probably are not a part of the Commission's original charge.

Now, of course, these proposed research activities can be interpreted as civil rights activities. Armed robbery is a violation of one's civil rights. Automobile theft and kidnap and extortion and murder, but just because these are acts which violate individual civil rights, it doesn't naturally suggest that these should come under the charge of the Civil Rights Commission.

The fact that the Civil Rights Commission seeks other activities to justify its continued existence doesn't place it in a class all by itself. There are numerous examples in the private and Federal sector. In the non-Government sector, the March of Dimes most readily comes to mind. That is, polio has been eradicated in the United States, virtually, but yet the March of Dimes exists, and it exists on a bigger budget than when polio was rampant.

The Interstate Commerce Commission is a Federal counterpart who was chartered to regulate railroads but now regulates common carrier trucks, long-distance buses, moving vans, some barge lines, and some oil shipment by pipeline.

The fact that the Civil Rights Commission duplicates the work of other Federal agencies, coupled with the fact of its tiny budget relative to other Federal agencies, suggests that there is no significant economy gain that would be realized by its dissolution.

This means that if the Commission contributes nothing not contributed by other agencies, there would be no pressing need to labor for its continued existence. However, I feel that this is not the case, and I am going to speak to that point with the few things I have to say.

The U.S. Civil Rights Commission has contributed significantly toward the forces for racial integration in public schools throughout the land. If the current racial mix in the public schools in our major cities, compared to the recent past is used as a proxy for success, then the only word that can be used to describe the efforts of the Commission is failure. However, the problem is deeper than this.

The Civil Rights Commission, as well as other agencies, perceives the educational problem that black children face as one of segregation in the public schools. While racial discrimination may explain some of the problem, it by no means explains all the problem.

However, to focus on racial discrimination in the public schools as the Civil Rights Commission has done turns attention away from more satisfactory explanations of underachievement by blacks.

There is considerable evidence around that racial integration is not a necessary, or even a desirable condition for black academic excellence. For example, black youngsters who attend black Muslim schools receive higher quality education than many of their public school counterparts. Likewise is the case in predominantly black parochial schools which have been all but abandoned by white parishioners as neighborhoods change. Likewise is the case in an ever-increasing number of community schools where the black children who attend those

schools perform much better than their peers who attend the public schools.

No one can say, I believe, that the black Muslim schools are integrated. Yet their students, when they leave these schools, they are closer to the national average than the public school counterpart.

On top of this observation is the fact that educational budgets in these schools are tiny fractions of the public school budgets.

Now, these two observations tell us, (1) that more money is not needed for improvements in black education; (2) integration is not absolutely for improvement in black education. In fact, I think that for one to suggest, as the Civil Rights Commission does, that blacks cannot achieve academic excellence except in the presence of whites is not only untrue, but it is a racial insult as well.

Now, on top of this, national polls show that an overwhelming majority of black parents are against busing for the purpose of racial integration. This is the case in Boston, too, where it is not black parents who want their children bused across town, it was civil rights organizations who felt that they had the superior view of how the world should be.

To the extent that the governmental agencies such as the Civil Rights Commission continue to focus on racial discrimination as the cause of black underachievement in schools, the masses of black children will continue to be underachievers. Racial discrimination in the public schools is not the problem in black education; the problem lies in the organizational structure of the school system which creates perverse incentives for all first parties involved.

The Civil Rights Commission's approach to the unemployment problems of minorities is similarly misguided. Arthur Fleming testifies: "The Commission has continued to identify affirmative action plans as a must if equal opportunity goals are to be achieved."

In citing the state of the civil rights report for 1977, the Commissioner said,

> Black unemployment was the highest since World War II. The persistent income gap between white men as compared to minorities and women is also a disturbing fact.

Now, while the Commission doesn't cite the cause for these statistics in the testimony, one wonders whether he would suggest that racial discrimination against blacks has risen since the end of World War II to the extent that black unemployment is higher than World War II.

Very interestingly, hardly anyone in Government looks at the fact that in 1948, black unemployment was lower than white unemployment for many age groups, and furthermore the labor force participation rates during that time among black youths was greater than among white youths.

Today, as we all know, the market opportunities for black youths have deteriorated precipitously, and can one explain that by saying that there is more racial discrimination now in 1978 than there was in 1948? I don't think that that hypothesis would hold water, and so long as governmental agencies such as the Civil Rights Commission and others continue to look for racial discrimination per se as the cause of black unemployment, black unemployment is going to remain high and perhaps go even higher.

The fact of black unemployment and minority unemployment as well, in general, is that much of the problems that blacks face in the labor market is due to the behavior of politically powerful interest groups who have used the coercive powers of the Federal, State, and local government to close job opportunity. They close the job opportunities not in the name of racial discrimination, but in the name of more desirable social objectives.

The Civil Rights Commission, recognizes that blacks live in poor housing. However, the question that must be asked is, does this reflect low income or racial discrimination. Overwhelming evidence suggests that nowadays that inabilities of most members of minority groups to secure adequate housing is a result of not having the financial means, as opposed to having the financial means and because of racial preferences of landowners, cannot secure adequate housing.

To the extent that this is true, housing problems of blacks do not necessarily fall under the purview of the Civil Rights Commission. It is an income problem, and it rests within some other agency of Government—hopefully, not the Housing and Urban Development agency. This agency has reduced the quantity of housing available to low-income minorities.

For example, HUD, between the years 1967 and 1971, destroyed 538,000 units of housing. They replaced this with 201,000 units of housing. Of those 201,000 units replaced, only 100,000 of them were priced within the range that would be available to low- and moderate-income people.

So I think that one thing that the Civil Rights Commission might do is insist that blacks do not receive further kinds of housing assistance of this nature.

This kind of housing program increases the rampant spread of slums, as is the case in many of our metropolitan areas.

The U.S. history is a history of despised, and discriminated against minorities—Jews, Japanese, Chinese, Irish, Polish, and Italians were not excused from various levels of hostility—including murder—the denial of rights to own land, and internment in the case of Japanese-Americans.

Somehow these immigrant groups melted into the mainstream of American society en masse. The reason is that when they came to our cities in large numbers, they had opportunities, albeit they were unattractive at times, but they had opportunities to be employed and go into business, however small, and improve the lot of their children.

When today's minorities became urbanized, blacks and Hispanics, they found that many of the opportunities available to yesterday's minorities were unavailable through many laws that closed market opportunities for poor people.

One example that stands out in stark relief is the taxicab industry. The taxicab industry is an area where a person, a minority person with a small income can go into business for himself and earn a remunerative income. In many cities, to own a car and have the will to work for oneself is not sufficient.

In the city of New York, it requires that you have a $52,000 medallion. The cost to get a license to drive a cab in New York is higher than a seat on the New York Stock Exchange.

On the other hand, in Washington, D.C., it costs—you need a car and $200 and you are in the cab business. Now, if one compares black ownership per capita in Washington, D.C. with that of New York, he would see a greater black ownership in Washington, D.C.

One cannot say that the differences in taxi ownership between New York and Washington are the result of racial discrimination. No, it is not. It is the result of the market entry restrictions in New York as compared to Washington, and many of our other cities have limitations as severe as New York.

There are literally thousands of cases of minorities denied entry, not on the basis or the intent of racial discrimination, but through laws that are supported by powerful interest groups that close markets and hence opportunities.

In conclusion, I recommend that the Congress authorize appropriations for the extension of the life of the U.S. Civil Rights Commission for 3 additional years.

As a part of this authorization, it should be required that the Civil Rights Commission limit the scope of its activities, and perhaps the Civil Rights Commission should be urged to look at these other areas that I have suggested, that is, rules of the game in the United States that deny, particularly minorities and women, an opportunity to get a foothold on the ladder and move up in society as have other minorities of the past.

Furthermore, I think that the Congress should only authorize activities for the Civil Rights Commission that are well within the original charter of the Commission. To study transportation, to study sterilization, to study abortion and issues like this are not. While one can broadly interpret these as civil rights issues, I think that if the Civil Rights engages in these activities, they approach nearly undoable tasks.

Finally, I urge the Congress to make a recommendation to the President of the United States that he appoint new Commissioners to the Civil Rights Commission. And I think that the purpose of making this recommendation is that they get some people running the Commission that are willing to take a hardminded approach to some of these problems that I have outlined.

Thank you very much.

Mr. EDWARDS. Thank you very much, Dr. Williams, for a very stimulating statement.

The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

Professor Williams, I don't understand what you are driving at on page 5 when you state that "the cause of much of the unemployment problems that blacks face is due to the behavior of politically powerful interests groups who have used the coercive powers of Federal, State, and local governments to close job opportunities."

Who are the politically powerful interest groups in Harlem, for example, where youth unemployment among blacks is 38 percent?

Dr. WILLIAMS. OK, we saw this in October of last year, when the minimum wage law was raised to $2.65 an hour. And the primary supporters of the minimum wage law were labor organizations who benefit from higher minimum wage laws to the extent that it prices

their competition out of the market, and makes them better able to demand higher wages for themselves.

This is one example. And to the extent that the minimum wage law rose, black youth unemployment has risen as I predicted in my testimony in the Senate. And this is an example of people using the coercive powers of the Government, saying that it is now illegal to hire a person below $2.65 a hour.

Mr. DRINAN. But, sir, that massive unemployment existed long before we raised the minimum wage.

Dr. WILLIAMS. That is absolutely right.

Mr. DRINAN. So who are these politically motivated, politically powerful interest groups? You said political, not labor.

Dr. WILLIAMS. Well, they are politically powerful interest groups. They come to Washington. Labor is the major lobbyer for the minimum wage law. It has been since the Fair Labor Standards Act of——

Mr. DRINAN. Your response is totally unresponsive to what I am asking about, and I see no proof of what you say here. But let's get down to your fundamental proposition that the U.S. Commission should go back to what it originally was.

Are you opposed to the 1972 amendment where sex-based discrimination was included in the mandate of the Commission?

Dr. WILLIAMS. Well, sir, first of all, whether one wants to discriminate on the basis of sex, I think that it is one's own private decision. Now, I do not think that the Federal Government should subsidize sex discrimination.

Mr. DRINAN. Well, sir, would you just respond? I am just trying to figure out what yo uare telling us here. You say:

> I recommend the Congress reduce the Commission's authorization to conduct non-civil rights research. I also recommend that the Commission's jurisdiction not be extended to include aged and handicapped.

All right, that is very clear, that you don't want aged and handicapped discrimination to be in the mandate as it is now. I am just asking you a simple question. When you say, "to conduct noncivil rights research," are you saying that the sex discrimination authorization should be repealed? Yes or no?

Dr. WILLIAMS. Well, if you push me for an answer, I would probably say I do not want it repealed. I do not——

Mr. DRINAN. Very good. Therefore, when you say the Commission should be pushed back to its original mandate, you mean the 1972 mandate?

Dr. WILLIAMS. Well, my interpretation of the mandate is that there should not be discrimination on the basis of race, sex, national origin, and religion.

Mr. DRINAN. And religion.

Dr. WILLIAMS. Religion.

Mr. DRINAN. All right. Therefore, the only thing that you are against, then, is sex, aged, and handicapped. You think that that is too much.

Dr. WILLIAMS. I said that the proposals that they plan to get into suggest that they want to look at handicapped discrimination, they want to look at aged discrimination.

Now, the point is, as I suggested when I began, is that there is discrimination of all kinds. You can probably sit down and think of

1,000 kinds of discrimination that goes on in our society, and you wonder whether they are capable of performing 1,000 of them. I mean, there is discrimination against criminals, there is discrimination against Communists, there is discrimination against people who don't bathe regularly, there is discrimination against people who have vulgar speech—many kinds of discrimination.

Mr. DRINAN. I have the same kind of difficulty with you as I had with Dr. Destro. You are stating that there are all types of terrible discriminatory——

Dr. WILLIAMS. No; I am not calling them terrible.

Mr. DRINAN. Well, there are forces of discrimination operating, and apparently you don't want the U.S. Commission to do something about this. But you are saying it should go back to what you conceive to be its original charter, as you say.

You want it to continue to exist. I want it to be effective. I have been on this subcommittee for 7½ years. We have reauthorized the Commission and the budget has not gone up. Regularly people complain, like you, that they are not doing enough; they are not getting into all of the things that are mandated.

Dr. WILLIAMS. I am not saying that they are not doing enough. I am saying they are doing the wrong things.

Mr. DRINAN. You are not telling us very much about the wrong things. I take the original charter, and if you really want them to be effective, they have to investigate the allegation of the denial of the right to vote, they have to be a national clearinghouse for information with respect to laws because of race, color, religion, sex, or national origin. They have to study and collect information concerning legal developments concerning any denial of equal protection of the laws.

They can't possibly do an effective, comprehensive job on the $11 or $12 million that they get every year. So I think logically you should say they should have a larger budget. Even if they say knock out handicapped and knock out aged, you still have to say that they are going to be a national clearinghouse and also appraise the laws and policies of the Federal Government with respect to denials of equal protection, they just have to have more financing.

Dr. WILLIAMS. Well, I am not particularly sure about the nature of their budget, but I don't see more financing as the solution to problems all the time.

Mr. DRINAN. Well, who does? I didn't say that.

Dr. WILLIAMS. Well, you suggested that they should have more financing.

Mr. DRINAN. Yes; but you are suggesting that they are ineffective.

Dr. WILLIAMS. Yes; I am.

Mr. DRINAN. And that to make them more effective, you are saying, "Let's knock off two things that they have to do, aged and handicapped discrimination." I see the point of what you are saying there. You are saying in effect that if they didn't have to get into aged and handicapped, if they didn't have to get into what your call—and I still don't have an adequate definition—what you call noncivil rights activity, then they would be more effective in doing the things in the original charter. You say that they should have a mandate for 3 years to do that. But I still say that they would be very ineffective, because it is such a tiny organization.

Dr. WILLIAMS. Sir, that is your opinion.

Mr. DRINAN. Excuse me?

Dr. WILLIAMS. That is your opinion.

Mr. DRINAN. Well, that is your opinion, sir. You come here as a witness——

Dr. WILLIAMS. Well, I am saying that——

Mr. DRINAN. And you are totally illogical. That is all I am saying.

Dr. WILLIAMS. I am saying that racial discrimination per se is not the primary problem that blacks face today. That is, there is the institutional structure that makes it impossible, virtually impossible, for blacks to progress rapidly as have other despised minorities in our country.

Mr. DRINAN. Well, I agree with you, sir, and I have been saying that for 20 years. I agree with you. The U.S. Commission on Civil Rights is the one feeble instrumentality that we have at the Federal level to investigate and try to eradicate institutionalized injustice. And you are saying——

Dr. WILLIAMS. What I am saying, sir, is from what I have seen, they are not willing to do it. And I have attended conferences with the Civil Rights Commission, and they are not willing to do it. That is, some things—institutionalized things that prevent people from opportunities, market opportunities, or things like the Davis-Bacon Act that requires that we have a superminimum wage law on Government-funded projects, the minimum wage law that deprives black youths of job opportunity, the ICC regulations where black truckers, even though they have the trucks to carry goods between States, have not proved need and necessity so that they can be able to conduct their livelihood.

This is the kind of discrimination that I am talking about, the institutional laws that make it very, very difficult for minorities to enter the mainstream en masse. That is, I think that raw racial discrimination such as has existed throughout most of the U.S. history is gone, but there are institutional structures that make permanent the handicap that blacks have had in the past.

Mr. DRINAN. Why don't you recommend that the U.S. Commission have a new mandate to investigate this type of institutionalized injustice? Wouldn't that be a more affirmative, constructive approach for you?

Dr. WILLIAMS. Well, probably so.

Mr. DRINAN. Thank you very much. My time is up.

Dr. WILLIAMS. This is one of the reasons why I suggested new Commissioners, to take this new mandate.

Mr. EDWARDS. Mr. Butler.

Mr. BUTLER. Pursuing that, it is your view that we do not need to alter the statute, but rather we need a different point of view on the Commission? Is that basically what you are saying in response to the last question?

Dr. WILLIAMS. Well, yes, I am. I am saying that there are—for example, in the case of black underachievement in school—racial discrimination doesn't necessarily explain that. These schools in Philadelphia, the city I am most familiar with, they have budgets just like the white schools. But in these schools there is shooting, there is raping

of teachers, there is cutting of throats and even if the school is integrated, in an environment like this, the people can't learn.

And one notices a remarkable difference between these schools and the black Muslim schools where the kids do learn. If the kids look cross-eyed at black Muslim teachers, they would be out of the school.

And so I am saying that to continue to look for racial discrimination, when in fact racial discrimination may not explain the problem, I think is unproductive. I mean, it is like if I go to the doctor with a stomachache and he says that—if he assumes that if it is a result of some kind of an infection having to do with conjunctivitis, if he looks for conjunctives as a cause of it, I will always have my stomachache.

So what I am arguing is that we are not looking at the causal factors involved in black/white differences.

Mr. BUTLER. Based on that view, why do you recommend the Commission's reauthorization?

Dr. WILLIAMS. Because out of the hope that maybe, if they are given a strong enough mandate by the Congress, they may look at these areas, because I think they are sufficiently important for somebody to look at them, and nobody is pressing forward to look at them.

Mr. BUTLER. I am very grateful for your testimony. I think you have made a major contribution to this deliberation and I am very grateful for it. I believe a reexamination by this subcommittee of exactly what should be expected of the Civil Rights Commission is very much in order.

We appreciate your testimony.

Mr. EDWARDS. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

Dr. Williams, I want to express my appreciation for your testimony.

In my own congressional district, I have had a high school student council advise me about the malicious impact of the minimum wage law on finding employment for the high school black students.

I have tried to project this view, not because of any hostility toward any particular type of legislation, and certainly not because I am in favor of low wages or salaries for anyone. Quite the contrary, I think the only way we can provide an opportunity for the young blacks to get a start on the economic ladder and demonstrate that they want to become part of our economic society, is to leave the door open for him to have a chance, and not deny it because of some Federal law that bars him or discourages a potential employer from giving him that opportunity.

I am aware of the article you wrote and the contribution you endeavored to make when we had the legislation up last year. Unfortunately, we were confronted with a black spokesman on the floor of the House who suggested that those of us who took the position you take really did not understand the problem, although I was trying to communicate it on the basis of a direct knowledge.

Also on the subject of housing, I am fearful right now that there are actions being taken which are creating racial and other types of tensions, such as efforts to force economic integration by subsidized and low-cost housing in a medium- or high-income housing area.

My experience has been that this creates tension there that I would rather not see.

Dr. WILLIAMS. If I may interject, most people don't know that the major lawsuits against having low-income housing in middle-class areas have been brought by blacks who escaped the ghetto environment through their own industry and did not want it following them in no form. And most Americans do not know that the major lawsuits were brought by blacks.

Mr. MCCLORY. One of the rather related problems is how to integrate low-income families in senior citizen housing developments since many senior citizens tend to prefer to live with other senior citizens. If you decide to put a low-income family, black or white, in a senior citizens development, the problem of young people and older people getting along is raised.

In my neighborhood in Washington, I tend to support improved housing through renovating existing housing. It is tied in with historic preservation in a way. My black neighbor has renovated his house and lives in rather comfortable quarters. However, some of the other real estate developers have taken over other houses and black families have moved out followed by white families moving in.

I would think that a governmental program which would help lower income families with loans and loan guarantees—by permitting low-interest loans to improve or restore historic housing—would provide for better housing than if we tore down older structures and replaced them with inexpensive and oftentimes inferior-quality new housing. We have done this in many housing projects which, I gather from your testimony, has really created problems.

Dr. WILLIAMS. Yes.

Mr. MCCLORY. I do not know whether you have any thoughts as to what I perceive to be the policies of HUD at the present time with respect to the attempt to integrate different economic groups.

Dr. WILLIAMS. Well, if their present behavior is anything like their past behavior, I am not very optimistic.

Mr. MCCLORY. I would just make one more comment. My older son teaches at a Catholic high school in Washington, D.C., where the student body is almost 100-percent black. The discipline, the level of parental support, and the other elements that contribute to a good education are enabling these young blacks to gain the kind of educational opportunities to which you made reference. This is so far superior to the public school educational opportunity, even with all the busing and all the other types of activities which leads to the misconception that putting a black student in a predominantly white school, will somehow automatically guarantee that student a better education. It just does not follow because of that particular element.

I thank you very much for your testimony.

Dr. WILLIAMS. Thank you.

Mr. EDWARDS. I appreciate the contribution that you made, Professor Williams, particularly with regard to the job opportunities and the fact that local and State and Federal Governments, from time to time, have lessened the number of job opportunities so that poor people generally can't emerge from the dire economic situations in which they find themselves.

But at the same time you are making a case for separate schools, separate housing, and 50 cents per hour, the old minium wage, separate but equal schools run by black Muslims.

Is that the kind of a case you are making?

Dr. WILLIAMS. That's not quite a correct characterization of what I want to say. I am saying that integration is not a necessary condition for black academic excellence.

Mr. EDWARDS. And separate, but equal?

Dr. WILLIAMS. Well, it has to do that way. After all, you want a kid to know calculus, and I don't see where sitting beside a white kid helps him to know calculus.

Now, I am not arguing for imposed segregation.

Mr. EDWARDS. But you think *Brown* v. *The Board of Education* is a bad decision?

Dr. WILLIAMS. Well, probably not. It is not a bad decision to the extent that it says that States cannot require segregation of schools. Now, I am not for required segregation, but here we have a number of our cities where a very, very large percentage of the population is black, and without engaging in some form of coercion you are going to have racially homogeneous schools.

So far as you characterize my statement about the wage situation and job opportunity, it is very interesting and nobody stops to think of it, that these other minorities who are successful minorities by today's standards—Japanese-Americans are the most successful of any immigrant group who came to our country by any standard of success. These immigrant groups, they went through sweatshops, they had pushcarts, and there was not this social commitment to help them enter the mainstream society en masse, and I think that those ethnic groups who did enter our mainstream en masse, they should thank us for not having the kind of "social commitment" that we have for today's minorities.

Mr. EDWARDS. Are you saying that the sweatshops went out of existence because the managers and owners allowed them to go out of existence, or because laws put them out of existence?

Dr. WILLIAMS. I don't know. I think that workers became more productive. Workers clearly are more productive today than they were back 40 years ago, and one's working condition, as well as his wages, are part of his total remuneration.

But the point I am making is that the minorities of years ago had opportunities to engage in economically rewarding activities that helped them get a foot on the ladder. What we have done today in our society is that we have removed the bottom rung of the ladder, so that if you are at the bottom of the socioeconomic heap, there is just nothing to grab on so that you can move up the ladder.

This is what the minimum wage law says. It says:

> If you cannot produce per hour $2.60 worth of goods and services, you are not deserving of a job. It is against the law for you to hold a job.

That is, in effect, what the minium wage law says.

Now, if I went back to Temple University and told my president that the minimum wage I am willing to work for from here on out is $100,000, he would say, "Williams, you are not worth that, just plain not worth it."

The wage that makes some people not worth being employed is just higher than others, but $2.65 tends to put low-skilled people out of jobs. And it is no accident, no accident at all that the people who are the most low skilled, in terms of demographic groups in our society,

are also the same people who are most highly represented in the unemployment statistics—blacks and other minorities.

And I think that what we are doing in our society, to a large degree and through the activities of many civil rights organizations, what we are doing is creating opportunities for black middle class, blacks who can make it anyway, and we are leaving the blacks who are at the bottom of the ladder where they have been since 1960 through the New Frontier, the Great Society program, the new Federalism—they are staying there, and they are going to stay there for another 10, 15 years, even longer.

Mr. EDWARDS. Well, thank you very much.

Ms. Davis.

Ms. DAVIS. Mr. Williams, I find your statement very interesting. However, it raises some questions that I hope you can answer here. We will start at the beginning.

On page 1 of your statement, you note: "It has been pointed out in other documents that much of what the Civil Rights Commission proposes to do," is duplicated by other Federal agencies, for example, the Department of Labor, the National Institute of Mental Health, LEAA, and HUD. Can you be more specific as to what other documents concluded the Commission's work is duplicative?

Dr. WILLIAMS. Well, the Department of Labor is involved in racial discrimination and sex discrimination——

Ms. DAVIS. I am asking you specifically what other documents point to the same conclusion that you have drawn?

Dr. WILLIAMS. It is just the committee hearings. I guess the supplemental report that was sent to me, the Civil Rights Commission Authorization Act of 1977, and it points out these areas.

Ms. DAVIS. So you have not actually seen these other documents, necessarily?

Dr. WILLIAMS. Well, if the civil rights organization proposed a particular area to do a study in—and I am very, very familiar with the area, for example, unemployment and affirmative action—I have seen the literature, and there is really nothing much more to say about it.

Ms. DAVIS. Could you provide the committee with some listing with those other kinds of documents that indicate that the Commission's work is duplicated by other agencies, Federal agencies?

Dr. WILLIAMS. Well, if you want me to, I can send it down.

One of the agencies that you cite as duplicating the work of the Commission is HUD. You noted that at page 2 of your written statement. However, further on in your testimony, you point to the horrible job HUD has done, at least in some areas.

Would you feel comfortable allowing HUD to continue to speak to housing issues on the impact on minorities without having some other agency, Federal agency looking at that?

Dr. WILLIAMS. Are you asking me a policy question?

Ms. DAVIS Well, you have made a statement that one justification for not extending the Commission is that its work is duplicated by other Federal agencies, correct?

Dr. WILLIAMS. Yes.

Ms. DAVIS. Yet, one of the agencies you cite, in the housing area is HUD. You point to the fact that HUD has not been doing a very good job, at least in some areas, as it impacts on minorities.

My question to you is are you comfortable suggesting to the indicating Committee, at least as to housing issues, that the Commission or some other Federal agency should not be looking at those kinds of issues as well?

Dr. WILLIAMS. Well, as I suggested, the civil rights agency should look at various laws that have a discriminatory impact on blacks, even though it does not have a discriminatory intent. And if the civil rights agency were to suggest or advise the Government and do the kind of research that would lead up to the advising that HUD be sued in terms of a number of activities that HUD engages in, I would say, yes, that is a legitimate area for them.

Ms. DAVIS. Fine. At page 2 of your statement, you note that research on forcible rape, coerced sterilization, domestic violence, and public transportation are examples of research outside the Commission's charge; correct?

Dr. WILLIAMS. Yes.

Ms. DAVIS. Are you aware that the Commission's jurisdiction was expanded in 1972 to include sex discrimination?

Dr. WILLIAMS. Yes; I am.

Ms. DAVIS. Could you set forth the kinds of issues you think the Commission should review to meet its charge to review sex discrimination?

Dr. WILLIAMS. It would be very, very narrow—so far as employment of women.

Ms. DAVIS. Do you think there are any other kinds of issues unique to women besides employment that the Commission should be looking into?

Dr. WILLIAMS. No; I don't.

Ms. DAVIS. Domestic violence would not be one of those?

Dr. WILLIAMS. No, men get beat up just as much as women.

Ms. DAVIS. Coerced sterilization would not be——

Dr. WILLIAMS. Men too get beat up as badly as women.

Ms. DAVIS. Pardon me?

Dr. WILLIAMS. Men in domestic violence get beat up just as bad as women do in domestic violence a lot of times. At least in my house. [Laughter.]

Ms. DAVIS. Let me just go back to that case. You also note that the Commission is working outside of its charge by doing a report on public transportation. Could you provide this committee with a little more documentation on that observation? I am not aware of any report the Commission has done on public transportation.

Dr. WILLIAMS. Well, this is part of their proposal. It says "fiscal year project"—and I am trying to find it—right here on page 10, they talk about, under consultation on role of cities, ineffectual public transportation.

Mr. BUTLER. Dr. Williams, will you identify the document you are reading from for the record.

Dr. WILLIAMS. It is the 95th Congress, 1st Session, H.R. Report No. 95-324, and it is titled "Civil Rights Commission Authorization Act of 1977."

Mr. BUTLER. Thank you. This is the subcommittee's report. Thank you.

Ms. DAVIS. You conclude your statement by noting that the Commission's scope should be limited to its original charter. That gets us to the followup question by Mr. Drinan.

If that were done, what kinds of issues would the Commission be reviewing, in your opinion.

Dr. WILLIAMS. Well, I would suggest that they look at the racial impact of various laws. That is, to the extent, as I suggested earlier, to the extent that certain laws have a disproportionate affect on minorities in terms of creating an adverse set of economic opportunities, I think they need to focus on these laws, such as the minimum wage law, such as ICC regulation, such as the Davis-Bacon Act.

Ms. DAVIS. The original charter was in 1957.

Dr. WILLIAMS. Yes.

Ms. DAVIS. And it did not include sex discrimination. Is that where you want to go back? I wasn't quite sure when you got into that discussion with Father Drinan exactly what your position is. Would you like to go back to 1957, or as of 1972, when it was amended to include sex discrimination?

Dr. WILLIAMS. Well, sex discrimination is something like racial discrimination. I would surely suggest that racial discrimination and employment should be one of the areas.

Ms. DAVIS. So, essentially you are saying that it continue to do the work that it is doing, but with a different point of view; is that correct?

Dr. WILLIAMS. No, not exactly. I am saying that if it is working on issues like abortion and sterilization, it should not be involved, in my opinion, in those kinds of activities. But in terms of racial disparties in our country, I think that they have completely exhausted racial discrimination as a cause of these problems, racial discrimination per se.

And I think that these various laws create the outcomes that they talk about.

Ms. DAVIS. Well, I have run out of time. Thank you.

Dr. WILLIAMS. OK.

Mr. BUTLER. Mr. Starek has some question.

Mr. STAREK. Yes. Thank you, Dr. Williams.

I would like to know if you believe that the Civil Rights Commission should be either a strong advocate or a proponent of efforts to enact or revise laws?

Dr. WILLIAMS. I have no foundation for answering that one way or the other.

Mr. STAREK. In other words, do you think they should lobby Congress or participate in amicus activities in the courts?

Dr. WILLIAMS. Well, I guess if you put it that way, I think that they should be an advisory group, as opposed to a lobby.

Mr. STAREK. I would like to ask one other question.

In your testimony you stated that the overwhelming majority of black parents are against busing to achieve racial balance in the public schools.

Dr. WILLIAMS. Yes.

Mr. STAREK. If this is the case, why do you believe that the Commission continues to insist that this is necessary in order to insure equal educational opportunities?

Dr. WILLIAMS. It is a kind of arrogance that pervades people with religious missions, and they feel as though they know better than their

ostensible clients. And it could be that—well, not particularly with the Commission, but I know that there are other civil rights organizations who support integrated schools and busing for the purposes of integration while the parents don't want it, but they get their funding from white liberal organizations and they are somewhat captive members of these white liberal organizations from whom they depend on for money. There could be any number of reasons.

And then I believe that many people seriously think that racial integration is the requirement for black academic excellence. And to the extent that that is true, they are misguided. I mean, there are any number of great black contributors in the United States who did not go to integrated schools, and they led blacks from the horrors of slavery and the Reconstruction to where we are today. They did not go to integrated schools. The great black scientists, they didn't go to integrated schools.

Mr. STAREK. Are you familiar with the work of the Commission's 51 State advisory committees?

Dr. WILLIAMS. No, I am not.

Mr. STAREK. Thank you.

Ms. DAVIS. Mr. Williams, would you explain why you do not support expanding the Commission's jurisdiction to review age and handicap discrimination?

Dr. WILLIAMS. As I suggested earlier, there are any number of areas where there is discrimination. Now, there is discrimination against whites in basketball, if you look at numbers.

I don't think that the Civil Rights Commission is doing its current job very well, much less taking on other responsibilities. This is maybe one of the important reasons.

And I think that the way the Civil Rights Commission pursues its mission as it sees it, it contributes to many of the racial problems and level of hostility that we have in our country by insisting that particular outcomes are racial discrimination, as opposed to those outcomes resulting from something else, namely the laws of the land.

Ms. DAVIS. Have you had a chance to review the Commission's recent study on age discrimination in federally funded programs?

Dr. WILLIAMS. No, and I wouldn't read it.

Ms. DAVIS. Thank you.

Mr. BUTLER. We thank you very much for your contribution and your attendance here today. You made a substantial contribution to the deliberations of this subcommittee.

Dr. WILLIAMS. Thank you.

Mr. BUTLER. You have to wonder whether all of our brethren agreed with you here, but certainly I thought you made a substantial contribution and I appreciate it.

Dr. WILLIAMS. Thank you very much.

Mr. BUTLER. Adjourned.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

NATIONAL RIGHT TO WORK COMMITTEE,
Fairfax, Va., April 19, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the House Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Despite the civil rights efforts of the last two decades, hundreds of thousands of working Americans are still being routinely denied their civil and human rights simply because they choose not to join or support labor unions. In every state of the Union, individuals who make this personal decision not to join can be required to pay money to labor unions in order to work for a living. This is compulsory unionism, and it is a tragic deprivation of individual rights.

It is a situation that cries out for attention and cannot be ignored in any open-minded discussion of civil rights and the role of the Civil Rights Commission in protecting those rights.

I am writing to you to call this widespread abuse of individual rights to your attention, and to request that you include this letter in the official record of hearings by your subcommittee on HR 10831—a bill to extend the Civil Rights Commission.

The National Right to Work Committee is a single-purpose organization of people from all walks of life—1,250,000 strong—dedicated to the single principle that every individual must have the right but not be compelled to join or support a labor union as a condition of employment. I am writing on their behalf to express their unanimous concern about the failure of the Congress to take any steps to right the wrongs inflicted upon workers who are not free to choose whether or not to affiliate with a labor union.

In all candor, Mr. Chairman, no question of civil rights goes more directly to the heart of individual freedom than does the Right to Work. As Supreme Court Justice William O. Douglas described it, "The Right to Work . . . was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live."

Justice Charles Evans Hughes remarked similarly that "It requires no argument to show that the right to work for a living in the common occupation of the community is the very essence of personal freedom and opportunity that it was the purpose of the (Fourteenth) Amendment to secure."

In his great encyclical, *Pacem In Terris*, the late Pope John XXIII concurred, saying: "every man has the right to life, to bodily integrity, and to the means which are suitable for the proper development of life; . . . (I)t is clear that man has a right by the natural law not only to an opportunity to work, but also to go about his work without coercion."

Such is the ideal. But in America today, the fact is that people are being persecuted for their personal decision not to join or support a union. These people are being discriminated against in their employment. They are harassed and beaten. Their homes are bombed, their cars torched, and their families threatened. And some are even murdered. The news is filled with stories of their plight.

Consider, for example, the case of Sammy Kirkland of Fort Myers, Florida. In 1971, while working on a construction site, Mr. Kirkland was attacked and severely injured by a union mob, simply because he was not a union member. Kirkland was beaten with a wrench; steel shavings were poured in his eyes; and his assailants threatened to cut off his hands to prevent his ever working again. After several years of litigation, Sammy Kirkland won his lawsuit against the Operating Engineers Union. But his injuries are permanent. As the presiding judge observed, Kirkland's is a life "virtually ruined."

Consider, too, the case of Dale Richardson of Nebraska, a union member who had the temerity to ask questions about the way his dues money was being used. As a result Richardson became the target of a union harassment campaign. He was persecuted both on the job and at home. His life and the lives of his wife

and children were threatened. And, in the end, he was even fired by his employer. Like Kirkland, Richardson won his case in court, but only after ten years of grueling and expensive court action.

And consider the chilling case of Joe Hooper, father of two small children in Louisiana, who was shot to death by a rampaging AFL–CIO mob, not because he was non-union, but because he joined the "wrong" union. No one has ever been convicted of his murder.

I have enclosed some items from the public record on these and similar incidents.

These cases are not atypical, Mr. Chairman. They are being reenacted with new victims every day—as the recent United Mine Workers strike demonstrated to every American. In fact, for each name and story we can relate there are thousands of Americans—black and white, man and woman, young and old—whose stories go untold, but whose rights as human beings and as American citizens are being denied because the law does not condemn the violence of union coercion. Some courageously take a stand, and they are the ones whose stories make the papers. Thousands more prudently keep silent and buy "protection" with their dues money.

In a country that prides itself on its respect for human rights, this situation is unconscionable. Clearly there is a need for the Civil Rights Commission to include among its myriad concerns an examination of the denial of civil rights resulting from union coercion.

Toward this end we have prepared an amendment to HR 10831 authorizing the Civil Rights Commission to study and collect information, appraise the laws and policies of the federal government, and serve as a national clearinghouse for information regarding denials of equal protection of the laws arising from compulsory unionism.

We are convinced that this amendment would be consistent with the high purpose of the Civil Rights Commission. In fact our amendment would enrich the work of the Commission by opening up a whole new era of civil rights abuses for consideration, discussion, and ultimate action. And it would offer significant relief to those Americans whose basic rights are denied or infringed upon by compulsory unionism.

If it is wrong to deny a worker his freedom to support a union, it is just as wrong to deny him his freedom to refuse to join or support a union. Until the Civil Rights Commission and the Congress recognize this fundamental fact and act to protect the basic rights of all Americans, justice in America will be unequal.

As Anthony Harrigan so aptly put it, "Labor union terror is a stain on the national life; an aspect of the crime problem in the United States. It is organized criminal activity against property owners and individuals who want to work without getting approval from a union boss.

"Existing federal labor law doesn't protect the right to work, a basic civil right. The non-union worker faces brutal pressure from the union monopolists who act as though they own all the jobs in America."

Thank you for your attention and consideration. I will be happy to provide any additional material you or your colleagues wish to have on this issue, and look forward to the opportunity.

Sincerely,

REED LARSON.

Enclosures.

AMENDMENT TO H.R. 10831

SEC. 3. (a) Section 104(a)(2) of the Civil Rights Act of 1957 (42 U.S.C. 1975c.(a)(2); 71 Stat. 635) is amended by striking out "sex or national origin or in the administration of justice:" and inserting in lieu thereof the following: "sex, national origin or compulsory unionism or in the administration of justice:".

(b) Section 104(a)(3) of the Civil Rights Act of 1957 (42 U.S.C. 1975c.(a)(3); 71 Stat. 635) is amended by striking out "sex or national origin or in the administration of justice:" and inserting in lieu thereof the following: "sex, national origin or compulsory unionism or in the administration of justice:".

(c) Section 104(a)(4) of the Civil Rights Act of 1957 (42 U.S.C. 1975c.(a)(4); 71 Stat. 635) is amended by striking out "sex or national origin," and inserting in lieu thereof the following: "sex, national origin or compulsory unionism,".

(d) Section 104(a) of the Civil Rights Act of 1957 (42 U.S.C. 1975c.(a); 71 Stat. 635) is amended by striking out "and" at the end of clause (5), by redesignating clause (6) and all references thereto, as clause (7), and by inserting after clause (5) the following new clause:

"(6) study and collect information concerning legal developments constituting unlawful discrimination or a denial of the equal protection of the laws under the Constitution on account of age, or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973 (29 U.S.C. 706(6); 87 Stat. 361), appraise the laws and policies of the Federal Government with respect to such discrimination or denials on account of age, or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973, and serve as a national clearinghouse for information in respect to such discrimination or denials on account of age or with respect to handicapped individuals as defined by the second sentence of section 7(6) of the Rehabilitation Act of 1973; and".

(e) Section 104(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975c.(b); 71 Stat. 635), is amended by striking out "1978" and inserting in lieu thereof "1983".

Testimony Submitted by Hon. Parren J. Mitchell

Mr. Chairman, I would like to thank you and the Members of the Subcommittee for this opportunity to appear before you today to express my support for H.R. 10831, to extend the existence of the United States Commission on Civil Rights.

At the very moment that this Subcommittee is meeting to consider whether or not to extend the life of the U.S. Commission on Civil Rights, other Committees of the Congress are considering the President's proposal to reorganize the Federal Government's presence in matters relating to employment discrimination. This reorganizational proposal is a very timely example of how the Commission on Civil Rights is carrying out its Congressional mandate.

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 with directives to do the following:

Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex or national origin, or by reason of fraudulent practices;

Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justices;

Appraise Federal laws because of race, color, religion, sex or national origin, or in the administration of justice;

Serve as a national clearinghouse for information in respect of denial of equal protection of the laws because of race, color, religion, sex, or national origin;

Submit reports, findings, and recommendations to the President and the Congress.

Again and again, it is the U.S. Commission on Civil Rights which, by its thorough, bipartisan and comprehensive work helps to provide the material needed by the Executive and Legislative branches to assess the impact of the actions we have already taken and identify what changes must be made in order to bring reality closer to Executive and Legislative intent.

The Commission has been filling a need not filled anywhere else in our governmental system. Starting in 1970, the Commission undertook a study of Federal enforcement efforts. Generally, the Commission has found that Federal civil rights enforcement efforts remain deficient and must be strengthened, not diluted.

To go even further, the U.S. Commission on Civil Rights' authority should be expanded to include discrimination against the aged and handicapped populace of this Nation. Increasingly, it is clear that significant discrimination is directed against both groups in America. The aged and handicapped have been denied equal protection under the laws which is guaranteed to every American citizen.

Before we die, many of us could experience handicaps that affect our way of life. There are currently 22 million persons above the age of 65 and there are

36 million handicapped persons in the United States today. They represent unused resources and many carry psychological scars as a result of life experiences in our society.

Only recently have we begun to decide that the aged and handicapped should be singled out for protection as a legitimate recipient of the rights identified in The Declaration of Independence, The Constitution of the United States, The United Nations Declaration of Human Rights, and the charge to the U.S. Commission on Civil Rights.

Dr. Robert N. Butler articulates a heightened awareness of the situation of the aged in "Why Survive; Being Old in America, 1975," when he says, "Ageism is a systematic sterotyping of and discrimination against people because they are old just as racism and sexism accomplish this with skin color and gender."

The 1961 White House Conference on Aging identified important rights of the Aged. Each of our senior citizens, regardless of race, color, or creed, is entitled to:

1. The right to be useful.
2. The right to obtain employment, based on merit.
3. The right to freedom from want in old age.
4. The right to a fair share of the community's recreational, educational, and medical resources.
5. The right to obtain decent housing suited to needs of later years.
6. The right to the moral and financial support of one's family so far as is consistent with the best interest of the family.
7. The right to live independently, as one chooses.
8. The right to live and die with dignity.
9. The right of access to all knowledge as available on how to improve the later years of life.

Recognizing the need for more effective legislation the Age Discrimination Act of 1975, "authorized the Commission on Civil Rights (1) to undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity."

The findings of the Commission released in December 1977 as the "Age Discrimination Study" clearly cry out for need to monitor and encourage enforcement of the Civil rights of the aged. Although the study was limited to the accessibility of services and benefits to the aged, the results show that of the ten programs receiving federal monies, all practiced discrimination on the basis of age and in a real sense mirrored the society of which they are a part. Persons 65 and over were most often victims, and members of minority groups were subject to compounded discrimination.

While under the Older Americans Act, considerable money was alloted this past year for nutrition programs, community services and research for the elderly, it is nevertheless true that much remains to be done.

Ken Ringle, in the *Washington Post*, September 18, 1977 wrote, "More crucial than dollars and the Committees and the institutional changes to the future of aging in America, gerontologists believe, is an attitudinal change on the part of the American public; an awakening to the realization that 'ageism,' like racism and sexism, endures through the sort of dull, insensitive thinking that debases both young and old, and a challenge to make the increasing years of later life not only possible but enriching for every American."

If attitudinal change is to be encouraged, if we are to halt discrimination against the aging in the public and private sectors—in employment, housing, transportation, health care, etc., there must be some body authorized to serve as conscience with capacity to provide relief and redress to those who suffer discrimination.

There is compelling need to continue efforts in the following areas:

(a) Accelerating the raising of consciousness of Americans relative to attitudes toward aging and the aged, as well as education of the aged regarding their rights and continuing usefulness. Myths regarding the imaginary handicaps of oldness need to be eradicated.

(b) Further investigation of discriminatory treatment of the aged not only in denial of services and benefits where federal monies are involved but in all levels of society where rights are necessary for full enjoyment of life.

(c) Investigation of retirement practices. In public and private life, "functional" rather than "chronological" age should be the norm. It should be remembered that mandatory retirement reduces taxes and tilts the balance toward retirees and not workers.

(d) Not only watchdogging the Government and society generally is essential, but also authority to enable quick redress of discriminatory practices against the aged should be part of the role of the Commission.

Handicapped (a handicapped person is defined in Section 504 regulations of the Rehabilitation Act of 1973, is any person who [1] has a physical or mental impairment which substantially limits one or more major life activities; [2] has a record of such impairment; or [3] is regarded as having such an impairment) persons in the United States consistently experience discrimination. To just name a few, the handicapped population also suffers unequal treatment in the areas of housing, employment, education, health, welfare and social services, insurance coverage and transportation.

Handicapped persons have been encouraged by the Rehabilitation Act of 1973, Section 504, which states: "No otherwise qualified handicapped individual in the United States, as defined in Section 7(6), shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program in activity receiving Federal financial assistance." At the signing of the regulations to this Act on April 28, 1977, Joseph A. Califano said, "The 504 Regulation attacks the discrimination, the demeaning practices and the injustices that have afflicted the Nation's handicapped citizens. . . . It will usher in a new era of equality for handicapped individuals in which unfair barriers to self-sufficiency and decent treatment will begin to fall before the force of law." The signing does not mean a miraculous change. There is a long way to go.

Among handicapped individuals there continues to be cynicism about the enforcement of laws which often appear as symbolic only. For instance, provisions of the 1964 Mass Transit Act stating that all efforts should be made to provide transportation for the disabled have not been implemented with regulations for the severely disabled. The Federal and State Governments have passed architectural barrier laws which require accessibility to the disabled but they have not necessarily been followed by action. Consistent monitoring of enforcement must be required.

Among other identifiable concerns of the handicapped which demand more attention are:

(a) Extension of private insurance coverage for the handicapped;

(b) Employment of the handicapped at levels of their abilities;

(c) Adequate care and opportunity for development of handicapped children;

(d) Provision for adequate housing;

(e) Provision of programs and facilities relating to health, social services and training of the handicapped;

(f) Provide for legal expertise to assist handicapped persons to enjoy their rights;

(g) Educate the American public to accept the handicapped as persons and part of society. Provide information encouraging understanding of the potential and accomplishments of the handicapped, as well as services available;

(h) Review objectives for the many Federal and State programs for the handicapped, and develop recommendations making them more effective; and, most importantly

(i) Monitor and encourage enforcement of civil rights in public and private sectors.

An important question which has been raised on several occasions concerns the issue of whether the problems of enforcement are related to organizational weaknesses or to a lack of will to enforce already existing law. The proposed employment reorganization which came about in part because of the conclusions reached by the Commission after it had conducted thorough investigations will provide an opportunity to test that theory. Does this Nation have the will to achieve the equality of opportunity which we speak of with such pride through 200 years of history?

To achieve that equality of opportunity, the Commission on Civil Rights is in need of the continuance of the State Advisory Committees. In fact, I am requesting that this Subcommittee give serious consideration to language that would state, "the U.S. Civil Rights Commission *shall* establish State Advisory Committees," in order that we may provide protection for the American people.

I am aware that the Administration has proposed that the current State Advisory Committees be replaced by Regional Advisory Committees. It is understandable that the Administration is making a valiant effort to streamline Federal Agencies and Departments. However, the President and the Congress, advocating human rights throughout the world, must understand that the current State Advisory Committees guarantee input from the people who are most affected by violations of civil and human rights in this country. If a system of Regional Committees were established, as the Administration poses, those Americans most affected would have a difficult time traveling hundreds of miles to make input into the recommendations of a regional Committee. The many issues that are peculiar to a given State would not receive the necessary attenion of a regional Committee.

The State Advisory Committees have existed for twenty (20) years and statistics reveal that they represent a balanced membership. With 43% women, 29% Black, and more than 12% Hispanic membership, the State Advisory Committees illustrate an unusually representative and balanced membership that other various State Committees fail to achieve.

I hope for the day when the existence of the Commission will no longer be necessary. I long for the day when we have not only identified the civil rights inequities in our society but moved definitively to eliminate those inequities. Until that day arrives, the U.S. Commission on Civil Rights represents the only Federal presence which is asking the questions which must be asked in order that we may provide protection for the civil and human rights of all citizens.

THE NATIONAL CENTER FOR LAW AND THE DEAF,
Washington, D.C., March 23, 1978.

STATEMENT FOR THE RECORD OF ANDREW PENN, STAFF ATTORNEY, NATIONAL CENTER FOR LAW AND THE DEAF

Mr. Chairman and Members of the Subcommittee: My name is Andrews Penn, and I am an attorney with the National Center for Law and the Deaf. Our Law Center is a project of Gallaudet College. We represent the legal interests of over 13.4 million deaf and hearing-impaired Americans.

On behalf of the Law Center I strongly urge you to support H.R. 10831 and to authorize the United States Commission on Civil Rights to study discrimination against handicapped persons.

DISCRIMINATION AGAINST DEAF PEOPLE IS WIDESPREAD

Hearing-impaired persons are discriminated against in every facet of their lives—in schools, in the workplace, in the courts, in areas ranging from insurance to television programing to enjoyment of government benefits and social services. While enormous progress has been made since the days when a person who was born deaf was considered, in the eyes of the law and society, to be a mental incompetent, deaf Americans are still denied the equal rights, equal protection of the law and equal opportunity promised to all of our citizens. Passage of H.R. 10831 would be a vital step toward securing their equality.

There are many areas and types of discrimination against hearing-impaired people which need to be investigated by the Commission on Civil Rights and reported to the public. Hearing-impaired persons confront job discrimination in hiring, promotion and training opportunities because of employers' misconceptions that they are impossible to communicate with, inefficient and accident prone. Many employers think deaf persons are only qualified to work in print shops because of their immunity to noise pollution.

Discrimination is also widespread in the field of higher educcation. Restrictive college entrance examinations fail to account for the language deprivation suffered by deaf persons and other minorities whose primary language is not traditional English. Even if a deaf person does pass the entrance examination. most colleges lack interpreters, note-takers and other support services to make their courses accessible. Thus deaf persons aspiring toward a higher education are forced to turn to the few existing colleges for the deaf in America.

Our criminal justice systems denies hearing-impaired persons many of the Constitutional rights guaranteed to all citizens. While several states have en-

acted laws for the appointment of interpreters, most of these laws are inadequate. Many states provide for an interpreter at trial for a deaf criminal defendant. Yet very few states provide for an interpreter from the time of arrest, even though some of the most blatant Constitutional rights violations occur at pre-trial proceedings. The Supreme Court in *Miranda* v. *Arizona*, 384 U.S. 436 (1966), recognized that since custodial interrogations by police are inherently coercive and undermine the privilege against self-incrimination, the police must *effectively* inform the accused of his or her Constitutional rights prior to any questioning. Without a qualified interpreter, a hearing-impaired person would not be able to fully comprehend what is written on the *Miranda* rights card. Thus, any waiver would not meet the Supreme Court requirement of a voluntary, knowing, and intelligent waiver of Constitutional rights.

Failure to provide a hearing-impaired person with an interpreter upon arrest also severely curtails any possibility of free and unfettered communication and consultation between the accused and his/her attorney. This Constitutes a denial of the accused's Sixth Amendment right to effective representation.

Hearing-impaired consumers also suffer abuse and discrimination. Many life, health, accident and automobile insurance companies charge higher premiums or restrict coverage to deaf people despite actuarial tables which indicate that deaf people are not greater risks than hearing people. Loan sharks, real estate agents and salesmen often take advantage of deaf consumers' limited understanding of written English. The results are the same kinds of unconscionable contracts imposed on many poor people.

Another area in which deaf persons have long been treated as second-class citizens is the provision of government benefits and social services. Because of the lack of any significant efforts by government agencies to bridge the communication gap, deaf people do not get their fair share of government services and benefits. Police and fire departments, social security, welfare, unemployment and housing officers and regulatory agencies must have TTYs or interpreters to make their services accessible to the deaf community.

In the world of telecommunication, a pitifully small amount of television programming is captioned for deaf viewers, despite the fact that broadcasters are legally required to provide adequate programming for significant minorities.

THE COMMISSION IS NEEDED TO PROTECT AND PROMOTE THE RIGHTS OF DEAF PEOPLE

Deaf people suffer discrimination in many facets of their lives, yet only a few federal laws protect their civil rights. The need for the Civil Rights Commission to investigate and inform the public of discrimination against deaf and other handicapped persons is obvious and urgent.

The Commission's reports can help educate the hearing world as to the realities of deafness. Ignorance of those realities is perhaps the greatest source of discrimination. The Commission's studies will provide an invaluable basis for Congress to decide on the many bills dealing with handicapped discrimination now under consideration. With the issuance of Regulations to Section 504 of the Rehabilitation Act, more and more law suits are being instituted to enforce the rights of handicapped persons. Proper decisions in these cases also require reliance on comprehensive studies of the type the Commission has undertaken with respect to discrimination against other minorities.

The Commission is also needed to monitor the enforcement of federal laws protecting the civil rights of the handicapped. Because legislation in this field is relatively new, its effectiveness is unknown. And because many of the federal agencies responsible for enforcing those laws have rarely dealt with the problems of the handicapped before, their ability to enforce the laws is unknown. The Commission can be of great service as an independent watchdog, evaluating the effectiveness of existing legislation and agency efforts to enforce it.

H.R. 10831 SHOULD EXTEND TO ALL HANDICAPPED DISCRIMINATION, NOT JUST UNCONSTITUTIONAL OR UNLAWFUL DISCRIMINATION

As presently drafted, H.R. 10831 authorizes the Commission to study only unlawful discrimination, i.e., only that discrimination which the courts have held to be unlawful. We urge that the bill be redrafted to include all forms of discrimination, not merely that which has been declared unlawful.

Failure to redraft H.R. 10831 could have drastic consequences. The Commission might be forced to ignore actions which it believes constitutes discrimination

simply because courts and legislatures have not yet ruled on their legality. Because society has long ignored the rights of the handicapped, there are many discriminatory actions which the courts and legislature have never confronted. For example, the issue of insurance companies' charging higher premiums or restricting coverage to deaf people despite actuarial tables which indicate that deaf people are not greater risks than hearing people. This practice is clearly unconstitutional, but many states have yet to outlaw it. If the Commission were forced to ignore such an issue because of the restrictive statutory language, its credibility as an advocate of civil rights in our society would be severely undermined.

CONCLUSION

In conclusion, we urge you to try to understand the frustrations and problems of hearing-impaired persons, and to realize the need for and value of the Commission in combatting discrimination against them. We urge you to pass H.R. 10831 as redrafted, to enable the United States Commission on Civil Rights to investigate all forms of discrimination against handicapped people.

Thank you for the opportunity to testify in support of this significant legislation.

STATEMENT PREPARED BY MARJORIE K. SMITH

DEAR MR. CHAIRMAN: I have served on the Maryland Advisory Committee to the United States Commission on Civil Rights for the past seven years and have been chairman for the past three years. I am joined by several other Maryland citizens who have also served as members of the Advisory Committee. We urge you to enact legislation which would require the United States Commission on Civil Rights to appoint Advisory Committees and to require also that these committees be structured along state rather than regional boundaries. The two questions which must be answered today are 1) Why should there be advisory committees? and 2) Why should these reflect state lines?

In the President's statement of February 25, 1977 in which he ordered a review of all advisory committees he said that "Advisory committees can be of great value. They may contribute to the openness of governmental decision making, and provide talent and opinions not otherwise available." The criteria for continuation of advisory committees were 1) compelling need, 2) truly balanced membership and 3) the conduct of business as openly as possible consistent with the law . . .

Considering these criteria in reverse order, the State Advisory Committees have consistently conducted their business in an open manner. Through the device of open meetings, and with strict adherence to procedures which require publication in the Federal Register, the committees encourage as many people and as many views, as possible to participate directly in the business of the SACs.

The issue of truly balanced membership has been answered by a Committee of the Senate. The Subcommittee on Reports, Accounting and Management of the Committee on Governmental Operations published, in 1976, an accounting of the Number and Percentage of Women and Minorities serving on Federal Advisory Committees as of 1975. Not one of the committees listed, including all those in the Executive Office of the President, the Departments, the Agencies and Selected Committees, Commissions and Councils had a more truly balanced membership. With 43% women, 29% black and more than 12% hispanic members, the SACs epitomized truly balanced membership. I might add that although this chart does not make note of other kinds of diversity, SAC membership is balanced politically as well.

The remaining criterion is the most difficult to document. Is there a compelling need? This requires subjective judgment. If one believes that the guarantee of civil rights is one of the most important principles of our governmental system, as I do; and if one believes that the impact of federal action can be appraised best in terms of its impact on the states and local jurisdictions of this nation, as I do; and if one believes, as I do, that the struggle for civil rights is not over, then one must believe that there is a compelling need to keep in place these committees which are, to however limited an extent, arms of the Federal government. Perhaps a case could be made that it is not essential that the Fed-

eral government receive information from the Condor Advisory Committee or the Commandant's Advisory Committee on Marine Corps History. But until we know that the guarantees of civil rights are available to all the people of this nation then it is essential that this independent source of factual information on how the Federal civil rights machinery is manifested in communities in every state continues to function. The presence of the SACs serves to remind Federal, State and local public officials, as well as many private officials, of their responsibilities under Federal civil rights laws and policies.

The U.S. Commission on Civil Rights, in responding to some questions asked by the Office of Management and Budget, said that "If advisory committees were abolished, not only would the Commission lose a resource that would be impossible to replace through Washington staff, but more importantly, its mandate to objectively report to the President and the Congress would be seriously compromised. The SACs have served as the only unit of the Commission that can serve as a bridge between the Federal government and local communities."

There is a clear need for the Commission to have advisory bodies. Now it has been suggested that Advisory Committees might be continued, but that they should be structured along regional rather than state lines. I cannot think of a group before which I would rather refute this argument that the members of a bicameral legislation in which representatives are chosen to one body from parts of states and to the other body from the state as a whole. The great strength of the Advisory Committee structure as it has operaed for almost 20 years is that its jurisdiction has been within the boundaries but outside the jurisdiction of state government. Who of you believes that the national perspective would be better reflected in the House if your districts did not respect state boundaries and in the Senate if the members of that house were chosen by regional jurisdiction rather that states? Which one of you then would believe that the national perspective would be better reflected in regional rather than state advisory committees?

In a letter to Chairman Flemming, Wayne Granquist, Associate Director for Administrative Management of the Office of Management and Budget said that "We believe the Regional Advisory Committees will serve as a valuble civil rights network assessing local developments and assisting the Commission in collecting information. . . . We in no way want to diminish the importance of these activities. We also believe that structuring your advisory committees along regional lines will broaden the perspective of the membership and more effectively present a national perspective on civil rights issues." As a member of a State Advisory Committee, I would leave it to the Commission to represent the *national* perspective. I have seen my responsibility as representing the local and state perspective which makes up but 1/50 of the national perspective. Let us analyze Mr. Grandquist's premise. How would the New England Advisory Committee reconcile the concerns of the Urban blacks in Boston, the American Indian in Maine and the French Canadian in New Hampshire? Should these groups have to compete with each other at this level? Or consider if you will the Southwest region which includes Arkansas, Louisiana, Oklahoma, Texas and New Mexico. Arkansas and Louisiana think of themselves as part of the deep south, whereas New Mexico considers itself a western state. New Mexico's population is nearly 50% minority, but only 2% black. The civil rights issues affecting Chicanos and Indians, and the experience of the civil rights struggle in New Mexico are markedly different than those in the deep south. Social, economic and political boundaries do not respect Federal regional boundaries. The states, with all their diversity, represent the oldest and the best means by which the people of this federal form of government organize themselves. We are a nation of states.

It is peculiar that a major change such as this should take place at the same time as a major study of the reorganization of the federal civil rights effort is underway. Logic would require that Congress should insist on the retention of the Advisory Committee structure until the reorganization study is complete.

Are Advisory Committees desireable? If so, then we should be analyzing the strengths and weaknesses of the system and determining what is required in order to guarantee the most effective possible system. Would, for example, additional staff increase the usefulness of the Advisory Committees?

If we conclude that a change from state to regional advisory bodies would not increase the effectiveness of these committees then we must wonder why such a change has been proposed. I would not presume to explain the motives of the

Executive branch. But I do hope that we are not seeing a demonstration of the numbers game. By reducing from 51 to 10 the number of Advisory Committees to the U.S. Commission on Civil Rights the President can score an impressive minus 41 in the game of numbers. But that decrease in no way improves the efficiency or the effectiveness of the Commission.

The United States Commission on Civil Rights has since its creation by the Congress diligently and accurately carried out its work under the authority granted to it by Congress. Under the direction of Arthur Flemming, one of this nation's most dedicated and creative public servants, the Commission has continued to play an important and honorable role in the Federal civil rights effort. The Advisory Commitetes were part of that effort and should not be abandoned.

STATEMENT OF M. D. TARACIDO, NEW YORK STATE ADVISORY COMMITTEE MEMBER

I have had the good fortune to be involved with the United States Commission on Civil Rights in two capacities. As a third year law student, I worked as a staff person for the Northeastern Regional Office in the New York City area. Later I was invited to become a member of the New York State Advisory Committee. Therefore, I have had experience assisting the State Advisory Committee members in the work done by the volunteer group as well as participating in the numerous projects that have been undertaken by the New York State group.

As a former staff person who was required to work closely with State Advisory Committee members and as a current member of an Advisory Committee, I think I can safely state that this volunteer group is made up of concerned citizens who feel it is of the utmost importance that this nation allow all Americans equal access to opportunity and that their fact-finding function assists in this important effort.

The latest of its efforts has resulted in a report entitled, "The Forgotten Minority: Asian Americans in New York City," one of the very few studies inquiring into the plight of Americans of Chinese, Japanese, Philipino, and Korean origin, among others. It is my hope that the report will be made part of the record of these hearings as an example of the type of fact-finding work done by the State Advisory Committees to add to our greater knowledge of lesser known racial minorities in this country.

Like the many State Advisory Committees across this nation, the New York Committee has played an important role in shedding light on a broad range of civil rights issues. In recent years the New York State Advisory Committee has conducted an investigation of equal employment opportunities in the construction industry throughout the State. It has done an analysis of the policies and practices of the New York State Department of Correctional Services. It has conducted an investigation of employment opportunities for Puerto Rican citizens in municipal and county employment upstate. A several year study of equal employment opportunity in the State University of New York has also been conducted. It has done a study of racism and sexism in advertising by the pharmaceutical industry. It has reviewed the affirmative action and equal employment opportunity posture of a number of local governments throughout the State.

Much has been done thus far to rectify the wrongs perpetrated on ethnic and racial minorities and women, but the struggle is not yet over, especially with regard to the second largest minority in this country, Hispanics. Indeed, with respect to discrimination based on age or the handicapped condition, it has barely begun.

Therefore, there is no question in my mind that the Commission's existence should be extended. There is no Federal agency better suited than the Commission to further the equal opportunity of persons who historically have been and continue to be victimized by discriminatory practices. Its independent, bi-partisan perspective ensures an objective and diversified view of problems as well as the manner in which these problems can be rectified.

However, to accomplish the Commission's important mandate, we must ensure that its work incorporates in a meaningful way the concerns of the citizens at the State and local levels, including the concerns of the large numbers of ethnic and racial minorities most affected by the discriminatory processes that require the focus of the Commission's efforts.

There has been a proposal to create Regional Advisory Committees. After careful analysis, it is difficult for me not to conclude that this proposed structure would curtail civil rights activities on the State and local levels. Therefore,

for the following reasons I am greatly encouraged that HR 10831, mandates State Advisory Committees.

Regionalization would make a representative body on the State level virtually impossible. The Commission's guidelines regarding membership on the proposed Regional Advisory Committees allows for five representatives for each one million persons in the States. Therefore, in Region 1, which is one of the two Regions served by the Commission's Northeastern Regional Office, six New England States would be consolidated into one Regional Advisory Committee.

Membership would fall from 150 to 40 persons, a 70 percent reduction in the Advisory Committee membership. This dramatic reduction in membership in itself demonstrates that regionalization would undercut a representative membership body on the Advisory Committee. However, the problem can more graphically be represented by the impact that regionalization would have on the State of Maine. Main's membership would be limited to six under the regional structure. Yet it has four separate and distinct Native American tribes as well as blacks and Franco-Americans. Given that the Commission guidelines call for at least half of the membership on the Advisory Committee to be members of the majority population, it is clear that there could not be a representative membership in Maine under the regional structure.

Regionalization of the Advisory Committees would also unquestionably impair and curtail inquiry into civil rights issues at the State and local level. For example, Region 2, would combine two Northeastern industrial States—New York and New Jersey—with the Caribbean Islands of Puerto Rico and the Virgin Islands, each of which has problems and concerns unique to it. Therefore, competing concerns exacerbated by reduced membership would undoubtedly cause important issues to be passed over that could and would be addressed under the State structure.

Region 2 is a good example of the lack of cost-effectiveness of the proposed regional structure. There is no question that to ensure an effective advisory structure requires field work and regular meetings. This cannot be accomplished in the New York, New Jersey, Puerto Rico, and Virgin Islands area without significant increases in travel costs. Indeed, increased costs was the excuse used by the Commission to determine that regional meetings could not be held more than once a year.

In short, Regional Advisory Committees would be neither cost-effective nor programmatically efficient. Therefore, I strongly support HR 10831 which continues the existence of Advisory Committees and mandates this Federal presence at the grassroots level.

STATEMENT SUBMITTED BY ELIZABETH A. WOLFSKILL, MEMBER, PENNSYLVANIA STATE ADVISORY COMMITTEE, TO THE U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairperson and Members of the Subcommittee: As a member of Pennsylvania's State Advisory Committee to the U.S. Commission on Civil Rights, I request that you give consideration to the following statement on H.R. 10831. and that you place it in the record of the public hearings scheduled for early March. This testimony concerns both the extension of the Civil Rights Commission and the retention of the Commission's State Advisory Committees.

In addition to membership on one of the Commission's State Advisory Committees, I have had the good fortune to be active in civil rights on the local and state level for nearly 15 years. Since these experiences contribute to my views here, later I will note several of my major organizational involvements.

EXTENSION OF COMMISSION AND ITS JURISDICTION

Your Subcommittee has heard arguments supporting the extension of the Civil Rights Commission for another five years, as proposed in H.R. 10831. Very simply, the Commission must continue because discrimination against women and certain minority groups continues in the United States. Although some blatant practices have ended, discrimination continues as unfair practices in the past are reflected in exclusionary patterns in the present, and when unregenerate bigots find new and momentarily undetectible ways to act out their biases.

In addition to the extension of its life, the Commission's statutory authority should be broadened to denials of equal protection of the laws because of age or

physical and mental handicap, as proposed in H.R. 10831. Agency personnel and financial resources must be substantially increased commensurate with this added jurisdiction.

In the five years ahead the Commission's fact-finding activities will continue to be important, since the objective documentation in its reports is still required to substantiate the persistence and location of discrimination in our society. Today, in addition to those who would deny minorities and women equal rights, there are well-intentioned persons who—in the mid 1970's—feel that discrimination is mostly overcome. Believing this, they see further study and corrective action as unnecessary. The Commission's reports, among the most extensive of the past being those weighty volumes on the federal civil rights enforcement effort and a range of reports on school desegregation, continue to be needed to counteract the complacency of the majority community.

ARGUMENT FOR STATE RATHER THAN REGIONAL ADVISORY COMMITTEES

Let me address the issue of the Commision's State Advisory Committees. Like witnesses who appeared in your hearings, I favor the language in H.R. 10831 which mandates and thereby organizationally protects State Advisory Committees during the forthcoming five-year term of the Commission. At the end of that period they deserve the same kind of scrutiny as the Commission, to determine whether they need to continue longer.

The State Adviory Committee issue arises at this time because last Fall the activity of the 51 State Advisory Committees was terminated, in anticipation of the formation of 10 regional advisory structures in 1978. Although members were recently notified that State Advisory Committees may be reactivated to function for the remainder of this fiscal year, this temporary "stay of execution" hardly assures that they will not be replaced with multi-state regional structures this coming September. So this issue remains unsettled.

Certainly with the initiation of regional advisory structures the Commission would lose some of the contact with problems and people at the local level that it now enjoys through State Advisory Committees. State Advisory Committees serve usefully as intermediary structures between the Nation's localities and a Federal agency which is directed by five Presidential appointees. The policies and programs determined by these five Commissioners are expected to serve more than 200 million U.S. citizens living in an area of 3.6 million square miles. Sometimes, because in this country the government *is* the people, it is important to bring government *to* the people in the localities where they live and work. This is exactly what State Advisory Committees have done in the past for the Civil Rights Commission.

Information in this channel between citizens and the five Commissioners can flow both ways, and State Advisory Committees have a creditable record in facilitating communication, as well as for engaging in their own projects which are issued as reports to the Commission. For the record, let me submit a copy of "The Unfinished Business Twenty Years Later," a brief but recent report to the Civil Rights Commission on activities of the 51 State Advisory Committees.

Certainly the solutions to many civil rights problems in this country must be national, and the Commission property executes its federal responsibility by addressing these problems from a unified national perspective. But it is equally true that without input which is highly specific and localized, these problems are barely glimpsed, sometimes not recognized at all.

For the most part complaints of civil rights problems emerge locally. Information must be developed locally—sooner or later—to substantiate or disprove such allegations. This is so even for a particular problem which is national or exists in more than one locality. In addition, truly local problems—even ones resulting from federal policy—may never be recognized at the national level without organizational mechanisms which are accessible to citizens at the local level. There is a need for known and creditable extensions of the federal presence into the Nation's many localities. Advisory Committees at the State level provide better access than would regional advisory bodies.

Many states have a diversity of population groups and civil rights problems. This is true in Pennsylvania, as we see in our own State Advisory Committee. Our Commonwealth is also very large and populous: nearly 12 million residents living in 67 counties encompassing 45,000 square miles. Pennsylvania alone has 2,500 municipalities plus some number of unincorporated entities.

In the proposed regional advisory structure Pennsylvania would be only one of the six mid-Atlantic states represented. Others are Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

To add to Pennsylvania's concerns the diversity of problems and population of four other states and the District of Columbia is overwhelming, especially when one considers the multiple task of responding simultaneously to local civil rights concerns, developing a regional agenda of manageable activity, and relating to the Commission at the national level. Yet this is just what would be expected of a multi-stage regional advisory committee, expectations held by the Commission and by the 23 million residents of those states just mentioned.

In short, I fear that the hopes for regional advisory committees would be very high, but that the actual result of their activity would be minimal, at least when measured against the civil rights problems requiring attention. Particularly if, as proposed, the regional committees meet only once or twice a year.

State Advisory Committees meet regularly throughout the year. Ours in Pennsylvania meets monthly, and subcommittee efforts and investigative work are carried on between meetings of our full Committee. Pennsylvania's State Advisory Committee receives staff assistance from the Commission's Mid-Atlantic Regional Office, but this staff work has always been augmented by investigative and informational efforts of Advisory Committee members themselves, which obviously increases our total Committee output. I suspect the same is true of other State Advisory Committees.

Regional advisory committee members presumably would act similarly. Yet there is no way to deny that decreasing the number of advisory committees, and along with this the number of committee members available to undertake such work, would decrease the amount of activity. So would increasing the distance advisory committee members must travel to engage in committee endeavor, which would occur if regional advisory committees replace the present State structures.

Of course the plan is to replace these State structures with regional advisory committees, in the interest of so-called "effectiveness." To us, and to some of our constituents on the local level, this reorganization seems designed for the sole purpose of adding to the number of federal advisory committees the Administration can claim to have abolished, in fulfillment of a campaign promise. No one has ever specified what "effectiveness" means, except perhaps organizational simplicity or administrative efficiency. And to my knowledge no one ever asked State Advisory Committees themselves how they—or any Commission advisory structures for that matter—might be more "effective."

Regional structures created for performing or coordinating other governmental functions, with the possible exception of the Tennessee Valley Authority in its early years, are not known to be particularly useful as much more than a clearinghouse for the plans of states and local units of government. Even TVA eventually succumbed to the domination of local interests: ultimately it was co-opted by local political and community leadership, despite lofty idealism and strenous efforts otherwise. Given this background, one questions whether the proposal for regional rather than State Advisory Committees to the Commission may not weaken civil rights efforts in the future.

AN ILLUSTRATIVE CASE AND SOME CONCLUSIONS

Late last summer two State Advisory Committees issued a report to the Civil Rights Commission and the public on "The Working and Living Conditons of Mushroom Workers." In it were documented a series of hazardous conditions faced by mushroom workers in their families in two adjacent counties, one in Pennsylvania and the other in Delaware. It is almost impossible to overstate these unhealthful and poverty-producing conditions our investigation uncovered, and I am tempted to say more here about this very serious problem in our country. However, since that is not my purpose, I will simply submit a copy of this joint report for the Subcommittee record and commend it to the attention of you and other members of the House of Representatives.

Although the detail of origin and nature of the extensive activity which produced that report might be more convincing than my merely drawing conclusions from it, let me spare you these and trust you can assume that my generalizations are based on certain actual events which occurred in the course of initiating and developing the mushroom worker project. Like most State Advisory Committee projects, it resulted in a report to the Civil Rights Commission.

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What I want to pursue here is the vital and proper role played by Commission State Advisory Committees in one particular case, for I doubt that the project would have been undertaken by the kind of regional advisory structures for the Commission proposed to replace them. Let me explain.

1. It seems questionable whether this problem ever would have reached the attention, let alone the agenda, of a Commission advisory body at the regional level.

It was mainly the local knowledge and contacts of a Pennsylvania Advisory Committee member which made us aware of the problem. These, combined with the nearness of one of our State Advisory Committee meetings to the locale of the problem made it possible for us to learn about it first-hand. Without this closeness we might still be unaware of the problem. Certainly the representative from La Comunidad Hispana, a community service and community action agency in Chester County, could never have visited a Committee meeting held in some distant location.

2. Even had the mushroom worker problem somehow reached a regional advisory committee, it seems unlikely that it would have received any priority, since the geographic area and absolute number of persons afflicted is small.

Probably little staff or Committee attention would have been given to this severe civil rights problem, simply because the number of people oppressed is so small. This matter would have had to compete for committee agenda priority with the many other serious civil rights problems in an entire region, some of which afflict much larger numbers of persons.

3. Even in the unlikely event that this study had been undertaken as an advisory committee project, regional committee members could not have participated in it as actively as did State Advisory Committee members—simply by virtue of fewer persons being available and longer travel distances required to reach the locale of the problem.

Along with the Commission's regional staff, Pennsylvania and Delaware Committee members sometimes themselves did what is commonly called "staff work"—exploratory investigations, field visits, report editing, etc.—in addition to conducting the two-day public hearing and deliberating on investigative reports and hearing testimony.

This active participation by State Advisory Committee members accomplished three purposes: (a) it familiarized them with the problem situation far beyond what would have occurred if Commission staff alone investigated and reported to them; (b) it substantially augmented the person-power of the Commission's regional office staff throughout the entire project; and (c) it created knowledgeable Committee members would could elicit pertinent testimony in hearings, deliberate intelligently about the report's conclusions and recommendations, and interpret the problem knowledgeably to the public following the report's release. I might note that our report received extensive news media attention both locally in Chester County and in nearby Philadelphia as well as some coverage in The Washington Post, another proof of the asset of local contacts.

The preceding detail was necessary to illustrate programmatically how the replacement of State Advisory Committees with regional structures could hamper progress toward justice in our Nation—which seems to have slowed down in the present decade—by lessening access, information, and the number of persons now available to the Commission on Civil Rights.

What I have given you is just one example of State Advisory Committee endeavor which, although undertaken jointly by two Committees, was initiated because of a problem brought to one of them. Other details of course are available in the report.

There are two conclusions I would like to draw from the exeprience I have just outlined, because they relate to the subject at hand. Both are very simple, First is that the Commission needs access to local communities and persons, and these persons need access to the Commission as well. Second is that the Commission itself—and I think the Nation—needs the extended person-power which State Advisory Committee members provide on a volunteer basis.

First, about access. Without the access of local persons to the Commission, the agency would lose contact with the people who should be the focus of its concern people sometimes invisible to others in the Nation. Unless these folks can somehow reach the Commission, the Commission loses effectiveness and purpose. State Advisory Committees, which can reasonably represent the broad diversity of civil rights interests within a State, provide better communication in both directions than could regional advisory committees. I don't know that

it is possible to construct a workable group representing the concerns of all significant populations within a multi-state region; personally I cannot even visualize a matrix for it!

Second, about volunteer person-power as presently provided by State Advisory Committee members. I am sure these volunteer efforts were noted for you by hearing witnesses. Those of us in the field are keenly aware that progress in civil rights relies heavily on the efforts of volunteers, one of the reasons being government's historical under-funding and under-staffing of its civil rights initiatives. Like my fellow State Advisory Committee members, I am amazed by the plan to dismantle a recognized and respected voluntary effort which greatly extends the potential for responding to these important initiatives.

State Advisory Committees really do not cost the Commission much, in terms of the work accomplished through our involvement. Even the President's Office of Management and Budget has stopped rationalizing regional committees on the basis that they will cost the Federal government less than State Committees.

These two important points, and others as well, have been made over the past several months in meetings between State Advisory Committee leadership and Federal officials in the Executive Branch. I respectfully submit them to this Subcommittee, hoping you will present to members of the Judiciary Committee our support for H.R. 10831 and our case for language in H.R. 10831 to extend State Advisory Committees as well as the life of the Commission itself.

Before I close, let me indicate to you a few of my organizational affiliations, since they provide the background for my membership on Pennsylvania's State Advisory Committee and the perspective for my remarks today.

Presently I am on the board of the Pennsylvania Equal Rights Council, another statewide organization. In 1975 I had a temporary assignment on a citizen participation project with Community Services of Pennsylvania, a statewide human service planning agency funded by the United Way. For two years I was chairperson of the Allegheny County Council on Civil Rights, a local coalition of 50 human rights organizations. Other citizen organizations include the Western Pennsylvania Coalition for Human Needs and the Citizen Coalition for Pittsburgh Trial Board Reform. Prior to my present employment I supervised the Community Relations Division of the Commission on Human Relations of the City of Pittsburgh. At the present time I am with the Department of Social and Community Development of the Diocese of Pittsburgh, and a doctorial student in social work at the University of Pittsburgh.

I appreciate the opportunity to present this written testimony to the Subcommittee on Civil and Constitutional Rights of the House of Representatives Committee on the Judiciary. Thank you.

CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS,
Milwaukee, Wis., May 19, 1978.

Representative DON EDWARDS,
U.S. House of Representatives, Washington, D.C.

DEAR MR. EDWARDS: At the hearings on H.R. 10831 I indicated to Ms. Davis that I would be happy to describe the legal work in which the Catholic League is involved. I will, for present purposes, restrict my comments to general categories. If you have questions relating to specific cases we will, within the bounds of confidentiality, be happy to answer them for you.

The legal work of the Catholic League falls into several broad categories: advice, support, and active involvement. We advise individuals who have been victimized by their employers; organizations concerned about their members, governmental units or agencies regarding their rights and responsibilities and citizens concerned about ther own rights and those of others. We provide legal research, drafting and other legal assistance and play other supporting roles involving cases having an impact on the religious and civil rights of Catholics. Beyond this, we become actively involved as co-counsel or of counsel in litigation concerning rights of conscience, free exercise, establishment, abortion, education, Title VII, equal protection and other areas of human rights, both national and international. In short, we are an organization similar, both in form and substance, to other Civil Rights organizations.

Some of the cases which are or have been on our docket can be summarized under the following categories:

1. Rights of Conscience:
   a. Defense of individuals who, for conscientious reasons, refuse to participate in abortions.
   b. Investigation of charges relating to pressure on hospital employees to perform active or passive euthanasia.
2. Religious discrimination:
   a. Title VII actions charging religious discrimination.
   b. Harassment of religious groups by the state or federal governments.
3. Free exercise:
   a. State interference in the religious upbringing of children.
   b. State interference with private religious or parochial schools.
4. Freedom of Information:
   a. Government funding used against religious groups.
   b. Discriminatory treatment of persons of religion.
5. Establishment:
   a. Attempts to negate the effectiveness of Catholics and others in the political process.
   b. Denial of access to public facilities to religious groups, or persons wearing religious garb.
6. Abortion:
   a. Defense of public officials against personal liability for acts taken in official capacities which in any fashion regulate abortion facilities (*e.g.*, zoning, medical standards).
   b. Defense of paternal and spousal interests in late-term absortions.
7. Freedom of Speech:
   a. Defense of individuals disseminating educational materials deemed "offensive" by state authorities.
8. Ethnicity—Title VII cases.

As you can see, our coverage of issues is rather broad and expands as we receive referrals. The cases summarized above are only a few of the cases which are brought to our attention. The task of investigating them, as one might imagine, is monumental.

Our complaint with the record of the United States Civil Rights Commission is that it too should be investigating and reporting on these matters. Since it does not, the citizenry is let to believe that the problems simply do not exist. They do, and we urge that action be taken to assure a change in the commission's perspective. When the next round of hearings takes place at the end of the appropriation period currently under consideration, we have no desire to report that "we warned you."

Thank you again for your attention and interest.

Very truly yours,

ROBERT A. DESTRO, *General Counsel.*

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., July 18, 1977.

LABOR-HEW CONFERENCE COMMITTEE,
U.S. Congress, Washington, D.C.

DEAR CONFEREE: The U.S. Commission on Civil Rights is deeply concerned about the Labor-HEW Conference, during which differences must be resolved between the House-passed blanket prohibition against any federal funding of abortions for the poor and the Senate-passed restrictive language, which would allow funding of abortion ". . . where the life of the mother would be endangered if the fetus were carried to term, or where medically necessary, or for the treatment of rape or incest victims. . . ."

As you know, the Commission's report to the President and Congress, "*Constitutional Aspects of the Right to Limit Childbearing,*" recommended that "Congress should reject anti-abortion legislation and amendments, and repeal those which have been enacted." This continues to be our position. We believe that any restrictions upon the right of poor women to obtain legal, medically safe abortions deny to them the effective exercise of a constitutional right accorded *all* women in the country. That is, without access to Medicaid funded abortions, the

constitutional right to abortion is a meaningless right for most poor women. The prohibitions sought to be imposed by the House and the restrictions voted by the Senate are punitive and racially and economically discriminatory. In addition, they are in total disregard of recent social and medical history (pre-*Roe* v. *Wade*) which should have made clear that denying a woman access to a safe and legal abortion does not eliminate abortion but merely invites butchery, the result of which is infection and numerous other complications, and sometimes even the death of the woman involved.

Although the Commission is opposed to both the House and Senate amendments, we recommend, reluctantly, that the Conferees accept the Senate language, which would preserve the ability of a physician to exercise the best medical judgment when dealing with an individual patient and her specific medical condition.

The term "medically necessary," as it appears in the Senate-passed language, places the responsibility of judgment as to when an abortion is needed in the hands of physicians—the people trained and professionally qualified to make such a determination. If Congress does not adopt the Senate language physicians would be prevented from acting in the best health interests of a patient.

The Medicaid Act provides for the delivery of "medically necessary" services to all regardless of an individual's economic status. The purpose of the Medicaid Act is to allow physicians to respond to the medical needs of people. Because approximately 40% of minority women depend on the Medicaid program to meet their total health needs, minority women will be drastically affected under the House-passed language. Illustrative is the fact that 54% of black female-headed households are living in poverty and 66% of Mexican-American female-headed households are below the poverty level, as are 65% of female-headed Puerto Rican families.

Should the Conferees agree to the House-passed restrictions, all pregnant Medicaid-dependent poor women who seek to end a pregnancy, even those who are married but for health reasons should not carry a pregnancy to term, will be forced to do so or to resort to unsafe procedures, endangering their health and lives and in a very real sense, the survival of their family unit.

For these reasons, the Commission urges acceptance of the Senate language.

Respectfully,

ARTHUR S. FLEMMING, *Chairman.*
(For the Commissioners).

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., March 15, 1978.

Hon. DON EDWARDS,
Chairman, Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The following additional data for the record is provided in response to the questions in your letter of March 7, 1978:

"1. Describe the budgetary impact of the proposed expansion of the Commission's jurisdiction to review age and handicap discrimination. The Commission has made some projections; we suggest you review those projections and comment."

Answer. Although we understand that the Commission has made some preliminary projections of those costs, no formal proposal has been submitted to OMB. At such time as a proposal is submitted we will, of course, review it as a part of the usual budget process.

"2. Comment on the use of consultants by the Commission—has such use increased or decreased over the years?"

Answer. The Commission reviewed its use of consultants and reported to the Director of OMB by letter dated July 20, 1977. A copy of that letter, and a table prepared by the Commission on its use of consultants, are enclosed for your information. This data indicates that the Commission's use of consultants is decreasing.

"3. Break out those projects which the Commission will begin in 1978 and:
(a) complete in 1978
(b) complete after 1978"

Answer. In 1978 the Commission will begin and complete a project to update Volume II of the Federal Civil Rights Enforcement Effort. Late in 1978 it will begin a project on pension insurance, which will be completed in 1979.

"4. List the temporary agencies which have open-ended authorization or ceiling authorization and set forth your views as to the rationale for either choice and more specifically why OMB supports removing the Commission's ceiling."

Answer. There are seven agencies, other than the Civil Rights Commission, which have an appropriation ceiling in their authorization: Federal Election Commission, Federal Trade Commission, Indian Claims Commission, Marine Mammal Commission, Nuclear Regulatory Commission, United States Information Agency, and the U.S. Railway Association. All others have an open-ended authorization. As a general rule, OMB prefers specific authorizations that are consistent with the President's Budget and outyear projections contained therein. However, because of the upward fluctuation of the Commission's modest budget, we determined that it would be desirable to remove the constraints of the Commission ceiling to avoid the need for special legislation each time a minor increase was necessary.

"5. There are several points which must be addressed when considering the proposed change from State Advisory Committees:

"(a) what specific factors were weighed by OMB when it decided to recommend regionalization to the Commission. For example: did you evaluate the effectiveness of each State Committee—what elements in your judgement made one Committee more effective than another; did you consider whether the membership of each Committee reflected the various groups within the States and whether such diversity would be maintained under the proposed change. As Congressman Drinan noted, we need to review that data which affected your decision to recommend regionalization."

Answer. OMB's review was based on its overall knowledge of the Commission and its functions and responsibilities, and of the State Advisory Committees as a part thereof. We did not review each individual SAC, although data on committee performance was considered. For example, in 1975 40 SAC's submitted no formal reports, 26 submitted no reports in 1976; 10 submitted one report in 1975, 18 in 1976; and one committee submitted two or more reports in 1975, seven submitted two or more in 1976.

"(b) set forth the structure and administration (function of the Regional Advisory Committees), and compare and contrast to the present State Advisory Committees. For example: what will be the number of representatives to the RAC's from each State, how will decisions be made as to which projects will be undertaken, what mechanism will insure that smaller States will have their projects considered and adopted?"

Answer. The structure and administration of the advisory committees of the Commission are determined by the Commission, which can judge best what will enable it to carry out its responsibilities. A two page statement by the Commission on the proposed RAC structure is enclosed.

"(c) set forth the present cost (e.g., travel, per diem, etc.) for the SAC's. What are the projected costs for the RAC's?"

Answer. As I have indicated elsewhere, costs were not a factor in OMB's recommendation. We assume that the costs of Regional Advisory Committees would be comparable to those of the State Advisory Committees, which were $1,459,150 in calendar year 1977.

"(d) describe the role of the SAC representatives in deciding on the proposed regionalization. For example, were all SAC representatives or a sample contacted before OMB made its recommendations—explain why their comments were not solicited. If you relied on information supplied by the Commission, please forward that data. Had any SAC representatives commented to OMB or the Commission that regionalization was desirable?"

Answer. OMB does not deal directly with the members of agencies' advisory committees, and did not contact SAC representatives before making its recommendation to the Commission. I do not know that any SAC representatives commented to OMB, or to the Commission, that regionalization was desirable.

I hope that this information will assist you and the Subcommittee in your deliberations.

Sincerely,

WAYNE G. GRANQUIST,
Associate Director for
Management and Regulatory Policy.

Enclosures.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., July 20, 1977.

Hon. BERT LANCE,
Director, Office of Management and Budget,
Washington, D.C.

DEAR MR. LANCE: The U.S. Commission on Civil Rights, in response to the President's memorandum of May 12, 1977, has reviewed all its available data on the use of consultants.

The principal purposes for which consulting services are being used are for expert advice and work on short term civil rights hearings and studies. The types of consultants used for these purposes are those who have special skills which augment that which employees can do. They are almost always hired on a short term basis.

The two types of consulting arrangements being used by the Commission are Civil Service Commission (CSC) appointments and contracts. We have no authority to issue grants except in the area of a special age discrimination study being conducted; but even in that study none have been issued. Advisory committee membership is on an "expenses" basis only; there is no reimbursement.

The number of consulting arrangements in effect and the total dollars involved are, as follows:

A. CSC appointments: As of June 30, 1977, twenty-two consultants had been appointed in the entire fiscal year and they earned a total of $30,689. Eight of those appointments are currently in effect.

B. Contracts: As of June 30, 1977, nine consultant type contracts had been awarded totaling $50,800. Two of these contracts are still open.

The Commission has reviewed the management controls and decision criteria used for consultants and is satisfied that they will and have effectively prevented abuses. For over a year, no consultant or expert has been hired by this agency without the Assistant Staff Director for Administration or I personally reviewing the request, to determine that the use of a consultant was necessary and proper and certifying that decision. That procedure will be continued. Also, the Assistant Staff Director for Administration and I review quarterly the status of all active consultants (see enclosed quarterly review) and terminate the services of those we believe are no longer justifiable. As a result of the last review process, four consultants were dropped from the rolls as no longer required. We have operational Administrative Instructions concerning the use of consultants (see enclosed Administrative Instruction 2–15), contracts (see enclosed Administrative Instruction 4–15) as well as a "consultant and expert kit" available to all office directors which deals with all aspects of the hiring requirements, pay, etc., of consultants. Before any contract is advertised or negotiated, the Staff Director must review the programmatic need for a contract.

This Commission supports the President's views on the use of consultants and experts and will continue to ensure that their use will not be excessive, unnecessary, or improper.

Sincerely,

JOHN A. BUGGS, *Staff Director,*
(By Louis Nunez, Deputy Staff Director).

Enclosures.

COMMISSION ON CIVIL RIGHTS—SALARIES OF COMMISSIONERS, CONSULTANTS, AND EXPERTS, FISCAL YEARS 1976, 1977, AND 1978 THROUGH DECEMBER

Names: City	Fiscal year 1976 and transition quarter		Fiscal year 1977		Fiscal year 1978 through December	
	Days	Amount	Days	Amount	Days	Amount
Commissioners:						
Flemming, Arthur S.:[1] Washington, D.C.						
Freeman, Frankie M.: St. Louis, Mo.	86	$13,036	82	$14,604	30	$5,770
Horn, Stephen: Long Beach, Calif.	65	9,843	56	9,914	10	1,923
Rankin, Robert S.: Durham, N.C.	34½	5,192				
Ruiz, Manuel, Jr.: Los Angeles, Calif.	71	10,741	61½	11,031	10	1,923
Saltzman, Murray: Indianapolis, Ind.	75	11,377	75	13,374	14	2,692
Subtotal, Commissioners	331½	50,189	274½	48,923	64	12,308

See footnotes at end of table.

COMMISSION ON CIVIL RIGHTS—SALARIES OF COMMISSIONERS, CONSULTANTS, AND EXPERTS, FISCAL YEARS 1976, 1977, AND 1978 THROUGH DECEMBER—Continued

Names: City	Fiscal year 1976 and transition quarter		Fiscal year 1977		Fiscal year 1978 through December	
	Days	Amount	Days	Amount	Days	Amount
Experts and consultants:						
Alvarez, Luis:[2] New York, N.Y	21	$2,520				
Anderson, Bernard E.:[2] Washington, D.C			2	$300		
Azores, Fortunata M.:[2] Washington, D.C					37	$3,700
Baca, Richard: San Francisco, Calif	18	2,628				
Blau, Francine D.:[2] Washington, D.C			2	200		
Briggs, Vernon M.:[2] Washington, D.C			5	650		
Cardenas, Gilbert:[2] San Antonio, Tex			75	10,500	8	1,120
Cassadore, Philip: Peridot, Ariz	27	1,620				
Chapman, Jane: Washington, D.C			20	3,380		
Cooper, Maudine R.:[2] Washington, D.C			2	200		
Cotrell, Charles L.:[2] San Antonio, Tex	19	2,375				
Creswell, Isiah T.: Washington, D.C			25	3,808		
Cruz, Maria Teresita:[2] Washington, D.C					14	1,400
Fox, William F., Jr.: Washington, D.C			23	2,990		
Getter, Russell W.:[2] Kansas City, Mo	6	600				
Glickstein, Howard A.: Washington, D.C	1	145				
Goff, Donald H.: Washington, D.C	112	14,000	4	500		
Gordon, David M.:[2] New York, N.Y			6	600		
Green, Sidney W.:[2] Washington, D.C			7½	1,106		
Hafer Ellen W.: Jamaica Plains, Mass	123	7,995				
Haworth, Joan C.:[2] Falls Church, Va	24 9	2,400				
Hercenberg, Jerrold J.: Washington, D.C			20	2,200	60½	6,655
Hernandez, Jose:[2] Washington, D.C	10½	1,313	21½	2,688		
Hillman, Larry W.:[2] Louisville, Ky	17	2,471				
Howard, Frankie: Tuba City, Ariz	15½	938				
Jackson, Gregg: Washington, D.C			5	650		
Johnson, Jeffalyn: Alexandria, Va			40	6,760	2	338
Jones, Dorothy E.:[2] New York, N.Y	5	500				
Jones, James E., Jr.:[2] Washington, D.C	1	145				
Juarez, Al:[2] Los Angeles, Calif			1	95		
Kohen, Andrew J.:[2] Washington, D.C	1	120	1½	195		
Korbel, George J.:[2] San Antonio, Tex	22	2,750	33	4,125		
Laws, Judith L.: Washington, D.C			13	1,430	25	2,750
Levine, Daniel:[2] Kansas City, Mo	10	1,000				
Lichtman, Judith L.: Washington, D.C			26	3,280		
Mathews, Thomas: Washington, D.C	67½	9,113	18	2,430		
Miller, Robert L.:[2] Los Angeles, Calif			1	147		
Niemi, Beth:[2] Washington, D.C			4	500		
Nobles, W. Scott:[2] Washington, D.C	3	435	8	1,160		
Park, Byron B.:[2] Los Angeles, Calif			1	110		
Piore, Michael J.:[2] New York, N.Y			6	780		
Powell, John H., Jr.: Washington, D.C	54	7,893				
Rhenisch, Madelyn B.:[2] Washington, D.C					7	595
Rodriguez, Eugene, Jr.:[2] San Antonio, Tex			5	760	1	152
Rogers, Luis E.:[2] Northglenn, Colo			59	5,900	21	2,100
Schertz, Morris:[2] Denver, Colo	8½	850				
Schey, Peter A.:[2] Los Angeles, Calif			1	100		
Schuchat, Theodore: Washington, D.C	40	5,800				
Shelburne, Elizabeth C.:[2] Washington, D.C			37	3,256		
Simpkins, Edward:[2] Louisville, Ky	17	2,465				
Sklar, Morton H.:[2] Washington, D.C	1½	150				
Solache, Saul:[2] Los Angeles, Calif			1	110		
Stafford, Walter:[2] New York, N.Y	5	500				
Stahl, Evelyn H.: Washington, D.C	5	500				
Sterne, Richard S.:[2] Washington, D.C			1	96		
Stevenson, Mary H.:[2] Washington, D.C			2½	259		
Stiffarm, Thelma J.:[2] Denver, Colo			5	475	47	4,622
Swall, Forrest L.:[2] Kansas City, Mo	7	700				
Tabor, Richard:[2] Washington, D.C	35	3,500	14	1,400		
Temme, Lloyd V.:[2] Washington, D.C	17	2,125				
Uhlig, George E.:[2] Atlanta, Ga			18	1,800		
Villalpando, Vic M.:[2] Los Angeles, Calif			1	110		
Vivo, Paquita: Washington, D.C	4	456	4	485		
Wade, Roger C.:[2] Denver, Colo			38	2,850		
Wagenheim, Kal: Maplewood, N.J	54	5,400				
Walker, Michael D.:[2] Seattle, Wash			59	5,913	27	2,700
Webster, Paula:[2] New York, N.Y			65	5,200	9	720
Williams, John S.:[2] Washington, D.C	110	13,200				
Zell, Patricia:[2] Washington, D.C			73	7,300	29	2,900
Zobel, Janet:[2] Kansas City, Mo			1	100		
Subtotal, experts and consultants	861½	96,607	755	86,898	287½	29,752
Total, Commissioners, experts and consultants	1,193	146,796	1,029½	135,821	351½	42,060

[1] Chairman Flemming who is Commissioner on Aging, Department of Health, Education and Welfare, is not compensated by the U.S. Commission on Civil Rights.
[2] Consultant.

U.S. COMMISSION ON CIVIL RIGHTS

REGIONAL ADVISORY COMMITTEE OPERATIONS

In September 1977, the Commissioners met with the State Advisory Committee Chairpersons to discuss and plan the transition from 51 State Advisory Committees to 10 Regional Advisory Committees. From that conference numerous recommendations were made by the chairpersons to the Commissioners, most of which were approved and are contained in a 19 page document reporting the results of the conference. These and other procedures are being combined into an operational manual for Regional Advisory Committees. In the meantime, this summary will provide the highlights of our plans for the committees.

We have established a formula for membership size for a trial period of at least a year. Regional Advisory Committees will be comprised of a minimum of five members from each state, plus one additional member for each million in population with the condition that no one state may have more than half the membership of the region. We think this will give adequate representation to each state and provide for a few more additional members in the larger states for an equitable balance. An estimated projection of this plan would have something over 400 members nationally, about half our present membership and our goal in the change from State Advisory Committees to Regional Advisory Committees.

Although we want to adhere to a size formula as closely as possible, we will consider exceptions. For example, if in working on a Commission study it becomes apparent that additional skills or knowledge would be helpful to the committee and the project, we would entertain a request for new appointees with the skill needed. We want to remain flexible.

We will expect to continue the balance of representatives on the regional committee, by race, sex, ethnic identity, political affiliation, age, occuupation and other relevant factors, such as a demonstrated history, or clear commitment to equal rights.

Regional Advisory Committees under the proposed formula above would range in size from about 25 to about 70. The larger groups will be expensive to operate and it is difficult to have a "committee meeting" with 70 persons. This leads us to having a Regional Advisory Committee executive committee which would be comprised of a person from each state whom may be called vice chairpersons. The executive committee will be the body that meets on a regular basis to do the business of the regional committee and the Commission.

All present State Advisory Committee chairpersons will be invited to become members of their Regional Advisory Committees. As many present State Advisory Committee members as possible will be appointed to the Regional Advisory Committees.

Regional Advisory Committee members as with State Advisory Committee members will be volunteers with jobs and other interests, but we would expect that they will be able to devote time to their positions when they accept appointment.

The Commission's Rules and Regulations provide for the appointment of advisory committee chairpersons by the Commission, which we will continue to do. However, the recommendations and advice from the Regional Advisory Committee and the regional staff will be taken into consideration with these appointments as they have in the past. We will follow the same procedure in connection with the appointment of state vice-chairpersons and members. This will be equally true of an annual (or bi-annual) review of a committee and its extension or recharter. We will be considering recommendations that have been developed jointly by the regional committee chairperson and the regional office director.

It is anticipated that the full regional advisory committee will meet two or three times a year, with the executive committee meeting several more times a year with the vice chairpersons handling the meetings of the state subcommittees. The 10 regional advisory committee chairpersons will meet at least twice annually with the Commissioners and more frequently if budget and time permit.

The work of the committees will be to assist the Commission in carrying out its factfinding and fact disseminating responsibilities, through studies, conferences, public meetings and published reports. A key contribution will be the committees' advice to the Commissioners during their conferences. these reports on local and regional issues will be a part of the Commission's program planning process.

Advisory Committee members serve without compensation but are reimbursed for the expenses of travel, meals and lodging. Staff assistance will be provided by the Commission's Regional Office. The Regional Director, will work closely with the chairperson in carrying out the Regional Advisory Committee's program.

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., March 13, 1978.

HON. DON EDWARDS,
Chairman, Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights, Washington, D.C.

DEAR MR. CHAIRMAN: During our March 1, 1978 hearing before your Subcommittee on H.R. 10831, Dr. Flemming promised to respond in writing to two questions which were directed to him. The first question related to the amount of additional funds which would be necessary if the Commission's jurisdiction were expanded to encompass discrimination on the basis of age or handicap. Chairman Flemming responded that the Commission had prepared tentative cost projections pursuant to a similar request from Senator Bayh, and that a copy of our letter to Senator Bayh would be made available to the Committee. Accordingly, I am enclosing a copy of the letter to Senator Bayh on the projected costs of Commission jurisdiction over age and handicap discrimination.

The second question to which Chairman Flemming promised a written response concerned the amount of funds expended by the Commission for consultant services over the last two years. In FY 1976 and the Transition Quarter, the Commission spent $96,607 for the services of consultants and experts. This amounted to 1.43% of the agency's total expenditures for the period. In FY 1977, the Commission spent $86,898 or 1.35% of its budget for the assistance of consultants and experts. For FY 1978, the Commission has expended $29,752 for the services of consultants and experts through December.

I trust that this information is responsive to the questions raised during the March 1 hearing. If you have additional questions or need further information, please have Ms. Davis contact Lucy Edwards or Jim Lyons

In closing, I want to personally thank you for the time and attention you have devoted to the matter of the Commission's reauthorization. Both the Commissioners and staff admire and appreciate your consistent commitment to civil rights legislation.

Sincerely,

LOUIS NUNEZ, *Acting Staff Director.*

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C., January 16, 1978.

HON. BIRCH BAYH,
Chairman, Senate Judiciary Subcommittee on the Constitution, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR BAYH: During the December 15, 1977 hearing before your Subcommittee on S. 2300, the Civil Rights Commission Act of 1978, you asked Chairman Flemming for a projection of the additional costs that would be entailed if the Commission's jurisdiction were expanded to encompass discrimination on the basis of age and handicap. As Chairman Flemming indicated during the hearing, a precise budget cannot be established until the Commission has had an opportunity to formulate a program in each of the areas and has cleared it through OMB. Nevertheless, Commission management and program staff have developed a cost projection based upon the agency's considerable experience in examining other types of discrimination, in carrying out the Congressionally-mandated, limited study of age discrimination in Federally-assisted programs, and in assuming jurisdiction for discrimination based upon sex in 1972.

For the Commission to establish and effectively carry out an ongoing program encompassing the age and handicap discrimination responsibilities set out in S. 2300 would necessitate an appropriation of approximately $2.8 million over and above the agency's current FY 1979 appropriation request of $10-plus million. Approximately two-thirds of this amount would be committed to salaries and associated personnel costs for an additional 80 program and support positions to be assigned to the Commission's field and headquarters operations.

While full staffing could not be accomplished at the outset of operations under the expanded jurisdiction, first-year personnel cost savings would be offset by other initial non-recurring outlays, e.g., relocation of the agency to quarters which could house the enlarged staff, expansion of library and field office research resources to include materials relevant to age and handicap discrimination, and acquisition of special equipment to accommodate the needs of handicapped employees and other individuals who would be expected to increase their use of the Commission's clearinghouse library and consultations necessary to assist the agency in developing program plans for the new jurisdictions.

I trust that the above information is responsive to your request, and that it will assist your Subcommittee in its deliberations. If you have any questions, please have Mr. Dixon contact Lucy Edwards or Jim Lyons at 254–6626.

Sincerely,

JOHN A. BUGGS, *Staff Director.*
(By Louis Nunez, Deputy Staff Director).

THE STATE OF CIVIL RIGHTS: 1977

A Report of The United States Commission on Civil Rights
February 1978

U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman

John A. Buggs, Staff Director

LETTER OF TRANSMITTAL

U.S. COMMISSION ON CIVIL RIGHTS
Washington, D.C.
February 1978

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

SIRS:

The U.S. Commission on Civil Rights presents this report to you pursuant to Public Law 85-315, as amended.

This is the second in a series of annual Commission reports on the state of civil rights in the United States. These reports are intended to provide the President, Congress, and the American people with the Commission's views on the most significant civil and women's rights events and developments during the preceding year.

Each report reviews executive, legislative, and judicial actions, and other developments, favorable and unfavorable, that the Commission considers critical to the national goals of eliminating discrimination and enhancing equal opportunity for all Americans in fundamental aspects of our national life.

At a meeting with the President last July, the Commissioners commended him for his strong and forthright expression of support for civil rights programs when he addressed employees of the Department of Health, Education, and Welfare. At that same meeting, the President asked the Commission to keep him fully apprised of its reaction to efforts by his administration to address civil rights issues, as well as more general concerns in the area of human rights. This report has been prepared in the spirit of that meeting and the President's request.

In reviewing civil rights developments in 1977, the Commission is particularly encouraged by the new administration's commitments and initiatives to improve enforcement of civil rights laws. If carried to fruition,

such efforts could lead to meaningful civil rights progress in coming years.

We remain deeply concerned, however, by the continuing high unemployment and poverty rates among minority groups and women and the inadequacy of programs to deal with the problems of low-income urban residents. The lack of economic progress for minorities and women is especially disturbing since the costs of meeting basic human needs continued to rise and the overall employment position of white males improved.

In education, there was further progress in 1977 in community adjustment to school desegregation. The Carter administration pledged to strengthen substantially enforcement of laws to ensure equal educational opportunity. On the other hand, congressional actions concerning school desegregation and challenges to affirmative admissions programs in higher education threatened to slow down progress toward achieving equal educational opportunity.

In employment, the administration also committed itself to more effective enforcement of equal employment laws, and initiated plans to reorganize Federal equal employment enforcement programs. A decision by the U.S. Supreme Court, however, placed severe limits on the eligibility of some victims of discriminatory seniority systems for relief. Measures to provide jobs and job training in 1977 fell far short of the needs of minorities and women.

In housing, the rising costs of housing and various subtle patterns of discrimination continued to limit fair housing opportunities in 1977. Federal programs continued to fall far short of providing additional housing needed by low- and moderate-income groups and thus contributed to the lack of any measurable progress toward achieving the national goal of decent housing for all Americans.

In women's rights, little progress was made in 1977 towards enactment of the Equal Rights Amendment, and efforts continue to enact laws that would have the effect of denying to poor women constitutional rights in the area of reproductive choice.

In the administration of justice, positive developments included proposed revision of the United States criminal code and steps toward establishing tribal sovereignty with

respect to law enforcement and protection issues on American Indian reservation areas. The Commission is disturbed, however, that in a number of communities, police abuse of minority citizens intensified as a critical issue, poisoning police-minority community relations and contributing to disorders in several cities.

In political participation, the administration promised the appointments of significant numbers of minorities and women to important positions in the Federal Government. Although movement toward this goal has been slower than expected, various top-level posts have in fact been filled by representatives of these groups. Voting rights of minorities were also strengthened by several Supreme Court decisions. Full participation in the Nation's political process remains a distant goal, however, and vigilance must still be exercised to ensure voting rights of minorities.

Following firm Presidential commitments, steps were taken in 1977 to reorganize the Federal civil rights enforcement effort. It is anticipated that these efforts will result in more effective enforcement efforts in 1978.

While important beginnings were registered during the past year, it is hoped that 1978 will be marked by a determined commitment, fully shared by executive and legislative branches of government, to follow through on the encouraging first steps noted in this report and to undertake new and greater efforts to eliminate obstacles to the full protection of civil rights and equal opportunity for all.

We urge your consideration of the facts presented in this report and ask for your further leadership to guarantee equal opportunity for all the citizens of this country.

Respectfully,

Arthur S. Flemming, Chairman
Stephen Horn, Vice Chairman
Frankie M. Freeman
Manuel Ruiz, Jr.
Murray Saltzman
John A. Buggs, Staff Director

ACKNOWLEDGMENTS

The Commission is indebted to staff in the following offices that participated in the preparation of this report: Congressional Liaison Unit; Office of Federal Civil Rights Evaluation; Office of General Counsel; Office of National Civil Rights Issues; Office of Program and Policy Review; and Women's Rights Program Unit.

Project director was Jessalyn P. Bullock, Chief, Current Issues Branch, Office of National Civil Rights Issues. Support was provided by Almeda E. Bush and Patricia Y. Ellis.

The report was prepared under the immediate supervision of James B. Corey, Director, Program Operations, Office of National Civil Rights Issues, and the overall supervision of William T. White, Jr., Assistant Staff Director, Office of National Civil Rights Issues.

Appreciation is extended to Louis Nunez, Deputy Staff Director, for his coordinating efforts during the preparation of this report.

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EMPLOYMENT

Developments affecting the employment position of minorities and women in 1977 were generally discouraging. Although overall joblessness declined and employment increased during the year, the disparities between whites and minority groups persisted as minorities shared only marginally in the improvements. Black unemployment was the highest since the Second World War. The persistent income gap between white men as compared to minorities and women is another disturbing fact. Affirmative action efforts for minorities and women were, to some extent, offset by a Supreme Court decision regarding seniority systems. That ruling is an additional barrier to the achievement of equal employment opportunity.

Unemployment

Overall unemployment declined in 1977 from 7.8 percent in December 1976 to a low of 6.4 percent in December 1977. The decrease of 1.4 percentage points represented a reduction of 1,165,00 persons from the ranks of the unemployed.[1] Total unemployment, however, averaged 7 percent during 1977 compared to 7.7 percent in 1976. While the average jobless rate for whites fell from 7 percent in 1976 to 6.2 percent in 1977, the average unemployment rate

[1]

for blacks increased from 13.8 percent to 13.9 percent during that period. The black unemployment rate thus was more than twice as great as that for whites during 1977. For workers of Hispanic origin, the average jobless rate dropped from 11.5 percent in 1976 to 10 percent in 1977 but unemployment among Hispanic was still 1.6 times higher than that among whites.[2]

Minority teenage unemployment remained very high. Black teenage unemployment rose from 39.3 percent in 1976 to 41.1 percent in 1977. The average unemployment rate for teenagers of Hispanic origin fell slightly from 23.1 in 1976 to 22.3 in 1977. The actual number of unemployed Hispanic teenagers, however, increased slightly as a result of their increased rate of entry into the labor force. Meanwhile, unemployment among white teenagers declined from 16.9 percent in 1976 to 15.4 percent in 1977.[3] The persistently high unemployment rate among Hispanic and black youths (roughly two to three times greater than that among white youths) is of special concern not only for its immediate effect on the minority community but also because of its likely long term effects on their job market success.

The average unemployment rate for women declined by less than one-half of a percentage point during the year--from 7.4 percent in 1976 to 7 percent in 1977--while the

average unemployment rate for men fell from 5.9 percent to 5.2 percent during this period. The unemployment rate for women thus remained significantly higher than that for men. For black and Hispanic women, the average rate of joblessness was roughly twice that of white women in 1977. For white males, the average unemployment rate declined from 5.4 percent in 1976 to 4.6 percent in 1977; for white women the rate declined from 6.8 percent to 6.2 percent.[4]

During this same period, the average unemployment rate for Hispanic males fell from 9.3 percent to 7.5 percent, while the rate for Hispanic females declined from 11.5 percent to 10.1 percent. The average jobless rate for black males dropped from 11.2 percent in 1976 to 10.5 percent in 1977. In contrast, the rate for black females increased from 11.6 percent to 12.1 percent.[5]

Similar disparities between blacks and whites appeared in the employment statistics. The total number of employed persons in 1977 reached 92.6 million, a record increase of 4.1 million since December 1976. Of this increase, whites represented 3.5 million whereas blacks accounted for 646,000.[6] The Bureau of Labor Statistics reported, however, that "[D]espite strong employment gains, there was no downtrend in the unemployment rate for black workers over

the past year as a result of sizeable labor force entry. There was, however, a reduction for black adult men."[7]

Unemployment figures alone do not portray the full extent of joblessness. The number of discouraged workers--those who want jobs but have stopped looking because they think they cannot find them--averaged 968,000 in the fourth quarter of 1977, down from 1.1 million in the second and third quarters and slightly below the 992,000 level in the fourth quarter of 1976. More than two-thirds of these discouraged workers were women; more than one-fourth were black men and women.[8] In addition, the number of part-time workers who would have preferred full-time work was slightly over 3 million, among whom women and minorities were disproportionately represented (2.2 million).[9] Taking discouraged and involuntary part-time workers into consideration, total joblessness was nearly twice as great as that recognized in official unemployment statistics.

The adequacy of unemployment statistics as a measure of true economic hardship has been questioned in recent years.[10] In response to these criticisms, a Presidential National Commission on Employment and Unemployment Statistics was created in 1977. The temporary Commission will "conduct a comprehensive assessment of methods, procedures, and concepts used to collect and analyze labor

force statistics" and will present its findings to the Secretary of Labor.[11] This development will hopefully contribute to a more accurate understanding of unemployment and underemployment problems of millions of Americans.

Occupational Status and Income

Another disturbing trend in the employment and earnings situation is that minorities and women continue to earn much less than white men. The most recent data point to large, persistent income disparities. The 1976 median income for females was $8,312, or only 60 percent of the $13,859 median income for males. Average incomes of black and Hispanic families ($9,242 and $10,259, respectively) were roughly two-thirds that of white family income ($15,537). Year-round, full-time, white female workers who headed households also earned less than two-thirds the income of white male-headed families. A similar gap also exists in the incomes of minority female-headed households compared to minority male-headed households.[12]

A new Census Bureau report also cites continuing disparities in poverty rates between whites and minority groups. The poverty rate among blacks was three times that for whites; Hispanics were 2 1/2 times more likely to live below the poverty level than whites.[13]

Although the disadvantaged economic status of women and minority groups can be blamed partly on high unemployment, it is also associated with their underrepresentation in better paying jobs. While half of all white men are in professional, managerial, or skilled craft occupations--those paying relatively high wages--less than one-fourth of white women and about 30 percent of minority men and 15 percent of minority women are so employed.[14]

Employment Legislation

In light of the severity of the 1974-75 recession and the continuing employment problems of large groups of Americans, much attention has focused on a bill sponsored by Congressman Hawkins and Senator Hubert Humphrey, the Full Employment and Balanced Growth Act.[15] In mid-November President Carter endorsed a revised version of this bill which establishes a national goal of reducing the overall unemployment rate from 7 percent to 4 percent by 1983.[16]

In early 1977 the Commission urged a renewed official Federal Government commitment to the concept of a right to a job and to full employment as essential to ensuring equal employment opportunity for all Americans.[17] The revised "Humphrey-Hawkins Bill" proposes that the Federal Government go on record in support of full employment, a step this Commission strongly endorses. While the bill calls for

every effort, including action by the Secretary of Labor, to reduce differentials in unemployment rates between minorities, youth, women, and others in Federal programs, it does not specify the mechanisms to be used in support of this objective. Doubt therefore arises as to whether the revised Humphrey-Hawkins measure will effectively come to grips with the disproportionate unemployment burden borne by members of minority groups.

Other legislation was enacted in 1977 to provide, at least on a temporary basis, for more training and employment opportunities to meet the needs of large numbers of unemployed and underemployed workers. This legislation included: (1) a 1-year extension of the Comprehensive Employment and Training Act of 1973,[18] (2) a supplemental $4 billion appropriation for the Local Public Works Program,[19] and (3) passage of the Youth Employment and Demonstration Projects Act of 1977.[20]

The Comprehensive Employment and Training Act (CETA) gives financial assistance to State and local governments to enable these jurisdictions to furnish training and employment opportunities to economically disadvantaged persons, including the unemployed, the underemployed, and welfare recipients. CETA also provides funds for the National Job Corps Program.

The act, originally scheduled to expire in fiscal year 1977, was extended through fiscal year 1978 and additional funds were provided to increase public service jobs from 310,000 to 725,000 by December 1977.[21] Additional appropriations for the Local Public Works Program, administered by the Economic Development Administration of the Department of Commerce, went to support a Federal grant program to State and local governments to help create private sector jobs on federally-funded public works projects. This act contains a provision requiring that 10 percent of each grant be expended for minority business enterprises.[22] It was estimated that the additional funds would create 300,000 jobs in the construction industry alone.[23] Finally, the Youth Employment and Demonstration Projects Act established a Young Adult Conservation Corps to provide employment and training in work projects on public lands and waters.

In light of past deficiencies, the Commission believes those administering these programs will have to take steps to assure the participation of unemployed minority workers and to ensure placement in jobs after completion of training. Public service jobs generally provide only temporary relief for unemployed persons seeking permanent employment; in the past, CETA officials had generally been

only half as successful in placing minorities and women (compared to white males) in unsubsidized jobs upon program completion.[24] This perhaps reflected certain deficiencies in CETA administration and operations. The General Accounting Office in April criticized CETA programs for their lack of intensive formal training and support services and for ineffective monitoring stemming in part from insufficient staffing.[25]

Last Hired, First Fired

Another major employment problem for minorities and women has long been the discriminatory effects of seniority-based layoff policies.[26] Seniority systems operate at cross-purposes with equal employment opportunity efforts when employers lay off workers during economic slowdowns. Minorities and women, often the last hired, are the first fired when seniority is the basis for layoffs.

In its study of this issue released in early 1977, the Commission noted that one survey of firms failed to reveal a single employer who, in an effort to retain minority and female workers, refrained from using the "last in, first out" approach.[27] Recently hired, low-seniority minorities and women are therefore particularly vulnerable when layoffs begin, and their relatively recent and limited occupational and wage gains are also undermined.

Various alternatives that could minimize or forestall the necessity of laying off low-seniority workers include work sharing (spreading the available work or hours of work), labor force reduction through attrition, restrictions on subcontracting, payless holidays, and subsidization of workers who accept a shortened work week by supplementing their wages with unemployment insurance benefits.[28] The Commission has urged greater use by employers of these alternatives when layoffs would otherwise disproportionately affect minority or women employees.[29]

Supreme Court Decisions

In a case involving sex discrimination in seniority systems, the U.S. Supreme Court in 1977 ruled that an employer's refusal to permit female employees returning to work following pregnancy leave to retain their accumulated seniority deprives them of employment opportunities and adversely affects their status as employees in violation of Title VII.[30]

Another employment issue of concern to women in 1977 was pregnancy disability benefits and the implications of such employment practices for the job security and economic status of women. Concern over this issue was aroused by a 1976 Supreme Court decision in which the Court refused to invalidate, under Title VII, an employer's disability plan

which excluded disabilities arising from pregnancy. The Court held that the challenged insurance, although it excluded pregnancy, contained no gender-based distinctions (i.e., there was no risk from which men were protected and women were not).[31]

In response to this ruling, the Senate passed legislation in September 1977 amending Title VII of the Civil Rights Act of 1964 to include a prohibition of discrimination based on pregnancy, childbirth, and related medical conditions as discrimination based on sex. The bill requires employers to include pregnancy among conditions which make employees eligible for benefits under employee disability plans.[32] A similar bill is pending in the House.

Another major decision by the Supreme Court upheld the legality under Title VII of seniority systems which perpetuated the effects of discriminatory acts that occurred prior to 1965.[33] International Brotherhood of Teamsters v. United States limits considerably the number of persons entitled to financial and seniority relief under Title VII of the Civil Rights Act of 1964.[34]

In Teamsters, lower courts had determined that a large trucking company had discriminated against minorities under Title VII. They further ruled that the seniority system established by the company and the Teamsters acted to

perpetuate the effects of this discrimination. The case concerned the widespread practice of maintaining separate bargaining units for city and over-the-road (OTR) drivers. For competitive purposes, such as determining the order in which employees may bid for favored positions and are laid off, seniority was determined within each unit. The practical effect was that, to transfer to an OTR driver position, all competitive seniority would have had to be forfeited.

The Supreme Court found that the employer had indeed discriminated against minority workers and that this discrimination had occurred both before and after the enactment of Title VII. Where discrimination had occurred after enactment of the Civil Rights Act of 1964, retroactive seniority could be awarded to the victims of discrimination. Pre-1964 discrimination, however, was treated differently: the Court declared that seniority systems negotiated without discriminatory intent (as distinguished from discriminatory effect) were not unlawful under Title VII simply because they perpetuated pre-1964 discrimination. This conclusion rendered immune from Title VII litigation numerous seniority systems that do perpetuate such effects. Despite this interpretation of the law, Congress could act, as it did in response to the Court's ruling on pregnancy disability

benefits, to amend Title VII to mitigate the effect of this decision. The Commission would favor such legislation.

Federal Enforcement

Evidence was again presented in 1977 that Federal equal employment enforcement responsibilities were not being fully met. By simple default, many Federal agencies ignored or subverted affirmative action requirements, thereby impeding minorities and women from moving into higher paying professional, managerial, and skilled trades jobs.

In a study of the television industry published in August 1977, for example, this Commission found that white males held the overwhelming majority of decisionmaking positions and that women, particularly minority women, continued to be concentrated in the technical and clerical ranks.[35] A relatively high proportion of minority females were employed, however, in visible on-the-air positions, conveying the impression that great strides in equal opportunity were being made. At the same time, the status of minorities and women was misrepresented by television stations in work force reports filed with the Federal Communications Commission (FCC). These and other practices went undetected because the FCC did not require television stations to analyze their labor forces for representation of minorities and women at all levels of responsibility or to

correlate recruitment and training efforts with the hiring and promotion of minorities and women. The FCC announced its intention to revise employment reporting forms, as the Commission recommended, but several other recommendations proposing more stringent employment standards were rejected by the FCC as beyond its statutory authority.

Another Commission study had found that low minority and female representation in the building trades and in the trucking industry was due in large part to discriminatory union practices relating to union admission, apprenticeship, and referral for employment.[36]

As in broadcasting, such unlawful practices have been abetted by the failure of Federal agencies to adopt adequate enforcement mechanisms. Some of these agencies did subsequently announce their intention to correct certain deficiencies. For example, the Department of Labor declared in 1977 that it would require Federal Government construction contractors to set employment goals not only for minorities but also for women[37] and to compel trucking industry firms doing at least $50,000 in Federal Government business to submit annual affirmative action plans.[38]

No action, however, was taken on several other fundamental issues. These included: requiring unions to file affirmative action plans where the union has a

collective bargaining agreement with Federal construction contractors; the improvement of information storage and retrieval to help monitor affirmative action plans; and redirecting apprenticeship outreach programs to increase the number of minorities and women in journeyman positions.

Many of the problems stemming from the lack of effective enforcement of equal employment laws were identified in a Commission report published in 1975.[39] These problems have yet to be eradicated, although progress did occur in 1977. The administration's commitment to effective equal employment opportunity enforcement reflects its expressed determination to come to grips with the problem of employment discrimination.

Recent appointees to key leadership positions in the Civil Service Commission, the Department of Justice, the Department of Labor, and the Equal Employment Opportunity Commission have indicated a determination to strengthen enforcement of Federal equal employment laws and to use Executive orders effectively in mandating action in this area. Initiatives to strengthen Federal agency equal employment opportunity compliance programs to combat employment discrimination have already been undertaken.[40] Several of these agencies conducted critical self-assessments which resulted in organization and regulation

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changes and expanded litigation activities. These agencies have also renewed efforts to develop interagency coordination, to resolve longstanding differences among agencies, and to establish a uniform Federal enforcement policy. One notable example is the Equal Employment Opportunity Commission. Extensive internal reorganization began and other vigorous measures were taken during the latter half of the year under the leadership of Eleanor Holmes Norton, who was appointed Chair of EEOC in June 1977. The Commission is encouraged by EEOC's early efforts to resolve its problems, which have limited the agency's ability to meet its important mandate.

For the most part, new initiatives were at varying stages of implementation and there was little measurable progress at the end of the year. The Commission has reason to expect, however, that the new spirit and the efforts renewed during 1977 will produce significant results in the coming years. These developments are among the most gratifying in the field of civil rights in 1977.

Notes to Employment

1. U.S., Department of Labor, Bureau of Labor Statistics, "The Employment Situation: December 1977" (Jan. 11, 1978), table A.

2. U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings (January 1978), table 44. The Public Information Office of the Bureau of Indian Affairs estimated 40 percent unemployment among American Indians in December 1977.

3. Employment and Earnings (January 1978), table 44.

4. Ibid.

5. Ibid.

6. "The Employment Situation: December, 1977," table A-1.

7. U.S., Department of Labor, Bureau of Labor Statistics, "Labor Force Developments: Fourth Quarter 1977," p. 1.

8. "The Employment Situation: December 1977," table A-8.

9. U.S., Department of Labor, Bureau of Labor Statistics, Employment and Earnings, vol. 24, no. 12 (December 1977), table A-29.

10. For example, the Bureau of Labor Statistics (BLS) does not collect monthly unemployment data for Hispanics, Asian and Pacific Island Americans, or American Indians. Monthly employment and unemployment data are published by BLS for "white" and "black and other" only. Some data for Hispanics are now published on a quarterly and annual average basis (April, July, October, January). Legislation designed to remedy this inequity was enacted on June 16, 1976. Public Law 94-311 (90 Stat. 688) is intended to provide for Federal collection, analysis, and publication of monthly employment data on Hispanics. A monograph to be published by this Commission will include an assessment of the actions of BLS to comply with Pub. L. 94-311.

11. U.S., Department of Labor, Monthly Labor Review (April 1977). (Emergency Jobs Program Extension Act of 1976, Pub. L. No. 94-444, §13.)

12. U.S., Department of Commerce, Bureau of the Census, Money Income and Poverty Status of Families and Persons in the United States: 1976, Advance Report, Current Population Reports, series P-60, no. 107 (September 1977), table 1.

13. U.S., Department of Commerce, Bureau of the Census, Characteristics of the Population Below the Poverty Level: 1975, series P-60, no. 106 (June 1977), pp. 16-17.

14. U.S., Department of Commerce, Bureau of the Census, Population Profile of the United States: 1976, Current Population Reports, series P-20, no. 307 (April 1977), p. 36.

15. H.R. 50, 95th Cong., 1st sess., 123 Cong. Rec. 79 (1977); S. 50, 95th Cong., 1st sess., 123 Cong. Rec. 124 (1977).

16. Weekly Compilation of Presidential Documents, Presidential statement, Nov. 21, 1977, vol. 13, no. 47, p. 1777.

17. U.S., Commission on Civil Rights, Last Hired, First Fired: Layoffs and Civil Rights (1977).

18. Comprehensive Employment and Training Act Amendments of 1977, Pub. L. No. 94-95, 91 Stat. 220 amending the Comprehensive Employment and Training Act of 1973, 29 U.S.C. §801 et seq. (Supp. IV 1974) and 18 U.S.C. §665 (Supp. IV 1974).

19. Local Public Works Capital Development and Investment Act of 1976, 42 U.S.C.A. 6701, as amended by the Public Works Act of 1977, Pub. L. No. 95-28, 91 Stat. 116. New appropriations for the Local Public Works Program were made under the Economic Stimulus Appropriations Act of 1977, Pub. L. No. 95-25, 91 Stat. 123.

20. Youth Employment and Demonstration Projects Act of 1977, Pub. L. No. 95-93, 91 Stat. 641.

21. Comprehensive Employment and Training Act of 1973, 29 U.S.C. §801 et seq. (Supp. IV 1974), as amended by the

Comprehensive Employment and Training Act Amendments of 1977, Pub. L. No. 95-44, 91 Stat. 220.

22. Local Public Works Capital Development and Investment Act, Amendments of 1977, Pub. L. No. 95-28, §103, 91 Stat. 116 (amending 42 U.S.C.A. §6705 (West 1977)).

23. Daily Labor Report, May 13, 1977, p. A-8.

24. U.S., Department of Labor, Employment and Training Report of the President (1977), p. 49.

25. Daily Labor Report, Apr. 12, 1977, p. A-8.

26. See Last Hired, First Fired.

27. Ibid., p. 25, citing Business Week, May 5, 1975, pp. 66-67.

28. Ibid., pp. 50-55.

29. Ibid., pp. 63-64.

30. Nashville Gas Co. v. Satty, 46 U.S.L.W. 4026 (Dec. 6, 1977).

31. General Electric v. Gilbert, 429 U.S. 125 (1976). See discussion of this decision in U.S., Commission on Civil Rights, State of Civil Rights: 1976, p. 9.

32. S. 995, 95th Cong., 1st sess., 123 Cong. Rec. 15035-15059 (1977).

33. International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977).

34. 42 U.S.C. §2000e (Title VII, effective July 2, 1965, prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin). In particular, the Court construed §2000e-2(h) as it pertains to seniority systems.

35. U.S., Commission on Civil Rights, Window Dressing on the Set: Women and Minorities in Television (1977).

36. U.S., Commission on Civil Rights, The Challenge Ahead: Equal Opportunity in Referral Unions (1976).

37. Proposed Labor Reg. §60-4.6, 42 Fed. Reg. 41378 (1977) (to be codified in 41 C.F.R. §60-4).

38. Proposed Labor Reg. §60-2.1, 42 Fed. Reg. 3461 (1977) (to be codified in 41 C.F.R. §60-2.1).

39. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (July 1975).

40. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1977, To Eliminate Discrimination, A Sequel (December 1977).

EDUCATION

While no new desegregation efforts of major significance began in 1977, the national movement toward greater equality of educational opportunity proceeded in an encouraging manner. As this Commission reported last year,[1] desegregation measures in numerous communities across the country continue to lessen racial isolation in elementary and secondary schools. However, the Bakke case and congressional activity have threatened to slow down the efforts to ensure equal educational opportunity at all levels. Actions of the executive branch, meanwhile, held the promise of increasing equal opportunity in education.

School Desegregation

Schools opened quietly throughout the country in September. This resulted in part from growing public acceptance of the adjustments needed to implement school desegregation plans.[2] In many districts, parents and others have remained more actively involved in school issues after desegregation has taken place. More effective communication between diverse groups in the community has been another byproduct of the desegregation process.[3]

In 1977 desegregation efforts received increasing support from some State governments. Stepped-up

desegregation activity at the State level had a positive impact on desegregation in 19 States.[4] The federally-funded National Project and Task Force on Desegregation Strategies began a 3-year effort intended to "raise the quantity and quality of desegregation activities at the state level."[5]

The limited scope of the desegregation plans that were implemented this year was in part responsible for the prevailing calm. In localities such as Springfield, Illinois, Buffalo, Kansas City, Missouri, San Diego, and El Paso, limited desegregation measures, such as voluntary transfer programs and the establishment of magnet schools, were put into effect without major problems.[6] An exception was Chicago where demonstrations by small groups of white parents accompanied the transfer of slightly more than 1,000 black students into predominantly white schools.[7]

Large school districts, such as Boston and Louisville, which had undergone turmoil earlier, reported steady progress in returning to normal conditions. The atmosphere in the Boston schools continues to improve, and racial tensions have diminished. Indicative of a more positive desegregation atmosphere in Boston were the defeat of two antidesegregation members of the Boston City Council and the election of a black to the Boston School Committee (school board) to replace another desegregation foe.[8] As Louisville

schools opened, minor disturbances were reported at only three schools. Antibusing demonstrations were smaller and less frequent than the previous year, indicating that support for antibusing groups had diminished.[9]

While the absence of serious disruptions in the schools is gratifying, equal educational opportunity for all children clearly has not yet been achieved. According to the Commission's State Advisory Committees, effective desegregation remains a distant goal in numerous localities.[10] Desegregation efforts were delayed in cities such as Dayton, Cincinnati, Columbus, Omaha, Milwaukee, Indianapolis, Cleveland, and Wilmington. In some cities, such as Tucson, Arizona, and Davenport, Iowa, where minority groups have pressed for desegregation, virtually no desegregation steps have yet been taken by officials.[11]

Desegregation of the Los Angeles public schools remained stalled in 1977 by the failure of the school board to develop an effective desegregation plan. This Commission found a "record of dilatory conduct, resistance to its constitutional duty, and apparent bad faith" by the Los Angeles school board then in office in its failure to act with commitment to desegregate the city's schools effectively.[12] In June 1977 a Los Angeles superior court found the board's desegregation plan unconstitutional under

the California State constitution on the ground that it "failed to desegregate a single school."[13] In December the superior court judge directed that the portion of the new plan, prepared by the school board now in office, requiring transportation of students in grades 4 to 8 be implemented in September 1978.[14] Controversies over the scope of this plan combined with an unsuccessful effort to remove the judge from the case continue to delay full desegregation in Los Angeles.[15]

In contrast to Los Angeles, school segregation in Seattle is scheduled to end by the fall of 1979 under a plan approved by a 6 to 1 vote of the school board in December. This plan is the first voluntary desegregation action calling for mandatory desegregation measures to be taken by a major city without being ordered to do so by a court or by HEW. It calls for the mandatory exchange of students in about half of the district's 86 elementary school areas, but also encourages voluntary transfer of students to magnet schools.[16]

A major problem previously reported by the Commission and other organizations persisted in 1977: That is, a disproportionate number of minority students continue to be suspended and to receive corporal punishment.[17] One 1977 report, concluding that corporal punishment is regularly

directed at blacks, Hispanics, and poor whites, stated that "the repeated and extensive use of corporal punishment with these groups is particularly insidious as it tends to reinforce their alienation from learning in a white middle-class system."[18] The report implied that such punishment may, in fact, retard the learning process and may later lead to acts of violence against teachers, the schools, and society. The Commission's State Advisory Committees also documented discrimination against minority students as a national problem requiring greater efforts by government and education officials if it is not to undermine the desegregation process.[19] In 1978 this Commission will release an updated report on the national progress toward full school desegregation.

Bilingual-Bicultural Education

The growth of bilingual-bicultural education continued slowly in 1977, hampered by generally weak political support and widespread confusion and debate over its basic philosophy. For linguistically and culturally different groups, including Hispanics, Asian and Pacific Island Americans, and American Indians, bilingual-bicultural education is considered a critical component of equal educational opportunity.

With passage in 1977 of bilingual education bills in Connecticut and Minnesota, a total of 13 States now have legislation mandating bilingual programs under certain guidelines.[20] The President's request of $135 million (an increase of $20 million) for bilingual education programs in 1978 reflects important support, but the controversy surrounding the concept raises the question as to whether adequate funding will be forthcoming.

The debate over bilingual-bicultural education centers on whether "transitional" programs or "maintenance" programs should be supported. Transitional programs are designed to assist linguistically different students to "catch up" with English-speaking children in English-speaking ability so that they may enter quickly into the traditional education program. Maintenance programs emphasize the use of the child's language and cultural traditions as media of instruction before and after English competence is achieved.[21]

Both forms of bilingual education face major threats in many State legislatures and in Congress through bills that would reduce or even eliminate funds for bilingual programs. This Commission supports congressional efforts to extend the Bilingual Education Act (Title VII of the Elementary and Secondary Education Act of 1974) that would provide

continued Federal funding of bilingual education for 5 years. The Commission's State Advisory Committees reported a need for continued monitoring of bilingual programs in those States that operate such programs to ensure compliance with existing laws.[22]

A 1977 evaluation of bilingual education programs in several large States identified the following major problems:

- lack of commitment by State education agencies and local school districts to the development of quality programs.
- insufficient funds for programs;
- token programs or programs designed to fail;
- lack of enforcement despite flagrant noncompliance by local school districts;
- continued widespread misunderstanding of the concept, resulting in weak political support for bilingual-bicultural education;
- a severe shortage of trained bilingual-bicultural teaching specialists;
- inadequate training programs;
- differences over teaching methodologies; and
- lack of research evaluating the effectiveness of programs.[23]

Although bilingual education continues to encounter such difficulties, important support for bilingual programs was recorded this year. A decision in a New York case brought by Hispanics supported bilingual education as an appropriate educational response for linguistically different children. The court noted that the ultimate test of a school district's response to such children is the benefits they receive from the school's curriculum as compared to the English-speaking students.[24] The legal controversy over bilingual education continues, however, and several suits are pending in Federal courts.[25]

Higher Education

Efforts to improve minority access to professional schools through affirmative admissions programs were the subject of major controversy in 1977, as the Supreme Court considered the case, Regents of the University of California v. Bakke.[26] The Bakke case was filed by a white male against the University of California Medical School at Davis on the grounds that he was passed over for admission even though his grades and test scores were superior to those of minority applicants who were accepted. The university had set aside 16 of 100 first year places for educationally and economically disadvantaged applicants. Bakke claims that because the special admissions program accepted minorities

whose numerical qualifications were not as good as his own, his 14th amendment right to equal protection of the law was denied.[27]

In the last decade graduate and professional schools have turned away from heavy reliance on test scores and grade point averages to determine applicants' qualifications. At present, almost all law and medical schools consider racial or ethnic origin and economic and educational background among many factors in reaching admissions decisions.[28]

In its brief filed in the Bakke case, the Department of Justice acknowledged the validity of properly designed, minority-sensitive programs in the college admissions process:

> The United States is committed to achieving equal opportunity and preventing racial discrimination.... [B]oth goals can be attained by the use of properly designed minority-sensitive programs that help to overcome the effects of years of discrimination against certain racial and ethnic minorities in America.[29]

President Carter expressed his support for such programs in response to a question about the Bakke case:

> I think it is appropriate for both private employers, the public governments, and also institutions of education, health, and so forth, to try to compensate as well as possible for past discrimination, and also to take into consideration the fact that many tests that are

> used to screen applicants quite often are inadvertently biased against those whose environment and whose training might be different from white majority representatives of our society.[30]

This Commission strongly supports race-conscious college admissions programs that will compensate for past discrimination and segregation and increase the numbers of minority professionals.[31] The outcome of the Bakke case may have consequences for affirmative action programs in employment and other areas, as well as education.

Supreme Court Decisions

The Supreme Court further developed in 1977 the principles set forth in several previous school desegregation rulings.[32] In so doing the Court did not retreat from its basic position that unlawful segregation must be eradicated, even if systemwide remedies are required to correct substantial violations of the Constitution.

In Dayton Board of Education v. Brinkman,[33] the Court reiterated that intentional segregative acts by local officials must be proven before the results of unconstitutional discrimination can be eliminated by court order.[34] The systemwide desegregation plan for Dayton, Ohio, ordered and approved by lower courts, was deemed excessive by the Supreme Court, which did not find sufficient evidence of unlawful official discrimination. The Court remanded the

case to determine how much purposeful discrimination actually had taken place and advised the district court that where constitutional violations have less than systemwide impact, only the "incremental segregative effects" of school officials' actions must be eliminated. However, the desegregation plan initially ordered by the district court was allowed to continue, pending a new decision by the district court. At the same time it announced its Dayton decision, the Supreme Court also remanded two similar desegregation cases to lower courts in Omaha[35] and Milwaukee[36] in light of Dayton.

Another significant ruling in 1977 stemmed from the Supreme Court's rejection in 1974 of the interdistrict remedy ordered for Detroit in Milliken v. Bradley (Milliken I).[37] In Milliken II[38] the Supreme Court affirmed the district court's determination on remand that compensatory measures involving remedial reading, inservice training, testing, and career guidance were necessary "to assure a successful desegregative effort and to minimize the possibility of resegregation."[39] The Supreme Court concluded: "Pupil assignment alone does not automatically remedy the impact of previous, unlawful educational isolation; the consequences linger and can be dealt with only by independent measures."[40]

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Thus, when substantial evidence shows that unlawful segregation has existed, the Supreme Court has confirmed the broad, flexible powers of lower courts to develop measures necessary to compensate for past discrimination. Further evidence of this came in a Wilmington, Delaware, desegregation case (Evans v. Buchanan) where the district court found interdistrict constitutional violations and imposed an interdistrict remedy that was upheld by the court of appeals.[41] The U.S. Supreme Court refused to review the appellate decision, thereby leaving the metropolitan remedy in effect.[42] This action by the Court is particularly gratifying to this Commission, which has maintained that metropolitan desegregation is vital to the Nation's continuing desegregation progress and is constitutionally required under certain circumstances.[43]

Congressional Action

That Congress retreated further in 1977 from the national goal it set out in 1964 is evidenced by legislation that lessens minority access to equal educational opportunity. Of particular concern are congressional efforts to limit student reassignment and transportation for school desegregation.

Two years ago, Congress passed the Byrd Amendment,[44] which prohibits the use of Federal funds for student

transportation to other than the nearest school offering the appropriate curriculum. The Carter administration interpreted that amendment to allow the transportation of students to the nearest paired or clustered school.[45] Last year, however, Congress sought to bar the use of Federal funds to compel these desegregation techniques by passing an antibusing amendment to the 1977 Labor-HEW Appropriations Act (frequently referred to as the Eagleton-Biden Amendment).[46]

This Commission advised the President that this provision conflicts with the Federal Government's responsibility under the fifth amendment and the 1964 Civil Rights Act not to fund racially discriminatory activities.[47] As he signed this measure into law as part of the Labor-HEW appropriations bill, President Carter acknowledged that the limits it places on student transportation "...may raise new and vexing constitutional questions, adding further complexities to an already complex area of law."[48] The constitutionality of the Eagleton-Biden Amendment was immediately challenged in Federal district court by a coalition of leading civil rights groups.[49]

Whereas this amendment was directed toward school desegregation required by HEW, an even more restrictive bill to limit court-ordered desegregation was approved by the

Senate Judiciary Committee in August. Senate bill 1651 stipulates that no court can order pupil transportation unless it has determined that "a discriminatory purpose in education was a principal motivating factor in the constitutional violation...."[50] The bill also requires courts to determine how much segregation resulted from each intentional constitutional violation before ordering student transportation to correct that violation.[51]

With regard to this legislation, the Attorney General observed that:

> ...the enactment of this legislation would, without adding significant substance to already existing legal standards, unnecessarily and detrimentally complicate the area of school desegregation, generate unnecessary litigation, and unconstitutionally delay, in some instances, the vindication of constitutional rights.[52]

Such legislative activity continues despite the fact that, as this Commission has repeatedly pointed out, the Supreme Court has ruled that student transportation and reassignment are lawful remedies for unconstitutional school segregation.

Another measure in the House of Representatives has a potentially greater effect on desegregation efforts than either the Eagleton-Biden Amendment or S. 1651. A constitutional amendment was introduced in January 1977 that prohibits "compelling attendance in schools other than the one nearest the student's residence."[53]

The House also attempted to limit methods designed to promote desegregation in higher education. The Walker Amendment to the Labor-HEW appropriations bill would have prohibited HEW funding for enforcement of "compliance with any timetable, goal, ratio, quota, or other numerical requirement related to race, creed, color, national origin, or sex" in employment or admissions.[54] A similar Senate amendment was defeated, and a House-Senate conference committee dropped the amendment.

Federal Civil Rights Enforcement in Education

In early 1977 the administration promised more vigorous enforcement of civil rights legislation. President Carter told Department of Health, Education, and Welfare employees that:

> ...I'm committed...to complete equality of opportunity in our Nation, to the elimination of discrimination in our schools, and to the rigid enforcement of all Federal laws. There will never be any attempt made while I'm President to weaken the basic provisions or the detailed provisions of the great civil rights acts that have been passed in years gone by.[55]

In February the Secretary of Health, Education, and Welfare announced steps aimed at "rekindling the commitment of the Department...to forceful and fair enforcement of the civil rights laws...." The Secretary specifically warned

schools that "to ensure compliance...we will order fund cutoffs if we must."[56]

The Carter administration also strongly urged effective enforcement of Title VI of the Civil Rights Act of 1964, which has particular importance in the area of education:

> ..the government of all the people should not support programs which discriminate on the grounds of race, color, or national origin. There are no exceptions to this rule; no matter how important a program, no matter how urgent the goals, they do not excuse violating any of our laws--including the laws against discrimination. This Administration will enforce Title VI.[57]

The President further directed the Department of Justice to coordinate the Title VI enforcement efforts of all agencies providing Federal assistance.[58] As a result, the Federal Programs Section of the Department's Civil Rights Division has conducted a more intensive program that includes: sponsoring a Title VI conference for representatives of Federal agencies and the private sector, providing technical assistance to many of the 28 Federal agencies having Title VI responsibility, and reviewing the compliance programs at several of those agencies.[59] On December 20, 1977, the Assistant Attorney General for Civil Rights issued a directive to each of those agencies requiring them to develop a Title VI enforcement plan within 45 days.[60]

Department of Justice

Department of Justice positions in several key desegregation cases indicated that the administration was proceeding with a case-by-case approach to school desegregation to assure constitutional conformity.[61] In the Wilmington case,[62] the Department argued that city, suburban, and State officials had been found to have engaged in interdistrict acts of racial discrimination which produced segregated schools in the metropolitan area. It therefore recommended that desegregation be accomplished with a metropolitan plan, including the transportation of students across city and suburban boundaries.[63] In the Indianapolis case[64] the Department called for a rehearing to determine whether there had been intentional acts of interdistrict segregation that would justify the remedy ordered by the lower courts.[65]

Later in the year, the Justice Department argued to the Supreme Court in a Dayton, Ohio, school desegregation case that once racially discriminatory practices by school officials had been proved, the courts should shift the burden of proof onto school officials to show that all racial separation within the schools was not the result of purposeful segregative acts.[66] Systemwide desegregation including pupil transportation would follow unless school

administrators could demonstrate that official action was not responsible for the racial identity of the schools.

Department of Health, Education, and Welfare

In its 1976 assessment of civil rights developments, the Commission reported that major deficiencies continued in HEW enforcement of Titles VI of the Civil Rights Act of 1964 (barring discrimination based on race, color, or national origin in federally-assisted programs) and IX of the Education Amendments of 1972 (barring sex discrimination in federally-assisted programs).[67] In elementary, secondary, and higher education, inadequate enforcement of antidiscrimination laws persisted in 1977, despite the new administration's commitment to implement thoroughly civil rights legislation.[68]

A report of the General Accounting Office (GAO) confirmed the limited success of HEW's Office for Civil Rights (OCR) in enforcing Titles VI and IX. The GAO attributed this record to a number of problems including:

> lack of a comprehensive and reliable management information system; lack of uniform policy guidelines and compliance standards; failure to determine job skills and knowledge required for effective staff performance; absence of uniform criteria for allocating staff resources among enforcement activities; lack of coordination between OCR and program agencies; and limited communication between headquarters and regional offices.[69]

The difficulties cited by GAO have been compounded by OCR's failure to fill its vacancies,[70] a backlog of complaints,[71] and an increasing number of lawsuits and court orders which require considerable staff time.[72] In an attempt to remedy this situation, OCR announced in June 1977 a major reorganization that would allow for a more balanced compliance program monitoring all laws and Executive orders requiring nondiscrimination in federally-funded programs.[73]

In late December a major breakthrough in civil rights enforcement occurred as settlement was reached on three longstanding lawsuits against HEW. Under the settlement agreement, discrimination based on race, sex, or handicap should receive much more efficient and effective enforcement action from OCR. The agreement calls for elimination of 3,000 backlogged discrimination cases by September 3, 1979, and for more frequent review of discriminatory practices in elementary, secondary, and higher education. To accomplish this stepped-up enforcement activity, the settlement commits HEW to expand OCR's staff size from its present level of approximately 1,100 to nearly 2,000.[74]

In 1977 HEW initiated enforcement proceedings under Title VI in 24 districts; similar proceedings in 15 other districts have moved further toward a finding of compliance or an order to terminate Federal funds.[75] Secretary Califano

announced in March that the Department would also begin strict enforcement of Title IX provisions by terminating Federal aid to institutions not complying with them.[76] Prior to this year, HEW had seldom cut off funds from such education entities.

HEW collects the data necessary to enforce Titles VI and IX through survey forms 101 and 102,[77] which are sent to 16,000 school districts annually. However, HEW cancelled the 1977-78 survey and decided that the fall 1978 survey will be sent to only 3,500 school districts. The survey data will then be collected on a biennial basis.[78] This action will impede compliance activities under both titles, since school districts will now have 2 years to comply instead of one.[79] This Commission, having long supported the collection of data sufficient for a full civil rights enforcement effort, will closely watch HEW's new data gathering methodology to determine its adequacy. Of critical importance is whether HEW will not only gather but also use data in a manner that will result in full desegregation of this Nation's schools.

In April 1977 a district court ordered HEW to develop specific criteria for desegregation of statewide higher education programs.[80] The order requires more aggressive enforcement by HEW of Title VI regulations under which

"States are required to take affirmative remedial steps and to achieve results in overcoming the effects of prior discrimination."[81] The criteria apply directly to six States (Arkansas, Florida, Georgia, North Carolina, Oklahoma, and Virginia) "that have operated de jure racially segregated college and university systems in the past."[82] HEW would, however, use these standards as guidelines for remedial measures where other State-sanctioned segregated systems of higher education are found.[83]

In early February 1978 HEW announced that desegregation plans of three States--Arkansas, Oklahoma, and Florida--met the Department's criteria as did a portion of North Carolina's plan. Georgia and Virginia, however, were notified that their plans submitted to date "did not meet the court-ordered guidelines." Secretary Califano pointed out that the ultimate failure to comply with the desegregation criteria "could result in the termination of all HEW funds to States' educational institutions."[84]

Although some concern has been expressed that these new criteria for desegregation in higher education may weaken the structure and quality of traditionally all-black colleges, there is a provision "that equivalent resources be allocated to equivalent institutions, regardless of whether those institutions are at present predominantly white or

predominantly black."[85] Secretary Califano stressed that this new effort "recognizes the unique role of black colleges in meeting the educational needs of black students and aims at protecting these institutions as an integrated and integral part of state higher education systems."[86]

Notes to Education

1. U.S., Commission on Civil Rights, Fulfilling the Letter and Spirit of the Law: Desegregation of the Nation's Public Schools (August 1976).

2. Gail Padgett, Operations Division, Community Relations Service, Department of Justice, Washington, D.C., telephone interview, Sept. 8, 1977 (hereafter cited as Padgett interview). Don M. Vernon, Chief, Compliance Program Branch, Technical Review and Assistance Division, Office for Civil Rights, Department of Health, Education, and Welfare, telephone interview, Nov. 23, 1977 (hereafter cited as Vernon interview). See also, Fulfilling the Letter and Spirit of the Law, which reported increasing acceptance of desegregation in most communities throughout the Nation.

3. Reports from the 10 regional offices of the U.S. Commission on Civil Rights show that increased community involvement and more effective communication are two common results of school desegregation around the country.

4. Ben Williams, Staff Director, National Project and Task Force on Desegregation Strategies, telephone interview, Jan. 17, 1978 (hereafter cited as Williams interview). The task force is funded by the National Institute of Education, U.S. Department of Health, Education, and Welfare, and the Ford Foundation. Cosponsors of the project are the Education Commission of the States, the National Association of State Boards of Education, and the Council of Chief State School Officers. The 19 States that have increased desegregation activity at the State level are: Illinois, Massachusetts, New York, Wisconsin, Delaware, New Jersey, Pennsylvania, North Carolina, California, Connecticut, Florida, Indiana, Iowa, Kentucky, Michigan, Ohio, Minnesota, South Carolina, and Texas. See also Bert Mogin, The State Role in School Desegregation (Menlo Park, Calif.: Stanford Research Institute, 1977).

5. Williams interview.

6. Mary von Euler, education policy fellow, Desegregation Studies Staff, National Institute of Education, telephone interview, Sept. 26, 1977.

7. Valeska Hinton, equal opportunity specialist, U.S. Commission on Civil Rights, Chicago Regional Office, interview, Dec. 7, 1977. Ms. Hinton has the task of monitoring developments in the Chicago school system for the Commission.

8. Martin Walsh, Operations Officer, Community Relations Service, Department of Justice, telephone interviews, Mar. 22, 1977; Sept. 1, 1977; Sept. 26, 1977; and Jan. 17, 1978. Eleanor Telemaque, field representative, U.S. Commission on Civil Rights, Northeast Regional Office, telephone interview, Jan. 13, 1978. Louise Day Hicks and John J. Kerrigan were defeated in their bids for reelection to the Boston City Council. John O'Bryant is the new member of the Boston School Committee, replacing Pixie Palladino.

9. Richard R. Ensley, Operations Officer, Community Relations Service, Louisville, Ky., telephone interview, Nov. 23, 1977. For background on Louisville, see U.S., Commission on Civil Rights, staff report, "School Desegregation in Louisville and Jefferson County, Kentucky, Hearings, June 14-16, 1976."

10. Fifty-One State Advisory Committees to the U.S. Commission on Civil Rights, The Unfinished Business, Twenty Years Later (September 1977).

11. Ibid., pp. 14-15, 65-66.

12. U.S., Commission on Civil Rights, A Generation Deprived: Los Angeles School Desegregation (May 1977), p. 217.

13. Crawford v. Board of Education of the City of Los Angeles, Minute Order C-822854 (Cal. Super. Ct., filed July 5, 1977), 551 P.2d 28 (1976). The California State Supreme Court had previously declared "...that in this state school boards do bear a constitutional obligation to take reasonable steps to alleviate segregation in the public schools, whether the segregation be de facto or de jure in origin." Id. at 34.

14. Crawford v. Board, Pretrial Order, Jan. 3, 1978.

15. Los Angeles Times, Jan. 4, 1978, pp. 1, 21.

16. Seattle Post-Intelligencer, Dec. 15, 1977, pp. A1, A9-A15, and A20.

17. Children's Defense Fund of the Washington Research Project, School Suspensions: Are They Helping Children? (September 1975), p. 9. See also State of Civil Rights: 1976, p. 18.

18. National Institute of Education, Proceedings: Conference of Corporal Punishment in the Schools: A National Debate, Feb. 18-20, 1977, pp. 5-6. Conference presented by the Child Protection Center, Children's Hospital, National Medical Center, and the National Institute of Education.

19. The Unfinished Business.

20. Alaska, California, Colorado, Connecticut, Illinois, Indiana, Massachusetts, Michigan, Minnesota, New Jersey, Rhode Island, Texas, and Wisconsin. Twelve States have legislation permitting bilingual education: Arizona, Hawaii, Iowa, Kansas, Louisiana, Maine, New Hampshire, New Mexico, New York, Oregon, Pennsylvania, and Washington. Ten States retain laws making English the exclusive language of instruction in their educational systems: Alabama, Arkansas, Delaware, Idaho, Montana, Nebraska, North Carolina, North Dakota, Oklahoma, and West Virginia.

21. This Commission has supported the broader concept of "maintenance" bilingual education. See U.S., Commission on Civil Rights, Bilingual-Bicultural Education: A Better Chance to Learn (September 1975), pp. 29-78, 137-41.

22. The Unfinished Business. See, for example, reports from Alaska, Arizona, California, Colorado, Idaho, Illinois, Kansas, Maine, Massachusetts, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Texas, Vermont, and Washington.

23. The Chicano Education Project, Un Nuevo Dia (Lakewood, Colo.: Summer 1977), pp. 2-18. Articles on California, Colorado, Massachusetts, and Texas.

24. Rios v. Read, 73 F.R.D. 589, 595-596 (E.D.N.Y. 1977).

25. See Perry A. Zirkel, "The Legal Vicissitudes of Bilingual Education," Phi Delta Kappan, January 1977, p.

409-11. See also Betsy Levin, Salvador Castaneda, and Mary von Euler, "Legal Issues Related to School Desegregation and the Educational Concerns of the Hispanic Community" (prepared for a conference sponsored by the National Institute of Education, Washington, D.C., June 26-28, 1977).

26. 18 Cal. 3d 34, 553 P.2d 1152 (1976), cert. granted, 429 U.S. 1090 (1977).

27. Ibid. This assertion was accepted by the district court that first ruled on the matter, and that decision was upheld by the California Supreme Court, which ruled that the university unconstitutionally considered race in its admissions process.

28. Dario O. Prieto, director, minority affairs, Association of American Medical Colleges, interview, May 27, 1977. Brief for the Association of American Law Schools as Amicus Curiae at 2, Regents of the University of California v. Bakke, cert. granted (1977).

29. Brief for the United States as Amicus Curiae at 3, Regents of the University of California v. Bakke, 18 Cal. 3d 34, 533 P.2d 1152 (1976); cert. granted, 429 U.S. 1090 (1977).

30. Weekly Compilation of Presidential Documents, news conference, vol. 13, no. 31 (July 28, 1977), p. 1126.

31. U.S., Commission on Civil Rights, Statement on Affirmative Action (October 1977), and Toward Equal Educational Opportunity: Affirmative Admissions Programs At Law and Medical Schools (to be published in early 1978).

32. See U.S., Commission on Civil Rights, The State of Civil Rights: 1976, pp. 5-12, for discussion of Washington v. Davis and Austin Independent School District v. United States, which held that a plaintiff must show discriminatory intent, and not solely discriminatory effect, in order to establish a violation of the equal protection clause of the 14th amendment.

33. _____ U.S._____ (1977), 97 S. Ct. 2766. U.S. District Judge Carl E. Rubin had found in 1973 that deliberate segregation existed in the Dayton school system. But upon remand of the case by the U.S. Supreme Court, Judge Rubin determined in December 1977 under the Supreme Court's

announced guidelines that the plaintiffs (National Association for the Advancement of Colored People) failed to meet the required burden of proof to establish a constitutional violation. He held that there was no evidence of segregative intent and incremental segregative effect and therefore the Dayton school board had no legal obligation to continue the court-imposed desegregation plan. The NAACP has indicated its intent to appeal this decision at once. R. Gary Winters, senior law clerk to Judge Rubin, telephone interview, Jan. 17, 1978. On Jan. 16, 1978, the U.S. Court of Appeals for the Sixth Circuit ordered that the desegregation plan, in effect since September 1976, "be maintained pending an appeal of [Judge] Rubin's ruling of last month or until the appeals court issues another order." Washington Post, Jan. 17, 1978, p. A7.

34. See Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 265 (1977) and cases cited therein.

35. School District of Omaha v. U.S., _____U.S._____(1977), 97 S. Ct. 2905.

36. Brennan v. Armstrong, _____U.S._____(1977), 97 S. Ct. 1907, 53 L.Ed.2d 1044.

37. 418 U.S. 717 (Milliken I) (1974).

38. _____U.S._____(1977), 97 S. Ct. 2761 (Milliken II).

39. 402 F. Supp. 1096, 1118 (E.D. Mich. 1975).

40. ____U.S.____ (1977), 97 S. Ct. 2761 (Milliken II).

41. 555 F.2d 373 (3d Cir. 1977).

42. _____U.S._____, 98 S. Ct. 235 (1977) (Chief Justice Burger, Justice Powell, and Justice Rehnquist dissenting).

43. See U.S., Commission on Civil Rights, Statement on Metropolitan School Desegregation (1977).

44. HEW Appropriations for FY 1977, Pub. L. No. 94-439, sec. 208 (1975).

45. Griffin Bell, Attorney General, letter to Joseph A. Califano, Secretary of HEW, May 25, 1977.

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46. Labor-HEW Appropriations for FY 1978, Pub. L. No. 95-205, sec. 208, ____ Stat. ____ (1977).

47. "The amendment would seriously erode the authority and ability of the Executive Branch of government to meet its constitutional obligations...[and] would eliminate executive enforcement action, at least as it relates to school districts unwilling to voluntarily adopt HEW requirements for Title VI compliance, by requiring judicial intervention. This enforcement substitute, namely judicial proceedings by the Department of Justice, would necessarily diminish enforcement.... The net result would be that the Federal Government would continue to fund unconstitutionally segregated school districts in violation of the prohibitions imposed by the 5th Amendment and Title VI." Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, letter to President Jimmy Carter, Sept. 15, 1977.

48. Weekly Compilation of Presidential Documents, bill signings, vol. 13, no. 50 (Dec. 12, 1977), p. 1840.

49. Motion for Declaratory and Injunctive Relief, Brown v. Califano, No. 75-1068 (D.D.C., filed July 3, 1975).

50. S. 1651, sec. 1, 95th Cong., 1st sess., 123 Cong. Rec. S-9228 (1977).

51. Ibid., sec. 3, _____. No action has been taken by the full Senate on S-1651, and no comparable bill has been acted upon in the House.

52. Griffin Bell, Attorney General, letter to Senator James Eastland, July 1977.

53. H.R. J. Res. 19, 95th Cong. 1st sess., 123 Cong. Rec. 82 (1977).

54. H.R. 7555, sec. 211, 95th Cong., 1st sess., 123 Cong. Rec. 6099 (1977).

55. Weekly Compilation of Presidential Documents, addresses and remarks, vol. 13, no. 8 (Feb. 21, 1977), p. 203.

56. Statement of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, HEW news release, Feb. 17, 1977.

57. Weekly Compilation of Presidential Documents, memorandums to Federal agencies, vol. 13, no. 30 (July 25, 1977), p. 1047.

58. Ibid.

59. Stephen Koplan, Chief, Federal Programs Section, Civil Rights Division, Department of Justice, letter to William T. White, Assistant Staff Director, U.S. Commission on Civil Rights, Jan. 18, 1978.

60. Drew S. Days, III, Assistant Attorney General, Civil Rights Division, Department of Justice, Memorandum for the Heads of Executive Department Agencies Re: Title VI Enforcement Plan, Dec. 20, 1977.

61. In March 1977, for example, the Assistant Attorney General for Civil Rights emphasized that any Justice Department support of metropolitanwide desegregation action would have to be based on a finding that an "inter-district violation" had occurred. In those circumstances, he said, "the violations might be very widespread and that would justify a broad remedy. In other situations, the violations may be very minor and perhaps the remedy would be somewhat restricted." The Assistant Attorney General stressed that the Justice Department would not "dash ahead in terms of school desegregation." He indicated future support for extensive desegregation measures in cases where there was evidence of intentional segregation throughout an entire school system, but hoped that desegregation plans would not "overreach." St. Louis Post-Dispatch, Mar. 17, 1977; Los Angeles Times, Mar. 21, 1977.

62. Evans v. Buchanan, 379 F. Supp. 1218 (D. Del. 1974), 393 F. Supp. 428 (D. Del. 1975) (three-judge court); summarily aff'd, 423. U.S. 963 (1975); 416 F. Supp. 328 (D. Del. 1976), appeal dism'd on jurisdictional grounds, 423 U.S. 1080; aff'd as modified, 555 F.2d 373 (3d Cir. 1977).

63. Brief for the United States as Amicus Curiae, Evans v. Buchanan, 555 F.2d 373 (3d Cir. 1977).

64. Buckley v. Board of School Comm'rs of the City of Indianapolis, 541 F.2d 1211 (7th Cir. 1976), vacated and remanded, 429 U.S. 1068 (1977).

65. Brief for the United States of Amicus Curiae, U.S. Board of School Comm'rs of the City of Indianapolis, Nos. 75-1730 through 1737, 75-1936, 75-1964, 75-1965, and 75-2007 (7th Cir., filed March 1977), on remand from Buckley v. Board of School Comm'rs of the City of Indianapolis, 429 U.S. 1068 (1977).

66. Brief for the United States as Amicus Curiae at 17, Dayton Board of Education v. Brinkman, _____U.S._____ (1977), 97 S. Ct. 2766.

67. State of Civil Rights: 1976, pp. 22-23.

68. Statement by Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, HEW News, Feb. 17, 1977, p. 1.

69. Elmer B. Staats, Comptroller General of the United States, letter to Senator Birch Bayh, Mar. 30, 1977, pp. 4-11. This letter was in response to a request by Senator Bayh that GAO review and report on management of civil rights enforcement responsibilities and resources by HEW's Office for Civil Rights.

70. Ibid., p. 3.

71. The Office for Civil Rights will begin fiscal year 1978 with a backlog of approximately 3,025 complaints; it expects to receive an additional 2,455 complaints during the year. The agency believes it will be able to resolve a total of 1,255 outstanding complaints and investigate 246 new complaints. 42 Fed. Reg. 39824 (Aug. 5, 1977).

72. Affidavit of David Tatel, Director of the Office for Civil Rights, filed June 6, 1977, Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

73. 42 Fed. Reg. 39824 (Aug. 5, 1977).

74. Statement of Joseph A. Califano, Secretary, U.S., Department of Health, Education, and Welfare, Dec. 29, 1977.

75. U.S., Department of Health, Education, and Welfare, "Status of Civil Rights Compliance Interagency Report," Cumulative List No. 369, Dec. 8, 1977. Of the 24 new enforcement proceedings, 22 involved school districts in Alaska that had not met the bilingual education requirements

imposed by the U.S. Supreme Court in Lau v. Nichols, 414 U.S. 563 (1974). Also Vernon interview.

76. HEW News, Mar. 17, 1977, p. 1. See also, "OCR Getting 'Basketful' of Late Title IX Assurances," Title IX News, Sept. 1, 1977, p. 1.

77. These forms are designed to collect data on race, sex, discipline, and handicaps pursuant to Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973. Form OS/CR 101 requests information from entire school districts; form OS/CR 102 requests more detailed information from individual elementary and secondary schools.

78. Joseph A. Califano, Secretary, Department of Health, Education, and Welfare, letter to Senator Warren Magnuson, July 19,1977. The 3,500 selected districts include those under court order to desegregate, those that have filed desegregation plans with OCR, and Emergency School Aid Act grant recipients.

79. Compliance with Title IX has been minimal. Of 20,318 school districts and colleges obliged to meet requirements prohibiting sex discrimination, only 5,504 school districts and 1,338 colleges submitted acceptable compliance forms due Mar. 15, 1977. HEW News, Mar. 17, 1977, p. 1. It now takes 12 to 18 months to process termination of Federal funds under Title IX. A.J. Howard, Acting Director, Compliance Enforcement Division, Office for Civil Rights, HEW, telephone interview, Nov. 18, 1977.

80. Adams v. Califano, 430 F. Supp. 118 (D.D.C. 1977).

81. 42 Fed. Reg. 40780 (Aug. 11, 1977).

82. Statement of Joseph A. Califano, Jr., Secretary of Health, Education, and Welfare, July 5, 1977, p. 1. These criteria establish the following objectives: through the use of goals and timetables, in 5 years substantially increase the total number of black college students, in part by increasing the black enrollment at 4-year white colleges; after 2 years set goals and timetables to increase the number of white students at black colleges; and immediately establish specific goals for attaining proportionate representation of blacks in faculty and administrative positions at each State institution. They further stipulate

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that the disparity between college graduation rates of whites and blacks should be reduced and that the same proportion of in-State black and white graduates of State public schools should enter postgraduate education.

83. Ibid., p. 6.

84. Statement of Joseph A. Califano, HEW News Release, Feb. 2, 1978.

85. Califano Statement, p. 6.

86. Ibid., p. 8.

HOUSING

Twenty-nine years ago Congress pledged a decent home and a suitable living environment as basic rights of every American family.[1] In 1968 Congress declared that, as a matter of national policy, housing discrimination must end.[2]

In 1977 these two promises remained unfulfilled for millions of minority and female-headed households. Rising housing costs, the markedly lower incomes and high levels of joblessness among minorities and female-headed households, and continuing discrimination in the housing marketplace stand as major obstacles to the achievement of equal housing opportunities in this Nation. Disproportionately large numbers of minorities remain concentrated in residential areas with the worst living conditions in America.[3] Federally-subsidized housing programs and fair housing enforcement activity in 1977 both fell far short of meeting the national need. The 1977 report by the Commission's State Advisory Committees outlines significant housing problems confronting minorities, women, and female heads of households in some 30 States and the District of Columbia.[4]

Housing Costs

The astronomical spiral in housing costs has limited homeownership opportunities of many Americans, including most minorities. Female-headed families and minorities whose level of income not long ago would have allowed them a relative degree of choice in deciding where to live now find themselves excluded from the market on economic grounds. In June 1977 the average price of a new home was $54,700, compared to $48,000 for all of 1976.[5] New home prices rose at an annual rate of 4 percent above the increase in disposable personal income,[6] and in some metropolitan areas homes have been reported to have appreciated in value at rates of 30 percent and up.[7] On the basis of costs alone, homeownership has grown beyond the reach of disproportionately large numbers of minorities and women,[8] who are limited to a rental market which, in 1977, was also increasingly costly.

Housing Discrimination

Discrimination remains the prime factor in containing minorities in neighborhoods with decaying housing, minimal public services, and serious social problems.[9] Job discrimination results in lower incomes and higher unemployment among minorities. As a result, they often lack the income needed to move from poor housing.

In a detailed, 3-year study completed in 1977, the American Bar Association reported that post-World War II urban growth in the United States has been accompanied by "serious racial and economic polarization."[10] The study concluded that exclusionary zoning and other local governmental action "have prevented access to decent housing and have reinforced and aggravated patterns of racial and economic segregation." Furthermore, "courts and legislatures have done far too little to prevent this governmental abuse of power."[11]

The ABA study predicted that without basic changes in the future direction of urban development, planning, and housing programs, "greater numbers of Americans will be denied housing choice, our cities will continue to decline, and racial and economic segregation will be perpetuated."[12] The study challenged local governmental bodies to assume the "affirmative legal duty to...1) plan for present and prospective housing in a regional context; 2) eliminate those local regulatory barriers that make it difficult to provide housing for persons of low- and moderate-income; and 3) offer regulatory concessions and incentives to the private sector in this regard."[13]

The ABA study advocated strengthened judicial action on exclusionary zoning cases with the view that "opportunities

for decent living accommodations in decent environments, freedom from law imposed discrimination based on income (and income as a surrogate for race), and access to employment opportunities are fundamental values."[14]

Discrimination against minority homeseekers by property owners and sales and rental agents undercuts the will of many minority families to seek better housing in traditionally all-white areas. Housing discrimination and the resulting residential segregation have fostered dual school systems that in turn require pupil transportation to eliminate their segregated character.[15]

One housing expert recently emphasized that discrimination in the housing market has in recent years become increasingly subtle and more difficult to detect. He noted that no region of the country yet appears to be free of discrimination in the housing market, although the fair housing provisions of the Civil Rights Act of 1968 have, in his view, had some limited effect in halting the worst abuses.[16]

Housing discrimination during 1977 took various guises, none of them new. Outright refusals to rent or sell to minorities have lessened as landlords and their agents have had to resort to more covert means. The availability, price, and terms of payment are all matters which can be

misrepresented to minority homeseekers in order to discourage them from seeking better, integrated housing.[17]

Blockbusting, although illegal,[18] is still employed by unscrupulous individuals willing to induce panic selling of houses in white and transitional neighborhoods by convincing homeowners that increasing numbers of minority residents will destroy property values. The practice continues partly because of difficulty in taking effective legal action against the persons and practices involved.[19]

Racial steering, also illegal,[20] is used by those sales agents who show homes in white neighborhoods only to whites while showing minorities housing only in minority, transitional, or integrated neighborhoods.[21] Racial steering is also a principal tool of blockbusting.[22]

Another discriminatory practice is "redlining." Mortgage lenders redline a neighborhood when they either refuse to make loans there or impose stiffer terms on purchasers because of a neighborhood's minority composition.[23] This problem is complicated since it is often accompanied by discrimination based on race, national origin, sex, or marital status in the making of the loan itself. Redlining has the effect of worsening conditions in neighborhoods most in need of bank financing for sales and

revitalization and leaves such areas vulnerable to well-funded speculators.[24]

Federal Fair Housing Enforcement

Enforcement of fair housing legislation remained deficient in 1977. The volume of housing discrimination complaints received by the Department of Housing and Urban Development under the fair housing law (Title VIII of the Civil Rights Act of 1968)[25] has been limited by a lack of public knowledge of the rights and protections the law includes.[26]

The Commission has in the past strongly criticized HUD's Title VIII enforcement and has urged the Department to initiate an active program of Title VIII community-wide pattern and practice reviews in localities throughout the country.[27] Such reviews would be aimed at uncovering violations of Title VIII and countering discriminatory local practices and policies through the examination of "State and local fair housing laws, the types and quality of activity conducted by fair housing agencies, zoning ordinances, marketing activities...mortgage financing practices...and data showing the racial and ethnic composition of neighborhoods...."[28] In 1978 action is needed to implement fully such a program as a means of enforcement.[29]

During 1977 HUD was again unable to investigate and close a large number of housing discrimination cases. A substantial backlog of complaints[30] now blocks the efforts of minority complainants to gain redress under the fair housing law. HUD's often lengthy case conciliation procedures have also led many minorities to believe that the Department's investigative and enforcement machinery is ineffectual.[31] Efforts in Congress to empower HUD with cease and desist powers in housing discrimination cases,[32] as recommended by the Commission,[33] are now in subcommittee and will need strong administration support for passage.

Positive action was taken during 1977 by Federal regulatory agencies against discriminatory lending practices.[34] For example, the possibility of future enforcement action under the Equal Credit Opportunity Act of 1974[35] and the Federal Home Mortgage Disclosure Act of 1975,[36] was strengthened. The National Urban League and other groups had brought suit in 1976 contending that the Federal agencies which regulate mortgage lending institutions in this country were guilty of "the continuing failure and refusal to end discriminatory mortgage lending practices."[37] The suit against four Federal regulatory agencies sought to compel them to enforce effectively fair housing laws when regulating member lending institutions.

Out-of-court settlements in 1977 with three of the agencies -the Federal Home Loan Bank Board, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency-- now require the agencies themselves to collect and analyze data on all mortgage applicants by race and sex and to employ stepped-up complaint and enforcement procedures.[38]

In January 1977 the Federal Reserve Board amended its regulations to require recordkeeping by regulated lenders on the sex, marital status, race, national origin, and age of applicants. Lenders must now explain to applicants the "action taken" on all loans.[39]

Another agency, the Federal National Mortgage Association (FNMA) issued new guidelines in 1977 prohibiting discrimination by FNMA-approved lenders against minority neighborhoods, residential areas with older housing, and borrowers relying on female wage earners to qualify for loans.[40] In November 1977 the Federal Home Loan Bank Board proposed similar regulations in a move to counter redlining of older neighborhoods.[41]

Exclusionary Zoning and Land Use Litigation

Local zoning that does not permit the construction of higher density, multifamily housing has the net effect of shutting out low- and moderate-income persons. Most minorities in this country seek housing in the low- and moderate-income price range, and such exclusionary zoning means that few minorities are able to afford to live in localities that impose restrictions against multifamily housing[42] In jurisdictions where minorities make up the bulk of all low-income persons in the area, it seems clear that the race of potential residents of multifamily housing is often a strong motivating factor in the enactment of exclusionary zoning ordinances.[43]

Village of Arlington Heights v. Metropolitan Housing Development Corporation[44] was a major case during 1977 involving exclusionary zoning. The locality had refused a developer's request to rezone a tract of land for multifamily residential use. In January the U.S. Supreme Court held that discriminatory intent had not been proved in the case and thus there was no constitutional violation. The case was returned to the U.S. court of appeals for determination of whether Arlington Heights may possibly have violated the statutory provisions of Title VIII of the Civil Rights Act of 1968.[45] The appeals court later remanded the

case to district court to determine whether in fact the village had violated the 1968 act.[46]

A complicating factor in exclusionary zoning cases involves the issue of standing: Which individuals or groups challenging zoning provisions have the right to do so under law? On this issue the Supreme Court, in a landmark case, ruled that:

> [A] plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court's intervention....[47]

State courts, however, recently ruled in New York and New Jersey that exclusionary zoning may violate the general welfare clause of the constitutions of those two States. Henceforth, in those particular States, plaintiffs who were nonresidents were granted standing to sue under "some" circumstances.[48]

Nevertheless, the New Jersey Supreme Court ruled in 1977 that localities which are already "fully developed" have the right to maintain "the character of a...predominantly single family residential community...."[49] Under this ruling it would appear that any New Jersey community with more than 95 percent of its land in use would have no obligation to provide for multifamily housing, if it has always excluded it.

Exclusionary zoning, despite repeated legal attacks, continued in 1977 to serve as an effective means of discriminating against minorities through the use of seemingly neutral ordinances and policies that bar families by income rather than by race. In this more "respectable" guise, exclusionary zoning continues to limit the housing choices of millions of minority Americans seeking better homes.

Federal Housing Programs

As the private market had traditionally failed to provide housing for low-income persons in this country, the Federal Government in 1937 began a series of housing subsidy programs. Currently, the four major subsidized housing programs are public housing,[50] housing for the elderly,[51] Section 235 homeownership housing,[52] and Section 8 rent subsidies.[53] The Section 8 program now accounts for the majority of all housing units subsidized by HUD under these programs.

HUD estimates that 4.5 to 5.5 million subsidized housing units will be needed during the next 10 years for low-income persons who cannot buy or rent in the private market.[54] Congress this year offered support for subsidized housing programs with a supplemental appropriation for 134,000 Section 8 rent subsidy units.[55] The House and

Senate agreed to another $1.16 billion in contract authority for Section 8 and public housing,[56] and support for housing for the elderly under the Section 8 and Section 202 programs increased substantially during 1977. Unit reservations funded under the two programs rose from approximately 3,400 in 1976 to almost 19,000 during 1977.[57]

The picture for low-income housing consumers in 1977 was still not bright. The Department of Housing and Urban Development's funding request for Section 8 and public housing shrank in Congress from just 400,000 low-income units to approximately 350,000 (or possibly less) under the 1978 budget.[58] (HUD's fiscal year 1979 funding request is for 400,000 units.)[59] An additional problem rests with in the fact that Section 8 assistance has been largely confined to existing, in-place housing. Thus, millions of dollars in Section 8 subsidies have had virtually no effect to date on existing patterns of residential segregation.[60]

The Section 235 homeownership program, resumed last year after a 3-year moratorium, has also been disappointing, both in terms of the number of units subsidized and for the population the program serves. As of June 1977--8 months into fiscal year 1977--less than $22 million of the $265 million authorized for the program had been used.[61] HUD foresees funding 40,000 to 50,000 units only under this

program in fiscal year 1978.[62] Because of rising maintenance and utility costs, the Section 235 homeownership program has now become too expensive for many low-income families, but HUD has responded by increasing mortgage limits and lowering interest rates and down payment requirements.[63] Nevertheless, these Federal housing subsidy programs have yet to come close to meeting the national need.

Urban Revitalization and Community Development Block Grants

The new administration placed major emphasis during 1977 on urban revitalization with the following objectives: maintaining viable neighborhoods while retaining area residents, encouraging the development of integrated neighborhoods, and bringing middle-income families back to the central city.[64]

The bulk of Federal money for urban revitalization comes from the Community Development Block Grant Program,[65] which received fiscal year 1978 funding in October. A total of $3.5 billion was authorized for housing and community development with a $400 million authorization for a new Urban Development Action Grant Program aimed at countering the deterioration of cities with stagnant or declining populations or tax bases. Debate has continued on the formula for distributing funds. Some older cities with

large numbers of low-income minority citizens could potentially lose millions of community development dollars under the current funding formula.[66]

Figures from the Community Development Block Grant program show that those whom the program was intended to serve--low-income families--are often not the beneficiaries. More than 80 percent of the funds spent in low- and moderate-income areas are, in fact, spent only in moderate-income census tracts,[67] leaving needy, low-income residents with limited assistance. This situation can be traced in part to the lack of specificity in HUD's list of activities that can be funded. During 1977, however, the Department moved to tighten Community Development program regulations by establishing as priorities "activities which will benefit low- or moderate-income families or aid in the prevention or elimination of slums or blight."[68] HUD's scrutiny of local spending of Community Development Block funds led to the reprogramming of about $45 million to meet this goal.[69] Progress on housing goals would also be a priority, and HUD has indicated that it will place heavy emphasis on "the substance of what communities are [actually] accomplishing."[70]

The community development program requires local jurisdictions to file a "housing assistance plan" (HAP) in

which communities are to consider carefully the housing needs of lower income persons, large families, female-headed households, minorities, the elderly, the handicapped, and others now residing or "expected to reside" in the local community.[71] The HAP requirement is a potentially powerful tool in moving local communities to develop low- and moderate-income housing. HUD has failed in the past to test forcefully the full usefulness of this requirement.[72] Proposed new program regulations indicate that the Department now intends to review far more carefully local action on housing needs.[73]

Secretary Patricia Roberts Harris has cited strengthened administration of the housing assistance plan requirement as a major accomplishment of her first year at HUD.[74] She noted that 1977 statistics indicated that "Federal programs are [once again] producing subsidized housing for deprived families in meaningful numbers."[75] Subsidized housing production, she predicted, would continue to rise during 1978.

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Notes to Housing

1. Housing Act of 1949, Pub. L. No. 171, 63 Stat. 413, as amended (codified at 42 U.S.C. §1441 (1970)).

2. Fair Housing Act of 1968, Pub. L. No. 90-284, 82 Stat. 81 (42 U.S.C. §3601(1970)).

3. Eleanor Clagett, program analyst, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, telephone interview, Oct. 5, 1977 (hereafter cited as Clagett interview). See also, U.S., Commission on Civil Rights, Twenty Years After Brown: Equal Opportunity In Housing (December 1975), pp. 137-66. Census figures for 1970 note that black Americans are more than twice as likely to live in housing lacking some plumbing and in overcrowded conditions. The urban ghettoes and barrios where serious housing and social problems coalesce offer the worst living conditions in this country. For example, the South Bronx in New York City, which President Carter visited in October, is often described as a "war zone" plagued by joblessness, crime, arson, vandalism, drug problems, and decayed housing. See, Washington Post, Oct. 6, 1977, p. 1, and New York Times, Oct. 6, 1977, p. 1.

4. Fifty-One State Advisory Committees to the U.S. Commission on Civil Rights, The Unfinished Business: Twenty Years Later (September 1977) (hereafter cited as The Unfinished Business).

5. U.S., Department of Commerce, Bureau of the Census, Price Index of New One-Family Houses Sold, Second Quarter 1977, Series C27-77-01 (September 1977), p. 3.

6. Ibid., and U.S., Department of Commerce, Bureau of Economic Analysis, Business Conditions Digest (September 1977), p. 10.

7. Washington Post, Oct. 1, 1977.

8. See income and poverty data in the chapter on employment.

9. Twenty Years After Brown: Equal Opportunity in Housing, pp. 1-13; and Clagett interview.

10. American Bar Association Advisory Commission on Housing and Urban Growth, Housing for All Under Law: New Directions in Housing, Land Use, and Planning Law, Executive Summary (Cambridge: Ballinger, 1978), p. 7.

11. Ibid.

12. Ibid., p. 8.

13. Ibid., p. 9.

14. Ibid., pp. 9-10.

15. Twenty Years After Brown: Equal Opportunity in Housing, pp. 11, 107-08.

16. Edward L. Holmgren, executive director, National Committee Against Discrimination in Housing, telephone interview, Oct. 6, 1977 (hereafter cited as Holmgren interview).

17. Phyllis White, National Committee Against Discrimination in Housing (NCDH), telephone interview, Nov. 3, 1977. The national committee, under contract to the Department of Housing and Urban Development, conducted a 1977 study which unearthed evidence of pervasive, continuing housing discrimination. See National Committee Against Discrimination in Housing, Trends in Housing (Fall 1977), p. 1.

18. 42 U.S.C. §3604(1970).

19. Linmark Associates, Inc. v. Township of Willingboro, 431 U.S.85 (1977). This case struck down local efforts to prohibit the display of "for sale" or "sold" signs which are often used by blockbusters to create the impression that a neighborhood is undergoing rapid transition.

20. 42 U.S.C. §3604(1970).

21. National Association of Human Rights Workers, Thirtieth Annual Conference, Detroit, Mich., Housing Workshops, Oct. 15-16, 1977. And see U.S., Commission on Civil Rights, Equal Opportunity in Suburbia (1974), p. 18.

22. Ibid., and Zuch v. Hussey, 394 F.Supp. 1028 (1975). The court enjoined several real estate salespersons in the

Detroit, Michigan, area from using blockbusting and racial steering as sales stratagems in transitional neighborhoods.

23. For example, see Des Moines Register, June 26, 1977, p. 1, and June 27, 1977, p. 1. Two articles by Register business writer Len Ackland outline how redlining operates and affects a typical Midwestern community. Ackland has prepared another article (available upon request from the Columbia Journalism Review, Columbia University, New York) which discusses how reporters and the public can seek to uncover evidence of redlining.

24. Real estate speculation has always been particularly threatening to the poor, but the current energy crisis has renewed the interest of investment in the central cities and led to intense speculation in older, decayed properties from which minorities are now being evicted in growing numbers. During the last 3 years, for instance, growing numbers of blacks and Hispanics in Washington, D.C., have lost homes and rental properties to affluent middle-income persons seeking rehabilitated housing in the Nation's capital. Those displaced have become part of the steadily growing body of low-income families contending for the severely limited numbers of low-income units available in the city and its suburbs. On July 7-8, 1977, the Senate Committee on Banking, Housing, and Urban Affairs held hearings on "neighborhood diversity" to examine the problem.

25. 42 U.S.C. §3601 (1970). With few exceptions, Title VIII, the fair housing provisions of the Civil Rights Act of 1968, bans discrimination on the basis of race, color, religion, or national origin in the sale and rental of housing.

26. Holmgren interview.

27. U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974, vol. II, To Provide...For Fair Housing (1974), pp. 48-50.

28. Ibid.

29. During 1977 the Department of Housing and Urban Development did contract with the National Committee Against Discrimination in Housing for a national survey to measure the nature and extent of racial discrimination in the housing market. The survey was done in 40 major

metropolitan areas, and it uncovered discriminatory practices in each. Since the survey was carried out for research purposes, no direct enforcement action will result from it.

30. Kenneth F. Holbert, Director, Office of Civil Rights Compliance and Enforcement, Department of Housing and Urban Development, staff interview, Nov. 15, 1977.

31. Holmgren interview. A recent step by HUD, however, offers the possibility of strengthened action under Title VIII. On December 7, 1977, the Department's Office of General Counsel issued an opinion clearing the possible development of "substantive" regulations under Title VIII. Such administrative regulations, reportedly now under consideration, would buttress HUD's enforcement efforts by specifying, for the first time, conduct prohibited under Title VIII.

32. H.R. 3504, 95th Cong., 1st sess., 123 Cong. Rec. 1115 (1977).

33. Twenty Years After Brown: Equal Opportunity in Housing, p. 181.

34. These changes were recommended by the Commission on Civil Rights in The Federal Civil Rights Enforcement Effort--1974, vol. II, To Provide...For Fair Housing (1974), pp. 134-64.

35. 15 U.S.C. 1691 et seq. (1976).

36. 12 U.S.C. 2801 et seq. (1976).

37. National Urban League v. Office of Comptroller of the Currency, Civil Action No. 76-718 (D.D.C., filed Apr. 26, 1976). Other original plaintiffs to the suit were the National Committee Against Discrimination in Housing, National Association for the Advancement of Colored People, American Friends Service Committee, League of Women Voters of the United States, National Neighbors, Housing Association of Delaware Valley, Leadership Council for Metropolitan Open Communities, Metropolitan Washington Planning and Housing Association, Rural Housing Alliance, and the National Association of Real Estate Brokers. Other Federal agencies that are parties to the suit are the

Federal Reserve Board, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board.

38. Settlement Agreements completed in the above case cover the Federal Home Loan Bank Board (signed March 23, 1977); the Federal Deposit Insurance Corporation (May 17, 1977); and the Office of the Comptroller of the Currency (November 28, 1977).

39. 42 Fed. Reg. 1242 (1978) (to be codified in 12 C.F.R. 202.13; and see, Equal Opportunity in Housing, vol. IV, no. 15 (Jan. 18, 1977), p. 3.

40. Federal National Mortgage Association, Conventional Home Mortgage Selling Contract Supplement, Section 310-11, Oct. 17, 1977.

41. 42 Fed. Reg. 58953 (Nov. 1, 1977).

42. See U.S., Department of Commerce, Bureau of the Census, Annual Housing Survey: 1975, General Housing Characteristics, Series H-150-75A (April 1977), pp. 10, 40. Black families, for instance, are more likely to reside in the central cities in older, less valuable housing. The median income of black renters living in the central cities is about one-third that of predominantly white homeowners living in the suburbs.

43. See Equal Opportunity in Suburbia, pp. 31-33; and Twenty Years After Brown: Equal Opportunity in Housing, pp. 91-105 and 109-14.

44. 429 U.S. 252, 97 S. Ct. 555 (1977). In its decision in Village of Arlington Heights v. Metropolitan Housing Development Corp., the Supreme Court refused to invalidate on constitutional grounds a zoning ordinance that operated to exclude low-income, racially integrated housing from the Arlington Heights, Illinois, subdivision, even though the effect of the ordinance fell disproportionately on blacks. The Court stated that, although disproportionate impact is one factor to be considered in determining whether the ordinance is constitutionally defective, that factor is only relevant as an indication of intent. Citing the case of Washington v. Davis, the Court reiterated the requirement that there must be a showing of discriminatory intent as a prerequisite to a finding of invidious discrimination. The

Court examined the evidence of intent in the record and ruled that it found it wanting. Nevertheless, as noted, the Court returned the case to the court of appeals for consideration of whether the statutory provisions of Title VIII of the Civil Rights Act of 1968 may have been violated.

45. Id. at 271.

46. Metropolitan Housing Development Corp. v. Village of Arlington Heights, 558 F.2d 1283 (7th Cir. 1977).

47. See Warth v. Seldin, 422 U.S. 490, 508(1975).

48. Suffolk Housing Services v. Town of Brookhaven, 397 NYS 2d 302(1977); and Urban League of Essex County v. Township of Mahwah, 147 N.J. Super. 28, 370 A.2d 521(1977).

49. Pascack Association, Ltd. v. Board of Adjustment of Township of Washington, 397 A.2d 6, 74 N.J. 470(1977). Associates v. Mayor of Demarest, No. A-129 (Sup. Ct. of New Jersey, Mar. 23, 1977).

50. Public housing programs provide loans for the construction or rehabilitation of low-rent housing for low-income families. 42 U.S.C. §1401 et seq. (Supp. V, 1975).

51. Section 202 of the Housing Act of 1959 provides loans to not-for-profit corporations for providing rental housing and related facilities for the elderly and handicapped. 12 U.S.C. §1701q (1970) (Supp. V, 1975).

52. Sections 235 and 237 of the Housing and Urban Development Act of 1968 created a homeownership program providing special mortgage insurance and cash payments to help low-income home purchasers meet mortgage payments. 82 Stat. 477 (1968).

53. Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, provides for rent subsidy payments for low-income families in newly constructed, substantially rehabilitated, or existing rental units. 42 U.S.C. §1437f (Supp. V, 1975).

54. Housing and Urban Affairs Daily, Aug. 16, 1977, p. 69.

55. Housing and Urban Affairs Daily, June 3, 1977, p. 120.

56. Housing and Development Reporter, vol. 5, no. 8 (July 25, 1977), p. 146.

57. Fred Dow, chief, Assisted Housing Branch, Office of Management, Department of Housing and Urban Development, telephone interview, Jan. 20, 1978.

58. William Van Lowe, Director of Program Budget Development, Office of the Assistant Secretary for Administration, Department of Housing and Urban Development, telephone interview, Dec. 14, 1977.

59. U.S., Department of Housing and Urban Development, Summary of the HUD Budget for Fiscal Year 1979 (January 1978), p. H-1.

60. See for example, The Section 8 Program for Existing Housing in Cuyahoga County, prepared for Cuyahoga Metropolitan Housing Authority by Joseph H. Battle and Associates. This 11-month study found that most families subsidized by the program in Cleveland did not "make moves which led to dispersal." The study pointedly noted that minority and female-headed families encountered discrimination in their homeseeking efforts. Most families settled "in place" without moving from the neighborhood in which they were already living. Critics charge that the program has functioned similarly in other cities.

61. Housing and Development Reporter, vol. 5, no. 2 (June 13, 1977), p. 22.

62. Patricia Roberts Harris, testimony before the Senate Committee on Banking, Housing, and Urban Affairs, Jan. 27, 1978.

63. Ibid.

64. See, for example, Housing and Development Reporter, vol. 4, no. 16, (Jan. 10, 1977), p. 688; vol. 4, no. 18 (Jan. 24, 1977), p. 730; vol. 4, no. 20 (Feb. 7, 1977), p. 780; and vol. 4, no. 22 (Feb. 21, 1977), p. 868.

65. The Community Development Block Grant program provides funds to units of local government for a variety of community development activities aimed at promoting "the development of viable urban communities by providing decent housing and suitable living environment and expanding

economic opportunities, principally for persons of low and moderate income." 42 U,S.C. § 5301 et seq. (Supp. V. 1975). The Housing and Community Development Act of 1977, 91. Stat. 1111, signed by President Carter on October 12, establishes as a new CDBG program goal "the alleviation of physical and economic distress through the stimulation of private investment and community revitalization." Housing and Development Reporter, vol. 1, no. 20 (Oct. 17, 1977), p. 443.

66. Housing and Development Reporter, vol. 5, no. 8 (July 25, 1977), pp. 136-37. HUD programs formerly operated under categorical grant funds. Activities such as urban renewal, planning, and water and sewer development were funded individually with payment guaranteed for each project. With the development of the Community Development Block Grant Program, these payment guarantees continued to be honored through a 3-year extension. However, under the new Urban Development Action Grant program, eligible "distressed" cities will compete for funding under a formula measuring age and condition of housing stock, average income, population loss, and stagnating or declining tax base. Some city officials fear that such a determination may lessen the total dollar amount they receive from HUD when measured against earlier funding under the categorical grant programs.

67. U.S., Department of Housing and Urban Development, Community Development Block Grant Program: Second Annual Report (1976), pp. 32-33.

68. Robert C. Embry, Jr., Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, "Notice to HUD Field Staff: Management of the Community Development Block Grant Program," Apr. 15, 1977.

69. Harris testimony.

70. Robert C. Embry, Jr., "Notice to HUD Field Staff: Monitoring of Entitlement Communities Under the Community Development Block Grant Program" (undated).

71. 24 C.F.R. 570.303(c) (1975).

72. See Harris testimony and Clagett interview.

73. 42 Fed. Reg. 56450 (1977) (to be recodified in 24 C.F.R. Part 570).

74. Harris testimony.

75. Ibid.

WOMEN'S RIGHTS

During 1977 two of the most critical women's rights issues--the proposed Equal Rights Amendment to the Constitution and the right to reproductive choice--were subjected to serious attack. Little progress was made toward ratification of ERA, first introduced more than 54 years ago, and ground was lost in assuring the right of reproductive choice, particularly to poor women.

Equal Rights Amendment

Indiana was the only State to ratify the Equal Rights Amendment (ERA) in 1977, bringing the total number of States to 35, three short of the number required for ratification. Although only one State did ratify the amendment, action was taken in 1977 defeating the amendment in one or both houses of seven State legislatures.[1] In four additional States, the amendment was defeated or not acted upon in legislative committee.[2]

In eight State legislatures,[3] recission resolutions brought to a vote were defeated in 1977. Such a resolution was successful in Idaho, however, which joined Nebraska and Tennessee in rescinding earlier ratification. Recission resolutions were introduced but not brought to a vote in six other States.[4]

Views expressed within the Congress, as well as those set forth in an advisory opinion issued in February 1977 by the U.S. Attorney General's office, suggest that State actions rescinding earlier ratifications would be ignored in tabulating totals, with such States counted as having duly ratified.[5] The recission efforts, however, are a barometer of strong opposition that has placed in doubt the likelihood of securing the three additional States required for ratification by March 22, 1979.[6] Efforts have begun, however, to extend the deadline. In November the House Subcommittee on Constitutional Rights held hearings on H.J. Res. 638, a bill which provides an additional 7 years for ratification.

The Commission believes that the ERA will provide a needed constitutional guarantee of full citizenship for women and will assure the rights of both women and men to equal treatment under the laws.

Ratification of the ERA is an important and appropriate means of alleviating sex discrimination--just as the adoption of the 13th and 14th amendments was vital to the cause of racial equality.[7] Given the history of pernicious racial discrimination sanctioned by law in the Southern States, it is striking to note that 8 of the 15 States that have not ratified the ERA are in the South.[8]

In the substantial controversy surrounding both ratification and recission efforts, several issues cited by anti-ERA forces are based on incorrect legal interpretations of the effect of the amendment. One is the charge that separate public restrooms would no longer be provided for women and men. The U.S. Supreme Court has ruled clearly that a right of privacy is well grounded in the Constitution; the ERA could not supersede this right which would guarantee the privacy of restroom facilities.

Another concern based on legal misinterpretation is that the amendment would sanction homosexual marriage. Congressional legislative history is clear that the only effect of the ERA would be that, if a State permits single sex marriage between two males, it must likewise permit such marriage between two females. The ERA could not be used to overturn a State statute forbidding homosexual marriage.[9]

Opposition also centers on the ERA's potential effect on military service. Congress has always had the authority to conscript women,[10] and the Selective Service Act provided for many exemptions and deferments. In the event that the current volunteer force is discontinued and conscription returns, similar exemptions could be expected and would apply to women as well as men. Thus, a mother with young children or a woman whose absence would cause "hardship to

dependents" would not be subject to the draft. Further, only 1 percent of all eligible males were ever assigned to combat duty in the field in 1971.[11] Since more women currently wish to volunteer than the services will accept,[12] the ERA would, in fact, extend the possibilities of G.I. benefits (learning skills, job preference, medical benefits, mortgage insurance, and education) to a greater number of women.

Perhaps the greatest opposition directed at the ERA is centered on its effect on wives not employed outside the home. The first of three usual charges is that the ERA would eliminate the husband's "duty of support." In fact, the duty of support is a legal issue (subject for court relief) only upon separation or dissolution of a marriage. While a husband and wife reside together, the husband is required to provide only the basic necessities, and he is the sole judge of the adequacy of same.[13]

The second charge is that the ERA would force wives to work outside the home to support husbands. In fact, the amendment applies only to Federal and State law and not to private action. There is no law compelling any person to work, and the ERA cannot effect one. Further, in States that have adopted State equal rights amendments, the

amendment has not been interpreted to require wives to support husbands.[14]

The third charge is that alimony would be eliminated. Support upon dissolution of a marriage is more fiction than fact at present. Most studies show that few women request alimony and fewer still are granted it; such payments are generally inadequate, and relatively few men pay support obligations (alimony and/or child support) with regularity or for any substantial length of time after the initial court order.[15] Nonetheless, congressional debate on the effect of the ERA noted that both husband and wife would be entitled to fairer treatment upon dissolution of a marriage on the basis of individual circumstance rather than sex.[16] In other words, payments would be based upon ability to pay and receipt would be based upon need.

To respond to these concerns, the U.S. National Commission on the Observance of International Women's Year issued throughout 1977 a series of State-by-State analyses of the legal status of homemakers. Since the majority of States base their laws applicable to homemakers in the common law principle that earnings determine ownership, homemakers may need the Equal Rights Amendment more than any other class of women.

Finally, opponents argue that State and Federal laws requiring reform to eliminate sex bias can be amended on a piecemeal basis in the absence of the ERA. Without the amendment, however, it is unlikely that such revision would be undertaken with thoroughness, especially since no compelling mandate would exist. Further, such an effort would require a single coherent theory and consistent national application to achieve equity for the majority of American citizens. In a title-by-title review of the U.S. Code released in April 1977, the Commission found a myriad of unwarranted sex-based differentials, the cumulative effect of which was to assign to women, solely on the basis of their sex, a subordinate or dependent role.[17]

Reproductive Choice

In the area of reproductive freedom, there was a sharp abridgement of a woman's right to choose abortion as set forth by the 1973 Supreme Court rulings.[18] This development resulted from the reintroduction of the Hyde Amendment in Congress and Supreme Court decisions which held that under existing laws States are free to exclude elective abortions from medical procedures funded by Medicaid,[19] and that public hospitals are not required to provide elective abortions.[20]

The Hyde Amendment

In 1977, as in 1976, Congress restricted the use of Federal Medicaid funds for abortion by amending the appropriation bill for the Departments of Labor and Health, Education, and Welfare. The so-called "Hyde Amendment," which was first passed on September 30, 1976, provided that none of the funds appropriated were to be used to perform abortions except where the life of the mother would be endangered if the fetus were carried to term.[21] That section was not enforced until August 1977 because it was immediately challenged in court and was enjoined.[22]

In June 1977, the House voted to insert a second Hyde Amendment, even more restrictive than the first, in the 1977 appropriation bill.[23] Senate passed the amendment only after modifying language was added permitting use of Federal funds for abortions in cases of rape or incest, or when necessary to save the life of the woman, or when medically necessary.[24] Finally, in December 1977, the House-Senate conference committee agreed upon compromise language.

This language, signed into law by the President on December 9, 1977, provides for Medicaid abortions: where the life of the mother would be endangered if the fetus were carried to term; where there was rape or incest, reported promptly to a law enforcement agency or public health

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service; or where two physicians determine severe and long-lasting physical health damage to the mother if the pregnancy were carried to term.[25]

The Commission views with concern the tendency of Congress to deal with major, substantive issues involving a fundamental constitutional right of this kind by attaching riders to appropriations bills. This practice of using appropriations bills as legislative vehicles deprives substantive committees of thorough deliberations of such issues and is inappropriate for discussing matters of such importance. This Commission therefore welcomes the efforts in the House to develop rules designed to prevent similar amendments from being attached to appropriations bills.[26]

Supreme Court Decisions

The injunction banning implementation of the Hyde Amendment was lifted following June 1977 Supreme Court decisions in three cases. In Beal v. Doe[27] the Supreme Court ruled that the exclusion of elective abortions from Medicaid coverage is not unreasonable. Although the Court accepted the contention that such an exclusion could not be justified as an effort to protect either the health of the woman concerned or public expenditures, it held that the exclusion rationally furthered the State interest of protecting the potentiality of human life. In effect, the

Court concluded that the denial of Medicaid funds for elective abortions does not unduly burden or interfere with a woman's privacy rights.

In Maher v. Roe[28] the Supreme Court concluded that the State of Connecticut had not violated the equal protection clause of the Constitution by excluding elective abortions from Medicaid coverage. The Court held that permissible State purposes might include protecting the life of the nonviable fetus, an interest acknowledged as existing though not compelling in Roe v. Wade.

Finally, in Poelker v. Doe,[29] the Court reversed a decision of the U.S. Court of Appeals for the Eighth Circuit which required public hospitals to perform nontherapeutic abortions. The decision in Poelker removed any obligation on the part of public hospitals, and most certainly, by analogy, private hospitals, either to use already existing facilities or to procure equipment and facilities for the performance of abortions.

These three recent decisions coupled with the Hyde Amendment have resulted in the nullification of a poor woman's right to choose abortion. Particularly affected by this nullification are rural women,[30] young women,[31] and minority women[32] since they are disproportionately represented among the poor and/or are disproportionately

dependent on the services provided for by Federal funds or in public hospitals.[33]

The seriousness of the present abortion issue is apparent when considering the effects these legislative and judicial developments are expected to have. One HEW estimate predicts that strict interpretation of the Hyde Amendment would result in the performance of 292,000 illegal abortions, 25,000 female illnesses or injuries, and 250 female deaths.[34] A woman sometimes pays as little as $25 to $30 for an illegal abortion[35] and nothing, in monetary terms, for a self-induced abortion. Owing to the withdrawal of Federal funds for abortions, poor women in need of the abortion procedure are now required either to forego their right to choose abortion or to submit to dangerous, unsanitary procedures unless $150-$200 (the price of a safe, legal abortion) can be raised out of a poverty level income.[36] Few public hospitals are providing abortions[37] and, if the woman happens to live in a rural area, in addition to being poor, she may not have access to any service within her State which performs abortions.[38] If a woman is one of the million teenagers who become pregnant each year, she may be faced with the additional obstacle of needing parental or spousal consent for the abortion.[39]

Young women, rural women, and minority women are disproportionately represented among the poor and are thus most severely affected by the present curb on Federal funds for abortions. There is good reason to believe that the decline in abortion deaths linked to the reduction of need for illegal abortions since 1973[40] will cease and that once again women, especially poor, minority, young, and rural, will die as a result.

These and other questions and fears have surfaced since the use of Federal funds to cover abortion costs has been curbed. Many questions arise out of the controversy as to what exactly constitutes a threat to the pregnant woman's life. There is disagreement about precisely what makes an abortion "medically necessary" rather than elective, and fears exist about where and to whom poor women will now turn.

Domestic Violence

Another issue of concern to women that has received increased attention in 1977 is that of domestic or marital violence.[41] Some States have initiated innovative programs (shelters, halfway houses, specifically trained police units, legal assistance) to assist battered women. The majority of States, however, do not provide these women with services or protections. In January 1978 this Commission

held a consultation that brought together persons actively involved in this matter to address the issues and recommend to the Commission effective means to grapple with them. A review of domestic violence issues will appear in the Commission's report on the state of civil rights for 1978.

Notes To Women's Rights

1. Arizona, Florida, Illinois, Missouri, Nevada, North Carolina, and Virginia.

2. Georgia, Louisiana, Mississippi, and Oklahoma.

3. Connecticut, Kansas, Montana, North Dakota, Oregon, Rhode Island, South Dakota, and Wyoming.

4. Indiana, Iowa, New Hampshire, Ohio, Texas, and Wisconsin.

5. John H. Harmon, Acting Assistant Attorney General, memorandum to Robert J. Lipshutz, Counsel to the President, Feb. 15, 1977.

6. Ratification is required by three-fourths of the States 7 years from the date of approval (Mar. 22, 1972) by Congress.

7. Statement of the U.S. Commission on Civil Rights on the Equal Rights Amendment (June 1973).

8. Tennessee is the only Southern State which has ratified the amendment.

9. 92d Cong., 2d sess., 118 Cong. Rec. 9331 (1972).

10. During the Second World War, for example, H.R. 4906 was introduced to draft "unmarried, unemployed women into the services," 78th Cong., 2d sess., 90 Cong. Rec. 5191 (1944). The Nurses Selective Service Act of 1945, H.R. 2277, had passed the House and been reported out favorably by the Senate Military Affairs Committee when the war ended.

11. 92d Cong., 2d. sess., 118 Cong. Rec. 9332 (1972).

12. M. Rawalt, The Equal Rights Amendment for Equal Rights Under Law (Women's Equity Action League, 1976), p. 5.

13. Brown, Emerson, Falk, and Freedman, The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women, 80 Yale L.J. 871, 943 (1971); Citizens' Advisory Council on the Status of Women, The Equal Rights Amendment and Alimony and Child Support Laws (1972), pp. 2-3.

14. National Commission on the Observance of International Women's Year, To Form a More Perfect Union (1976) pp. 27-28; and Rawalt, The Equal Rights Amendment for Equal Rights Under Law, p. 5.

15. To Form a More Perfect Union, pp. 229, 233-4; and The Equal Rights Amendment and Alimony and Child Support Laws, pp. 4-8.

16. 92d Cong., 2d, sess., 118 Cong. Rec. 9523, 9526-7, (1972).

17. U.S., Commission on Civil Rights, Sex Bias in the U.S. Code (April 1977), p. 204.

18. See Roe v. Wade, 410 U.S. 113 (1973), in which the Supreme Court ruled that State criminal laws that prohibit abortions without regard to the state of pregnancy violate the due process clause of the 14th amendment which protects the right of privacy. Id. at 163. The Court, however, held that this right to privacy is not unqualified, that the State has legitimate interests in protecting the health of the pregnant woman and the potentiality of human life, and that these interests become more compelling as the pregnancy progresses.

The Court thus ruled that in the first trimester of pregnancy, the decision as to abortion must be left solely to the judgment of the pregnant woman and her physician. After the first trimester, however, the State may regulate the abortion procedures in ways reasonably designated to protect the health of the pregnant woman. After the stage of viability of the fetus, the State may prohibit abortion altogether in the interest of protecting the potentiality of human life. Id. at 164.

See also Doe v. Bolton, 410 U.S. 179 (1973), in which the Court held that a State cannot erect procedural barriers to the obtaining of an abortion not reasonably related to the protection of legitimate State interests in maternal health and potential of human life, as enunciated in Roe v. Wade, supra.

See also Doe v. Bolton, 410 U.S. 179 (1973). The Doe decision held that States could not make abortions unreasonably difficult to obtain. In Doe, the Supreme Court

ruled that States could not "create elaborate procedural barriers and residency requirements" (Id. at 200) that would make the obtaining of an abortion unreasonably difficult.

19. Beal v. Doe, 432 U.S. _____. 97 S. Ct. 2366 (1977), and Maher v. Roe, 432 U.S. _____. 97 S. Ct. 2376 (1977). In Maher v. Roe, the Court ruled that the State need only assert a rational relationship between its decision to exclude elective abortions from Medicaid coverage and the furtherance of a constitutionally permissible State purpose. The "constitutionally permissible purpose" in this case and in Beal v. Doe was the State's "unquestionably strong and legitimate interest in encouraging normal childbirth." Beal v. Doe, 432 U.S. at _____, 97 S. Ct. at 2372 and, Maher v. Roe, 432 U.S. at _____, 97 S. Ct. at 2385. The Court further indicated in a footnote that one additional interest might be a State's "legitimate demographic concerns about its rate of population growth." 97 S. Ct. at 2385, n.11. This could set a very dangerous precedent since the rate of population growth of minority people in a particular State could be a demographic concern. Continuing this rationale, the rate of minority population growth then becomes a State interest as well as the private concern of minority individuals.

20. Poelker v. Doe, _____ U.S. _____, 97 S. Ct. 2391 (1977). Abortions performed in public hospitals in 1974 constituted only 17 percent of the estimated number needed by low-income women, and in 1975 only 18 percent of all public hospitals in the country provided abortion services, according to "Legal Abortions in the United States 1975-1976," Family Planning Perspectives, vol. 9, no. 3 (May/June 1977), pp. 116-29. This decision will decrease the already small number of public hospitals that provide abortion services. In 10 States there were no public hospitals providing such services in 1975. Ibid., p. 128.

21. Pub. L. No. 94-439, §209, 90 Stat. 1418, 1434 (1976).

22. McRae v. Mathews, 421 F. Supp. 533 (E.D.N.Y. 1976). The injunction was subsequently lifted by the Supreme Court, sub nom., Califano v. McRae, 97 S. Ct. 2993 (1977).

23. 95th Cong., 1st sess., 123 Cong. Rec. H-6098, (June 17, 1977).

24. 95th Cong., 1st sess., 123 Cong. Rec. S-11056, (June 29, 1977).

25. Pub. L. No. 95-205, §101, 91 Stat. 1460 (1977).

26. As a result of the conflicts caused by attaching the abortion amendment onto the Labor and Health, Education, and Welfare appropriation bill, a move was initiated in Congress to ban such riders. Charles Johnson, assistant parliamentatian, Office of the Parliamentarian, U.S. House of Representatives, telephone interview, Jan. 12, 1978. See also, Washington Post, Jan. 4, 1978, p. A2.

27. Beal v. Doe, 432 U.S. _____, 97 S. Ct. 2366 (1977).

28. Maher v. Roe, 432 U.S. _____, 97 S. Ct. 2376 (1977).

29. Poelker v. Doe, 432 U.S._____, 97 S. Ct. 2391 (1977).

30. Wyoming Advisory Committee to the U.S. Commission on Civil Rights, Abortion Services in Wyoming (June 1977), pp. 12-15.

31. "Legal Abortions in District Top Births for 1976," Washington Post, Sept. 1, 1977, p. 1. See also New York Times, Aug. 22, 1977, p. 23, which notes that of approximately 300,000 women in 1975 who had received Medicaid-funded elective abortions, one-third were teenagers, 15,000 of whom were under 14 years of age. "Again, Back-Alley and Self-Induced Abortions," New York Times, Aug. 22, 1977, op. ed. sec., p. 23.

32. See, for instance, Fifty-one State Advisory Committees to the U.S. Commission on Civil Rights, The Unfinished Business, Twenty Years Later (1977), p. 129.

33. Ibid., pp. 95, 102, 111, and 129.

34. Washington Post, Aug. 3, 1977, p. A4.

35. Center for Disease Control, Abortion Surveillance, 1975 (April 1977), p. 9.

36. Since 40 percent of minorities depend on the Medicaid program to meet their health needs, and since a relatively affluent woman will find it considerably easier to spend $200 for a safe legal abortion, the current curb on Federal

funding for abortions has a strong disparate effect on minority women. Poelker v. Doe, ____ U.S. ____, 97 S. Ct. 2391, 2395, n.1, 2397-98 (1977) (Marshal, T. dissenting). For poverty income data, see employment chapter of this report.

37. "Legal Abortions in the United States 1975-1976," Family Planning Perspectives, vol. 9, no. 3 (May/June 1977), pp. 116-29.

38. Alan Guttmacher Institute, Abortion 1974-1975 Needs and Services in the United States, Each State and Metropolitan Area (1976), pp. 7-19.

39. Washington Post, Aug. 15, 1977. In addition to the cutoff of public funds to cover the cost of abortions, some States have parental and spousal consent requirements which disproportionately affect women who are young and/or unmarried. Furthermore, State requirements of this type present a barrier to poor women in need of elective abortions beyond the financial curb presently in effect. Missouri has a parental and spousal consent requirement, Planned Parenthood v. Danforth, 428 U.S. 52 (1976). Massachusetts has a parental consent requirement, Belotti v. Baird, 428 U.S. 152 (1976).

40. Center for Disease Control, Abortion Surveillance, 1975 p. 9, and Alan Guttmacher Institute, Abortion 1974-1975 Needs and Services, pp. 7-19.

In 1972, 1 year before the legalization of elective abortions nationwide, there were 39 known deaths because of illegal abortions. In 1975 there were 4 such deaths. The decline in deaths caused by illegal abortions has been linked to the reduction in illegal abortions performed in 1975. Despite legalization of elective abortions, an estimated 17,000 illegal abortions were being performed in 1974. One key explanation for the remaining illegal abortion rate is the difficulty of obtaining elective abortions. Ibid.

41. See, for example, Colorado Advisory Committee to the U.S. Commission on Civil Rights, The Silent Victims: Denver's Battered Women (1977).

ADMINISTRATION OF JUSTICE

Aspects of the administration of justice in the United States were the focus of public concern and important developments during 1977. One major area of controversy concerned allegations of serious police abuse of citizens and of tense, troubled relations between police and minority communities. Questions involving the treatment of American Indians in the administration of justice and far reaching proposals regarding regulation of undocumented aliens were also prominent. Proposed changes in the U.S. criminal code represented positive steps that may reduce discrimination in the criminal justice process. The proposed changes in the code with respect to American Indians, however, have been actively opposed by most Indian groups as restricting tribal jurisdiction.

Police Misconduct

Allegations of police abuse, brutality, and harassment of citizens, particularly minorities, have for too many years constituted an unresolved and galling public problem in America. Instances of police misconduct, beatings, shootings, and intimidation of citizens undermine public safety, trust, and confidence in law enforcement. In 1977 the Commission on Civil Rights received an increasing number

of citizen complaints and reports indicating that police misconduct remains a widespread phenomenon that has, in some cities, become so pervasive as to appear to be officially sanctioned.[1]

Serious allegations of police misconduct were made in cities throughout the country. Philadelphia,[2] New York,[3] Houston,[4] Chicago,[5] Los Angeles,[6] Memphis, Tennessee,[7] Jackson, Mississippi,[8] and Montgomery, Alabama,[9] among others, all came under scrutiny during 1977 for questionable police practices and poor police-community relations.

Complaints from citizens have alleged verbal and physical abuse by police of persons stopped for minor violations as well as beatings and violations of constitutional rights during lengthy interrogations.[10]

While the majority of complaints allege excessive force and police brutality, most have not involved shootings.[11] In fact, the Police Foundation noted "a clear national trend among police agencies toward establishing restraint in the use of firearms."[12] Nevertheless, the study warned that local police continue to need clear directives regarding the use of deadly force.[13] Police use of firearms, the study said, "can have a powerful, deleterious effect on the life of a community. Presidential commissions established to study violence and urban riots have pointed out that the

precipitating event is often a police shooting of a civilian which, at the time, seems questionable or pointless."[14] It also observed that police are seldom punished in cases involving the questionable use of firearms against citizens.[15]

Some instances of alleged police brutality have resulted in death without shots being fired. One suspect in Philadelphia reportedly was beaten with gun butts and blackjacks by seven police officers and then dropped head first onto a parking lot. The victim died as a result. The police misconduct alleged in this case was corroborated by 16 eyewitnesses, but the matter was never prosecuted.[16] In response to this and other incidents, the United States Attorney in Philadelphia began a grand jury investigation of police practices in Philadelphia, and 15 officers were indicted on 12 charges of brutality and 3 of corruption. Further indictments are expected.[17]

In a well-publicized case in Houston, Texas, a man involved in a disturbance at a bar was arrested, later beaten, and finally taken to police headquarters. The duty sergeant ordered that the man be taken to an emergency room for treatment prior to booking. Instead, officers took the man to a bayou and pushed or threw him into the water. The cause of death, when the body was found, was drowning.[18] Two

of the officers involved were indicted, found guilty of negligent homicide (a misdemeanor), and were sentenced to a year in jail and fined $2,000. Their jail sentences were suspended.[19]

During 1977 several major cities were the scenes of disorders triggered in large part by hostility between local police and minority groups. In June, for example, police attempts to disperse a crowd after a shooting in a West Chicago, Puerto Rican neighborhood led to 2 days of rioting.[20] Tampa, Florida, was also the site of 2 days of looting, burning, and rioting in June, when a white officer killed a black youth suspected of breaking into a warehouse.[21]

A March 1977 report described the problems encountered by American Indians in the criminal justice system in Flagstaff, Arizona.[22] Abuses were cited in the treatment of Indians, including setting of excessive bail, refusal to release Indians on their own recognizance, failure to ensure that Indian suspects understood their rights (which are explained in English), and illegal arrest procedures in traffic cases.

Another 1977 study found similar civil rights violations in the administration of justice in two South Dakota counties, Pennington and Charles Mix.[23] Findings

included physical abuse of American Indians in police custody, warrantless searches of Indian homes, and selective enforcement of laws by police resulting in the arrest of Indians (but not of non-Indians in similar circumstances). The study also found that Indians are generally excluded from jury service, and that unfair, subjective hiring standards also block them from employment as police officers. The report concludes that there is general police insensitivity to American Indian defendants and their rights in these two South Dakota counties.

Nationally, the Federal Bureau of Investigation and the Department of Justice have taken action in some cases of police brutality and misconduct. Limited resources and personnel, however, have prevented more thorough investigation of local complaints.

Supreme Court Decisions

During 1977 the potential effect of the Supreme Court's earlier decision in Rizzo v. Goode[24] was a matter of concern in light of allegations of police misconduct. The Court in the Rizzo case limited the remedies available to victims of police abuse when it ruled that citizens in suits against officials must prove that the officials directly participated in the deprivation of citizen rights by encouraging or expressly authorizing illegal and

unconstitutional conduct.[25] In this suit under section 1983 of the Civil Rights Act of 1871,[26] the Court also held that without evidence of direct participation in unconstitutional actions by local officials, any relief ordered by the courts would constitute an unwarranted intrusion by the Federal judiciary into the discretionary authority of State and local officials to perform their official functions. Proof that such officials learned of violations by subordinates, but did little or nothing to prevent these acts, is no longer sufficient ground for action under section 1983.

During 1977 the Court continued a trend restricting the availability of Federal review of State criminal convictions through Federal habeas corpus petitions.[27] In Wainright v. Sykes,[28] the Court held that a prisoner who failed to comply with the State's "contemporaneous objection"[29] rule could not gain Federal habeas corpus relief on a claim that his or her confession was obtained involuntarily.

The Court issued two other decisions on the rights of prisoners. One ruled that inmates' constitutional right to access to the courts required prison authorities to provide them with access to adequate law libraries or legal assistance programs.[30] The other decision ruled that deliberate indifference by penal authorities to the serious

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medical needs of inmates is prohibited by the eighth amendment's ban on cruel and unusual punishment.[31]

The Court continued to narrow the use of the exclusionary rule under which defendants have in the past challenged the prosecution's use of illegally obtained evidence. Court rulings on this question during 1977 came in cases involving self-incrimination[32] and electronic eavesdropping.[33]

Proposed Legislative Reform

Criminal Code

In early May 1977, bills entitled "The Criminal Code Reform Act of 1977" were introduced in both Houses of Congress[34] in an attempt to codify and reform Federal criminal law. Current Federal law makes conspiracy to violate a citizen's civil rights a crime; the reform bill would enlarge upon this by making individuals acting alone subject to prosecution, and by providing that the citizenship or noncitizenship status of the person whose civil rights are violated is irrelevant. This merely reflects the fact that aliens in this country are protected by numerous Federal and statutory provisions and, therefore, deserve the protection of the sanctions provided under the reform bill.

Conspiracies against the civil rights of citizens would be recodified under the act as substantive offenses, permitting prosecution of an individual action taken alone and not as a member of a group.[35] The Criminal Code Reform Act would also extend Title I of the Civil Rights Act of 1968[36] by prohibiting interference, injury, or intimidation on the basis of sex as well as race, color, religion, and national origin,[37] an extension recommended by the Commission.[38] Added to the U.S. Code for the first time would be prohibitions against the obstruction of voter registration and political activities.

Perhaps the most significant civil rights aspect of the reform bill is the creation of a commission to establish sentencing ranges for specific categories of offenses. Sentencing decisions would be subject to appellate review. The proposed sentencing changes promise to reduce the subjectivity, lack of uniformity, and absence of due process that have often led to disparate treatment of minority and women defendants under current Federal practices.

Bilingual Court Proceedings

Other positive legislative action during 1977 included the introduction of bills to provide for bilingual proceedings in all Federal district courts.[39]

Undocumented Aliens

The status of undocumented workers was a major national issue in 1977. In August the Carter administration outlined its plan to take action on the question of undocumented aliens in the United States.[40] The administration proposes civil penalties for employers who knowingly hire undocumented workers, criminal penalties for those who secure jobs for undocumented workers or who act as agents for smugglers of such workers, and stricter enforcement of the Fair Labor Standards Act and the Federal Farm Labor Contractor Registration Act.

The most widely publicized section of the plan provides that permanent resident status will be granted to aliens who can prove continuous residency in the United States from anytime before January 1, 1970, to the present. Five years after the granting of such permanent resident alien status, an individual could apply for U.S. citizenship if residency has been maintained. Other undocumented aliens residing in this country on or before January 1, 1977, who register with the Immigration and Naturalization Service during a 1-year

registration period, will be granted temporary resident alien status for 5 years. The plan would also substantially increase enforcement by U.S. border patrols, particularly at the U.S.-Mexican border.

Legislation based on the administration's proposals was introduced in October in the House of Representatives.[41] The bill, known as the Alien Adjustment and Employment Act of 1977, contains only three aspects of the President's earlier proposals. These are the adjustment of status provision, the creation of a new temporary alien status, and the use of employer sanctions. Not contained in the proposed bill are increased border enforcement, the review of immigration statutes, and economic assistance to countries from which illegal aliens are leaving. The Commission in 1977 initiated a study of the civil rights implications of the proposed legislation and of the enforcement practices of the Immigration and Naturalization Service.

Jurisdiction--The American Indian Reservation

Another controversial and important issue involves legal jurisdiction over American Indian reservation areas, specifically, which units of government are responsible for law enforcement and protection. Without congressional authorization, States currently have no administration of justice jurisdiction over Indians who reside on reservations. Such jurisdiction is currently the joint responsibility of the tribal government and the Federal Government.

The Federal Government, through the Federal Bureau of Investigation and local United States attorneys, is responsible for the investigation and prosecution of major felony offenses.[42] Critics have alleged a lack of effective and impartial FBI investigation and a low level of interest on the part of U.S. attorneys in pursuing prosecutions.[43] Reliable estimates indicate that approximately 80 percent of reported felony cases are not prosecuted.[44] As a result, a substantial burden is placed on tribal justice systems, which are limited by law to the imposition of penalties not to exceed 6 months' imprisonment, or a $500 fine, or both. Tribal justice systems are further strained by the continuing decline in aid received through the Law Enforcement Assistance Administration (LEAA) appropriation

levels.[45] In fiscal year 1977, the total LEAA budget for tribal justice systems was $3 million compared to $4,363,000 in fiscal year 1974. A further, major reduction in the budget is projected for fiscal year 1978.[46] Tribes have had to meet criminal justice costs through the use of tribal funds that otherwise could have been spent on badly needed social or economic development programs.

Federal law permitted a number of States to assume, without tribal consent, civil and criminal jurisdiction on Indian reservations,[47] a move actively opposed by most tribes. In a May 1977 report, the American Indian Policy Review Commission recommended that tribal governments be given the option to remove all or part of State jurisdiction.[48] The recommendation was based on findings that State jurisdiction was repugnant to tribal sovereignty and self-government and on the failure of States to provide adequate nondiscriminatory services in the administration of justice.

Also in 1977, the U.S. Court of Appeals for the Ninth Circuit struck down the State of Washington's piecemeal assumption of jurisdiction as violating equal protection standards.[49] In an equal protection ruling, the appeals court invalidated the State statute with the ultimate result (unless overturned by the U.S. Supreme Court) that the State

of Washington no longer has criminal or civil jurisdiction on Indian trust lands where that jurisdiction was assumed without tribal consent.

Related to the issue of jurisdiction within Indian reservations is the question of defining the legal boundaries of such reservations. Generally, boundaries have been established by treaty, Executive order, or specific legislation. Until recently, the thrust of caselaw has been that, to alter these boundaries, a clear intention of the parties must appear in subsequent legislation or agreement.[50] Starting with De Coteau v. The District Court,[51] however, the Supreme Court has increasingly ruled in favor of reducing or disestablishing reservation boundaries.

In 1977 the Supreme Court ruled in Rosebud Sioux v. Kneip[52] that a clear expression of congressional intent in either the statute or its legislative history is not necessary if surrounding circumstances make it clear that the intent was to diminish the land area which had been reserved for the tribe under an existing treaty. The Court ruled that the questionable "opening" of part of reservation lands to settlement by non-Indians should be viewed not just as an arrangement under which the United States would sell parcels of land within the original reservation (with

proceeds going to the tribe), but also, more germanely, that such action should be treated as a jurisdictional retaking of the land by the United States Government.[53] Jurisdictional control over other reservation lands similarly "opened" to settlement by non-Indians may now be questioned in the light of this case.[54]

In off-reservation areas Indian Americans are subjected to the jurisdiction of local and State administration of justice systems. These systems, particularly in border town areas, have been the subject of past and continuing criticism, including complaints of discriminatory law enforcement practices. Problems found by the Commission with respect to the exercise of law enforcement by non-Indians over Indians clearly illustrate the importance of the issue of jurisdictional control over reservation lands.[55]

Notes to the Administration of Justice

1. See, for instance, Philadelphia Inquirer, Apr. 24-28, 1977, for a detailed review of alleged police misconduct in Philadelphia, Pennsylvania. One former detective offered the following assessment of police practices among some Philadelphia detectives:

> The rule down there [is] convictions at any cost. A detective will say, "Chief, we know it's him, but we haven't got it [a statement of confession] yet." And then [the chief inspector] will say, "get it." And they know it doesn't matter how they get it. Beatings? Yes, I've seen them. Really. Why beatings? It's very simple. They do it because they're told to. It's very lucrative....Convictions is the name of the game. Not truth.... Philadelphia Inquirer, Apr. 24, 1977, p. 12A.

2. See Philadelphia Inquirer, Apr. 24-28, 1977. On May 5, 1977, following the Inquirer's articles on the Philadelphia police, United States Attorney David W. Marston announced that his office would begin investigation of police practices in the city.

3. See New York Times, Mar. 5, 1977, p. 18. The Times editorial for this date discusses past shooting deaths in New York City and sees "chillingly similar patterns" in which black citizens are killed by white police under questionable circumstances. The Times urges the tightening of psychological screening and testing procedures to halt such incidents.

4. See New York Times, May 20, 1977, p. 14; Wall Street Journal, Oct. 10, 1977, p. 1; New York Times, Oct. 12, 1977, p. 1; and Houston Post, Oct. 13, 1977, p. 1. The Wall Street Journal quotes Houston's mayor as charging, "Our police department is white supremacist. There is an illness afoot here--a frontier mentality--that has condoned police excess for years, especially to keep minorities in their place." See also U.S., Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (1970). This report discusses earlier abuses and problems

encountered by Mexican Americans in the law enforcement and criminal justice system.

5. Ruth Wells, executive director, Citizens Alert, Chicago, Ill., letter to Arthur S. Flemming, Chairman, U.S. Commission on Civil Rights, Aug. 5, 1977. Wells' letter reviewed recent allegations of police use of excessive force in Chicago.

6. Philip Montez, Regional Director, Western Regional Office, U.S. Commission on Civil Rights, memorandum to Office of General Counsel, U.S. Commission on Civil Rights Sept. 1, 1977. Police-community relations in Los Angeles were characterized as an "uneasy truce." Complaints from south central Los Angeles (largely black) and eastern Los Angeles (predominately Chicano) most frequently accuse police of excessive and unnecessary force in dealing with minority citizens.

7. The Commission on Civil Rights conducted a 1-day hearing on police-community relations in Memphis, Tennessee, on May 9, 1977.

8. See U.S., Commission on Civil Rights, Southern Regional Office staff report, "Police Community Relations in Jackson, Mississippi: An Overview" (Feb. 15, 1977).

9. See New York Times, Feb. 6, 1977, p. 24, which reported that the Montgomery, Alabama, director of public safety resigned after he failed a polygraph examination during an investigation into the circumstances of the shooting death of a local black citizen. An investigation revealed that the citizen had been killed by a police officer and that a gun earlier held in police custody was placed with the victim's body to create the impression that he had been armed when shot.

10. See, for instance, Philadelphia Inquirer, Apr. 24, 1977, pp. 1 and 12a; Apr. 26, 1977, p. 1; and May 15, 1977, p. 1.

11. See, for example, Tom Curtis, "Support Your Local Police (Or Else)," Texas Monthly, September 1977, p. 83.

12. Police Foundation, Police Use of Deadly Force (1977), p. 11.

13. Ibid., pp. 5, 130-36. The Police Foundation noted that many officers view efforts to reduce the use of violent force by the police as attempts to undermine the fight against crime.

14. Ibid., p. 3.

15. Ibid., p. 11. See also New York Times, Dec. 2, 1977, p. A26.

16. Philadelphia Inquirer, Apr. 27, 1977, p. 8.

17. David W. Marston, U.S. Attorney for the Eastern District of Pennsylvania, telephone interview, Nov. 11, 1977.

18. Curtis, "Support Your Local Police (or Else)," p. 83.

19. New York Times, Oct. 12, 1977, p. 17. Subsequent to the suspension of the sentences, a Federal grand jury indicted the two policemen for civil rights violations, specifically, §1983 of the Civil Rights Act of 1871.

20. New York Times, June 5-6, 1977, p. 1. In the wake of the Chicago disturbances, the Commission on Civil Rights released a statement on June 23, 1977, noting the discrimination and economic and educational disadvantages faced by Puerto Ricans living in the mainland. The statement recalled that Chicago was the scene in 1966 of similar disturbances arising from similar causes.

21. Fifty-One Advisory Committees to the U.S. Commission on Civil Rights, The Unfinished Business, Twenty Years Later (September 1977). This study reports conflicts in police-community relations in 28 States.

22. Arizona Advisory Committee to the U.S. Commission on Civil Rights, Justice in Flagstaff: Are These Rights Inalienable? (March 1977).

23. South Dakota Advisory Committee to the U.S. Commission on Civil Rights, Liberty and Justice For All (October 1977).

24. 423 U.S. 362 (1976).

25. In dissent, Justice Blackmun pointed out that the Court in so ruling "casts aside reasoned conclusions to the

contrary reached by the Courts of Appeals of 10 circuits." Id. at 611.

26. 42 U.S.C. §1983 (1970).

27. Habeas corpus petitions request a Federal court to review the State conviction of a prisoner to determine whether the prisoner's Federal constitutional rights have been violated.

28. 97 S. Ct. 2497 (1977).

29. The contemporaneous objection rule requires a defendent in a criminal case to object to the introduction of unconstitutionally obtained evidence at the time the evidence is first presented in court.

30. Bounds v. Smith, 430 U.S. 817 (1977).

31. Estelle v. Gamble, 429 U.S. 97 (1976).

32. Oregon v. Mathiason, 429 U.S. 492 (1977).

33. United States v. Donovan, 429 U.S. 413 (1977).

34. S. 1437 was referred to the Senate Committee on the Judiciary, Subcommittee on Criminal Law and Procedure. The Subcommittee held hearings on the bill from June 7 to Aug. 5, 1977; H.R. 6869 was referred to the House Committee on the Judiciary, Subcommittee on Criminal Justice.

35. The requirement of proving a conspiracy often reduces the chance of conviction. Prosecution of individuals would be made possible by the proposed changes.

36. 18 U.S.C. §245 (1970).

37. 18 U.S.C. §245 (b) (2).

38. See U.S., Commission on Civil Rights, Sex Bias in the U.S. Code (April 1977).

39. H.R. 342, 1996, 2350, and S. 1315.

40. Office of the President, Press Secretary, Undocumented Aliens--Fact Sheet, Aug. 4, 1977.

41. H.R. 9531, 95th Cong., 1st sess., 123 Cong. Rec. 10865 (1977).

42. Major Crimes Act, 18 U.S.C. §1153 (1970). Other areas of Federal jurisdiction are spelled out in the General Crimes Act, 18 U.S.C. §1152 and the Assimilative Crimes Act, 18 U.S.C. §13.

43. American Indian Policy Review Commission, "Task Force Report: Federal, State, and Tribal Jurisdiction" (July 1976).

44. National American Indian Court Judges Association, Justice and the American Indian, vol. 5, p. 5.

45. 42 U.S.C. §3711 et seq. Funds are provided for this purpose through the Law Enforcement Assistance Administration.

46. The fiscal year 1978 LEAA-funded budget is just under $2 million.

47. Pub. L. No. 83-280, Aug. 15, 1953, codified as 18 U.S.C. §1162 and 28 U.S.C. §1360 (1970). The 1968 Indian Civil Rights Act permits States not covered by 18 U.S.C. §1162 and 28 U.S.C. §1360 to assume civil and criminal jurisdiction on Indian reservations, but only with the consent of the affected tribes. 25 U.S.C. §1321 (1970).

48. American Indian Policy Review Commission of the United States Congress, A Policy for the Future (1977).

49. Confederated Bands and Tribes of the Yakima Indian Nation v. State of Washington, No. 74-1225 (9th Cir. Apr. 29, 1977). The State of Washington had moved to assume jurisdiction over: compulsory school attendance, public assistance, domestic relations, mental health, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles.

50. Mattz v. Arnett, 412 U.S. 481 (1973).

51. 420 U.S. 425 (1975).

52. 97 S. Ct. 1361 (1977).

53. Three dissenters unsuccessfully argued that to base a diminishment of reservation lands on an act (or acts) of Congress, which did not clearly express diminishment as the intent of Congress, was both an erroneous legal presumption and a possible source of confusion. Id. at 1377.

54. For example, the city of Tacoma, Washington, recently filed suit against the Department of Interior over taking land into trust for the Puyallup Tribe. This litigation is based in part on the claim that the Puyallup Reservation was similarly diminished.

55. See, for example, New Mexico Advisory Committee to the U.S. Commission on Civil Rights, The Farmington Report: A Conflict of Cultures (1975).

POLITICAL PARTICIPATION

While 1977 was not a major election year, the increasing involvement of women and minorities in the political process continued. Opportunities for effective and full participation in public affairs were enhanced by Presidential appointments and several Supreme Court decisions concerning voting rights.

Presidential Appointments

President Carter committed himself to increasing the proportion of minorities and women in top level Federal Government jobs because of their underrepresentation in the past.[1]

By December 1977 the President had announced 632 appointments; of these, 77 (12 percent) were female and 91 (14 percent) minority. Blacks comprised the largest number of minorities with 56 appointments, followed by Hispanics with 28 appointments, and Asian Americans and Native Americans with 4 and 3 positions, respectively.[2]

It is significant that certain of these appointments were to key top level positions. For example, Juanita M. Kreps, a white woman, is Secretary of the Department of Commerce; Patricia Roberts Harris, a black woman, is the Secretary of the Department of Housing and Urban

Development; Andrew Young, a black man, was appointed U.S. Ambassador to the United Nations; and Leonel Castillo, a Hispanic man, was appointed as Commissioner of the Immigration and Naturalization Service.[3]

As yet there has been no indepth study of the personnel policies of the administration for comparative analysis. Such an analysis would be helpful, together with the establishment of a "benchmark" by which the administration's commitment to minority and female representation can be evaluated.

Voting Rights Enforcement and Litigation

Enforcement of key provisions of the Voting Rights Act[4] continues to affect the participation of minorities in the political process. During 1977 jurisdictions covered under section 5 of the act continued to submit (as required) changes in voting laws, practices, and procedures to the U.S. Attorney General for a determination that the changes would not discriminate against racial or language minorities.[5] From October 1976 through June 1977, 1,204 such submissions involving 2,544 voting changes were forwarded to the Department of Justice.[6] They included changes in bilingual procedures and polling places, and the form of local government, reapportionments, and annexations. During this period, 40 objections were raised by the Department of

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Justice requiring modification of the changes before they could be enforced.[7] This process can significantly advance minority voting rights.[8]

During the past year a number of cases pertinent to the Voting Rights Act proceeded through the courts. In Williamsburgh v. Carey, an important ruling issued in March 1977, the U.S. Supreme Court upheld a New York legislative redistricting plan for Kings County. The plan was developed to overcome a Voting Rights Act objection to previous plans that appeared to dilute minority voting rights.[9] The plan increased nonwhite majorities in some of the districts, but it did not change the number of districts with nonwhite majorities. The Court held that using racial factors for redistricting to comply with the Voting Rights Act did not violate the 14th or 15th amendment.[10] While the long term implications of this decision are still difficult to gauge, the ruling appears significant because the Court found that, in some circumstances at least, a race-conscious plan does not violate the Constitution.

In Briscoe v. Bell the Supreme Court rejected a Texas effort to avoid coverage under the Voting Rights Act Amendments of 1975, which extended the protections of the act to and required bilingual elections in Texas, among other jurisdictions.[11] The Court held that section 4(b) of

the act clearly prohibits judicial review of rulings on the act's coverage issued by the enforcing officials--the Attorney General of the United States and the Director of the Bureau of the Census. The only recourse available to the State is a (bailout) suit to terminate coverage under strict limitations and burden of proof outlined in section 4 (a) of the act.[12] Since coverage of all voters in Texas was a major aim of Congress in its 1975 deliberations on the Voting Rights Act, the outcome of Briscoe v. Bell was positive.

Despite the gains made by minorities and women in the political arena in 1977, full participation remains an unattained goal. Women and minorities continue to be underrepresented in elected positions at all levels of government.[13] Also, while the minority electorate played a major role in the 1976 Presidential election, recent data reveal that fewer than 50 percent of the minority voting age population voted in that election.[14] A substantial problem of nonparticipation clearly remains.

While significant court cases have been decided in favor of minority voting rights, and opposition to bilingual elections among State and local election officials appears to have diminished, several possible problem areas have emerged in litigation and enforcement of the Voting Rights

Act. Several cases in lower courts raise issues that could adversely affect minority voting rights. For example, challenges to the reach of the Voting Rights Act preclearance requirements[15] and to coverage under the minority language provisions[16] bear watching. Also, some covered jurisdictions have not submitted bilingual election plans to the Attorney General for review, and they may not have conducted bilingual elections.[17] Justice Department enforcement of bilingual requirements in some jurisdictions has been delegated to U.S. attorneys around the country who are neither trained nor staffed for such monitoring.[18]

Notes to Political Participation

1. Washington Post, June 19, 1977, p. A17.

2. Office of the President, Presidential Personnel Office, Profile: Presidential Appointments (Dec. 28, 1977).

3. Ibid.

4. 42 U.S.C. §1973 (1976).

5. Id. See U.S., Commission on Civil Rights, Using the Voting Rights Act (1976), p. 9.

6. Drew Days III, U.S. Assistant Attorney General, "The Department of Justice Voting and Elections Activities" (speech delivered to the Advisory Panel of the Federal Election Commission's Clearinghouse on Election Administration, July 25, 1977), pp. 13-14.

7. Ibid., p. 14.

8. For example, in April 1976 the Attorney General had objected to 13 of 23 proposed annexations by the city of San Antonio, Texas, because the city had not shown that the annexations would not result in dilution of minority voting strength in a system in which the nine city council members (including the mayor) were elected at large, with numbered posts and a majority requirement. Such features frequently have been identified as restricting minority voting rights, and the Department of Justice suggested that adoption of a single-member ward system of election could remedy the problem. The city developed a single-member system, which resulted in the spring 1977 city council election of five Mexican Americans, one black, and four whites. The previous city council was composed of two Mexican Americans, one black, and six whites. J. Stanley Pottinger, U.S. Assistant Attorney General, letter to James M. Parker, city attorney, city of San Antonio, Apr. 2, 1976; George Korbel, U.S. Commission on Civil Rights, Southwestern Regional Office, telephone interview, Aug. 30, 1977.

9. 430 U.S. 144 (1977).

10. Id. at 161.

11. _____U.S._____(1977), 97 S. Ct. 2428 (1977).

12. Id. at 2431. To win such a case, Texas would have to prove that its English-only elections were not used with a discriminatory purpose or effect for 10 years preceding its suit. 42 U.S.C. §1973b (1976).

13. For example, although the number of black elected officials continues to increase (8 percent increase from June 1976 to July 1977), they "continue to account for less than one percent of the more than 522,000 elected officials in the Nation." Joint Center for Political Studies, JCPS News (press release), Dec. 1, 1977.

14. Southwest Voter Registration Education Project, "The Latino Vote in the 1976 Presidential Election" (1977), p. 1; Maebell Bennett, research department, Joint Center for Political Studies, telephone interview, Aug. 31, 1977; U.S., Department of Commerce, Bureau of the Census, Voter Participation in November 1976, Series P-20, No. 304, p. 1.

15. E.g., U.S. v. Board of Commissioners of Sheffield, Alabama, 430 F. Supp. 786 (N.D. Ala. 1977), appeal pending, No. 76-662.

16. E.g., Choctaw and McCurtain Counties, Oklahoma v. U.S., Civil No. 76-1250 (D.D.C., filed July 6, 1976); Doi v. Bell, Civil No. 77-0256 (D. Hawaii, filed July 19, 1977).

17. This statement is based on comparison of the list of covered jurisdictions and the section 5 weekly submission lists prepared and circulated by the Voting Section of the Civil Rights Division, Department of Justice.

18. See memorandum from James P. Turner, Acting Assistant Attorney General, Civil Rights Division, to U.S. Attorneys (in districts covered by section 203 of the Voting Rights Act), Oct. 22, 1976, and staff interview with David P. Bancroft, Assistant U.S. Attorney, Northern District of California, San Francisco, Calif., June 30, 1977.

CIVIL RIGHTS REORGANIZATION

One of the more significant civil rights developments in 1977 was the active involvement of both the executive and legislative branches of the Federal Government in efforts to reorganize Federal civil rights enforcement programs. This Commission has documented the need for substantial reorganization. As a number of Commission reports point out, current Federal civil rights enforcement efforts suffer from duplication, inconsistent policies and standards, and lack of overall leadership.[1]

One of President Carter's commitments during the 1976 campaign was to seek authority to carry out a major reorganization of executive branch agencies. In February 1977 he specifically emphasized his intention to consolidate the Government's equal employment effort.[2] In April the President received authority from Congress to carry out such a reorganization of the executive branch.[3] Shortly thereafter, he established the President's Reorganization Project within the Office of Management and Budget. A Task Force on Civil Rights Reorganization was set up within the reorganization project.

The civil rights task force sought to evaluate and make recommendations for improving civil rights enforcement by

specific subject matter areas. The first area the task force studied was equal employment opportunity enforcement. All Federal agencies with equal employment opportunity enforcement responsibilities were closely examined and were asked for opinions and ideas as to how equal employment enforcement efforts could be improved.[4] The task force simultaneously solicited the views of private civil rights organizations and advocacy groups, and representatives from the business community and major labor organizations.[5] The task force also asked this Commission to reassess the agencies discussed in its 1975 report on Federal equal employment enforcement efforts.[6] The task force has also begun to assess Federal civil rights enforcement efforts in housing, education, and programs of Federal financial assistance.

Activity generated by the Task Force on Civil Rights Reorganization was only part of the reorganization effort during 1977, particularly in the area of employment. The Equal Employment Opportunity Commission, Civil Service Commission, and Departments of Labor and Justice each conducted independent evaluations of their current equal employment enforcement responsibilities and proposed or made major changes as a result.

EEOC, under the direction of the newly appointed Chair, Eleanor Holmes Norton, began a complete reorganization of its headquarters and field offices and redefined its approach to complaint processing and systemic litigation.

Other EEOC initiatives include: combining the agency's field investigation and legal personnel in unified field offices so that compliance process under Title VII is more cohesive; establishment of a specific program for accelerating the processing of new individual complaints by emphasizing early settlement procedures; creation of special teams to handle the backlog of complaints; and redefinition of the concept "reasonable cause" to ensure that a complaint has merit so that such "reasonable cause" findings will now be equivalent to an agency determination that a case is worth litigating.[7] While it is too early to judge the effectiveness of these initiatives, they do represent the kind of major reforms needed to enable EEOC to carry out its vital task.

The Labor Department conducted a detailed evaluation of its contract compliance program. Its major internal report recommended, among other things, consolidation of contract compliance responsibilities within the Department of Labor.[8]

The Civil Service Commission proposed to institute a number of special employment selection processes to correct

the underutilization of minorities and women in Federal employment.[9] In addition, the Civil Service Commission, together with the Office of Management and Budget, are involved in the Federal Personnel Management Project, a comprehensive study of Federal personnel management that is part of President Carter's executive branch reorganization effort. The project found inherent conflict between the Civil Service Commission's role in personnel management and its role in adjudicating complaints against the Federal personnel system. One remedy the project proposes is the creation of an independent counsel to handle appeals, including equal employment opportunity appeals.[10]

The Justice Department has moved to consolidate all equal employment litigation functions in the Civil Rights Division's Employment Section[11] and to resolve a longstanding dispute between the Department's Civil Rights Division and the Civil Division. For years the Civil Division's positions on equal employment law provided less protection to Federal employees with discrimination complaints than was afforded employees in the private sector by the Civil Rights Division. In late August, the Attorney General notified all U.S. attorneys and Federal agency general counsels that the Federal Government would henceforth apply the same equal employment opportunity

principles to its own employment practices that it imposes on private employers and State and local governments.[12]

Furthermore, all of the aforementioned agencies have finally arrived, after nearly 5 years of division, at a common position on uniform Federal guidelines for employee selection procedures.[13] These and similar efforts in the Federal agencies stem from motivation at the highest levels to support and carry out the President's commitments.

Interest in reorganization of the Government's civil rights efforts is not confined to the executive branch. In February Congressmen Don Edwards and Robert Drinan introduced legislation to reorganize both the equal employment and fair housing responsibilities of the Federal Government.[14] Major provisions in the bill include consolidating all Federal equal employment enforcement in EEOC, and giving cease and desist authority to both EEOC and HUD. Hearings were scheduled in January 1978 on the housing sections of the bill (Title II). Action on the employment sections of the bill (Title I) was postponed (with the sponsor's consent) until the President submitted his own employment reorganization plans.

More recently, the proposed Civil Rights Act of 1977[15] was introduced and submitted to the appropriate House subcommittees. This proposal would consolidate all civil

rights subject matter areas under one law, placing all enforcement responsibilities in the Department of Justice.

Additional congressional interest in civil rights reorganization is reflected in positions taken by such groups as the Congressional Black Caucus, which devoted considerable attention to this issue in 1977.[16] The Caucus favors substantially consolidating equal employment enforcement responsibilities in the Equal Employment Opportunity Commission and giving that agency primary policymaking authority for this program. The Caucus' position resembles that of the task force in that it opposes an immediate total consolidation.

With the foundation laid for a major reorganization of civil rights enforcement, close executive and legislative cooperation could lead to major improvements in the next 12 months.

The Commission, meanwhile, again urges that the Office of Management and Budget establish a Division of Civil Rights to be located in the Office of the Director, as a necessary step to further improve Federal civil rights enforcement.[17]

Notes to Civil Rights Reorganization

1. In particular, volumes II, V, and VII of the series of this Commission's reports entitled The Federal Civil Rights Enforcement Effort--1974 describe the difficulties the Federal Government has encountered in enforcing fair housing and equal employment laws and Executive orders, and in providing clear executive leadership to civil rights enforcement. Volumes II and V recommend substantial reorganization and restructuring of the enforcement process within Federal agencies. Volume VII calls for "comprehensive executive oversight and direction" in guiding the Federal civil rights effort.

2. Weekly Compilation of Presidential Documents, vol. 13, no. 7, Feb. 14, 1977.

3. Reorganization Act of 1977, 5 U.S.C. §501 (1977).

4. Separate meetings were held in July between task force members and representatives of the Departments of Justice and Labor, the Civil Service Commission, and the Equal Employment Opportunity Commission.

5. Among the civil rights groups were the Lawyers' Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, the Urban League, the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Education Fund, and the Women's Legal Defense and Education Fund. In the business community, a sample of task force contacts includes the Business Round Table, the Equal Employment Advisory Council, the U.S. Chamber of Commerce, and the National Association of Manufacturers. The major labor organizations included the American Federation of Labor-Congress of Industrial Organizations, the American Federation of Government Employees, and the International Union of Electrical, Radio, and Machine Workers.

6. The Federal Civil Rights Enforcement Effort--1974, vol. V, To Eliminate Employment Discrimination (1975). Commission staff evaluated changes and developments which had occurred since 1975 at the agencies discussed in volume V, as well as at the Employment Section of the Department of Justice's Civil Rights Division. A report was submitted to

the task force in September and published in December as The Federal Civil Rights Enforcement Effort--1977: To Eliminate Employment Discrimination, A Sequel (December 1977).

7. EEOC's reorganization plans are presented at length in the Bureau of National Affairs, Daily Labor Report (July 21, 1977).

8. U.S., Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Program's Task Force, Preliminary Report on the Revitalization of the Federal Contract Compliance Program (September 1977).

9. See U.S., Civil Service Commission, A Plan For Special Emphasis Employment Programs, revision of Sept. 19, 1977, developed by CSC Vice-Chairman Jules M. Sugarman.

10. "Federal Personnel Management Project, Option Paper Number One: Staffing and Equal Employment Opportunity" (Sept. 7, 1977). Numerous project recommendations for strengthening equal employment opportunity could, if adopted, eliminate some major barriers to the employment of minorities and women in Federal Government. For example, one proposal includes the modification of current provisions for providing preference for hiring veterans, who are more frequently male than female. The project also suggests, as one possible approach to affirmative action, the development by Federal agencies of self-imposed "consent decrees" which would set prescribed goals for hiring minorities and women and would be in operation until past discrimination is corrected.

11. A proposal to accomplish this consolidation was submitted by Drew S. Days III, U.S. Assistant Attorney General, Civil Rights Division, Department of Justice, to the Attorney General.

12. Griffin Bell, Attorney General, Memorandum to United States Attorneys and Agency General Counsels, "Title VII Litigation," Aug. 31, 1977.

13. Proposed Uniform Guidelines on Employee Selection Procedures were published jointly by the four agencies in the Federal Register for public comment on December 30, 1977. 42 Fed. Reg. 65542 (1977).

14. H.R. 3504, Civil Rights Amendments of 1977, Feb. 16, 1977. The proposed legislation has two titles. Title I, which would amend Title VII of the Civil Rights Act of 1964 and related equal employment provisions, and Title II, which would amend Title VIII of the Civil Rights Act of 1968 relating to fair housing.

15. H.R. 9804, Oct. 28, 1977.

16. See the detailed Reorganization Proposal for Federal Employment Rights Efforts (April 1977), which the Caucus sent to President Carter. The Caucus' letter of August 23, 1977, enabled it and other major civil rights groups to express a common position on reorganization to the Task Force on Civil Rights Reorganization.

17. See U.S., Commission on Civil Rights, The Federal Civil Rights Enforcement Effort--1974: To Preserve, Protect, and Defend the Constitution (June 1977).

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