EXTENSION AND AUTHORIZATION REQUEST FOR APPROPRIATIONS FOR THE U.S. COMMISSION ON CIVIL RIGHTS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

H.R. 2230

EXTENSION AND AUTHORIZATION REQUEST FOR APPROPRIATIONS FOR THE U.S. COMMISSION ON CIVIL RIGHTS

MARCH 24 AND APRIL 7, 1983

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EXTENSION AND AUTHORIZATION REQUEST FOR APPROPRIATIONS FOR THE U.S. COMMISSION ON CIVIL RIGHTS

THURSDAY, MARCH 24, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met at 9:33 a.m., in room 2226, Rayburn House Office Building Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Schroeder, Washington, Sensenbrenner, Gekas, and DeWine.

Staff present: Helen C. Gonzales, assistant counsel, and Philip Kiko, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

I'd like to first say that out there in the audience is minority counsel, Tom Boyd, who has been of much assistance to the subcommittee for quite a number of years. Tom is leaving the subcommittee—I guess he's been promoted since he will be working in a different part of the House Judiciary Committee. We are going to miss him very much. He's a great friend. But we welcome Phil Kiko, who we understand will replace Tom. So things are the same, but things change.

Yes, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I ask unanimous consent that the subcommittee permit the meeting this morning to be covered in full or in part by television broadcast, radio broadcast, and/or still photography, pursuant to rule 5 of the committee rules.

Mr. EDWARDS. Is there objection?

[No response.]

Mr. EDWARDS. The Chair hears none.

This is the first of two hearings regarding the extension and authorization of the U.S. Commission on Civil Rights. We are going to hear today from the former Chairman of the Commission, Dr. Flemming, and from representatives of organizations who are familiar with the Commission's work over the years. And then on April 7, we are going to hear from the current Chairman, Clarence Pendleton.

The Civil Rights Commission is an independent bipartisan agency created under the Civil Rights Act of 1957. Since that time, the Commission's life has been extended seven times and its jurisdiction broadened.

The last extension was in 1978 for a 5-year period, which expires on September 30, 1983. Therefore, in addition to reviewing the Commission's specific budgetary request, we must also extend its statutory authorization beyond September 30.

In his State of the Union Message, the President agreed that the Commission's life must be extended, since it is, and I quote the President, "an important part of the ongoing struggle for justice in America."

On Tuesday, I introduced H.R. 2230, which would extend the Commission's life for 15 years and authorize appropriations for fiscal years 1984, 1985, and 1986.

[A copy of the bill follows:]

[H.R. 2230, 98th Cong., 1st sess.]

A BILL To amend the Civil Rights Act of 1957 to extend the life of the Civil Rights Commission 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 1983".

EXTENDING LIFE OF COMMISSION

SEC. 2. Section 104(c) of the Civil Rights Act of 1957 (42 U.S.C. 1975c(c)) is amended by striking out "1983" and inserting "1998" in lieu thereof.

AUTHORIZATION LEVELS

SEC. 3. Section 106 of the Civil Rights Act of 1957 is amended—

(1) by striking out "$12,000,000" and inserting "$13,000,000" in lieu thereof;

(2) by striking out "1981" and inserting "1984" in lieu thereof; and

(3) by striking out the period at the end and inserting ", and such sums as may be necessary for the fiscal year ending September 30, 1985, and the succeeding fiscal year.".

Mr. EDWARDS. The Commission is the only independent Federal agency which oversees the civil rights enforcement efforts of all levels of government—Federal State, and local. Their studies and findings are frequently relied on not only by Congress but also by Federal agencies and the judiciary. Last Congress, the Commission's voting rights report, which cataloged continuing problems throughout the covered jurisdictions, contributed greatly to our deliberations on the Voting Rights Act extension.

A 15-year extension is appropriate at this time to send a signal to the Nation of our continuing commitment to the important mission of the Commission. In addition, a 15-year extension will provide stability for the Commission at a time when doubts have been raised about the ability of the Commission to maintain its independence.

I now yield to and recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I salute the chairman for calling prompt hearings on the legislation which extends the life of the Civil Rights Commission. At the outset, let me state that I intend to support an extension of the life of the Civil Rights Commission. I believe that it has performed an extremely useful function in highlighting civil rights abuses in the United States, since its creation in 1957. However, let me state that the Civil Rights Commission should not go without criticism in

some of the activities which it has undertaken, particularly in the last few years.

In the Wall Street Journal of Tuesday, March 22, 1983, Chester E. Finn, Jr., a professor of education and public policy at Vanderbilt University, wrote an op ed piece, which points out some of the problems that the Civil Rights Commission has been having. I would ask unanimous consent that Mr. Finn's article be placed following my opening statement.

Mr. EDWARDS. So ordered.

Mr. SENSENBRENNER. Mr. Finn particularly critizes the Civil Rights Commission for going a long way toward transforming democratic principles of universal applicability and great power into cynical gamesmanship. In part of his article he says that the Commission has addressed itself "to the decline of black farming in America"—apparently white farmers aren't having problems at all—"the adequacy of social services for battered women and the consequences of cutting the budget of the U.S. Department of Education."

Mr. Finn says "Such reports characteristically go well beyond fact finding and handwringing. They include a vigorous search for culprits, among whom the three favorites are the Reagan administration, other interests that compete for public resources, especially the defense establishment, in a pervasive racism, sexism, ageism, handicapism, et cetera, that the Commission manages to find practically everywhere it looks."

Going on, "But assigning guilt rarely ends the matter. The Commission typically goes on to exonerate its client groups from any responsibility for their own actions and to threaten the larger society with dire consequences, if it doesn't mend its ways."

Now I think that there is a a modicum of truth that rings to the accusations that Mr. Finn has made. One of the reasons why the Civil Rights Commission over the years got such tremendous prestige, is that it didn't draw itself into noncivil rights debates on funding levels and things like that are more properly debated by Congress without civil rights implications.

The concluding part of Mr. Finn's article says, "If the Civil Rights Commission is to regain the moral and intellectual authority that is its greatest resource, it has its work cut out for it."

This could very well require all the additional time the President is recommending, and parenthetically, I would say the chairman of the subcommittee as well.

Now I notice the former Chairman of the Civil Rights Commission, who presided over the activities that has caused this criticism to be printed in the largest daily newspaper in the United States, as well as representatives of certain of what Mr. Finn refers to as "client groups" are here this morning. I would hope this criticism would be viewed as constructive. I hope the testimony is given by our witnesses this morning, rather than merely stating that all is rosy in the Civil Rights Commission, would specifically respond to the criticism that has been published in the Wall Street Journal.

And I thank the Chairman.

[A copy of the article referred to by Mr. Sensenbrenner follows:]

From Civil Rights to Special Interests

(By Chester E. Finn, Jr.)

The threat by the U.S. Commission on Civil Rights to subpoena White House aides and other government officials who, it alleges have not handed over all the documents that it has demanded, is but the latest skirmish in the ongoing guerrilla war that the commission is conducting against the Reagan administration. Though the President has voiced support for extending the commission's statutory authority, now scheduled to expire in September, this shows considerable tolerance for pain as the commission has been a frequent and strident critic of his policies. Weeks seldom pass without front-page accounts of rebukes delivered by the commission to the White House for some inaction or misdeed.

Criticism is the commission's stock in trade. It makes no policies, runs no programs and issues no regulations. It is a watchdog agency without specific powers (other than the subpoena) or operational responsibilities.

The commission is, however, charged by law to gather and disseminate information, to conduct studies and to appraise federal laws and policies, all "with respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin.

Thus, the commission's mandate is at once vague and specific. It can look into pretty much whatever it likes, but is supposed to do so only when there is reason to suspect "discrimination" or "denial of equal protection" under one of the familiar proscribed categories.

How to Define Discrimination

The tough questions, of course, are what constitutes equal protection and how to define discrimination, which is equivalent to asking just what are the "rights" that the commission is charged with guarding. In the 1950s and early '60s, when the landmark laws establishing the civil rights enforcement apparatus were passed, such queries had straightforward answers. "Civil rights were those attendant to citizenship. They weren't to be abridged on account of one's external characteristics or those of any group or category to which one might belong. If a white could enter a hotel or restaurant, a black could not be barred. If a man could use the library or sit where he liked on a bus, so could a woman. If a Presbyterian could obtain a driver's license or buy a bottle of milk, a Catholic couldn't be stopped from doing the same. This didn't mean anyone was owed a bottle of milk—or a hotel room, a bus token or a love for literature—only that such couldn't be withheld from persons with the inclination and wherewithal to obtain them.

As the American welfare state expanded, however, the line between civil rights and social benefits blurred. Where once the responsibility of government had been to ensure that a person wanting to rent an apartment wasn't turned away by the landlord because of his color (age, religion, etc.), now the state was charged with providing housing to those who couldn't afford it. The right to purchase a loaf of bread was transformed into an entitlement to Food Stamps with which to pay the grocer. The right to have one's gender ignored by a prospective employer began to evolve into a right to preferential hiring on account of one's gender.

It was advantageous for supporters to characterize such activities as "civil rights" programs, for the designation vested their advocates and beneficiaries with a degree of nobility, selflessness and political morality that was denied their opponents. Who, after all, wanted to be portrayed as "against civil rights"? Thus this group of advocates successfully clothed even its most hyperphagic forays to the public treasury in raiments of social justice and cultural legitimacy that weren't easily donned by the dairy industry, the shipbuilders or the investment bankers. But what was in fact occurring couldn't be disguised: The civil rights movement was gradually acquiring the attributes of an interest group seeking more resources for its clients and—not altogether by chance—its own organizational budgets.

The Civil Rights Commission plunged into these battles with zest, alongside the many non-governmental organizations that are its primary constituencies. Because their number had mounted with every expansion of the commission's watchdog mandate, with the buildup of "protected" categories in the population, and with the efflorescence of social welfare programs, more and more of the routine decisions of government at every level came to be regarded by it as "civil rights issues." And, inevitably, the commission depicted Mr. Reagan's efforts to shrink the size, cost and intrusiveness of government as assaults on civil rights.

Thus in the past two years, the commission has addressed itself, *inter alia,* to the "decline of black farming in America," the adequacy of social services for battered

women and the consequences of cutting the budget of the U.S. Department of Education. Currently under way are studies of minority entrepreneurship, of poverty in single-parent households and of divers other social policy issues.

Such reports characteristically go well beyond fact-finding and hand-wringing. They include a vigorous search for culprits, among whom three favorites are the Reagan administration, the other interests that compete for public resources (especially the defense establishment) and the pervasive racism (sexism, ageism, handicapism, etc.) that the commission manages to find practically everywhere it looks.

But assigning guilt rarely ends the matter. The commission typically goes on to exonerate its client groups from any responsibility for their own actions, and to threaten the larger society with dire consequences if it doesn't mend its ways. Thus the incidence and ugly consequences of "spouse abuse" are attributed in part to the failure of government to supply "needed services" of sufficient scope and variety. The spread of intolerance is traced to social program retrenchments which "bigots * * * are quick to interpret * * * as a lack of government concern for minorities who are now fair game for attacks that are expected to go unchallenged."

Seldom does actual discrimination against individuals crop in commission reports and studies these days, and there isn't any sign of alarm about reverse discrimination, quotas or official race-consciousness. Rather, group entitlements, set-asides and "targeting" are the order of the day. The commission's appetite for generously funded aid and service programs appears insatiable. But by endeavoring to throw the apolitical mantle of civil rights over such interest-group advocacy, by impugning the motives of those who may place greater weight on other interests, by exonerating its clients from accountability for their own actions, by smiling at discrimination and favoritism when those same clients stand to profit, and by hinting that unpleasantness awaits those who don't share its priorities, the commission has gone a long way toward transforming democratic principles of universal applicability and great moral power into cynical gamesmanship.

Hence we may hope that in characterizing the commission as an "important part of the ongoing struggle for justice in America," Mr. Reagan wasn't endorsing the course on which it has for some time been embarked. The transformation of all social policy issues into "civil rights" issues doesn't make for honesty and tough-mindedness in either domain.

This was manifest in a little-noted address last October by James A. Joseph, president of the Council on Foundations, the members of which supply most of the non-governmental resources that underwrite the civil rights movement. "In our country where every citizen is granted the right to vote, to own property, and travel at will," Joseph said, "human rights have come to mean social and economic justice."

SUBTLETIES NOT UNDERSTOOD

He specified four "fundamental human rights issues of the 1980s: 'equal access to capital'; 'participatory governance in the work place'; equal access to energy'; and 'increased privileges for those who are aging.' "

In asserting that these goals "are not so much a proliferation of new rights as they are new forms of old commitment to promoting the general welfare," Mr. Joseph further blurred the distinction between civil rights and social and economic benefits. But that line had already been substantially erased by the by the Civil Rights Commission itself.

Some attempts to redraw it have been made by the commission's new chairman, an able Californian named Clarence Pendleton, who understands that the idea of civil rights loses its special hold on society's supergo when it becomes a social policy catchall; and that discrimination is always evil, even when its victim is a white male firefighter. But his five colleagues—one Reagan appointee and four hold-overs—either don't understand these subtleties or find it convenient to disregard them.

That the president's celebrated "social safety net" has some weak spots can't be denied. That a slack economy and widespread unemployment have eroded the material well-being of many is likewise beyond dispute. But to take a legitimate debate about the proper level of common provision and entangle it in the mechanisms whereby the society safeguards the elemental rights of individual citizens serves only to corrupt the debate and corrode the mechanisms. If the Civil Rights Commission is to regain the moral and intellectual authority that is its greatest resource, it has its work cut out for it. This could well require all the additional time that the president is recommending.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

Do any of the other members of the committee desire to make opening statements?

[No response.]

Mr. EDWARDS. Our first witness this morning is Dr. Arthur Flemming, who is president of the National Council on the Aging and chairman of the Citizens Commission on Civil Rights.

Dr. Flemming is a long-term friend of the committee. He is a former Chairman, of course, of the U.S. Commission on Civil Rights, and thus his observations and advice regarding the Commission are particularly valuable to the subcommittee.

So we welcome you, Dr. Flemming, and you may proceed.

TESTIMONY OF ARTHUR FLEMMING, PRESIDENT, NATIONAL COUNCIL ON AGING, CHAIRMAN, CITIZENS' COMMISSION ON CIVIL RIGHTS, AND FORMER CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

Dr. FLEMMING. Mr. Chairman, members of the committee.

First of all, I want to express my appreciation to the chairman and the members of the committee for providing me with the opportunity of testifying in support of the extension of the law authorizing the establishment of the U.S. Commission on Civil Rights.

I might say, Mr. Chairman, that I feel that you and your associates on this committee have rendered our Nation an outstanding service, in terms of the leadership that you have provided to the entire civil rights community. I have always appreciated the opportunity of appearing before this committee, presenting my views, and responding to your questions and comments.

I have noted Congressman Sensenbrenner's reference to an article in the Wall Street Journal. I have not had the opportunity of reading that article. I think that some of the comments that I am going to make will be responsive to some of the points raised by that article, but I will be glad to respond to questions based on that article.

Personally, I believe that this Nation needs the leadership that can be provided by a bipartisan, independent U.S. Commission on Civil Rights more than at any other time in the past 25 years.

An evaluation of the role that the U.S. Commission on Civil Rights has played and is playing, provides solid evidence for concluding that its work must be continued.

The Commission has been, and continues to be, on the cutting edge of the civil rights issues which confront our Nation. It hasn't hesitated to identify the hypocrisy that is embedded in condemnation of racism, bigotry, and discrimination, unaccompanied by a willingness to invest time, energy, and resources in programs designed to prevent the manifestations of racism, bigotry, and discrimination.

It hasn't hesitated to insist on the Federal Government's obligations and responsibilities not only to establish the right of access, for example, to education, jobs, and housing, but also to provide adequate financing for Federal programs designed to open up genuine opportunities in the fields of education and employment and housing for the victims of racism, bigotry, and discrimination.

The U.S. Commission on Civil Rights has and continues to provide the Nation with the results of indepth studies of civil rights issues, studies which help to construct a solid foundation of knowledge and understanding on which to erect action programs and to combat the myths surrounding these programs.

Its reports in the area of desegregation, reports which have been based on public hearings, field studies, and the work of scholars, have helped to keep this issue where it belongs—on the front burner—and to make it possible for us to move forward, in spite of well-organized opposition.

I have been impressed over the years by the affirmative comments that have been made to me about these reports by the workers in the vineyard—persons in both the executive and lgislative banches of the Federal Government, members of school boards, school administrators, and above all, the citizens of our communities who have fought and continue to fight the battle for desegregation.

The Commission's reports on affirmative action have proved to be of invaluable assistance to public and private administrators, who are determined to use the tools of administration in such a manner as to enable their organizations to achieve the objective of equal employment.

As indicated by the chairman's opening comments, this committee, perhaps better than any other group in our nation, is aware of the contributions made by the Commission's studies in the area of voting rights.

Then, in addition to the Commission's far-reaching studies in the area of housing, I also believe that it has been of great help to the Nation, when it focuses attention, for example, on the revival of hate groups, on the Federal response to domestic violence, on the decline of black farming, on police brutality, on civil rights issues on Indian reservations, on discrimination against women and minorities in television, and on discrimination on the basis of age, in delivering services supported in whole or in part by Federal dollars.

Twenty-five or twenty-seven years ago, President Eisenhower, after discussions with his Cabinet—I was fortunate to be a member of his Cabinet at that time—recommended that the Congress create an independent, bipartisan Commission on Civil Rights. I thought he was right then. Today, as I review the role the Commission has played and is playing, I know that he was right.

The Commision continues to monitor the implementation of civil rights law.

It has and continues to turn the spotlight on the fact that civil rights laws and court decisions will be of little help to the present and potential victims of discrimination, unless adequate funds are recommended for enforcement by the President and appropriated by the Congress.

It has and continues to make recommendations to the President and heads of departments and agencies for a more vigorous and hard-hitting implementation of the Constitution and the civil rights laws as interpreted by the Federal courts.

The existence of the Commission for more than 25 years has provided the Nation with the services of a competent, dedicated group

of career civil servants, who have made and are making a very significant contribution to the strengthening of the foundation on which the civil rights movement rests. They constitute a national asset we cannot afford to lose. These civil servants have been led by a group of staff directors, including the present, very effective Acting Staff Director, John Hope III, to whom our Nation is also indebted.

The services rendered by the career civil servants at the U.S. Commission on Civil Rights to the members of the Commission, and through them to the Nation, provide us with an excellent illustration of why our nation should honor and respect those who are willing to serve all of us through the career civil service—a service which came into existence 100 years ago last January.

The existence of the Commission for 25 years also has provided the Nation with the voluntary services over that period of time of several thousand members of the Commission's State Advisory Committees. Right now, there are approximately 800 persons serving on these committees providing the Commission and through the Commission their State and local governments and the civil rights workers in their communities with the benefit of their findings and recommendations, based on their experiences, their studies, and their public consultation.

The composite impact of the leadership provided by the members of these committees is difficult to convey in an adequate manner. It is clear, however, that they have made a very positive contribution to the attainment of the Nation's civil rights goal—a contribution that could not have been made in any other way.

Let me underline again, the fact that all of the members of these committees serve as volunteers. The State Advisory Committees, in my judgment, also constitute a national asset we cannot afford to lose.

An evaluation of the status of civil rights in our nations provides additional solid evidence that the work of the U.S. Commission on Civil Rights must be continued.

We are confronted with an all-out effort to either weaken or eliminate the methods which must be used if we are to be successful in implementing civil rights laws and court decisions.

The appropriation rider has been used successfuly to carry out this strategy. It has been used to set the Nation back in implementing *Brown* v. *Board of Education* in connection with the desegregation of public schools and the denial of tax-exempt status to private schools. The last session of the Congress, the Senate, with the support of the executive branch, attached a rider to the Justice Department appropriation authorization bill, which, if it had become law, would not only have tied the hands of the Justice Department in the area of desegregation, but would have seriously undermined the role of the courts, when it comes to prescribing remedies for the violation of constitutional rights.

Leaders in the executive branch of the Federal Government have taken sharp issue with reassignment of students, accompanied by assistance in transportation, to accomplish desegregation goals, and with the development and implementation of affirmative action plans, in order to achieve equal employment opportunity goals. These stands have been taken, in spite of the fact that the Federal

courts have upheld these methods. The outright hostility which has been expressed to methods of implementation has undermined morale at all levels of Government on the part of many persons engaged in civil rights enforcement activity.

In spite of vigorous representations by the U.S. Commission on Civil Rights and many leaders in the civil rights community, the Department of Housing and Urban Development has yet to issue meaningful regulations for the implementation of the fair housing law passed in 1969.

If we look at the status of civil rights at the present time, we cannot escape the conclusion that we are at a crossroad. At this point, the Nation needs an independent, bipartisan U.S. Commission on Civil Rights that will help it to combat a regressive movement in civil rights that is more interested in preserving the status quo than in paying the price that must be paid, if we are to deal effectively with the root causes of institutional discrimination.

We are confronted with an all-out effort to weaken or eliminate the role of the Federal Government in developing and supporting programs designed to give the victims of discrimination meaningful access to such areas as education, jobs and housing.

The reductions in appropriations accompanied oftentimes by inclusion in block grants of programs designed to provide Federal assistance to schools engaged in desegregation, the elimination of the Comprehensive Employment and Training Act—which hopefully is being replaced in part by recent and pending legislation, and the proposed virtual elimination of authorizations for subsidized low-cost housing—all are examples of a backward movement in the area of civil rights.

Similar illustration can be given in the health area where unfortunately the Nation has made very little progress in even beginning to implement effectively title VI of the Civil Rights Act of 1964.

An evaluation of the status of public opinion in the United States demonstrates that the work of the U.S. Commission on Civil Rights is needed by those who are the crusaders of equal opportunity out at the grass roots of our Nation.

There is more support for the basic values underlying the civil rights movement at the grassroots today than there was at any time in the 1960's or the 1970's.

The Harris polls and other polls on civil rights issues, particularly those dealing with desegregation demonstrate that a large majority of our people want to move forward—not backward—in the field of civil rights.

The Harris and other polls demonstrate that our people want to move forward—not backward—when it comes to Federal programs that relate to the poor, a large percentage of whom are members of minority groups.

The overwhelming support for the extension of the Voting Rights Act certainly testifies—among other things, to the fact that our selected representatives believe that the Nation wanted to move forward, not backward, in that area.

The support we find for the values underlying the civil rights movement should not surprise you. One of my favorite theologians, Dietrich Bonhoeffer, the German theologian who was executed by

the Nazis 2 to 3 days before the end of World War II—in one of his books he develops the theme that only those who obey believe.

Over a period of the last 20 years hundreds of thousands of persons in this country have decided to respond affirmatively to the constitutional and moral imperatives that are at the center of the civil rights movement.

Because they have obeyed, they believe. Because they have participated actively in desegregation programs within their own communities they have discovered that those programs have opened up genuine opportunities for members of minority groups that otherwise would not have existed.

They have discovered that desegregation programs bring communities together.

Many public and private administrators who initially resisted the idea of developing and implementing affirmative action plans have discovered by experience that when they use the tools of administration in order to achieve that particular management objective, that they gain great satisfaction out of discovering that they can open up the doors of opportunity for minorities and for women.

But those who are working in behalf of civil rights out at the grassroots, those who do believe in the values underlying the civil rights movement need help.

They need help in identifying the significant issues that arise when we become engaged in implementing civil rights laws and court decisions.

They need to be provided with the basic factual material that will help them and those who participate in discussion groups with them to understand the issues so that they can arrive at their own conclusions.

They need help in dispelling the myths that surround the implementation of civil rights programs.

In brief, the workers at the grassroots need the help and assistance they can receive from an independent bipartisan U.S. Commission on Civil Rights.

Mr. Chairman and members of the committee, you have under consideration the extention of the authorization of a very unique body in our Government.

It does not function as a part of any branch of the Federal Government except for housekeeping purposes. It is here to serve the President; it is here to serve the Congress of the United States; members of the judiciary have stated from time to time that it has been of help to them.

It is also here to serve all of the people of our Nation as together we struggle to make the rhetoric of the Constitution come to life in the lives of our people.

We need as never before an independent bipartisan U.S. Commission on Civil Rights that, with the help of a dedicated group of career servants and the dedicated volunteers that serve on the State Advisory Committee, will continue to stay out on the cutting edge of civil rights issues, that will conduct indepth studies and hold public hearings on fundamental civil rights issues, that will provide the people of our Nation with continuing leadership and that we'll never lose sight of the fact that it has the opportunity of acting as the "conscience of our Nation" in this all-important area.

I urge you to authorize the continuation of what, for some of us, is a very important institution—one that is needed now even more than it was 25 years ago when it was included in the Civil Rights Act of 1957.

Thank you very much.

[The full statement of Dr. Flemming follows:]

TESTIMONY OF

ARTHUR S. FLEMMING
PRESIDENT, NATIONAL COUNCIL ON THE AGING, INC.
AND
CHAIRMAN, CITIZEN'S COMMISSION ON CIVIL RIGHTS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS
COMMITTEE ON JUDICIARY
U. S. HOUSE OF REPRESENTATIVES

March 24, 1983
Rayburn House Office Building
Room 2237
9:30 a.m.

I. Introduction

A. Thank you for providing me with the opportunity of testifying in support of the extension of the law authorizing the establishment of the U. S. Commission on Civil Rights.

B. This nation needs the leadership that can be provided by a bi-partisan independent Commission on Civil Rights more than at any other time in the past 25 years.

II. Body

A. An evaluation of the role that the U. S. Commission on Civil Rights has played and is playing provides solid evidence for concluding that its work must be continued.

1. The Commission has been and continues to be on the cutting edge of the civil rights issues which confront our nation.

a. It hasn't hesitated to identify the hypocrisy that is imbedded in condemnations of racism, bigotry and discrimination unaccompanied by a willingness to invest time, energy and resources in programs designed to prevent the manifestations of racism, bigotry and discrimination.

b. It hasn't hesitated to insist on the Federal Government's obligations and responsibilities not only to establish the right of access to education, jobs, and housing but also to provide adequate financing for Federal programs designed to open up genuine opportunities in the field of education, employment and housing for the victims of racism, bigotry and discrimination.

2. The Commission has and continues to provide the nation with the results of in-depth studies of civil rights issues--studies which help to construct a solid foundation of knowledge and understanding on which to erect action programs and to combat the myths surrounding these programs.

   a. Its reports in the area of desegregation--reports which have been based on public hearings, field studies and the work of scholars--have helped to keep this issue where it belongs--on the front burner--and to make it possible for us to move forward in spite of well-organized opposition.

I have been impressed by the affirmative comments that have been made to me about these reports by the workers in the vineyard--persons in both the executive and legislative branches of the Federal government, members of school boards, school administrators, teachers and above all, the citizens of our communities who have fought and continue to fight the battle for desegregation.

b. The Commission's reports on Affirmative Action have proved to be of invaluable assistance to public and private administrators who are determined to use the tools of administration in such a manner as to enable their organizations to achieve the objective of equal employment.

c. This Committee, perhaps better than any other group in the nation, is aware of the contributions made by the Commission's studies in the area of voting rights.

d. Then, in addition to the Commission's far-reaching studies in the area of housing I also believe that it has been of great help to the nation when it focuses attention on the revival of hate groups, on the Federal response to domestic violence, on the decline of black farming, on police brutality, on civil rights issues on Indian reservations, and on discrimination against women and minorities in television.

3. The Commission has and continues to monitor the implementation of civil rights laws.

   a. It has and continues to turn the spotlight on the fact that civil rights laws and court decisions will be of little help to the present and potential victims of discrimination unless adequate funds are recommended for enforcement by the President and appropriated by the Congress.

b. It has and continues to make recommendations to the Presidents and heads of departments and agencies for a more vigorous and hard-hitting implementation of the Constitution and the civil rights laws as interpreted by the Federal courts.

4. The existence of the Commission for more than 25 years has provided the nation with the services of a competent dedicated group of career civil servants who have made and are making a very significant contribution to the strengthening of the foundation on which the civil rights movement rests. They constitute a national asset we cannot afford to lose.

   a. These civil servants have been led by a group of Staff Directors, including the present, very effective Acting Staff Director, John Hope III, to whom our nation is also indebted.

   b. The services rendered by the career civil servants at the U. S. Commission on Civil Rights to the members of the Commission, and through them to the nation, provide us with an excellent

illustration of why our nation should honor and respect those who are willing to serve all of us through the career civil service--a service which came into existence one hundred years ago last January.

5. The existence of the Commission for 25 years also has provided the nation with the voluntary services over that period of time of several thousand members of the Commission's State Advisory Committees.
    a. Right now there are approximately 800 persons serving on these committees--providing the Commission and, through the Commission, their State and local governments and the civil rights workers in their communities with the benefit of their findings and recommendations based on their experiences, their studies and their public consultations.
    b. The composite impact of the leadership provided by the members of these committees is difficult to convey in an adequate manner. It is clear, however, that they have made a very positive contribution to the attainment

of the nation's civil rights goals--a contribution that could not have been made in any other way.

c. Let me underline again the fact that all of the members of these committees serve as volunteers.

d. The State Advisory Committees also constitute a national asset we cannot afford to lose.

B. An evaluation of the status of civil rights in our nation provides additional solid evidence that the work of the U. S. Commission on Civil Rights must be continued.

1. We are confronted with an all-out effort to either weaken or eliminate the methods which must be used if we are to be successful in implementing civil rights laws and court decisions.

   a. The appropriation rider has been used successfully to carry out this strategy.

      It has been used to set the nation back in implementing Brown v. Board of Education in connection with the desegregation of public schools and

the denial of tax exempt status to private schools. At the last session of the Congress the Senate, with the support of the Executive Branch, attached a rider to the Justice Department appropriation authorization bill which, if it had become law, would not only have tied the hands of the Justice Department in the area of desegregation but would have seriously undermined the role of the courts when it comes to prescribing remedies for the violation of constitutional rights.

b. Leaders in the Executive Branch of the Federal Government have taken sharp issue with reassignment of students, accompanied by assistance in transportation, to accomplish desegregation goals, and with the development and implementation of affirmative action plans in order to achieve equal employment opportunity goals. These stands have been taken in spite of the fact that the Federal courts have upheld these methods.

The outright hostility which has been expressed to these methods of implementation has undermined morale at all levels of government on the part of many persons engaged in civil rights enforcement activities.

c. In spite of vigorous representations by the U. S. Commission on Civil Rights and many leaders in the civil rights community the Department of Housing and Urban Development has yet to issue meaningful regulations for the implementation of the Fair Housing law.

2. We are confronted with an all-out effort to weaken or eliminate the role of the Federal Government in developing and supporting programs designed to give the victims of discrimination meaningful access to such areas as education, jobs, and housing.

The reductions in appropriations, accompanied oftentimes by inclusion in block grants, of programs designed to provide Federal assistance to schools engaged in desegregation, the elimination of the Comprehensive Employment and

Training Act, (which hopefully is being replaced in part by recent and pending legislation), and the proposed virtual elimination of authorizations for subsidized low-cost housing all are examples of a backward movement in the area of civil rights. Similar illustrations can be given in the health area where unfortunately the nation has made very little progress in even beginning to implement effectively Title VI of the Civil Rights Act of 1964.

C. An evaluation of the status of public opinion in the United States demonstrates that the work of the U.S. Commission on Civil Rights is needed by those who are the crusaders for equal opportunity out at the grass roots of our nation.

1. There is more support for the basic values underlying the civil rights movement at the grass roots today than there was at any time in the 1960s or the 1970s.

    a. The Harris polls on civil rights issues, particularly those dealing with desegregation, demonstrate that a large majority of our people want to move forward--not backward--in the field of civil rights.

b. The Harris and other polls demonstrate that our people want to move forward--not backward--when it comes to Federal programs that relate to the poor, a large percentage of whom are members of minority groups.

c. The overwhelming support for the extension of the Voting Rights Act certainly testifies, among other things, to the fact that our elected representatives believed that the nation wanted to move forward--not backward--in that area.

2. Those who are working in behalf of civil rights at the grass roots need help.

   a. They need help in identifying the significant issues that arise when we become engaged in implementing civil rights laws and court decisions.

   b. They need to be provided with the basic factual material that will help them, and those who participate in discussion groups with them, to understand the issues so that they can arrive at their own conclusions.

c. They need help in dispelling the myths that surround the implementation of civil rights programs.

3. In brief, the workers at the grass roots need the help and assistance they can receive from an independent bi-partisan U. S. Commission on Civil Rights.

III. Conclusion

A. Mr. Chairman, and Members of the Committee, you have under consideration the extension of the authorization of a very unique body in our Government.

1. It does not function as a part of any branch of the Federal Government--except for housekeeping purposes.

2. It is here to serve the President; it is here to serve the Congress of the United States; members of the Judiciary have stated from time to time that it has been of help to them.

3. It is also here to serve all of the people of our nation as together we struggle to make the rhetoric of the Constitution come to life in the lives of our people.

B. We need as never before an independent bi-partisan U. S. Commission on Civil Rights that, with the help of a dedicated group of career civil servants and

the dedicated volunteers that serve on the State Advisory Committees, will continue to stay out on the cutting edge of civil rights issues, that will conduct in-depth studies and hold public hearings on fundamental civil rights issues, that will provide the people of our nation with continuing leadership and that will never lose sight of the fact that it has the opportunity of acting as the "conscience of our nation" in this all-important area.

C. I urge you authorize the continuation of what, for some of us, is a very important institution--one that is needed now even more than it was 25 years ago.

Mr. EDWARDS. Thank you very much, Dr. Flemming. As always you've brought us a most important message, and I recognize the gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. I'd like to join you in the comment greeting Dr. Flemming and expressing my regard for him and for what he has said to us today.

I gather you are satisfied with the Commission on Civil Rights as it exists today in terms of carrying out its responsibilities, and that your criticism really lies elsewhere—frustration at the lack of achievement for those interested in civil rights in this country; is that correct?

Mr. FLEMMING. Congressman, that is correct. Like all other groups of human beings that make up a particular body, I'm sure that those who are serving on it today would indicate that there are things that they could be doing that they're not doing, and I'm sure that they feel that there are steps that can be taken to improve the work of the Commission.

But in terms of the general thrust of the Commission's activities over a period of the last 25 years, I feel that the Commission has been headed in the right direction, I feel that the Commission has been providing the Nation with the kind of leadership that was envisaged when the Commission originally was brought into existence.

Mr. KASTENMEIER. Yesterday or the day before—it was the day before, on the 22d, Mr. Finn in a column in the Wall Street Journal describing the Commission says that "criticism is the Commission's stock in trade. It makes no policies, runs no programs, and issues no regulations. It is a watchdog agency without specific powers or operational responsibilities."

But he goes on to suggest that it's only in the last 2 years it is not doing everything it could and that "the Civil Rights Commission has gone a long way toward transforming democratic principles of universal applicability and great moral power into cynical gamesmanship." It concludes by saying that "if the Civil Rights Commission is to regain the moral and intellectual authority that is its greatest resource, it has its work cut out for it."

I take it you don't share the concern of Mr. Finn?

Mr. FLEMMING. Before you came in, Congressman Sensenbrenner also referred to that article and read me some extracts from the article.

I have not had the privilege of reading it and analyzing it in detail, but I am very much in disagreement with the general thrust of that article.

I gather from some of the material that has been read to me that I would be in sharp disagreement with some of the specifics in the article.

But I do not agree with the author's concept of the role of the U.S. Commission on Civil Rights.

Mr. KASTENMEIER. In sum, you would say that the Commission as presently constituted, and in the last couple of years, is still zealous in pursuing its goals?

Mr. FLEMMING. The Commission, as I see it, is functioning today as an independent bipartisan commission; it is out on the cutting edge of some of these issues. It is calling the shots as it sees them.

And I think that is its obligation and responsibility.

Mr. KASTENMEIER. Thank you.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. Dr. Flemming, I think that at least part of your statement confirms some of the criticism that Mr. Finn made in the article that appeared in the Wall Street Journal; that is, that the Commission has become mired in political arguments that really do not have a significant civil rights overtone: for example, whether or not certain programs should be turned into block grants, whether or not the CETA law should be revised as the Congress did revise it last year.

What I'd like to ask you is how the U.S. Commission on Civil Rights can imply that someone who does support block grants and who does support changing around the CETA law in a manner that we believe would be more effective in retraining people to take meaningful jobs are bigots or against civil rights.

Mr. FLEMMING. Let me first of all take your question relative to block grants. The Commission, while I was still Chairman, did issue a report in which in one of our chapters we called attention to what we considered to be some of the dangers, from a civil rights point of view, that are inherent in the block grant concept.

I'll just back up and say that after the Civil War, after the inclusion of the 13th, 14th amendments in the Constitution, the Congress passed some very good civil rights legislation under which it placed responsibilities on the Federal Government consistent with those amendments.

Then our Nation entered into a period of State-centered federalism, and as we all know, civil rights not only went on dead center, but it proceeded to move backward from that time down to *Brown* v. *Board of Education.*

Mr. SENSENBRENNER. That was a long time ago.

Mr. FLEMMING. Well, that was a long time ago.

Mr. SENSENBRENNER. The pendulum swung the other way and certainly States are as keen to civil rights issues as the Federal Government is now.

Mr. FLEMMING. I would not accept that generalization by any means. I'm sure that you and I could agree on certain States where their laws and the implementation of their laws would indicate that they are committed to civil rights objectives, but that is not a uniform situation existing throughout the country.

Now, unless block grants are accompanied by very specific and detailed Federal guidelines and standards in the area of civil rights, and unless the Federal Government accepts the responsibility for enforcing those guidelines and standards, the block grant concept will set us back insofar as the implementation of civil rights laws and court decisions are concerned.

I feel that the basic issue confronting us at the present time as a Nation is, do we have the commitment and the capacity to take the laws that are on the books, the Federal law—take the court decisions that have been handed down and implement them in such a way that they mean something to the lives of those who are the victims of discrimination?

And if we take the implementation of those laws and court decisions and just turn it over to the States without the Federal Gov-

ernment saying "All right, you got some money, you can use this money for certain types of programs, but you've got to use it in a manner that is consistent with the Constitution, with the Civil Rights Act, of 1964 and other civil rights acts, and we intend to follow up and we intend to enforce these standards"——

Unless that is done, then it is a backward move.

Mr. SENSENBRENNER. Let me point out how the Commission has hoisted itself on its own petard in some of its rhetoric: For example, about a year ago, the Commission issued a report that showed that the fiscal 1983 Reagan budget marks a new low point in civil rights enforcement.

However, according to the report, the administration planned to spend $536 million for civil rights enforcment throughout the Government in fiscal 1983, up from $527 million in the current fiscal year.

Now, that's the first time I have ever heard that a budget increase marked a new low in civil rights enforcement activity.

I think that this is the kind of thing that Mr. Finn was going after in his article, and apparently you don't recognize the problems that are involved where you say one thing and the statistics don't bear that out.

Mr. FLEMMING. Well, Mr. Congressman, you have now shifted over to another issue, namely, the analysis of the 1983 budget. I did not participate in that particular analysis——

Mr. SENSENBRENNER. But you're defending it. That's my point.

Mr. FLEMMING. Wait, wait a minute. You're saying I'm defending it. I assume that the Commission did present to this committee and to the Congress an accurate analysis of the situation, and I assume that the members of the Commission and the Staff Director are prepared to defend that analysis, and I am confident of the fact that if you asked them to defend that particular analysis, you will see that in certain areas that the resources available for implementation and enforcement are not the kind of resources that were available in either the preceding year or in 1981.

We've got to adjust these figures for inflation, we've got to do a lot of different things in order to discuss that.

Now, I'll be very glad, if you or the members of the committee would like me to, to take that particular report and analyze it and give you my own detailed response to the situation as far as 1983 is concerned.

Mr. SENSENBRENNER. I would just——

Mr. FLEMMING. I have complete confidence in the soundness of that analysis by the staff of the Commission as concurred in by the members of the Commission.

Mr. SENSENBRENNER. My point, Mr. Flemming is very simply this; if the Commission and its supporters do not accept the constructive criticism that appeared in the Wall Street Journal article, you are going to see the Commission become increasingly embroiled in partisan political struggles that go on in the Congress of the United States.

The Commission started out and performed a very useful function over the years as being a moral spokesman for democratic principles about which there should be no complaint in our society.

But when we start going into block grants, which is a question of Government organization more than civil rights, or how to revise the CETA law so that it becomes more effective in providing training tools to those who need them—I seem to recall that Senator Kennedy, whose civil rights record certainly cannot be criticized, was one of the principal authors of the CETA law revision—then I think all the Civil Rights Commission is doing is hurting itself in the long run.

Now, if you aren't going to listen to constructive criticism, then budgetary questions and reauthorization questions are going to also get drawn into the political thicket that goes on in this Congress.

I don't want to see that. The President has come out for reauthorization of the Civil Rights Commission and strengthened enforcement of the fair housing laws, but the decision on how universally supported the Civil Rights Commission will continue to be is really in your ball park rather than in ours.

Mr. FLEMMING. Mr. Congressman, may I respond to Congressman Sensenbrenner's comments?

Mr. EDWARDS. Sure.

Mr. FLEMMING. First of all, I would like to say that if the Congressman were acquainted in detail with the history of the Commission, as it has conducted its work over a period of 25 years, I think he would discover that in quite a number of instances the reports that it has filed with the President and with the Congress have been reports that have made Presidents of the United States very unhappy over the finding and recommendations, and there have been reports that have made leaders of both parties at times very unhappy over those findings and recommendations.

The idea that you can disassociate civil rights from our political system just doesn't make sense to me at all.

Now, on CETA because that has come up a couple of times. The position taken by the U.S. Commission on Civil Rights and a position which I would vigorously defend is this: We put a great deal of emphasis in this country on establishing the right of access to jobs without people being confronted with closed doors because of race, color, national origin, and creed.

That is great. We've got a long distance to travel in that particular area. All we've got to do is to look at the monthly unemployment statistic to bear that out. But it is one thing to establish the right of access to something, but if there isn't any opportunity to have access to something, what good is the right? And our feeling, our conviction was that CETA did open up some opportunities for people who had been the victims of discrimination to have access to jobs.

Now I would not say, the Commission would not say that the CETA Program was the last word in terms of a program to provide opportunities for persons who are victims of discrimination in the field of employment. My quarrel is over the fact that CETA was eliminated, and there was a gap—there has been a gap between CETA and, first, the training program, now, the Jobs Program, which has just now gone down to the President.

Mr. SENSENBRENNER. Dr. Flemming, the Congress last year replaced CETA with a bill called the Jobs Training Partnership Act, which was supported by the President and was drafted largely by

Senators Quayle and Kennedy, and it was a revision on how to target the funds in a more meaningful manner to people who are more in need of that. Now in my State, the wife of a justice of the State supreme court, who could hardly be termed a discriminated minority desperately in need of training, ended up holding down a CETA job for a period of some months. Now that can't be defended. And I think that's why the Congress revised that law.

Mr. EDWARDS. The time of the gentleman has expired. We would like to continue this interesting dialog, but I do think we have other witnesses too.

The gentleman from Michigan, Mr Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. Good morning. It is great to see you in good form as usual.

What we're trying to do, I guess, some of us is to improve the operation of the Civil Rights Commission. We start with the assumption that we approve why it was necessary to come into existence and acknowledge the good work that it has done. Then, of course, we turn to the inevitable Government question of how can we improve and your long insight would be helpful on that score.

Because Miami recently exploded, Gail Bowman, who is assistant counsel on my judiciary subcommittee, went down there and just got back. The question arose, what's the record of police abuse there. Is it on the increase? What are the numbers and the statistics? And I have been trying—to my shock, I was told we don't keep those records. Nobody apparently does, not the Department of Justice, not the FBI, not civil rights agencies. I forgot to call Julian Bond's organization in Atlanta, maybe they are doing it. But here's a very simple question of police violence, which has been a central problem to ending racism and discrimination for decades, and I was just wondering, could the Civil Rights Commission undertake this responsibility?

Mr. FLEMMING. Congressman Conyers, my suggestion or recommendation would be that Congress specifically assign that responsibility to one of the operating agencies of the Government, so that the Civil Rights Commission would then, in line with its major thrust, monitor the way in which that responsibility was being discharged. Typically, the Civil Rights Commission has not been given operating responsibilities. It has been looked upon as the agency that would conduct the basic studies to which I referred, and so on, and would also monitor what goes on within the executive and legislative branches. And I think that is a pretty good line of demarcation. I don't think it would be wise to turn the Civil Rights Commission into an operating agency.

But may I say that the issue that you identify is an issue that has been of real concern to the Commission. While I was Chairman of the Commission, we held a number of hearings in communities on that issue, Philadelphia, Houston. We held a national consultation on it. We did put out a statutory report on it. We did go to Miami after the first breakdown there and held 5 days of hearings, and resulted in a report which was issued after I left the Commission. But that, in my judgment, is one of the major issues confronting the country, and I believe that one of the important roles for the Commission is to keep monitoring the way in which that particular issue is being handled and to make recommendations to the

Congress and to the executive branch as to better ways of handling it.

Mr. CONYERS. Well, maybe we should get the Department of Justice to do it. And I think we will bring that up with the Attorney General or the head of the Criminal Division, because without those statistics, you're just clipping out of newspaper files and talking—you know, it's general talk. Things are getting worse, things are getting better, but this is an area of civil rights enforcement that needs a lot of accurate recordkeeping.

Mr. FLEMMING. This trend in the direction of reducing our statistic gathering or our fact gathering activities is a very unfortunate trend. And if it continues, it is going to make it very difficult for the Civil Rights Commission, for the Congress to monitor what is going on in the area of civil rights.

Mr. CONYERS. Well, now, suppose that there were 217 people like the chairman of the subcommittee around the Congress, how could we strengthen this operation? I mean, it's a—you know, I sometimes get the impression it is a nice organization with well-intentioned people. But good God, trying to get anything done—they're fighting half the Government, half the Congress, they're struggling for their own existence. They are usually underfunded and understaffed. How do we seize the offensive and turn this thing around?

Mr. FLEMMING. Congressman Conyers, first of all, may I say that the basic act creating the Commission has not been changed in a substantial way over the years. The jurisdiction has been expanded, and I think that has been all to the good. I do not recommend, myself, any changes in the basic legislation. One of the assets that the Commission has had has been the oversight activities of this committee, the interest of this committee. And this committee has taken an interest in the appropriation level of the Commission. Typically, the authorization figure that has been agreed upon by this committee and concurred in by the House has been a higher figure than the figure that has been reported out by the Appropriation Committee. In other words, this committee has tried to lift the sights of the Congress, in terms of the role that the Commission could play.

I would hope, one way or another, that this committee would keep in close touch with the needs of the Commission through its oversight function, and they can spell them out in detail, and then would serve as an advocate for the Commission in connection with the appropriation process. So that the Commission can have the kind of resources that are needed in order to do an increasingly effective job.

Mr. CONYERS. Finally, I was impressed with the Commission Chairman and Vice Chairman, I guess, the other day. They act like they are getting ready to stand on their hind legs and really make this operation work over there. Wasn't that a good signal?

Mr. FLEMMING. That was an action taken by the Commission as a whole; you're referring, I assume, to their putting the executive branch on notice that either they provide the information that had been requested or they would hold a hearing and subpoena the record. That was an excellent action on the part of the Commission.

Mr. CONYERS. Were you as surprised as I was?

Mr. FLEMMING. No, I wasn't necessarily surprised. I was delighted to see that action taken, because the law is very clear. The departments and agencies of the Government, the entire executive branch, the White House, and departments and agencies of the Government, have an obligation to supply the Commission with the information that it needs. If any part of the executive branch drags its feet on supplying that information, it is clear that the Commission should exercise the authority Congress has given it and subpoena that information. That was a very wise move. It was a very healthy move, it seems to me. It was encouraging to all of us.

Mr. EDWARDS. The time of the gentleman has expired. Thank you. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

Dr. Flemming, I too am a little bit concerned, with the notion that anyone who opposes any segment, wording, or phrase of anything the Civil Rights Commission does is somehow categorized as being anticivil rights. I worry about that a great deal. For instance, in my own communities in Pennsylvania, there are legislators who have a 100-percent good record on voting for extension of civil rights in open housing and in a variety of the momenta that have taken place over the last 15 years. Yet they are opposed to busing as an outright tool of desegregation, for the basic reason that every time busing has been used, the next consequence is extraordinarily high white flight, so to speak, from the very areas which seek to be blended proportionately, according to the ratio—the population that exists.

So when someone says there is a chance to preserve the population makeup of an urban center without busing, so that there is a blend of majority and minority students in a certain school district, what benefit is there by insisting on busing that will make a totally black area out of what was, for instance, in a white-and-black situation, one that was of mixed coloration?

Mr. FLEMMING. Congressman, you have opened up, of course, a number of very important issues. First of all, may I say this, that I do not believe in characterizing people as being anticivil rights or pro-civil rights, and so on, just on the basis of one particular—or a point of view on one particular issue. I believe in dealing with the issues as they come along on their merits.

Frankly, I feel that anyone who votes for a rider which is normally identified as a antibusing rider—you've got a rider attached to the Department of Education bill, appropriation bill, known as the Eagleton-Biden rider, which is called an antibusing rider. I feel that the people who vote for that rider are voting to weaken to a very considerable degree the ability of the executive branch to implement Brown versus Board of Education. I believe that on its merits. The Senate, when they passed the rider to which I referred in my testimony, attached to that rider certain findings. And one of their findings was a finding dealing with white flight. The Citizens Commission for Civil Rights that I now chair had put out a study on that particular rider.

We dealt first with the constitutional issues that are involved in that rider. Then we dealt with the findings of the Senate in the area of desegregation. And for example, we asked the question, What is the effect of busing on white flight and resegregation? We

said the second finding contained in the Helms-Johnson amendment is that busing causes greater racial imbalance because it results in an exodus of children from the public schools. The simple response to this statement, as reported in the previous section is, that there has been a consistent and significant increase in minority students attending predominantly white schools for more than a decade.

In addition, between 1968 and 1978, when many of the Nation's most comprehensive busing plans were implemented, the overall proportion of white students enrolled in public schools increased, while the proportion attending private schools declined.

A more complete answer is found in the uniform conclusion of social scientists who have studied the issue. There is no significant or lasting relationship between white flight and school integration in the Nation's largest cities. And then that is footnoted and a reference to all of the studies is included in that footnote.

The schoolbus has become such a normal part of our national life that the neighborhood school, defined as one to which students can walk, is an anachronism in many parts of the country. Indeed, one-half of the Nation's schoolchildren are bused to school, only 3.6 percent of whom participate in desegregation plans. Among families with actual experience with busing, both for convenience and to achieve desegration, there is no evidence that they leave the public school system, because their children are bused to school or bused particular differences. And here again, there is a reference to studies made by Rosell and Hawlick and quite a number of other studies.

The president of the National Association for Neighborhood Schools, an organization that strongly supported the Helms-Johnson amendment, has stated that the real issue for his organization is not busing, but "a perception of what has happened to the quality of education" as a consequence of school desegregation. Increasingly, social science data has shown that this perception is a product of ignorance and that it tends to change radically as people acquire actual experience with busing.

White flight originally was used to describe the post-World War II exodus of the white middle class from the inner city. This flight was attributed not to push factors that made the city less attractive, but to pull factors that made the suburbs more attractive. People were looking for larger homes with more lands. They found that the suburbs offered both for less than the city, due in part to lower tax rates and Federal housing loan policies.

At about the same time, business and industry started locating in the suburbs, so that job opportunities existed there as never before.

The same movement to the suburbs and beyond continues today and accounts for the vast majority of white flight currently identified by social scientists. My only plea is that before people jump to the conclusion that we should weaken the implementation of *Brown* v. *Board of Education* by so-called "antibusing riders," that they look at the evidence and evaluate the evidence. Now, after that is done, some people may arrive at a different conclusion than I would arrive at, but the point is, that we just jump to conclusions without looking at the evidence that is available.

Mr. GEKAS. Dr. Fleming, that sounded beautiful, but nobody can convince me that there is no connection with white flight to busing. That's the only thing I am saying. The meaning which I wanted to draw from you, and I think I did in your first statement, that one who looks at this very painfully and tried to arrive at conclusions and who is in favor of desegregation, but has all these other pressures having to do with busing, confronting the issue, that that kind of an individual isn't automatically tabbed by your Commission or anybody favoring the Commission as being anticivil rights. That is the one thing I wanted to draw.

Mr. FLEMMING. The individual that you described—I am not going to question—

Mr. GEKAS. I may call you to testify sometime.

Mr. FLEMMING. I would not question his motivation. I would disagree sharply with the conclusion that he arrives at, and I would disagree with that conclusion on the basis of the available evidence and the evaluation of that evidence.

Mr. GEKAS. Thank you.

Mr. EDWARDS. Mr. DeWine.

Mr. DEWINE. Mr. Chairman, thank you very much.

Dr. Flemming, after listening to your testimony and questions and answers and looking at the article in the Wall Street Journal, it seems to me that—I would like your comment after I make a comment.

Are we changing the role of the Civil Rights Commission, and are we looking at expanding the definition of civil rights? It seems to me that when we begin to talk about CETA programs, and the economic effect that a program may have on a minority, that the definition of civil rights is being expanded beyond what we may have meant by it, say, 20 years ago, 30. Would you agree with that or disagree with that? I'm not saying whether it is good or bad. I just am trying to discover what your definition is of civil rights, and by what is your definition of the role of this Commission.

Mr. FLEMMING. Congressman, I think you gathered from my testimony what my definition is. I mean, I tried to make it very clear. You use—your question is, has it been expanded from what it was 20 years ago? That brings us back to the 1960s. In the 1960s, the period when Congress passed some very significant legislation that was identified as civil rights legislation. The Civil Rights Act of 1964, the Voting Rights Act of 1965, the Fair Housing Act of 1968. At the same time, I do not think that this was just a coincidence. The Congress passed some very significant legislation under which the Federal Government accepted an obligation and a responsibility to grant access, the right of access, but to make sure that there was a realistic opportunity for access.

We don't have a very good record in the field of housing. Fair housing. We have done a very poor job as a nation in implementing that fair housing law. Part of it is due to the fact that the law itself is weak, but part of it is due to the fact that there hasn't been a commitment to the implementation of that law.

Let's assume that we were getting vigorous enforcement of it. If there is one thing to say—the people have rights under fair housing, but if housing isn't available, what good are the rights? If at the present time we are faced with a situation where the subsi-

dized, Low-Cost Housing Program, Federal Government's participation in the subsidized, low-cost program is going down to virtually zero, now, that's contrary to the philosophy, the approach, of the 1960s, when we got a Fair Housing Act, but we also had legislation designed to open up.

Mr. DEWINE. Yes. Doctor, I don't quarrel with that being a part of our national policy. I guess my—specific question—to you is, and you can take housing. Do you feel it is a function of your mission to comment on Federal legislation or Federal policy or the administration policy which does not deal at all with discrimination as far as the law, as far as legal ability to buy something, but rather, deals with something that you would perceive would hurt a minority economic, and therefore deprive them of the ability to do that?

In other words, are we moving from a legal interpretation of access to where you define your role as including commenting and dealing directly with legislation, with policies, that really are economic that would happen to impact—at least in your judgment—directly on a minority?

Mr. FLEMMING. I have answered that question in my testimony in the affirmative. I believe that is a role of the Commission.

Mr. DEWINE. OK. Doctor——

Mr. FLEMMING. The reason I believe that is we are dealing with elements in our—groups in our society who have been denied opportunities by reason of their race, color, national origin, creed, sex, and so on. The bottom line is whether or not those who have been denied opportunities are given opportunities.

Mr. DEWINE. Doctor, excuse me——

Mr. FLEMMING. And there is a two-step process here. One, to establish the right; and the second is to have made sure of the fact that you can exercise that right, and the two are linked together, and I think we have got to keep our attention focused on people, not on distinction—not on trying to draw fine lines of demarcation, but we have got to keep our attention focused on the people who in some instances for over 200 years were the victims of discrimination.

The U.S. Commission on Civil Rights has tried to keep focused on those people, and what does this Government need to do, what should this Government do, to open up opportunities for those people. I am not interested in drawing fine lines and saying, "Well, if you establish the right to access, then you don't——"

Mr. DEWINE. Doctor, excuse me——

Mr. FLEMMING [continuing] Have to worry about anything else."

Mr. DEWINE. I think I understand your position very well, and I think you are very eloquent in explaining it.

Just one last question, Mr. Chairman.

Wouldn't it be true, though, Doctor—there is no limit as far as your ability to comment on the policies of the national Government? In other words, everything we do in Congress, everything we do, from the decision on national defense, which might take money away from another program, everything we would do could very justifiably be argued directly impact on a minority.

Mr. FLEMMING. I don't agree with you there. I think there are——

Mr. DEWINE. There are limits.

Mr. FLEMMING. There are limits that should be kept in mind. I would confine the role to that of, say, with housing, since we have started with that, for purposes of illustration, I think the Commission has got to continue to be vitally interested in the failure on the part of the Government and our society to implement fair housing. But I think at the same time the Commission has got to continue to have an interest, a concern, about not only establishing the right to fair housing, but trying—but expressing itself on programs that are designed to make that right something more than a paper right, and make that right something that people really have the opportunity of exercising.

Mr. DEWINE. Thank you, Mr. Chairman. Thank you, Doctor.

Mr. EDWARDS. The gentlewoman from Colorado.

Mrs. SCHROEDER. Thank you, and we are honored to have you with us again this morning. I am not sure if anyone asked or not, but as we consider looking at reauthorization of the Commission, would you advise us giving subpoena powers to the Commission for uses with its hearings, also?

Mr. FLEMMING. Well, we—the Commission does have that power at the present time, and the Commission never holds a public hearing without utilizing that power. The power is restricted to a 50-mile radius——

Mrs. SCHROEDER. Yes.

Mr. FLEMMING [continuing]. In terms of the location of the hearing, and sometimes that proves to be a little bit inconvenient because you may want somebody that's beyond that 50 miles.

Now, actually, that can be handled. The Chairman of the Commission can appoint a subcommittee to hold a hearing 100 miles away from the site of the main hearing in order to get some evidence, and you can use the subpoenaing power at that particular time.

May I just give you an experience in connection with the start of the Commission? As I indicated, I was in President Eisenhower's Cabinet when the question of recommending the creation of a Commission came up, and some of my colleagues in the Cabinet said to the President, "Mr. President, you don't need legislation to establish this Commission. You could do it by Executive order."

And his response, and I was kind of surprised at the response, coming from a nonlawyer, was, "Yes, I could, but I couldn't give them the right to subpoena witnesses and put them under oath." And he said, "I think they're going to have to have that right if they're going to get the facts on top of the table."

Well, he was 100 percent right on that. The history of the Commission demonstrates that time and again we would have not been able to get the facts on top of the table in various parts of the country if we hadn't had that power. For example, when we held the police hearing, the hearing on police brutality, in Philadelphia—those were the days when Mr. Rizzo was the mayor—he instructed his solicitor to refuse to respond to our subpoena calling for certain documents.

Under the procedure, we then take it to the U.S. attorney, and the U.S. attorney goes into district court, asks for a court order. In this case, the district court judge turned down the U.S. attorney, and that was appealed immediately to circuit court of appeals, and

the panel hearing it unanimously upheld our right, and by the time that had been upheld, Mr. Rizzo was out of office and Mr. Green was in office, and we did not have any more trouble in getting it. But that right is very, very important.

Mrs. SCHROEDER. I guess what I want to know is would you—if you can live with the 50-mile radius—would you extend, then, the subpoena right to hear—not to hearings, you have got them for hearings—I mean for studies.

Mr. FLEMMING. Well, that latter question I hadn't got to. We do, in terms of the departments and agencies of the Federal Government, we now have the right to subpoena—well, what we have to—what the Commission has to do, what the Commission has to do is to call a hearing, which it is in the process of doing, and then, in connection with that hearing, subpoena the documents that it needs to study what's gone on in the executive branch, so that where documents are needed for purposes of making the study, there is a way of doing it.

I would really—I really feel that the committee should be governed by the feelings on the part of those who have been serving on the Commission during the past year—they have had some interesting experiences along this line—to see whether or not they feel that we have reached the point where it would be very helpful to extend that authority. That's really the only question.

Mrs. SCHROEDER. Yes.

Mr. FLEMMING. One way or another, under existing law, you can exercise that subpoena power, but you do have to take two or three steps, where Congress conceivably could amend the law in such a way that we would only have to take one step.

Mrs. SCHROEDER. I was especially interested in that because I chair the Civil Service Subcommittee, and, as you know, we have been very worried about many agencies not filing their affirmative action plans which state what their hiring procedures have been and so forth and I know that the current Civil Rights Commission is also interested in that and is trying to subpoena documents in that regard. But I find it incredible that a Federal commission has to go through all that Mickey Mouse to get the records out of other Federal agencies.

In other words, it seems like there must be some way everybody could be more cooperative. But, the EEOC tells me the only thing they can do with the Justice Department, who has refused to file an affirmative action plan, is go and have tea with them and try and convince them that it would be nice if they would do this, and then if they don't, surrender.

I mean, there is not much that they can do. You have a few more powers than that, but even that, it seems to me, gets a little convoluted in what you have to do to utilize them. When you are dealing with governmental entities that collect taxes from everybody equally, it seems to me they ought to meet their obligations without forcing EEOC and the Commission to go through a lot of rigmarole.

Mr. FLEMMING. I'll say two things. First of all, this is the first time that the Commission has been driven to the point of having to subpoena records. We have had problems in the past where somebody has delayed their response to our request and we have had to

go from one level to the top of the agency in order to get action and so on.

Mrs. SCHROEDER. You mean from the Federal Government?

Mr. FLEMMING. Yes. And I am talking about the Federal Government now.

But we have never had a situation where apparently they just made up their minds not to furnish the information, so this is the first instance of that.

I share your feelings of frustration, particularly on the issue that you identified, because, as one who served on the Civil Service Commission for 9 years, I have always felt that the Federal Government functioning in its capacity as an employer should set the example for the other employers in the country, and to have the Federal Government saying, "We are not going to respond to the law in terms of developing and implementing affirmative action plans" is a very serious matter, and somehow or other I hope that your committee and the Civil Rights Commission can get to the bottom of that, because I think that's an indefensible situation.

But to sum it up, I can see how the procedure could be made easier, but I am very, very glad that what has been built into the law is there, and I wouldn't want to run any risk of that being modified in any way, shape, or manner. For that reason, I would be—if I still had responsibility over there, I would be inclined, probably, to say that, well, I think I can live with this, and achieve the objectives that we want to achieve.

Mrs. SCHROEDER. Thank you.

Mr. FLEMMING. You're welcome.

Mr. EDWARDS. Thank you, Ms. Schroeder, and thank you very much, Dr. Flemming. Your testimony is immensely helpful.

Next we will have a panel presentation by three distinguished civil rights advocates who have greatly contributed to the civil rights struggles throughout the years. The panelists are Althea Simmons, a long-time associate of the National Association for the Advancement of Colored People; Arnoldo Torres, executive director of the League of United Latin American Citizens; and Ralph Neas, executive director of the Leadership Conference on Civil Rights.

I should point out at the outset that Mr. Torres, is leaving LULAC. He has been most helpful, for a long time, in many areas that the subcommittee deals with and that I personally am involved in. We hope that you will stick around Washington and make your services available, Mr. Torres.

Mr. TORRES. Are you offering me a job? [Laughter.]

Mr. EDWARDS. We will talk about that later. [Laughter.]

Ms. Simmons, you may proceed. Without objection, all three statements will be made a part of the record.

TESTIMONY OF ALTHEA T.L. SIMMONS, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; RALPH NEAS, EXECUTIVE DIRECTOR, LEADERSHIP CONFERENCE ON CIVIL RIGHTS; ARNOLDO S. TORRES, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS

Ms. SIMMONS. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to come and speak in behalf of our 1,800 branches in support of H.R. 2230 and the reauthorization of the U.S. Commission on Civil Rights.

The NAACP supports the 15-year extension of the life of the Commission for several reasons. First, the conditions which led to the establishment of the Commission still exist. Racism is alive and well, unfortunately.

Second, we find civil rights legislation difficult to enact and once enacted it's slow to be enforced, and sometimes it becomes necessary to spotlight inaction, delayed action, and/or reversals of civil rights. It is in that context that the Commission's work becomes most important. It is the sole agency with the general oversight responsibility in the Government, and we, in the civil rights community, my organization is 74 years old, call it the "conscience of the government."

During the past 2 years, the civil rights community has been involved in what I have termed a "thumb-in-dike" operation. We have been attempting to hold back what threatens to be a tidal wave of reversal of civil rights. The administration's support of tax exemptions to private schools that discrimination; the planned erosion of affirmative action by the Office of Federal Contract Compliance; the numerous activities of the Department of Justice regarding busing, court stripping; the drastic cuts in operating funds for Federal civil rights agencies; and as a matter of fact, if you want to flag just one thing, the refusal of the administration to speak out and take a forthright position with reference to the extension of the Voting Rights Act.

All of these, actions and inactions support the NAACP's position that the Commission is needed now more than ever before.

The wealth of information made possible by the monitoring of this Commission is invaluable. As a matter of fact, but for the information that the Commission had gathered pre-1965 and all the way down to the time we started the hearings on the Voting Rights Act, I would have been a yeoman's task to try and assemble the kind of information that was useful in informing the Congress of experiences under the act.

My predecessor, the legendary Clarence Mitchell, when he appeared before this subcommittee in 1978, said this:

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

We have utilized the Commission's work in citations and briefs before the courts. We have used its information to actually build up the kind of materials that we need in order to push for civil

rights, and it has been very helpful to have the State advisory committees, to have people of the stature that the Commissioners have been, because that has helped, also, in making the Commission the kind of entity that both friend and foes alike have been able to rely on.

I think independence of the Commission is absolutely mandatory because the Commission, serving as the Government's conscience, forces the Government to be introspective even when the Government does not want to be introspective, and I think that is possible only because it is independent.

Just recently, the Commission in its budget enforcement review systematically demonstrated there was a retreat underway in the civil rights area. We knew there was a retreat, but with the machinery the Commission had, it were able to put the information together so we could see it and say: "Here is information that shows what we have known, and we have picked up in bits and pieces, but here it is."

We urge your consideration if you do more than give it the straight extension, the 15-year extension—that you might want to give some consideration to the possibility of having subpoena authority nationwide for documents, which would facilitate the Commission's ability to speak generally rather than being limited as it presently is to a case study approach. I say that because a number of agencies, entities and civil rights groups rely very heavily on the research that the Commission engages in.

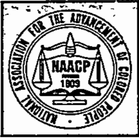
In conclusion, Mr. Chairman, I would certainly hope that not only will the Commission's life be extended but that it get the kind of budget authorization that is necessary in order to continue the quality and the quantity of its work.

I was somewhat dismayed several months ago in hearing the Chairman of the Commission in a Senate oversight hearing indicate that they needed fewer studies, they could get along with a smaller staff, and a decrease in budget.

As a member of the civil rights community of some long standing, it just didn't make sense to me. So we hope that this committee take into consideration the need for an appropriate budget for the Commission to carry out the responsibilities for which it has been established.

I certainly appreciate the opportunity to testify today.

[The complete statement of Ms. Simmons follows:]



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TESTIMONY

OF

ALTHEA T. L. SIMMONS

DIRECTOR, WASHINGTON BUREAU

OF THE

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

ON

EXTENSION OF AND AUTHORIZATION FOR THE U.S. COMMISSION ON CIVIL RIGHTS

MARCH 24, 1983

Mr. Chairman, and members of the Subcommittee, I appreciate the opportunity to appear before you today in behalf of the 1,800 branches and 38 state and area conferences of the National Association for the Advancement of Colored People to testify in support of the reauthorization of the U. S.Commission on Civil Rights.

The NAACP supports a 15 year extension of the life of the Commission for several reasons. First, the conditions which led to the establishment, in 1957, of the U. S. Commission on Civil Rights unfortunately still exists. Discrimination is alive and unfortunately well. Secondly, civil rights legislation is difficult to enact and once enacted is slow to be enforced. Sometimes, it becomes necessary to spotlight inaction, delayed action and/or reversals of civil rights. It is in this context that the work of the Commission becomes most important. It is the sole agency with general oversight responsibility in the Federal Government. It has aptly been referred to as the "conscience" of the government. If there ever was a time for what has been referred to as "consciousness-raising" in the government, that time is now.

During the past two years, the civil rights community has been involved in a "thumb-in-dike" operation attempting to hold back what threatens to become a tidal wave of civil rights reversals. The Administration's support for tax exemptions to private schools which discriminate; the planned erosion in affirmative action by the Office of Federal Contract Compliance; the numerous activities of the U. S. Department of Justice regarding busing, court stripping; the drastic cuts in operating funds for Federal civil rights agencies and the Administration's obstinate refusal to support the extension of the Voting Rights Act, to mention a few, supports the

NAACP's position that the Commission is needed more than ever in the years ahead.

The wealth of information made possible by the continuing monitoring of the enforcement of the Voting Rights Act—the studies and hearings held by the Commission pre-1965 and subsequent thereto were vitally important in providing the information needed by this Subcommittee and the Congress in determining that a 25 year extension of the Voting Rights Act was needed. The Commission has been the entity cited—reports, testimony, recommendations—in the deliberations on every piece of civil rights legislation considered by the Congress since its inception.

My predecessor, the legendary Clarence Mitchell, in his appearance before this Subcommittee in 1978, addressing himself to the need for the Commission stated:

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

The Commission's reports have been cited in briefs, speeches and other statements by a multitude of agencies and groups. Many of the groups which rely on the Commission's works are hard put to remember the arduous task of collecting information and interpreting it before the Commission's responsibilities were expanded so it could serve as a national clearinghouse of information.

We believe, Mr. Chairman, and members of the Subcommittee that the Commission's ability to feel the pulse of the national community through

state advisory committees combined with its monitoring of Federal agencies is essential in pinpointing the work yet to be accomplished in making equality of opportunity a reality for millions of Americans.

Independence of the Commission

The Congress wisely made the U. S. Commission on Civil Rights an independent, bipartisan entity and that independence should be--must be--retained. Independence is crucial to the role the Commission must play as the government's conscience. Its studies and reports have oftimes forced the government to be introspective even when it had no desire to look within. The Commission must maintain its integrity regardless of political winds of change and this is possible only if the Commission is separate from the Executive branch.

Just recently, the Commission in its budget enforcement review systematically demonstrated that there was a retreat underway in the civil rights area. But for the fact that the Commission was an independent entity, the review may never have seen the light of day because it is problematic as to. whether such a report would have been cleared for publication. Another example which comes to mind is the Commission's opposition to the Administration's retreat on Title IX coverage.

If the Commission is to serve the purpose for which it was created, this Congress must insure its independence.

Subpoena Authority

The NAACP urges this Committee and the Congress to broaden the subpoena authority of the Commission on Civil Rights to provide for its use in connection with studies as well as hearings and that the subpoena be nationwide for documents as this would facilitate the Commission's ability to speak generally rather than having to rely solely on a case-study approach.

It occurs to us that this would be less costly in that the Commission would not have to hold multiple hearings on the same subject and it would permit the Commission to gather information it cannot now gather without a hearing.

Conclusion

Mr. Chairman, the NAACP would be remiss if it did not mention several additional concerns. We urge the Committee to consider a provision in the bill reauthorizing the Commission which would allow the Commission to submit its budget to the appropriate Congressional committee and to the Office of Management and Budget simultaneously. Currently, the Commission's budget must be cleared through OMB and therefore its budget is reflective of what the Administration approves. The NAACP believes that simultaneous submission of the budget has some merit.

The Paperwork Reduction Act,which has been a worrisome issue for the civil rights community, poses some constraints on the Commission and its information gathering. Currently, the Commission must clear, through the Office of Management and Budget, any questionnaire that is to be sent to 10 or more people. This constraint effectively prevents survey research unless such research is deemed necessary by the Administration. We urge the Committee to consider the advisability of the Congress exempting the Commission from this requirement as has been done in the case of regulatory agencies.

Finally, Mr. Chairman and members of the Subcommittee, we urge an adequate funding level for the work of the Commission.

Thank you for this opportunity to express the NAACP's views on the need for the continued independence of the Commission; lengthening of the life of the Commission; nationwide subpoena authority for documents and adequate funding for the work of the Commission.

Mr. EDWARDS. Thank you, Ms. Simmons.

Mr. Arnoldo Torres.

Mr. TORRES. Mr. Chairman, thank you very much for your very kind compliments of my work as a representative of the league. That was very kind of you.

For the record, my name is Arnold S. Torres. I am the national executive director for the League of United Latin American Citizens, this country's oldest and largest Hispanic organization. We are honored to be given this opportunity to testify before this subcommittee on the extension of and authorization for the U.S. Commission on Civil Rights, and to strongly indicate our support for H.R. 2230.

Members of this subcommittee and the full Judiciary Committee are well aware of the work that the U.S. Commission on Civil Rights has done to educate the public, uncover discrimination, investigate and recommend remedies for the attainment of equal rights for all Americans.

Since the inception of the Commission in 1957, it has given a great deal of attention to investigating transgression of voting rights. A group of Americans facing major problems in their quest for full participation in American society has been black Americans. The Commission was and has been instrumental in bringing about the passage of the Voting Rights Act as a result of many of the works that it has conducted.

In addition, a great deal of its work has served as a stimulus for change in the treatment of black Americans. Recognizing the institutional racism confronting the fight for equal rights of the black Americans, the Commission has waged a relentless effort in identifying, investigating, and recommending improvements in equal protection laws to Congress and the President.

With regard to the Hispanic community, the Commission has begun to take notice of the fact that civil rights violations are a major occurrence. In 1975, the Commission published a report entitled "A Better Chance to Learn: Bilingual-Bicultural Education," in which we were informed of the educational need and merits of bilingual-bicultural education.

We have seen, since then, Commission reports on issues of major concern to our community, such as immigration, unemployment data, employment discrimination, police-community relations, and voting rights. Many of these reports were either completed or developed during the mid-to 1970's (sic). This would appear to coincide with the phenomenal growth of the Hispanic population in this country from 1970 to 1980.

The U.S. Bureau of the Census has reported that the Hispanic community increased 61 percent during these 10 years. This significant population growth has brought about, unfortunately, with it, growing civil rights concerns and problems confronting Hispanics. During the 1970's, the American public and its institutions have begun to recognize that Hispanic Americans are indeed a major minority group in this country with major civil rights problems requiring specific attention.

It is, however, imperative that we recognize the need to focus more attention on the problems confronting our groups. The phenomenal population growth cited also brings with it growing oppo-

sition to Hispanics from American society in general. Historically this has been the reaction to immigrants and now so too are, Hispanics encountering major civil rights problems. Due to the ignorance most Americans have of Hispanics, and due to the general neglect of Hispanic concerns, we are presently confronted with a major population group which feels it is being denied coverage of equal protection laws and regards Government institutions responsible for enforcement of such laws and unaware and uninterested in understanding the Hispanic experience.

The Commission in conducting the reports we have indicated has recognized some of these problems and has begun to take some action. Furthermore, we strongly believe that the Commission must have more Hispanics in policymaking positions and should undertake an outreach effort to the Hispanic community.

It is not our desire nor intention that the Commission solely focus on Hispanic concerns, but rather that there be an integration of our views in the work conducted by the Commission when appropriate.

It is clear to us that the work of the Commission is never ending, but rather, ever-increasing. Therefore, with regards to the extension of and authorization of the U.S. Commission, we would recommend, one, that the Commission be extended for 15 years. Recognizing the major issues and work ahead, the Commission should have the stability needed in order to develop its longitudinal studies as well as to set in motion a short- and long-term study agenda.

Furthermore, this time period would coincide with the extension of the Voting Rights Act of 1982 which the Commission has a primary responsibility for monitoring and assessing. In addition, American society, especially those most concerned with their civil rights, should know that Congress is firmly committed to the continuation of the work of the Commission.

Reauthorization. Based on the scenario we have previously outlined, the Commission will be confronting an additional request for examination of civil rights concerns. We believe that the Commission should establish a specific program to undertake ongoing studies of civil rights problems confronting immigrant groups in the United States.

This recommendation with regards to reauthorization and the funding levels, is very important, because all immigrant groups to this country, whether they be white, black, green, red, orange or whatever color or cultural background, have always gone through significant adjustment periods in this country, and some, unfortunately, have never been allowed to be part of American mainstream. So consequently, they are continually having civil rights problems. So I believe that as we see the future, or we can anticipate the future, based on the present and past, we can easily see future population movements, of people from other countries to the United States. Whether we want to accept it or not, they will be a part of American society.

There is a need to begin to focus on the problems that will confront these immigrant groups as they become, hopefully, integrated and part of American mainstream. In addition, due to the need to better educate the general public as well as to educate affected groups to the work of the Commission, funding should be targeted

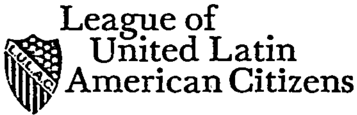
for educational outreach programs. We would recommend that for fiscal 1984, 1985, and 1986 the Commission be authorized to spend $14.5 million, which would reflect an increase of $2.4 million in the Reagan administration request for fiscal year 1984.

National subpoena. I believe that the representative of the NAACP has given a very good rationale for the need for national subpoena powers with regards to information. We regard the fact that the inability to secure information at times on the national level has, in fact, stifled the investigative and research efforts by the Commission and in fact has stopped them from conducting certain reports as accurately as they would have liked to.

In closing, we are well aware of the criticism which has been vented toward the U.S. Commission on Civil Rights for its work in identifying civil rights problems. The critics have indicated that the Commission has viewed and discussed these problems in a very narrow and preconceived manner. Unfortunately, the Commission is responsible for informing us about aspects of American life which most people find unacceptable, and at times, extremely abhorrent. Nonetheless, the Commission must continue to serve as our conscience for human dignity and respect. If the Commission needs improvements, let us work together to ensure that they are brought about in a responsible and logical fashion. We must not allow the bad news to serve as our stimulus to respond to the Commission, but rather, the information it provides should serve as a rallying point for the cause of equal protection and treatment of all Americans.

Thank you very much, Mr. Chairman, and I would certainly entertain and appreciate very much to get as many questions for this panel as the first speaker got, on the Finn article.

[Mr. Torres' full statement follows:]



Office of National President
TONY BONILLA

TESTIMONY

BEFORE

HOUSE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

REGARDING

EXTENSION AND AUTHORIZATION OF THE U.S. COMMISSION

ON CIVIL RIGHTS

PRESENTED BY

ARNOLDO S. TORRES
NATIONAL EXECUTIVE DIRECTOR

MARCH 24, 1983

P. O. DRAWER 5427 2590 MORGAN AVENUE CORPUS CHRISTI, TEXAS 78405 512/882-8284
400 FIRST STREET, N. W. SUITE 716 WASHINGTON, D. C. 20001 202/628-0717

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE HOUSE SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS. I AM ARNOLDO S. TORRES, NATIONAL EXECUTIVE DIRECTOR OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC). LULAC IS THIS COUNTRY'S OLDEST AND LARGEST HISPANIC ORGANIZATION WITH OVER 100,000 MEMBERS IN 45 STATES. WE ARE HONORED TO BE GIVEN THIS OPPORTUNITY TO TESTIFY BEFORE THIS SUBCOMMITTEE ON THE EXTENSION OF AND AUTHORIZATION FOR THE U.S. COMMISSION ON CIVIL RIGHTS.

THE MEMBERS OF THIS SUBCOMMITTEE AND FULL JUDICIARY COMMITTEE ARE WELL AWARE OF THE WORK THE U.S. COMMISSION ON CIVIL RIGHTS HAS DONE TO EDUCATE THE PUBLIC, UNCOVER DISCRIMINATION, INVESTIGATE AND RECOMMEND REMEDIES FOR THE ATTAINMENT OF EQUAL RIGHTS FOR ALL AMERICANS. IT HAS OFTEN TIMES BEEN ABLE TO FORECAST POTENTIAL CIVIL RIGHTS PROBLEMS AS WELL AS TO EFFECTIVELY INVESTIGATE AND MONITOR AREAS OF MAJOR CONCERN. PERHAPS MORE IMPORTANTLY THE COMMISSION HAS SERVED AS A NEVER-ENDING VOICE FOR EQUAL RIGHTS, A VOICE THAT CONSTANTLY EMPHASIZES EQUITY AND JUSTICE.

SINCE THE INCEPTION OF THE COMMISSION IN 1957, IT HAS GIVEN A GREAT DEAL OF ATTENTION TO INVESTIGATING TRANSGRESSIONS OF VOTING RIGHTS. A GROUP OF AMERICANS FACING MAJOR PROBLEMS IN THEIR QUEST FOR FULL PARTICIPATION IN AMERICAN SOCIETY WERE BLACK-AMERICANS. THE COMMISSION WAS AND HAS BEEN INSTRUMENTAL IN BRINGING ABOUT THE PASSAGE OF THE VOTING RIGHTS ACT. IN ADDITION, A GREAT DEAL OF ITS WORK HAS SERVED AS A STIMULUS FOR CHANGE IN THE TREATMENT OF BLACK-AMERICANS. RECOGNIZING THE INSTITUTIONAL RACISM CONFRONTING THE FIGHT FOR EQUAL RIGHTS FOR BLACK-AMERICANS, THE COMMISSION HAS WAGED A RELENTLESS EFFORT IN IDENTIFYING, INVESTIGATING AND RECOMMENDING IMPROVEMENTS IN EQUAL PROTECTION LAWS TO CONGRESS AND THE PRESIDENT.

WHILE THE COMMISSION HAS BEEN EFFECTIVE IN RAISING THE CONSCIOUSNESS OF AMERICAN SOCIETY TO THE CIVIL RIGHTS OF BLACK-AMERICANS, IT HAS ALSO SERVED TO EXPOSE TO THE PUBLIC THE STATE OF CIVIL RIGHTS AFFAIRS CONFRONTING AMERICANS IN GENERAL. IT HAS BEEN ABLE TO EDUCATE ALL OF US TO THE REALITY THAT CIVIL RIGHTS VIOLATIONS CAN AND DO AFFECT ALL OF US REGARDLESS OF ETHNICITY, SEX, RELIGIOUS BELIEF, COLOR OR PHYSICAL STATUS.

With regard to the Hispanic community, the Commission has begun to take notice of the fact that civil rights violations are a major occurrence. In 1975, the Commission published a report entitled "A Better Chance to Learn: Bilingual/Bicultural Education, in which we were informed of the educational need and merits of bilingual/bicultural education. We have seen since then Commission reports on issues of major concern to our community, such as immigration, unemployment data, employment discrimination, police-community relations, and voting rights.

Many of these reports were either completed or developed during the mid- to late-1970's. This would appear to coincide with the phenomenal growth of the Hispanic population in this country from 1970 to 1980. The U.S. Bureau of the Census reported that the Hispanic community increased 61% during these ten years. This significant population growth in ten years also brought with it growing civil rights concerns of Hispanics. During the 1970's the American public and its institutions have begun to recognize that Hispanic-Americans are indeed a major minority group in this country with major civil rights problems requiring specific attention.

It is, however, imperative that we recognize the need to focus more attention on the civil rights problems confronting the fastest growing minority group in American society. The phenomenal population growth cited, also brings with it growing opposition to Hispanics from American society. As has historically been the reaction to immigrants and non-Anglo groups, Hispanics are encountering major civil rights problems. Due to the ignorance most Americans have of Hispanics, and due to the general neglect of Hispanic concerns, we are presently confronted with a major population group which feels that it is being denied coverage of equal protection laws and regards government institutions reponsible for enforcement of such laws as unaware and uninterested in understanding the Hispanic experience. The Commission in conducting the reports we have indicated has recognized some of these problems and has begun to take action.

Areas of major concern to Hispanics are school segregation which studies indicate Hisapnic children are the most segregated group in American public education, discrimination in higher education, violence perpetrated by hate groups and the constant civil rights violations of migrant farmworkers. These are projects we believe the Commission should begin to investigate as soon as possible.

FURTHERMORE, WE BELIEVE THE COMMISSION MUST HAVE MORE HISPANICS IN POLICY-MAKING POSITIONS AND SHOULD UNDERTAKE AN OUTREACH EFFORT TO THE HISPANIC COMMUNITY. IT IS NOT OUR DESIRE NOR INTENTION THAT THE COMMISSION SOLELY FOCUS ON HISPANIC CONCERNS, BUT RATHER THAT THERE BE AN INTEGRATION OF OUR VIEWS IN WORK CONDUCTED BY THE COMMISSION WHEN APPROPRIATE. THE WORK DONE BY THE COMMISSION THUS FAR MUST NOW BE FOLLOWED UP BY ADDITIONAL EFFORTS FOR AS OUR POPULATION GROWS, SO TOO WILL OUR EXPECTATIONS, AS WELL AS THE RELUCTANCE TO ALLOW OUR FULL PARTICIPATION IN MAINSTREAM AMERICA. A GOOD EXAMPLE OF THIS ATTITUDE IS EXHIBITED BY THE ANTI-IMMIGRANT SENTIMENT AND THE ANTI-CIVIL RIGHTS POLICIES THE U.S. GOVERNMENT HAS RECENTLY ENACTED.

THE COMMISSION, IN ITS WORK, HAS BROUGHT ABOUT A GROWING RECOGNITION OF CIVIL RIGHTS PROBLEMS ALSO CONFRONTING WOMEN, THE HANDICAPPED AND HAS INDICATED UNDERTAKING MAJOR STUDIES TO EXAMINE RELIGIOUS DISCRIMINATION, AND EMPLOYMENT DISCRIMINATION CONFRONTING EASTERN AND SOUTHERN EUROPEAN GROUPS.

IT IS CLEAR TO US THAT THE WORK OF THE COMMISSION IS NEVER-ENDING BUT RATHER EVER-INCREASING. WE HAVE HAD SOME MAJOR CONCERNS WITH THE LACK OF SUPPORT THE REAGAN ADMINISTRATION AND SOME MEMBERS OF CONGRESS HAVE DEMONSTRATED FOR ENFORCEMENT OF CIVIL RIGHTS LAW AND ESPECIALLY THE COMMISSION. RECENTLY, WE READ OF THE COMMISSION'S EFFORTS TO SECURE CIVIL RIGHTS INFORMATION FROM THE WHITE HOUSE AND FEDERAL AGENCIES WHO HAD BEEN UNCOOPERATIVE AND HAD IGNORED REPEATED REQUESTS. WE HAVE SEEN AND OUR COMMUNITY HAS EXPERIENCED THE CONSEQUENCES OF THIS NON-ENFORCEMENT AS WELL AS EFFORTS TO DISMANTLE AND UNDERMINE CIVIL RIGHTS LAW. THIS REGRESSION, COUPLED WITH A GROWING NEED BY HISPANICS AND OTHERS TO HAVE THEIR CIVIL RIGHTS CONCERNS ADDRESSED, RESULT IN THE NEED FOR A STABLE, FULLY SUPPORTED AND ADEQUATELY FUNDED COMMISSION ON CIVIL RIGHTS. THEREFORE, WITH REGARDS TO THE EXTENSION OF AND AUTHORIZATION OF THE U.S. COMMISSION ON CIVIL RIGHTS, WE WOULD RECOMMEND THAT:

- COMMISSION BE EXTENDED FOR 15 YEARS

  RECOGNIZING THE MAJOR ISSUES AND WORK AHEAD, THE COMMISSION SHOULD HAVE THE STABILITY NEEDED IN ORDER TO DEVELOP ITS LONGITUDINAL STUDIES AS WELL AS TO SET IN MOTION A SHORT- AND LONG-TERM STUDY AGENDA. FURTHERMORE, THIS TIME PERIOD WOULD COINCIDE WITH THE EXTENSION OF THE VOTING RIGHTS ACT OF 1982 WHICH THE COMMISSION HAS A PRIMARY RESPONSIBILITY FOR MONITORING AND ASSESSING. IN ADDITION, AMERICAN SOCIETY, ESPECIALLY THOSE MOST CONCERNED WITH THEIR CIVIL RIGHTS SHOULD KNOW THAT CONGRESS IS FIRMLY COMMITTED TO

THE CONTINUATION OF THE WORK OF THE COMMISSION.

UNFORTUNATELY, THE NEED TO MONITOR, INVESTIGATE AND RECOMMEND IMPROVEMENTS OF CIVIL RIGHTS MATTERS CONFRONTING AMERICANS, WILL UNDOUBTEDLY CONTINUE WITH US. WE DO NOT BELIEVE THAT THE COMMISSION NEEDS REAFFIRMING EVERY FIVE YEARS, RATHER OUR COMMITMENT FOR COMMISSION WORK SHOULD BE MADE CLEAR AND SHOULD BE STABLE.

- <u>REAUTHORIZATION</u>

BASED ON THE SCENARIO WE HAVE PREVIOUSLY OUTLINED, THE COMMISSION WILL BE CONFRONTING ADDITIONAL REQUESTS FOR EXAMINATION OF CIVIL RIGHTS CONCERNS. WE BELIEVE THAT THE COMMISSION SHOULD ESTABLISH A SPECIFIC PROGRAM TO UNDERTAKE ON-GOING STUDIES OF THE CIVIL RIGHTS PROBLEMS CONFRONTING IMMIGRANT GROUPS IN THE U.S. IN ADDITION, DUE TO THE NEED TO BETTER EDUCATE THE GENERAL PUBLIC AS WELL AS TO EDUCATED AFFECTED GROUPS TO THE WORK OF THE COMMISSION, FUNDING SHOULD BE TARGETED FOR EDUCATIONAL OUTREACH PROGRAMS. WE WOULD RECOMMEND THAT FOR FY'84, '85, '86, THE COMMISSION BE AUTHORIZED TO SPEND $14.5 MILLION WHICH WOULD REFLECT AN INCREASE OF $2.4 MILLION IN THE REAGAN ADMINISTRATION'S REQUEST FOR FY'84. THESE MONIES SHOULD BE TARGETED FOR ONGOING STUDIES OF CIVIL RIGHTS PROBLEMS CONFRONTING IMMIGRANTS AND FOR EDUCATIONAL OUTREACH.

- <u>NATIONAL SUBPOENA</u>

THE COMMISSION'S QUEST FOR INFORMATION PERTAINING TO CIVIL RIGHTS MATTERS SHOULD NOT BE IMPEDED, AND IN FACT, MUST BE EXPANDED BEYOND ITS EXISTING 50 MILE SUBPOENA POWERS. WE BELIEVE THE COMMISSION SHOULD BE AUTHORIZED NATIONAL SUBPOENA POWERS SO AS TO INSURE THAT ITS WORK IS THOROUGH AND ACCURATE. THE PRESENT 50 MILE LIMITATION IS EXTREMELY CUMBERSOME AND SERVES, AT TIMES, AS A MAJOR OBSTACLE TO THE COMMISSION'S MONITORING AND INVESTIGATIVE EFFORTS. THIS LIMITATION HAS, AND WILL CONTINUE TO, HINDER THE COMMISSION'S RESEARCH EFFORTS AND BECAUSE OF THE INABILITY TO SECURE CERTAIN INFORMATION WILL STIFLE ITS MISSION. WE REGARD THE NEED FOR NATIONAL SUBPOENA POWERS AS BEING IMPERATIVE IF THE COMMISSION IS TO CONTINUE ITS WORK.

IN CLOSING, WE ARE WELL AWARE OF THE CRITICISM WHICH HAS BEEN VENTED TOWARDS THE U.S. COMMISSION ON CIVIL RIGHTS FOR ITS WORK IN IDENTIFYING CIVIL RIGHTS PROBLEMS.

THE CRITICS HAVE INDICATED THAT THE COMMISSION HAS VIEWED AND DISCUSSED THESE PROBLEMS IN A VERY NARROW AND PRE-CONCEIVED MANNER. UNFORTUNATELY, THE COMMISSION IS RESPONSIBLE FOR INFORMING US ABOUT ASPECTS OF AMERICAN LIFE WHICH MOST PEOPLE FIND UNACCEPTABLE. NONETHELESS, THE COMMISSION MUST CONTINUE TO SERVE AS OUR CONSCIENCE FOR HUMAN DIGNITY AND RESPECT. IF THE COMMISSION NEEDS IMPROVEMENTS, LET US WORK TOGETHER TO INSURE THAT THEY ARE BROUGHT ABOUT IN A RESPONSIBLE AND LOGICAL FASHION. WE MUST NOT ALLOW THE BAD NEWS TO SERVE AS OUR STIMULUS TO RESPOND TO THE COMMISSION BUT RATHER THE INFORMATION IT PROVIDES SHOULD SERVE AS OUR RALLYING POINT FOR THE CAUSE OF EQUAL PROTECTION AND TREATMENT OF ALL AMERICANS.

THANK-YOU.

Mr. EDWARDS. Well, thank you very much, Mr. Torres, and now we will hear from Mr. Ralph Neas, the executive director of the Leadership Conference on Civil Rights.

Mr. NEAS. Thank you, Mr. Chairman. Members of the subcommittee, I am Ralph Neas, executive director of the Leadership Conference on Civil Rights, a coalition of 165 national organizations representing blacks, Hispanics, women, labor, Asian Americans, the disabled, senior citizens, native Americans, and religious groups.

Before I begin my testimony, Mr. Chairman, I want to take this opportunity to express once again the deep appreciation of the leadership conference for the work of this subcommittee in guiding in a bipartisan way the extension of the Voting Rights Act through the 97th Congress.

This subcommittee, led by Congressmen Edwards and Sensenbrenner and Washington, and by Congressman Conyers in the full committee, played an historic role in the passage of the most effective and important civil rights measure enacted in almost two decades.

Mr. Chairman, the leadership conference is grateful for the opportunity to testify on behalf of the legislation to extend the life of the U.S. Civil Rights Commission. This measure is one of the conference's top legislative priorities for the 98th Congress. For the past 25 years, the Civil Rights Commission has served two principal purposes which, though somewhat changed in character over the years, are as vital now as they have been in the past.

The first function is the investigation of the progress of the nation in achieving equality of opportunity in such critical areas as education, jobs and housing, and of the extent to which discrimination remains a barrier to individuals seeking to fulfill their potential; and the second function is monitoring performance of other Federal agencies charge with implementing civil rights laws and making recommendations for improved enforcement. The Commission has performed these two functions with great distinction. Its work constitutes a proud chapter in this Nation's history of seeking to provide equality of opportunity for all our citizens.

Indeed, the Commission has had a major effect in all civil rights legislation passed from 1960 to date. If anyone studies the debate on these bills, it will become clear 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. 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.

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 report on all aspects of American life are always well publicized, well received, and informative. We believe they have helped shape public opinion favorable to the exercise of civil rights, and have held down many of the attacks on the assertions of those rights.

Although everyone acknowledges the contributions of the Commission, there are those who question whether there is still a need to extend the life of the Commission. The answer is a resounding "yes." No one who sat before this subcommittee listening to almost 3 months of hearings on the extension of the Voting Rights Act could have walked away without acknowledging the existence of persistent discrimination in this country.

Indeed, the evidence was so overwhelming that it constituted the basis for the longest and strongest extension of the Voting Rights Act ever. But as the well documented reports of the Civil Rights Commission have pointed out in recent years, pervasive discrimination still haunts us in housing, in employment, in education, and in many other areas of American life. This discrimination threatens our professed ideals and stands as a barrier to the achievement of important national goals.

Mr. Chairman, there is another important reason to extend the life of the Civil Rights Commission. We now need, perhaps more than ever, an independent, nonpartisan agency to monitor the civil rights activities of the Federal Government.

Regrettably, civil rights is in a state of crisis. For the representatives of the radical right, both those in the Reagan administration and on Capitol Hill, still seek through their policies to weaken our civil rights laws and to dismantle the Federal Government's enforcement apparatus.

In the words of Dr. Arthur Flemming, we face the "distinct possibility of a second post reconstruction." A brief summary of the administration's record will show the dimensions of these regressive efforts.

The Reagan administration, until the very final moments before the passage, led the fight against a strong and effective Voting Rights Act extension.

The administration hatched the brazen scheme to reverse the long established Federal policy mandated by court decisions to deny tax-exempt status to educational institutions which discriminate on the basis of race.

The administration supports legislation which would limit the jurisdiction of the Federal courts over certain constitutional issues, thus risking what David Brink, former president of the American Bar Association, calls the most serious threat to our constitutional scheme of government since the Civil War.

The Department of Justice, as well as other agencies charged with equal opportunity responsibilities, has not been vigorously enforcing the law of the land with respect to housing discrimination, employment discrimination, educational discrimination, and in many other types of discrimination.

It is truly tragic that the bipartisan congressional coalition on civil rights on Capitol Hill, which generally produced a good congressional record on civil rights during the 97th Congress, has had little effect on the civil rights policies of the administration. Without question, it is vital that the U.S. Civil Rights Commission must be given a mandate to monitor carefully what the administration is doing—or not doing—with respect to civil rights. While we must extend the life of the Commission, the mere act of extension would

not be enough, for we must also ensure that we preserve the independence, the integrity, and the effectiveness of the Commission.

In several respects, the Commission is an unusual body. It is located in the executive branch, but its structure and functions are similar to those of independent regulatory agencies. One function of the Commission we have discussed, its duty to "appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws * * * or in the administration of justice" is particularly crucial. For the Commission to carry out this role properly, its members must be prepared to exercise independent judgment, to point out failings in the enforcement of civil rights caused by departments in the executive branch, and indeed, where necessary, to be critical of the President's performance of his constitutional duty to take care that the laws are faithfully executed.

It is fair to say that the Commission's positive reputation over the years rests as much on the courage of Commissioners in taking issue with the Presidents who appointed them as on the reliability of the agency's investigations and research.

Congress in establishing the Commission recognized this need for independence. From the outset in 1957, the authorizing statute has provided that no more than three of the six members may be of the same political party, that the Commission report to the Congress as well as to the President, and that all Federal agencies shall cooperate fully with the Commission to enable it to carry out its duties effectively.

The one major gap in assuring the independence of the agency is in the failure of Congress to provide fixed terms of office, as it does with regulatory agencies. Because the Agency was viewed as temporary, no terms were specified, and the Commissioners have served at the pleasure of the President.

Over the years, however, Presidents have recognized and respected the Commission's need for independence. With one exception—President Richard Nixon's dismissal of Father Hesburgh as a Chairman in 1972—members of the Commission have been replaced only when they voluntarily resign, because of ill health, or for other personal reasons. President Reagan, however, has broken with this bipartisan tradition. He fired Dr. Arthur Flemming, a lifelong Republican who has served for many years in Government, under many different Republican and Democratic Presidents—I believe eight in total—and the President has sought the wholesale replacement of the Commission's members. While President Reagan, arguably, has the authority to name an entirely new Commission, his actions clearly threaten to subvert the Agency's eligibility to carry out its statutory responsibilities.

The Leadership Conference hopes that this subcommittee will focus carefully on the issue of the Commission's independence and integrity. Perhaps the committee should consider the possibility of staggered terms for members of the Commission. Mr. Chairman, the Leadership Conference also believes that the proposed 15-year extension would help guarantee the effectiveness and the independence of the Commission. It would allow the Commission to plan ahead and provide the needed continuity with respect to its long-range programs. Perhaps most importantly, such a 15-year exten-

sion would send a strong signal to the entire country that the Congress recognizes the problems of discrimination that still exist and that it remains totally committed to the Nation's goal of providing equal opportunity for all its citizens.

Mr. Chairman, we are passing through a difficult period with respect to civil rights, but despite what some perceived as considerable odds against us, we were able in the last Congress to pass our foremost legislative priority, the extension of the Voting Rights Act, and perhaps just as importantly, to block the radical right from enacting even one item on their legislative agenda.

I am confident that we can continue to be successful if we continue to work together as a civil rights coalition, just as hard and just as effectively. When the history of this watershed period is written, a considerable amount of credit for turning back the forces that would have us retreat from our commitments will be given to the U.S. Civil Rights Commission. For this independent and nonpartisan organization has provided the Congress and the Nation with the documentation to buttress legislative efforts and to hold accountable those who would act inconsistently with constitutional obligations. This Commission, which has been on the cutting edge of civil rights issues for so long, has demonstrated once again its incalculable value to this country.

Mr. Chairman, I would like to respond briefly to Congressman Sensenbrenner's request to address several issues that he raised in his opening statement. First, you mentioned the Chester Finn article in the Wall Street Journal. Just a few minutes ago, I glanced at Mr. Finn's article.

I note in the first few paragraphs perhaps one of the reasons for his fundamental misunderstanding of the Commission's statutory authority. As I stated in my testimony, the Commission is charged by statute to "appraise laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the law * * * or in the administration of justice." Regrettably, Mr. Finn chose, when quoting that statute, to leave out the phrase "or in the administration of justice." The Commission's charter requires a review of more than just constitutional issues. It's much broader, going to the administration of justice issues.

Also brought up was the budget analysis by the administration. The Reagan administration has taken its defense of its civil rights policies into the budget arena, with the inclusion in the fiscal year 1984 budget materials of Special Analysis J, civil rights activities. The ACLU, one of the member organizations of the Leadership Conference, I believe, has sent every Member of Congress a copy of an eight-page document—and I would just like to read two or three paragraphs from that document:

> The current version of Special J is a highly misleading political document which claims proposed increased expenditures for civil rights enforcement not only in their magnitude but in the context of the overall budget itself represents a substantial increase in the priority accorded civil rights. In fact, the opposite is true. These civil rights expenditures are even lower than last year, and the increases are being channeled away from enforcement programs. The $634 million proposed for civil rights enforcement in fiscal 1984 is $27 million over the amount the administration estimates will be spent in 1983; however, less than one-third of this increase, $8 million, is allocated among the principal civil rights agencies. More than two-thirds of the proposed increase, $19 million, is allocated to internal EEO administration costs,

principally in the Department of Defense, and will have no effect on civil rights enforcement outside the Federal Government. Major funding cuts are proposed in several key areas.

And finally: the enforcement of Federal statutes to protect civil rights in the areas of school desegregation, housing, credit, rights of institutionalized persons and coordination of the Federal statutes prohibiting discrimination by recipients of Federal financial assistance will be funded at the same levels as in fiscal year 1983.

A number of the members of the subcommittee have inquired about the definition of civil rights, and whether it has been expanded over the years. I think every witness that has testified has certainly stated that it has. The Leadership Conference was instrumental in coordinating the lobbying campaigns on the 1964 bill, the 1965 bill, and the 1968 bill, but the Leadership Conference in 1969 recognized that these constitutional rights alone are not sufficient to secure equality of opportunity. Accordingly, the Leadership Conference expanded its definition of civil rights to mean not only the establishment and enforcement of civil rights in law, but also the realization of social and economic conditions in which alone the fulfillment of these rights is possible.

Mr. Chairman, I thank you for the opportunity to testify on behalf of the Leadership Conference, and the Conference looks forward to working with the subcommittee to ensure the expeditious consideration and passage of this most important legislation.

[The full statement of Mr. Neas follows:]

Statement of Ralph G. Neas

Executive Director

Leadership Conference on Civil Rights

On Behalf of Legislation To

Extend The Life Of The United States

Commission On Civil Rights

March 24, 1983

Mr. Chairman and members of the Subcommittee, I am Ralph G. Neas, Executive Director of the Leadership Conference on Civil Rights, a coalition of 165 national organizations representing Blacks, Hispanics, women, labor, Asian Americans, the disabled, senior citizens, Native Americans, and religious groups.

Before I begin my testimony, Mr. Chairman, I want to take this opportunity to express once again the deep appreciation of the Leadership Conference for the work of this Subcommittee in guiding the extension of the Voting Rights Act through the 97th Congress. This Subcommittee, and Congressmen Edwards and Sensenbrenner in particular, played an historic role in the passage of the most effective and important civil rights measure enacted in almost two decades.

Mr. Chairman, the Leadership Conference is grateful for the opportunity to testify on behalf of legislation to extend the life of the United States Civil Rights Commission. For this measure is one of the Conference's top legislative priorities for the 98th Congress.

For the past twenty-five years, the Civil Rights Commission has served two principal purposes which, though somewhat changed in character over the years, are as vital now as they have been in the past. The first function is the investigation of the progress of the Nation in achieving equality of opportunity in such critical areas as education, jobs, and housing and of the extent to which discrimination remains a barrier to individuals seeking to fulfill their potential. And the second function is monitoring the performance of other Federal agencies charged with implementing civil rights laws and making recommendations for improved enforcement.

The Commission has performed these two functions with great distinction. Its work constitutes a proud chapter in this Nation's history of seeking to provide equality of opportunity for all our citizens.

Indeed, the Commission has had an effect on all civil rights legislation passed from 1960 to date. If anyone studies the debate on each of these bills, it will become clear 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 instances, it may be found that the information supplied by the Commission has likewise been presented by the Leadership Conference or its constitutent organizations. But coming from an official source, it is granted a recognition of authenticity that is not always given to other sources. 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.

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 favorable to the exercise of civil rights and have helped dull many of the attacks on the assertion of those rights.

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.

Although everyone acknowledges the contributions of the Commission, there are those who question whether there is a need to extend the life of the Commission. The answer is a resounding yes.

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No one who sat here before this Subcommittee listening to almost three months of hearings on the extension of the Voting Rights Act could have walked away without acknowledging the existence of persistent discrimination in this country. Indeed, the evidence was so overwhelming that it constituted the basis for the longest and strongest extension of the Voting Rights Act ever.

But, as the well documented reports of the Civil Rights Commission have pointed out in recent years, pervasive discrimination still haunts us in housing, in employment, in education, and in many other areas of American life. This discrimination threatens our professed ideals and stands as a barrier to the achievement of important national goals.

Mr. Chairman, there is another important reason to extend the life of the Civil Rights Commission. We now need, perhaps more than ever, an independent, non-partisan agency to monitor the civil rights activities of the Federal government.

Regrettably, civil rights is in a state of crisis. For the representatives of the Radical Right, both in the Reagan Administration and on Capitol Hill, still seek through their policies to weaken our civil rights laws and to dismantle the Federal government's enforcement apparatus. In the words of Dr. Arthur Flemming, we face the "distinct possibility of a Second Post Reconstruction."

A brief summary of the Administration's record will show the dimensions of these regressive efforts.

-- The Reagan Administration, until the very final moments before passage, led the fight against a strong and effective Voting Rights Act Extension.

-- The Administration hatched the brazen scheme to reverse the long-established federal policy, mandated by law, to deny tax exempt status to educational institutions which discriminate on the basis of race.

-- The Administration supports legislation which would limit the jurisdiction of the federal courts over certain constitutional issues, thus risking what David Brink, former President of the American Bar Association, calls the most serious threat to our Constitutional scheme of government since the Civil War.

-- The Department of Justice, as well as other agencies charged with equal opportunity responsibilities, has not been vigorously enforcing the law of the land with respect to housing, employment, education, and many other types of discrimination.

Perhaps the most chilling indicator of the Administration's policies can be seen in its attitude with respect to providing equal justice for the victims of discrimination. First, by supporting legislation to limit the jurisdiction of the Federal courts over certain constitutional issues, the Administration would restrict access to the Federal courts. Second, by seeking to abolish the Legal Services Corporation and to weaken the Civil Rights Attorneys Fees Act, the Administration would adversely affect adequate legal representation once the victims are in court. And third, by attempting to limit as much as possible the legal remedies available, the Administration would deny in many cases effective relief for the victims of unconstitutional discrimination. Rather than fulfilling its historic role as the principal advocate for the victims of discrimination, the Administration has become in many instances, an aggressive opponent.

It is truly tragic that the bipartisan Congressional coalition on civil rights on Capitol Hill, which generally produced a good Congressional record on civil rights during the 97th Congress, has had little effect on the civil rights policies of the Administration.

Without question, it is vital that the United States Civil Rights Commission must be given a mandate to monitor carefully what the Administration is doing, or not doing, with respect to civil rights.

While we must extend the life of the Commission, the mere act of extension would not be enough. For we must also ensure that we preserve the independence, the integrity, and the effectiveness of the Commission.

In several respects, the Commission is an unusual body. It is located in the Executive branch, but its structure and functions are similar to those of independent regulatory agencies. One function of the Commission we have discussed -- its duty to "appraise the laws and policies of the Federal government with respect to discrimination or denials of equal protection of the laws...or in the administration of justice" is particularly crucial. For the Commission to carry out this role properly, its members must be prepared to exercise independent judgment, to point out failures in the enforcement of civil rights laws by departments in the Executive branch and indeed, where necessary, to be critical of the President's performance of his constitutional duty to "take care that the laws are faithfully executed." It is fair to say that the Commission's positive reputation over the years rests as much on the courage of Commissioners in taking issue with the Presidents who appointed them as on the reliability of the agency's investigations and research.

Congress, in establishing the Commission, recognized this need for independence. From the outset in 1957, the authorizing statute has provided that no more than three of the six members may be of the same political party (Section 101b), that the Commission report to the Congress as well as to the President (Section 104b) and that all federal agencies shall cooperate fully with the Commission to enable it to carry out its duties effectively (Section 105e).

The one major gap in assuring the independence of the agency is in the failure of Congress to provide fixed terms of office, as it does with regulatory agencies. Because the agency was viewed as temporary, no terms were specified and the commissioners have served at the pleasure of the President.

Over the years, however, Presidents have recognized and respected the Commission's need for independence. With one exception (President Richard Nixon's dismissal of Father Hesburgh as a Chairman), members of the Commission have been replaced only when they voluntarily resigned because of ill health or for other personal reasons.

President Reagan, however, has broken with this bipartisan tradition. He fired Dr. Arthur Flemming, a lifelong Republican who has served for many years in government, under many different Republican and Democratic presidents, and he has sought the wholesale replacement of the Commission's members.

While President Reagan arguably has authority to name an entirely new Commission, his actions clearly threaten to subvert the agency's eligibility to carry out its statutory responsibilities.

Mr. Chairman, the Leadership Conference hopes that the Subcommittee will focus carefully on the issue of the Commission's independence and integrity. Perhaps the Committee should consider the possibility of staggered terms for members of the Commission.

Mr. Chairman, the Leadership Conference also believes that the proposed fifteen-year extension would help guarantee the effectiveness and the independence of the Commission. It would allow the Commission to plan ahead and provide a needed continuity with respect to its long range programs.

Perhaps, most importantly, such a fifteen-year extension would send a strong signal to the entire country that the Congress recognizes the problems of discrimination that still exist and that it remains totally committed to the Nation's goal of providing equal opportunity for all its citizens.

Mr. Chairman, we are passing through a difficult period with respect to civil rights. But, despite what some perceived as considerable odds against us, we were able in the last Congress to pass our foremost legislative priority and, perhaps just as significantly, to block the Radical Right from enacting even one item on their legislative agenda. And I am confident that we can continue to be successful, if we continue to work together as a civil rights coalition, just as hard and just as effectively.

But when the history of this watershed period is written, a considerable amount of credit for turning back the forces that would have us retreat from our commitments, will be given to the United States Civil Rights Commission. For this independent and nonpartisan organization has provided the Congress and the Nation with the documentation to buttress legislative efforts and to hold accountable those who would act inconsistently with constitutional obligations. This Commission, which has been on the cutting edge of civil rights issues for so long, has demonstrated once again its incalculable value to this country.

Mr. Chairman, the Leadership Conference looks forward to working with this Subcommittee to insure the expeditious consideration and passage of this important legislation.

Mr. EDWARDS. Well, the thanks of the subcommittee goes to you three witnesses, and your really splendid testimony. We are indeed very grateful.

The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I agree that the organizations represented here were critical in the Voting Rights Act extension, and are also very important in the national scheme of things. I congratulate all of you.

Julian Bond and Jesse Jackson were on Sunday's Brinkley television program and they raised the issue of affirmative action and how enforcement is slipping drastically under this administration. I am just wondering, the Civil Rights Commission—I am just wondering what they would find if they were to check on what the Department of Justice, the FBI, the Civil Rights Division, and EEOC were doing in terms of this whole panorama of governmental responsibility in the area of affirmative action. How detailed would they be able to document this general charge that I think comes from the civil rights community, and many others?

Ms. SIMMONS. Congressman, the Commission was very concerned about this, and had a consultation on affirmative action just last year. I think that what they found was what all of us knew: that there was some reversals.

Let me cite several examples. The Office of Federal Contract Compliance, and the attempted change that now is being fast-tracked once again in raising the threshold from 50 employees to 250 and from $50,000 in contracts to a million dollars in contracts. The Department of Labor itself says that if that is done, 75 percent of those who do business with the Government would not have to have written affirmative action plans.

The Justice Department's actions, or inactions, have been thoroughly documented in a Leadership Conference study. The Commission is aware of this and has been addressing these issues. There's a need, for continued reports and monitoring, because we have not had this kind of reversal since post reconstruction. I said at the beginning of the 1980's that unless there was a shift in the administration's position, we—blacks—could find ourselves back in the same position we were with post reconstruction; the laws on the book, not being enforced, and with, the Supreme Court cutting back on its interpretation of the laws. Black Americans don't want to see that happen.

Mr. NEAS. I certainly agree with everything that Althea Simmons just stated.

I would hope that the Commission could spend even more time on this issue.

Assuming that the executive branch would respond to requests for information, I'm sure that information would further document what Althea was talking about.

I know just in the past week the employment task force of the Leadership Conference was meeting on how to respond to the latest developments.

And of course, everyone is outraged at yet another possible retreat by the Reagan administration on fundamental civil rights issues.

What's interesting to note is that, once again, it's just not the civil rights community that seems to be repulsed by the proposals that are circulating. The business community has joined hands with the civil rights community and the public interest community, somewhat similar to the response on the circular A122 just a couple of weeks ago.

It seems, time and again, that both the legal and political analysis within the civil rights policies of the administration is found sorely lacking. In fact, I'm not sure I've seen such a series of self-inflicted political wounds in such a short period of time ever before.

Mr. TORRES. Mr. Conyers, it's truly unfortunate that we're confronted with the situation such as the representative of the NAACP has indicated. Except I think she's being much too kind about the regression, you know, since post-Reconstruction.

I don't think we've ever really had affirmative action in this country. What we have are examples that people have wanted to pick up and use and say that, "See, this is the problem that affirmative action creates for people."

But that is not the affirmative action that those of us who would like to benefit from affirmative action had in mind when the program was being developed.

I think the program, pretty much from—its almost beginning, was sabotaged almost by purpose, by design to some extent. Other times, it's been simply the inability, the ignorance of the Government structure to effectively implement it and get the employer or the private sector to actually implement it properly.

And I think that with the advent—as Mr. Neas has indicated—of the "new right," you find the so-called, ugly, terrible, reverse discrimination examples coming to a head. And that is all that you see.

I don't really know what more the Commission on Civil Rights can do. They have analyzed affirmative action. They've consulted on the matter. They've done reports and will continue to do so and that is really a responsibility that they have.

I think, now, the next step, at least with regard to affirmative action, lies with the Congress.

What is it going to do?

The administration loves to talk about "alternatives," but we never once heard of an alternative to affirmative action except the thought in someone's mind of a perfect society. I think that individual thinks that we're back in the 1920's. And thank God that we're not.

But I think that that's where we're at now. I think that the Commission has done an extremely effective job.

And in closing, I'd say that Hispanics, believe me, want to be a part of some of these programs. But they're being criticized so much, in a very nonconstructive manner, that it's very difficult for us to feel that we're ever going to get to a point where we're going to have it really playing a part in our community.

And again, it isn't because there isn't the intent and the desire of those that implement it necessarily. It's simply the fact that it is not the vogue thing anymore. No one wants to use it as a means of improving circumstances that unfortunately confront Hispanics and other minorities significantly now.

Mr. CONYERS. Well, there is a lot more we can do.

I'm really approaching this thing from a omnibus approach. I remember that the NAACP put out a very excellent study on this slippage. And you read and hear about it constantly.

I was really reminded of this problem again when Jackson and Bond discussed it with Brinkley—they started just ticking off the ways that this retreat has been occurring. And of course, it's moving them to political action. They feel that they just can't take it anymore, that it's got to be identified.

And I see part of my responsibility is not just keeping the Commission going. I think that's a minimum duty.

The way you move forward in this society is that you make stronger and larger and more able those organizations that are doing the right thing. We have to reward them in a sense and not by just refunding them and keeping them alive for a few more years, but by really inquiring into what their job is, based on the assessment that is almost universally made, and then how we can really—what the ideal case ought to be.

And I really believe in these large horizons legislatively. I had no way in the world—maybe the chairman of the subcommittee had more confidence than I did when we went over to the Senate side to argue, before the chairman of that appropriate committee in Judiciary, how we were going to get them to swallow whole the House version of the Voting Rights Act. I mean, that was—that was my recent legislative act of faith. I mean, I looked at the Senate, and it looked like a hopeless case.

But it all worked out. We all ended up in the White House, with the President asserting that it was his privilege to sign the strongest extension of all time. He took his share of credit for it, and we were happy to share that with him.

But somehow—these things—we always miraculously manage to land on our feet. And it sort of reminds me that we're operating under this theory that Martin Luther King put forward, you don't try to prove that it can all happen—how your theory is going to work—you begin by doing what you think is right, and then you press forward. And there'll be setbacks and defeats. And somehow, in this crazy system of ours, things sometimes manage to get corrected.

Your organizations have been so important here in Washington, where the laws and the decisions and the interpretations and the appropriations go on. And that sets in rigid form what's going to happen. And without you keeping our feet to the fire, keeping us posted, I don't think we'd be as far along the way as we can.

So, I approach this whole matter of the Commission's extension as one where we ask how do we make it even bigger and better than it is.

And your thoughts have been important, and I think they'll continue to be as we work our way through this bill.

Ms. SIMMONS. Well, Congressman, what you're describing is civil rights.

As a matter of fact, I would go so far as to say the definition of "civil rights" has not changed. And I say that based on the fact that the NAACP is 74 years old. And in our statement of purpose

we are dedicated to bringing about equality of opportunity in every aspect of public life.

Therefore the NAACP's position is that the actions taken, the studies undertaken by the Commission in trying to monitor the Government, are legitimate action in pursuit of the civil rights of individuals.

Mr. EDWARDS. Well, thank you, Mr. Conyers.

I found that very interesting. And I think we have an awful long way to go.

Yes, I agree that we've often, in our country, landed on our feet. But we only land on our feet after a great deal of hard work and devotion.

And the organizations that you people represent are certainly in the forefront of that effort.

I was distressed, Mr. Torres, by reading that the Vietnamese people in New York were run out by young toughs in Flatbush and beaten up. They even had to move to another State because they couldn't possibly live in the city of New York. And that's a national shame.

But your testimony was to the effect that this happens to most groups that come from other countries. They pass the Statue of Liberty, and then they have an unpleasant, difficult era of readjustment that we must be sensitive to, and we must do a much better job.

Mr. TORRES. I think that sometimes people have a tendency to think that—to look at civil rights and say that—it can fit a very narrow box and give a very definite definition to it.

I think that Ms. Simmons is absolutely right. It has not changed.

But perhaps the only thing that has changed is simply the people that now are crying for recognition that their civil rights be granted and enforced. I think that is probably the only new element in this debate—the fact that people have become a little bit more educated that there are a number of people out there that have the same concerns. And that is what she so eloquently indicated, which is opportunity.

And we're not saying that we want opportunity and that civil rights has a role with regard to social welfare programs and because we're not allowed to go into a social welfare program because there's not enough money or—et cetera, that our civil rights have been denied. We're not trying, under any circumstance to bastardize the quest for equal opportunity. I think that is the point that other people want to make when discussing civil rights.

But I very much appreciate the fact that you have identified the issue of problems confronting immigrant groups because it is, unfortunately, an extremely dangerous reality. We're never going to be able to stop the flow of people coming into this country, we may be able to control it one of these days better than we're doing now, but we'll never be able to stop it. This population movement is inevitable.

And we must do everything we can as a society, and as a Government for this is a Government responsibility—to make sure that all people are, in fact, accorded their civil rights.

I believe that the Commission must begin to prepare itself and it would make it better, Mr. Conyers, in this regard were it to begin

to plan to deal with this immigration that is coming now and will just continue to come in the future.

So, I appreciate the fact that the chairman has picked up on that.

Mr. EDWARDS. Well, thank you.

And also, with regard to affirmative action and civil rights and so forth—affirmative action by itself really isn't worth much to somebody for whom society has not yet provided educational opportunities or skills or adequate health care or opportunities to develop reasonably good work habits.

While affirmative action programs are important and necessary, we must also keep in mind that their impact will be limited if the people haven't also been nurtured by their own society.

Now, none of you has any problem with the 15 extension provided in H.R. 2230. We all know we're going to need the Civil Rights Commission 15 years down the road. We're going to need it for 20 and 25 years. Things just don't move that fast in this country. You have no problem there, and I appreciate that because that's going to be a big problem down the road, I promise you that.

And, Ms. Simmons, I thought that the suggestion in your prepared statement that the Commission be required to submit its budget to perhaps this committee, or another appropriate congressional committee, and to OMB simultaneously—where did you get that idea? It's a pretty good one.

Ms. SIMMONS. Well, it occurred to me that since the Commission's budget has to go to OMB, it's quite possible that what comes out of OMB as a budget recommendation might not meet the needs of the Commission, adequately.

But if the Congress also knew what budget is being submitted, then the Congress, in its wisdom, could make some decision.

Mr. EDWARDS. It's a very good idea. And it's supposed to be an independent Commission, too.

Ms. SIMMONS. Right.

Mr. EDWARDS. Yes. That's the key to it. It's not a Republican or Democratic——

Ms. SIMMONS. That is correct.

Mr. EDWARDS [continuing]. Run agency, like most agencies are, where the head is appointed by whoever might be President.

Ms. Simmons. And control of the money takes away the independence.

Mr. EDWARDS. And, Mr. Neas, you think that we ought to be sure to fix terms for the Commissioners.

Why? So they can't be fired at will?

Mr. NEAS. Just a minor adjustment in that statement, Mr. Chairman. I think that we have to focus very carefully on the independence, the integrity, and the effectiveness issues. The leadership conference certainly has no position whatsoever at this time on what is the best way to do that.

We would like to address it during the hearings and study what is available. But I think I stated that perhaps there is the possibility of looking at that type of issue, but there is no position by the leadershp conference.

I'd like to underscore the last point made by Althea Simmons on the—the OMB issue. I think it is very much a issue of independ-

ence and that the budget should be submitted simultaneously to this subcommittee as it is submitted to OMB.

And one further and last thought, I think Arnoldo Torres mentioned, with respect to the funding levels, about increasing those levels and the need to have more of an outreach, more of an educational program initiated by the U.S. Civil Rights Commission. And I think that would be a wonderful idea.

This Commission has been so invaluable over so many years, I think it becomes more valuable when every person within this country has access to the type of information, the type of analysis that the U.S. Civil Rights Commission can provide.

Mr. EDWARDS. Thank you.

Mr. Conyers, do you have any more questions?

Mr. CONYERS. No questions.

Mr. EDWARDS. Any questions from counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

Mr. Torres, you seem to indicate, in your statement, some concern about the continuing inclusion in the Civil Rights Commission Programs and studies of issues of concern to the Hispanic community.

Could you—is that an accurate assessment of your statement?

Mr. TORRES. We believe that while the Commission has done some outstanding work in the area of concerns to Hispanics, I think there is a need not to, at times, refer to Hispanics as an afterthought. We believe that at times that tends to be the case. But I think it's primarily due to general ignorance.

I think that there has been a significant move on the part of the Commission to try and begin to integrate our concerns in their overall reports.

A good example of that is its report on unemployment that discussed all of the impact groups. It had sections discussing their individual situations regarding unemployment.

We believe that this is the standard that we think the Commission should be aspiring to. And unfortunately, we find that over a period of time—and even in its proposed 1983 and 1984 agendas, we find that there is room for more improvement.

Nevertheless, we are hopeful, and we are confident that this committee working with them and with the Leadership Conference's assistance, we believe that things will continue to improve.

But a major area, of concern to us, that has been raised today is segregation.

We are extremely concerned that the Hispanic child is now the most segregated child in American public education today. We're not sure as to why that's the case. We believe the Commission should take a serious and indepth look at this.

Now, the implications of this situation are significant, for if, in fact, we can learn of the problems confronting the Hispanic population in this regard, they are probably going to be the same type of problems that will confront other immigrant groups that have a language other than English as their dominant language.

Language plays a major role in the isolation of people as well as housing.

Again we firmly believe that this is an area that needs a tremendous amount of attention by the Commission. We understand this

subcommittee will be holding hearings on this subject, because it's held hearings earlier this year on the general status of segregation in American public education.

I think this is one major area that requires significant attention and perhaps action will be forthcoming in this calendar year.

Ms. GONZALES. I have one other question for all the members of the panel.

There have been suggestions raised that we might want to consider some statutory change in the Commission's authority to guarantee the independence that the Congress intended for the Commission.

We realize, I think, that there are both good reasons for going forward with some of these changes and also some hesitations that we ought to keep in mind as we consider them.

I wonder if I could have the thoughts of the panel on a couple of suggestions. One possible consideration is provide set and/or staggered terms for the Commissioners.

Another is a provision that says that the Commissioners, rather than serving at the pleasure of the President, per se, can only be fired for cause.

I wonder if you could give us some thoughts as to both the advantages and the disadvantages those kinds of suggestions might have?

Ms. SIMMONS. Well, my organization certainly has—is not in favor of fixed terms. We think that might politicize the Commission.

And even thought the Commissioners serve at the pleasure of the President, Presidents have, as a matter of fact, allowed Commissioners to remain through their term.

And I recall one Commissioner who comes to mind immediately is Commissioner Freeman, who served 16 years. So, she overlapped several terms.

And we do have grave reservations about staggered terms.

With reference to discharge for cause, I'd like to give that some thought and give you a statement in writing on that issue.

Ms. GONZALES. Great. I think we'd appreciate that.

Mr. NEAS. I think, as Althea said, the NAACP does oppose fixed terms or staggered terms. And certainly the Leadership Conference does not have a position on that issue. It's something that's been addressed, but there is no consensus.

I think that if there were ever going to be any type of set term though I would think—and this, again, is just an immediate reaction—that if you could fire at the President's pleasure, you really don't have a fixed term. I think it would have to be for cause.

I think, also, that if there were ever going to be that type of situation, that there would probably have to be some type of protection for incumbents.

So, I think there's boilerplate language that is very often used in that type of situation.

But I just throw these out as issues, without any real thought given to them, or certainly no position with respect to them.

Ms. GONZALES. Thank you.

Mr. Torres.

Mr. TORRES. I think that the idea of the staggered terms is, to some extent, at times, a response to, what the Reagan administration has done, with regards to unprecedented tampering.

I think that we should be very careful when getting into this area of not overreacting to something that has been created by overzealous individuals who have a difference of opinion with regards to civil rights.

We would be—we should be very careful to insure that an issue like that, of working to secure Commission independence, not turn around and hurt the independence and the stability of the Commission.

So, we would be concerned and would caution any activity in that area.

With regards to the cause issue. I believe it should be given some attention as we proceed on this legislation.

One point that I would add is that this area of ensuring independence—I think the point that Ms. Simmons makes concerning who controls the money has implications for the independence of the Commission.

This area is one that is very difficult to design to insure perfect independence. We will never have the kind of independence that perhaps should exist.

It would be nice if the Commission had its own fixed budget and it had an authorization level of $100 million to spend up until year 2000. Something of that nature would be very helpful, and if the money was there in the bank we wouldn't have to worry about it. But I don't think we are ever going to get to that point, unfortunately.

But I do think that we must do what we can to ensure that the type of tampering that has taken place these last 2, 3 years will somehow not go unchecked in the future. We must do everything we can to make sure that that does not take place, however I am not sure if the answer lies in altering the structure of the Commission.

I think, in all honesty, that it really does lie in the work of a subcommittee like this, which I believe has conducted itself very responsibly. It is here where the responsibility lies to make sure that there is not tampering by the executive branch of an independent agency as vital as the U.S. Commission on Civil Rights.

Ms. GONZALES. Thank you. We obviously appreciate your thoughts. Your cautionary comments are especially important because it may be that people feel that we should rush into making some judgments. As you indicated, over a 25-year period the system has seemed to work well, and it is a good point to be made.

Any other thoughts that you have along these lines, on the issue, you might want to share with us as we proceed.

Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Kiko.

Mr. KIKO. I just have one question. It is directed toward Mr. Torres. If anybody else would like to respond, it would be fine.

In your testimony, you recommended targeting money for civil rights problems confronting immigrants. This is an issue that, as you know, is going to be addressed by the judiciary in the next couple of months.

How do you define immigrants? Would this definition include illegal aliens? Should the Commission resources be directed toward those types of problems—people that are not in our country legally?

Mr. TORRES. That is a good question. It is a difficult one that you have given me, Mr. Kiko, because it is going to come back to bite me in certain places of my anatomy.

I think that there is a movement to give priority to American citizens for everything that is done by the Government, and I think that a response to your question, a very quick response, would be that priority should be given to immigrant groups that are allowed to come to the country legally.

But I think that the Commission's mandate does not discuss the presence, legal or illegal, of a human being within the boundaries of the United States. It is very much like the census count. The census does not say an American citizen. It says whoever is residing within the boundaries of the country should be counted.

I think that that should be the standard. In all honesty, we should not focus solely on assessing the problems of the Hispanic undocumented population. Our concern is much more broad because the problems that confront the undocumented Hispanics are going to be the same problems that will confront the undocumented Africans, the undocumented Haitians, the undocumented Caribbeans, the undocumented Eastern Europeans, Western Europeans—all people who are undocumented in this country.

Eventually, as we come through an evolution of time and as a society, we will begin to accept these people. They will either legally adjust their status in this country, or remain illegal. Regardless they will still continue to confront the same types of difficulties, because it is not their status in this country that makes the issue; it is their culture; it is their color of skin; it is their language that makes the basis for the treatment, treatment which disregards their civil rights.

It is not acceptable to people, and I think that that is what we have to try to make sure that we concentrate on, that it is not the status of the people that always makes it an issue of whether they are going to be treated right or wrong. It is usually a question of their skin color, of their culture, and of their language.

I think if we keep those things in mind we would see that the appropriate role of the Commission is to assess the problems of immigrants across the board, whether legal or illegal.

Mr. KIKO. I have no further questions.

Mr. EDWARDS. Mr. Neas.

Mr. NEAS. Just one request, Mr. Chairman. Whenever I make strong assertions against the administration with respect to programs, policies, or documents, I would very much like to make sure that I have the documentation for those charges, and I did quote three paragraphs in the ACLU report, and I would like to ask the permission of the subcommittee to put that 10-page document in the record.

Mr. EDWARDS. Yes; without objection, it will be made a part of the record. Thank you.

Mr. EDWARDS. Mr. Kiko.

Mr. KIKO. No further questions.

Mr. EDWARDS. Well, that winds up our hearing today, and we thank the witnesses for splendid testimony.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned subject to the call of the Chair.]

EXTENSION AND AUTHORIZATION REQUEST FOR APPROPRIATIONS FOR THE U.S. COMMISSION ON CIVIL RIGHTS

THURSDAY, APRIL 7, 1983

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

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

Present: Representatives Edwards, Kastenmeier, Schroeder, Sensenbrenner, Gekas, and DeWine.

Staff present: Helen C. Gonzales, assistant counsel, and Phil Kiko, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This is the second of two hearings regarding the extension and authorization of the U.S. Commission on Civil Rights. On Tuesday, March 22, I introduced H.R. 2230, which would extend the life of the Commission for 15 years and authorize appropriations for fiscal years 1984, 1985, and 1986.

This morning, the Washington Post reported that the President has proposed extending the life of the Commission by 20 years. I am sure that the committee can work out a compromise with the President, don't you think, Mr. Sensenbrenner?

Mr. SENSENBRENNER. Would the chairman yield?

Mr. EDWARDS. Yes; I yield.

Mr. SENSENBRENNER. Twenty years is on the table. Do I hear 25?

Mr. EDWARDS. The President also proposes to give future Commission members 6-year terms instead of retaining the present system, where the Commissioners serve at the pleasure of the President.

We discussed this issue at our last hearing. It was suggested, and I think agreed, that we would be very careful before proceeding to make any such changes. It was also suggested that any such change to staggered terms would necessarily have to be accompanied by a provision stating that the Commissioners cannot be removed, except for cause. I don't see that in the President's proposal.

We are looking forward to hearing from the Commissioners present this morning on these issues.

The Civil Rights Commission is the only independent, bipartisan Federal agency which oversees civil rights enforcement efforts. Its

life has been extended seven times since its creation, and its 1978 extension expires on September 30 of this year.

Before I introduce our three witnesses, I recognize the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. My opening statement will be brief.

Let me state that I found out at 8:30 last night what was contained in the administration's bill that was being sent up. The first I had seen of the factsheet and message to the Congress by President Reagan was when I walked into the hearing room this morning.

I believe that there are some substantial problems involved, as does the chairman, with the administration's piece of legislation. I am hopeful that things will not get off the track so badly that we approach the 30th of September without a bill that is workable on the President's desk, so that the life of the Commission will not be placed in jeopardy.

I thank the chairman.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I, too, am somewhat taken by surprise at the President's recommendations. But at least, as long as they are to be made, they come at a timely period, even though prior legislative consultation was not in evidence.

I only regret that I will not be able to stay this morning. In a few minutes my subcommittee meets on the subject of legal services, and I need to excuse myself, notwithstanding the importance of these hearings. I am sure that I will be able to follow the import of them, nonetheless, even in my absence.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Kastenmeier.

This morning we are pleased to hear from the current Chairman of the Commission, Clarence Pendleton, who is accompanied by two other Commissioners, Dr. Mary Frances Berry and by Rabbi Murray Saltzman. We welcome you all.

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

Mr. Pendleton, you may proceed.

TESTIMONY OF CLARENCE PENDLETON, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY MARY FRANCES BERRY, COMMISSIONER, AND RABBI MURRAY SALTZMAN, COMMISSIONER

Mr. PENDLETON. Thank you, Mr. Chairman, and members of the committee. Thank you, Mr. Chairman, for recognizing my colleagues.

As the President has said in his State of the Union Message, we will ask for an extension of the Civil Rights Commission, which is due to expire this year. The Commission is an important part of the ongoing struggle for justice in America, and we strongly support its reauthorization.

The Commissioners believe, as the President does, that there is a clear need for the Commission. While great progress has been

made, clearly discrimination does exist. It is necessary to consider whether the Federal Government in terms of policy development and law enforcement functions has met its special responsibility for achieving a color-blind, gender-neutral society that provides equal opportunity.

We recognize that our Nation has made significant progress in the area of civil rights, but we think evidence is clear that discrimination is not a relic of the past. The obstacles to equal opportunity in our country are complex and persistent and we must recognize, as the Commission has shown in a number of reports and statements, that these obstacles are woven into the very fabric of our national life.

Removing these obstacles requires considerable time and commitment. The Congress has recognized—and the President, also, yesterday—that invidious discrimination affects many Americans. For this reason, the Commission's jurisdiction was broadened in the 1970's to address discrimination on the basis of sex, age, handicap, additional areas of continuing concern with regard to discrimination.

In its work of monitoring progress and prodding the Federal Government toward national civil rights objectives, the Commission has made a significant contribution. The Commission must remain an independent, bipartisan, fact-finding agency unique in the Federal Government.

The unique and independent nature of the Commission should enable it to perform the invaluable role envisioned by the Truman committee and by the Congress. Although the Commission is not directly involved in enforcement or regulatory activities, it has a statutory mandate to appraise Federal laws and policies. The statutorily required access to Federal civil rights-related information allows the Commission to appraise, evaluate, and develop recommendations regarding the issues that fall within the Commission's responsibility.

In furtherance of its statutory mandate to appraise the laws and policies of the Federal Government to investigate the deprivation of voting rights and a denial of equal protection of laws on the basis of race, color, religion, national origin, sex, age, and handicap, and in the administration of justice, and to serve as a national clearinghouse for information, the Commission has carried out a variety of activities related to civil rights.

A review of these activities is included in the Commission's testimony submitted for the record. You will find in reviewing the areas studied and activities of the Commission that our range has been broad and varied. This should not be surprising, given the multitude and types and forms of discrimination, the interrelationship between the different types of discrimination and the mandate of the Commission.

The Commission's activities include conducting studies, submitting reports to the President and the Congress, analyzing legislation at the request of Members of Congress, holding public hearings and monitoring Federal civil rights agency activities, and serving as a public clearinghouse for information.

With respect to fiscal year 1984, the President has requested $12,180,000 and 235 full-time equivalent positions. Including the

amounts requested in the pay cost supplemental, we anticipate that the appropriation for fiscal year 1983 will be $11,981,000 supporting 237 full-time equivalent positions.

The 1984 request thus represents an increase of $199,000 over the appropriation expected in fiscal year 1983. However, after adjustments are made for mandatory increases, the 1984 request actually represents a $437,000 decrease in program activities.

When I testified before this subcommittee last year, I indicated that the fiscal year 1983 appropriation level would require a cutback in the Commission program activity and possibly require the closing of two regional offices and a reduction in force of approximately 20 employees in the latter part of the year.

I am pleased to inform you that subsequent events have made a reduction in force and the closing of two regional offices unnecessary. We anticipate entering fiscal year 1984 with approximately the same staffing level we will maintain in fiscal year 1983.

The program we propose, although reduced in terms of the number of activities to be carried over to initiate in fiscal year 1984, is similar in content to those presented in the previous authorization request. Since it is discussed in detail in the appropriations request, which you already have received, I will not repeat it here.

You will note, however, that the Commission's long-standing interest in eliminating barriers to equal opportunity in employment and economic development, education, housing, the administration of justice and participation in the political process will continue.

We also will continue monitoring Federal agency effectiveness in carrying out civil rights responsibilities. State advisory committee activities will continue in all 50 States and the District of Columbia.

In closing, let me point out that civil rights, like the larger society it reflects, is not a static concept. New approaches and new remedies must be found for new problems. Because of the Commission's unique and independent structure, it can respond in a focused, analytical manner to fit both the ongoing and the developing civil rights issues of our times. The Commission sees a continuing need for the contribution that it can make to the future of our Nation, because so much work in the field of civil rights remains to be done, and the Commission is uniquely qualified to contribute to the achievement of these fundamental national objectives.

We are pleased to respond to any questions you may have, Mr. Chairman, and members of the committee.

Mr. EDWARDS. Thank you, Mr. Pendleton.

[The statement of Mr. Pendleton follows:]

Testimony of Honorable Clarence M. Pendleton, Jr., Chairman
U.S. Commission on Civil Rights
before the
Subcommittee on Civil and Constitutional Rights
House Judiciary Committee

April 7, 1983

Mr. Chairman and members of the Subcommittee, I am Clarence M. Pendleton, Jr., Chairman of the United States Commission on Civil Rights. Joining me are Commissioners Mary Frances Berry and Murray Saltzman. We are pleased to have the opportunity to appear before you to support unanimously the reauthorization of the Commission.

In his State of the Union message the President of the United States said "...we will ask for extension of the Civil Rights Commission which is due to expire this year. The Commission is an important part of the ongoing struggle for justice in America and we strongly support its reauthorization." As the Congress considers reauthorization of the Commission and reviews its work, it is necessary to consider whether our Nation has reached its objective of a color-blind, gender-neutral society that provides true equal opportunity. It is also necessary to consider whether the Federal government, in terms of its policy development and law enforcement functions, has met its special responsibility for achieving these goals.

In both instances, the Commission believes that the answer is no. The Commission recognizes that the Nation has made significant progress in the area of civil rights. But the evidence is clear that discrimination is not a relic of the

past. Nor is it limited to occasional isolated acts of prejudice against particular individuals. The obstacles to equal opportunity in our country are complex and persistent. It must be recognized, as the Commission has shown in a number of reports and statements, that these obstacles are woven into the very fabric of our national life. Removing these obstacles will require considerable time and commitment.

There is evidence of severe disparities in access to the fruits of this society in many areas, including education, employment and housing. A recent Commission study, Unemployment and Underemployment Among Blacks, Hispanics, and Women, shows that commonly used explanations for such disparities, such as comparative skills levels, or the overall health of the economy, simply do not explain the differences.

Commission studies reveal an apparent link between the continuing social and economic disparities and discrimination against women and minorities in our Nation. To isolate these social and economic issues entirely from the larger context of the historical and continuing nature of discrimination, as some would prefer, is to ignore the country's history. It is apparent that the discrimination that minorities and women experience continues to be far more pervasive, entrenched and varied than has been commonly assumed.

The Commission believes that real progress in resolving these problems comes only when remedies are shaped to fit the nature of the discrimination. Measures to provide increased opportunities that take race, sex and national origin into

account intervene in a system that routinely disfavors minorities and women. Experience has shown that in many circumstances those opportunities will not occur without such efforts. Discrimination based on race, sex or national origin occurs against individuals because of their membership in disfavored groups rather than their individual attributes. To be effective, remedies must take into account group characteristics and the continuing nature of discrimination. To eradicate such discrimination, Federal courts and public agencies must be able to utilize remedies that take race, sex and national origin into account, including goals and timetables, and quotas when necessary. The primary concern should be which remedies are likely to be most effective in eliminating violations of the law.

The Congress has recognized that invidious discrimination affects many Americans. For this reason, the Commission's jurisdiction was broadened in the 1970s to address discrimination on the basis of sex, age and handicap, all areas of continuing concern with regard to discrimination. In its work, which is sometimes controversial, of reminding the Federal government and the country of national civil rights objectives, monitoring progress and prodding the Federal effort, the Commission has made a significant contribution.

The Commission has functioned in general as anticipated by the Truman Committee, a distinguished bipartisan panel that in 1946 recommended the establishment of a permanent Commission on

Civil Rights. In support o6 its recommendation the Committee stated:

> 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 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 valuable to them and to the Federal government.

Subsequently, the Congress established the Commission as an independent, bipartisan factfinding agency, unique in the Federal Government. The special nature of the Commission has enabled it to perform the invaluable role envisioned by the Truman Committee and by the Congress. Although the Commission is not directly involved in enforcement or in regulatory activity, it has a statutory mandate to appraise Federal laws and policies. The statutorily required access to Federal civil rights-related information allows the Commission to address a broad range of civil rights concerns. Although the Commission is a Federal agency, it is free to reach conclusions and

develop recommendations based on its own analysis, without clearance by the Congress or the President. Thus, the Commission is able to balance the more short-run and, often, changing policy views with the more enduring perspective appropriate to realizing our constitutional promises.

The Commission's 25-year civil rights experience has led to the conclusion that each aspect of discrimination has its own particular history, internal dynamics, substantive concerns, and effective remedies. Experience has demonstrated time and time again that the forms that past and current discrimination takes are indeed many and ever-developing.

Given the multitude of types and forms of discrimination, and the interrelationships between different types of discrimination, it is not surprising that the subject areas studied and the activities engaged in by the Commission have been varied. In furtherance of its statutory mandate to appraise the laws and policies of the Federal government, to investigate the deprivation of voting rights, discrimination and the denial of equal protection of the laws, on the basis of race, color, religion, national origin, sex, age, and handicap, and in the administration of justice, and to serve as a national clearinghouse for information, the Commission has carried out a number of activities related to civil rights. These range from conducting studies, submitting reports to the President and the Congress, testifying at the specific request of Congress, analyzing legislation at the request of Members of Congress, holding public hearings, and monitoring Federal civil

rights agency activity, to disseminating information on civil rights. The following discussion of the Commission's work, while not exhaustive, illustrates this point in greater detail.

Since its creation the Commission has consistently addressed problems of deprivation of voting rights. Commission studies resulting from extensive field research served as a basis for passage of the Voting Rights Act of 1965, and subsequent extensions of the Act in 1970, 1975, and, most recently, in 1982. The Commission's report, The Voting Rights Act: Unfulfilled Goals, documented the fact that despite increased political participation by minorities in the electoral process, minorities continue to face a variety of problems the Act was designed to overcome. This report recommended extending and strengthening the Voting Rights Act and was cited extensively during congressional consideration of the legislation. The Commission also testified before the House and Senate subcommittees having jurisdiction over this legislation. As has been the case in the past, the Commission is now monitoring, and will continue to monitor, the actual enforcement of the Voting Rights Act.

Because of its fundamental nature and relationship to equal opportunities in our society, the Commission has consistently examined issues concerning education. The Commission's activities have included the release in February 1979 of, Desegregation of the Nation's Public Schools: A Status Report, a report assessing the roles played by the Supreme Court, Congress, and the former Department of Health, Education, and

Welfare in school desegregation. It also included brief discussions of the status of school desegregation in 47 school districts. A 1981 report, The Black/White Colleges: Dismantling the Dual System of Higher Education, examined the potential of criteria formulated by the former Department of Health, Education, and Welfare to aid States in desegregating their higher education systems. A 1982 Statement on School Desegregation reaffirmed the Commission's support for school desegregation and the methods that have proved effective in its implementation.

The Commission's activities in the area of education also have included testimony before Congress on numerous occasions. For example, in October, 1981, the Commission testified on school desegregation before this Subcommittee and in February, 1979, before the House Ways and Means Oversight Subcommittee.

The Commission also closely followed developments regarding the decision by the Department of Treasury to reverse its longstanding interpretation of the law governing the tax-exempt status of private schools that discriminate on the basis of race. In 1982, the Commission testified before the Senate Finance Committee on this subject. In December 1982, the Commission released Discriminatory Religious Schools and Tax-Exempt Status, a monograph addressing the issue of granting tax-exempt status to religious schools that discriminate on the basis of race. The monograph explains the historical underpinnings of the fundamental national policy against racial discrimination and discusses the constitutional conflicts which

arise when a sincerely held religious belief violates this fundamental policy. It also discusses the Establishment Clause conflict that occurs when one religious institution is treated differently by the government than another religious institution.

In the area of employment, the Commission recently issued a report entitled Unemployment and Underemployment Among Blacks, Hispanics, and Women. This report compares unemployment and underemployment statistics for blacks, Hispanics, and women with the data for white non-Hispanic males. Disparities were identified and analyzed in terms of different economic conditions, location, and industrial sectors in the economy, as well as individual characteristics, such as education, training, and age. The disparities were pervasive and evident in virtually all educational and age categories. Minorities and women are disproportionately *under*employed in addition to being disproportionately unemployed. When all the factors are held constant, the gap between these groups is not explained, leading to the inference that discrimination remains.

In addition, the Commission continues its employment monitoring activities, emphasizing the enforcement by Federal agencies of Title VII of the Civil Rights Act of 1964 and Federal policies involving affirmative action.

In the area of housing, the Commission in 1979 released The Federal Fair Housing Enforcement Effort, a sequel to an earlier Commission report on the same subject, To Provide...For Fair Housing. The 1979 report evaluated the Federal effort to end

discrimination in housing and recommended, in part, the amendment of Title VIII of the Civil Rights of 1968 to increase the fair housing enforcement capability of the Federal government. The recommendations were adopted in part by the House of Representatives in 1980, but did not become law. Several of the Commission's State Advisory Committees, including those in New York, Kentucky, Illinois, Missouri and South Dakota, also have conducted follow-up studies on fair housing.

These committees are among the Commission's 51 State Advisory Committees. The State Advisory Committees (SAC), whose membership includes citizen representatives covering a broad range of groups, interests and ages, are the "eyes and ears" of the Commission in communities across the Nation. The two principal functions of the advisory committtees are to advise the Commission on Civil Rights about matters within its jurisdiction, and to assist the Commission in its "clearinghouse" statutory responsibility to gather and disseminate information to the public about civil rights-related matters.

The important role played by the State Advisory Committees is seen in the fact that, several SACs--Connecticut, Georgia, Michigan, West Virginia, New Jersey and New York--to name a few, have closely monitored and reported to the Commission on the resurgence of instances of racially- and religiously-motivated violence, a subject of paramount concern to the Commission. Racial and religious bigotry and violence continue

to represent a serious threat to the maintenance of a peaceful, democratic and pluralistic society today, just as they did over 100 years ago.

Consistent with its responsibility for evaluating Federal enforcement of civil rights laws, the Commission has placed high priority on monitoring the activities of Federal agencies having responsibility for enforcing laws prohibiting discrimination. This aspect of the Commission's work is particularly important because the civil rights laws are merely words unless they are effectively administered and enforced.

In this regard, the Commission has supported and assisted Federal agencies in developing more efficient and effective civil rights enforcement policies and procedures. For example, the Commission has actively monitored and supported efforts to coordinate enforcement of 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 as well as separate efforts to coordinate the enforcement of Title VII and the enforcement of Executive Order 11246. The Commission has commented on proposals to implement such coordination on numerous occasions.

In commenting to the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs on compliance manuals, management directives and staff guides, the Commission has worked to improve the clarity and usefulness of Federal agency policy guidance for those who must comply with the Federal civil rights laws.

Additionally, the Commission has monitored substantive civil rights policy developments and has, for example, commented on Title VI and Title VI-related regulations and legislation. The Commission has also submitted comments on regulations and legislation regarding the civil rights implications of Federal program consolidation and block grants. The Advisory Committees in the five Southwestern states have been especially active seeking to ensure maintenance of civil rights protections in newly-implemented block grant programs in those states.

In the area of handicap discrimination, which was added to the Commission's jurisdiction in 1978, the Commission conducted a consultation in 1980 to identify and examine civil rights issues concerning disabled persons and to address potential solutions. Building on what was learned at this consultation, the Commission is working on a monograph on discrimination against the handicapped, scheduled for release in 1983. Among the topics to be addressed is "reasonable accommodation" as a remedy for such discrimination. The Commission has also been active in monitoring the development of Federal agency policies and procedures affecting the handicapped.

In the area of administration of justice, the Commission has conducted several studies. For example, in September 1980, the Commission submitted to the Congress and the President its report on immigration, The Tarnished Golden Door: Civil Rights Issues in Immigration. This report was the culmination of a lengthy study of civil rights problems in immigration law,

practice, and procedure. Over the course of the study, literally hundreds of individuals were interviewed and open meetings were held by the Commission's State Advisory Committees in New York, California, and Texas. In November 1978, the Commission held a national hearing here in Washington, D.C. on civil rights issues in immigration. The Commission has testified regarding the findings and recommendations of The Tarnished Golden Door before House and Senate subcommittees having jurisdiction over pending immigration legislation.

In 1981, the Commission released its report on police practices and civil rights, Who Is Guarding the Guardians? Several months of field work and fact-finding hearings in Philadelphia and Houston went into this study. Several State Advisory Committees also conducted investigations into police practices in smaller communities throughout the country. The police report is now being used by the Federal Bureau of Investigation at its training facility in Quantico, Virginia. The report also has formed the basis for model reforms suggested by police and community organizations. Guardians was also cited throughout the briefs submitted to the Supreme Court in the Boston Firefighters case which was recently heard by the Supreme Court.

Another important endeavor of the Commission is its monitoring of the enforcement of and compliance with Title IX which bars sex discrimination in Federally-assisted education programs and activities. In 1980, the Commission released two

reports in this area. One, More Hurdles to Clear, examined the status of women and girls in competitive athletics in the Nation's high schools and colleges and assessed progress toward equal opportunity for women in this area. The other, Enforcing Title IX, evaluated enforcement of the law by the Department of Health, Education, and Welfare and recommended improvements the new Department of Education should undertake as it assumed principal Title IX responsibilities.

The Commission has closely followed and commented on the Government's policies in Title IX litigation. These efforts have been given high priority since recent and pending cases ultimately will determine the scope of Federal protections against sex discrimination in education. This litigation will have a profound impact on similar protections against discrimination based on race, handicap, and age. The Commission has initiated continuing communications about these cases with the Departments of Education and Justice and has served as an informational resource on the issues involved. The Commission also has begun monitoring the practical impact of Title IX interpretations on the enforcement efforts of the Department of Education's Office for Civil Rights.

In the area of American Indian rights, the Commission published the second edition of the American Indian Civil Rights Handbook in 1980. The purpose of the handbook is to inform the public about basic rights under Federal law enjoyed by American Indians both on and off reservations. In addition, in 1981, the Commission issued, Indian Tribes: A Continuing

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Quest for Survival based upon a series of hearings, careful monitoring of related developments, and upon extensive field research. The report examines the role of State, tribal, and Federal governments in some of the major conflicts--fisning rights, reservation criminal law enforcement, and eastern Indian land claims--that exist between Indian tribes and non-Indians. These conflicts and the manner in which they are resolved have profound implications for the civil rights status of American Indians.

Another important endeavor of the Commission is that of utilizing existing statistical data to provide useful and timely information on the status of minorities and women. For example, the Commission in 1978 released _Social Indicators of Equality for Minorities and Women_. This report uses 21 statistical measures in the areas of education, unemployment, income, and housing to compare levels of well-being of minorities and women to those of majority males for 1960, 1970, and 1976. These indicators demonstrated many forms of minority and female inequality. Indicators were presented for several minority groups that are generally excluded from statistical reports. The report served as the basis of testimony presented to the Senate Committee on Human Resources in January 1979. The Commission plans to update _Social Indicators_ based on the 1980 census data and to establish a statistical baseline for comparison purposes for Southern and Eastern European ethnic minorities.

In the area of age discrimination, the Commission recently released Minority Elderly Services: New Programs, Old Problems, a congressionally-mandated study of racial and ethnic discrimination in Federally-assisted programs for older persons. Part I of the report, published in 1982, examined minority participation in programs administered by the Administration on Aging in six communities across the Nation. Part II, published in 1983, contained the results of a national survey of State and area agencies on aging and interviews at the Administration on Aging regarding minority experiences in connection with employment, grants and contracts, and service delivery in Older Americans Act programs.

The above-noted report was preceded by The Age Discrimination Study, also mandated by the Congress. Part I of this report, published in 1978, set forth the Commission's findings and recommendations based on an 18-month study of age discrimination in the administration of 10 Federally-assisted programs and selected education activities. Part II, published in 1979, described each program examined by the Commission and summarized the record of information obtained through literature search, data analysis, a field study, and public hearings.

Although this abbreviated discussion does not include all of the Commission's activities, the scope, variety, and complexity of its work, and the importance of civil rights related issues to the well being of the Nation as a whole, are reflected. In 1981 the Commission issued a statement entitled

Civil Rights: A National, Not a Special Interest in the hope it would clarify the dangers in treating civil rights as just another special interest competing for Federal funds. They are not, and cannot be treated that way. Rather, these constitutional protections are the foundation upon which the American body politic rests. The 13th, 14th, and 15th amendments to the Constitution, adopted at the close and in the years immediately following the Civil War, are the keystone in the arch of freedom called civil rights. These constitutional amendments not only ensured the acquisition of legal rights, but they also led to the enactment of legislation and the establishment of programs to overcome the effects of past discrimination and effectuate the promises made by the Civil War amendments. A number of federal programs that are often viewed as not having a relationship to civil rights in fact have their historic and/or legal bases in those amendments. The legislative history of certain programs such as those providing for federally assisted housing and community health centers reveals that they were enacted in large part to overcome the effects of discrimination.

The Civil War amendments not only created new civil rights but they empowered the Federal government with the authority and responsibility to enforce them. The historical record of implementing these three amendments--and Federal court decisions and congressional legislation based upon them--remains, at best, uneven. For over 25 years, the Commission's independent bipartisan status has allowed it to offer its findings and

recommendations regarding the implementation and enforcement of these laws to both Democratic and Republican administrations.

Civil rights, like the larger society it reflects, is not a static concept. New approaches and new remedies must be found for new problems. Because of the Commission's unique and independent structure, it can continue to respond in a focused, analytical manner to both the continuing and the developing civil rights issues of our times. The Commission sees a continuing need for this contribution in the future because so much work in the field of civil rights remains to be done, and the Commission is uniquely qualified to contribute to the achievement of this fundamental national objective.

Statement of Honorable Clarence M. Pendleton, Jr., Chairman,
United States Commission on Civil Rights
before the
Subcommittee on Civil and Constitutional Rights
House Judiciary Committee

April 7, 1983

Mr. Chairman and members of the Subcommittee, I am Clarence M. Pendleton, Jr., Chairman of the United States Commission on Civil Rights. Joining me are Commissioners Mary Frances Berry and Murray Saltzman. We are pleased to have an opportunity to appear before you unanimously to support the reauthorization of the Commission.

In his State of the Union message the President of the United States said "...we will ask for extension of the Civil Rights Commission which is due to expire this year. The Commission is an important part of the ongoing struggle for justice in America and we strongly support its reauthorization." We, the Commissioners believe, as does the President, that there is a clear need for the Commission. While great progress has been made, clearly discrimination does exist. It is necessary to consider whether the Federal government, in terms of policy development and law enforcement functions, has met its special responsibility for achieving a color-blind, gender-neutral society that provides equal opportunity.

We recognize that our Nation has made significant progress in the area of civil rights. But we think the evidence is clear that discrimination is not a relic of the past. The obstacles to equal opportunity in our country are complex and persistent. We must recognize, as the Commission has shown in

a number of reports and statements, that these obstacles are woven into the very fabric of our national life. Removing these obstacles will require considerable time and commitment.

The Congress has recognized that invidious discrimination affects many Americans. For this reason, the Commission's jurisdiction was broadened in the 1970's to address discrimination on the basis of sex, age and handicap, additional areas of continuing concern with regard to discrimination. In its work, of monitoring progress and prodding the Federal government toward national civil rights objectives, the Commission has made a significant contribution.

The Commission must remain an independent, bipartisan factfinding agency, unique in the Federal government. The unique and independent nature of the Commission has enabled it to perform the invaluable role envisioned by the Truman Committee and by the Congress. Although the Commission is not directly involved in enforcement or in regulatory activity, it has a statutory mandate to appraise Federal laws and policies. The statutorily required access to Federal civil rights-related information allows the Commission to appraise, evaluate and develop recommendations regarding the issues that fall within the Commission's responsibility.

In furtherance of its statutory mandate to appraise the laws and policies of the Federal government, to investigate the deprivation of voting rights, and the denial of equal protection of the laws, on the basis of race, color, religion, national origin, sex, age, and handicap, and in the administration of

justice, and to serve as a national clearinghouse for information, the Commission has carried out a variety of activities related to civil rights. A review of these activities is included in the Commission's testimony submitted for the record.

You will find in reviewing the areas studied and activities of the Commission that our range has been broad and varied. This should not be surprising given the multitude of types and forms of discrimination, the interrelationship between different types of discrimination, and the mandate of the Commission. The Commission's activities include conducting studies, submitting reports to the President and Congress, analyzing legislation at the request of Members of Congress, holding public hearings, and monitoring Federal civil rights agency activity, and serving as a public "clearinghouse" of information.

With respect to Fiscal Year 1984 the President has requested for $12,180,000 and 235 fulltime equilavent positions. Including the amounts requested in the pay cost supplemental, we anticipate that the appropriation for Fiscal Year 1983 will be $11,981,000 supporting 237 fulltime equivalent positions. The 1984 request thus represents an increase of $199,000 over the appropriation expected for Fiscal Year 1983. However, after adjustments are made for mandatory increases, the 1984 request actually represents a $437,000 decrease in program activity.

When I testified before this Subcommittee last year, I indicated that the Fiscal Year 1983 appropriation level would require a cutback in Commission program activity, and possibly require the closing of two regional offices and a reduction-in-force of approximately 20 employees in the latter part of the year. I am pleased to inform you that subsequent events have made a reduction-in-force and the closing of two regional offices unnecessary. We anticipate entering Fiscal Year 1984 at approximately the same staffing level we will maintain in Fiscal Year 1983.

The program we propose, although reduced in terms of the number of activities to be carried over to or initiated in Fiscal Year 1984, is similar in content to those presented in previous authorization requests. Since it is discussed in detail in the appropriation request, which you have already received, I will not repeat it here. You will note, however, that the Commission's long-standing interest in eliminating barriers to equal opportunity in employment and economic development, education, housing, the administration of justice and participation in the political process will continue. We also will continue monitoring Federal agency effectiveness in carrying out civil rights reponsibilities. State Advisory Committee activity will continue in all 50 States and the District of Columbia.

In closing, let me point out that civil rights, like the larger society it reflects, is not a static concept. New approaches and new remedies must be found for new problems. Because of the Commission's unique and independent structure, it can respond in a focused, analytical manner to both the ongoing and the developing civil rights issues of our times. The Commission sees a continuing need for the contribution it can make in the future of our Nation because so much work in the field of civil rights remains to be done, and the Commission is uniquely qualified to contribute to the achievement of this fundamental national objective.

We will be pleased to respond to questions you may have. Thank you.

Mr. EDWARDS. Do either of the other Commissioners desire to make a statement?

Dr. Berry.

Dr. BERRY. I guess I would, Mr. Chairman.

In addition to what our Chairman has stated, I would like to note just briefly that in recent weeks the Commission has been the subject of criticism—we are always criticized by somebody for something—of a new kind, in my experience; that is, criticism that we concern ourselves with issues that are unrelated to civil rights. I just briefly want to address myself to that.

As I understand the criticisms and the materials that I have read, it seems to me to be of three kinds: One, that we are always concerned about some kind of discrimination that does not involve individuals, and that is a problem; two, that we are always identifying groups as people who are discriminated against and that it is somehow un-American for us to do that, in addition to being inconsistent with the law under which we operate; and finally, that we concern ourselves with social programs, like health and welfare programs and the like, that we in fact should not concern ourselves with.

Let me just respond to that briefly, Mr. Chairman and members of the committee, by saying that the Commission recognizes that individual discrimination occurs, that we are concerned about it.

We also know that when John Doe, for example, is the subject of racially targeted violence, it is because John Doe is black or Hispanic and not because John Doe's name is John Doe. To ignore that, we would be closing our eyes to what everyone sees and closing our ears to what everyone hears.

We know that when Susie Smith is discriminated against as an individual, it is often because she is female and not because she is Susie Smith. For us to ignore that, again, would be to ignore what is reality.

On the subject of groups, the Congress itself recognizes again and again the President signing the bills that the Congress passes, that there are certain groups in our society that are discriminated against.

Note: The Surface Transportation Act of 1982, called the gas tax bill, contains a section that identifies specifically Hispanics, blacks, and other minority groups by name as groups that have been discriminated against and have special needs that must be addressed.

The final point that I would make, Mr. Chairman, the example was given of the education budget report that we did as something that was not civil rights, that it had to do with social policy or something and we should not concern ourselves with it.

Since I happen to know more about education, having run those programs, than some of the other ones that we monitor in the civil rights areas, let me just note that in the laws of the United States as enacted by this Congress and signed by, in this case, a Republican President, the Emergency School Aid Act, "the purpose of this legislation is to meet the special needs incident to the elimination of segregation and discrimination among students." So, if we are not to concern ourselves with that budget for that program, then I guess we are not supposed to be concerned about eliminating segregation.

On bilingual education, for example, I would note that in the legislation there is a statement, "Congress declares it to be the policy of the United States in order to establish equal educational opportunity for all children" that this program exists.

So, if we are not to concern ourselves when budget cuts and shifts are made in that program, we would not be concerned with equal educational opportunities and we would be ignoring what the Congress recognizes as the civil rights issue, what the courts have recognized as civil rights issues, and we would be trivializing the work of the Commission.

At least as long as I am a member of this Commission, and my colleagues who serve with me in the majority of the commission, we will not so trivialize the issues and we will continue to respond, if this Commission is reauthorized and I am still there, on issues that everyone recognizes as being national issues on the subject of civil rights.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Dr. Berry.

Rabbi Saltzman.

Rabbi SALTZMAN. I appreciate the opportunity to add to my colleagues' comments. I think this issue is of fundamental significance to our Nation and its self-image.

The view that we should speak only to individual circumstances and to the rights of individuals presents a basic philosophical dichotomy between individual rights and group rights as they compete in an imperfect world. The polarities of individual rights versus group rights cannot be reconciled perfectly. Certainly when synagogues are plastered with swastikas, they are not plastered with swastikas because they are anything else but a Jewish synagogue.

So, we have to be concerned with group rights as well as individual rights and create a balance. I think the extreme, toward either end of the polarity, creates the kind of demagoguery and tyranny which in this country we have sought to guard ourselves against.

Unbridled, excessive individualism may be very much at the root of the permissiveness, the narcissism which creates many of the problems in our contemporary society. The "Meism," producing a focus solely on the individual without any sensitivity to group responsibilities debilitates a society.

To the other extreme, group responsibility must not operate so as to infringe on the rights of the individual. There must be a balance. I think the Commission has sought to achieve that sensitivity, to balance both individual and group rights.

I thank you.

Mr. EDWARDS. Thank you.

Mr. Kastenmeier.

Mr. KASTENMEIER. I have no questions, Mr. Chairman.

Mr. EDWARDS. Mr. Sensenbrenner?

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

One of the major issues that I believe was posed in the legislation extending the Commission's life will be the national subpoena power issue. I think that there are some legitimate concerns over how that subpoena power would be exercised, should it be granted

to the Commission, given some of the criticisms that have been leveled against the Commission.

I take it as a given that the Commission is going to be reauthorized. I think the question is how long it will be for: 15, 20, 25, 50 years perhaps. I am kind of concerned that if the Commission decides that its role is to be an advocate in the civil rights process, the issuance of a subpoena against an individual or an organization or a Government agency can carry with it the stigma that the recipient of that subpoena is somehow racially bigoted, which is a stigma I think as serious as the stigma of being accused of being a Communist 30 years ago.

I would like to have the opinions of all three of the Commissioners who are present on how that could be prevented and how they would anticipate the national subpoena power to work, should the Commission be granted that subpoena power.

Mr. PENDLETON. I would yield first to my colleagues, Mr. Sensenbrenner.

Dr. BERRY. Mr. Sensenbrenner, the Commissioners asked for the national subpoena power because at present we can subpoena in connection with a hearing only within 50 miles of the site. Our only reason for proposing national subpoena power was because of reasons of efficiency and effectiveness. We thought that it would be a better use of resources.

Mr. SENSENBRENNER. Does that mean that everybody comes to Washington rather than you going to where the problem is?

Dr. BERRY. No. In fact, what we do is we go around the country and hold hearings. That is what our pattern has been. But in some instances where we have done a study, say, in Miami, of racial violence in Miami, just to use that as an example, if we had been able to gather information about some other instances that were going on somewhere else without having to go there, the understanding is that we would have been able to include something relating to those in our report.

The project was made only for reasons of efficiency and effectiveness. If there are people who feel that this somehow will invade the rights of someone in ways that we have not thought through carefully, the Commissioners are quite willing to consider that any such suggestions.

But it was done for that one reason, that we could add material from around the country to our studies without the expense of going places. We only subpoena materials in connection with hearings.

By the way, on the question of stigmatization of persons who are subpoenaed, we already subpoena everybody who comes to our hearings routinely, as a matter of course, so that there is no distinction about who is subpoenaed and who isn't. No one has ever considered that to be a stigmatization. So, that pattern occurs. The subpoena does not presuppose that anyone has done anything wrong.

We would be willing to consider any comments or concerns that anyone has about an invasion of rights or civil liberties related and balance that against the effectiveness and efficiency argument.

Rabbi SALTZMAN. My only comment, because I concur with my colleague, is to the subtlety and distinction of the advocacy role

that you pointed to. I don't think the Commission, in contrast to the Federal Government, is an advocate in the same way that the Federal Government is an advocate.

We believe that by reason of the 13th, 14th, and 15th amendments to the Constitution, the Federal Government has the responsibility to effectively administer and promote civil rights. Our role, as established by the Congress, is to monitor the Federal Government's role in its posture as an advocate for civil rights.

Mr. PENDLETON. Mr. Sensenbrenner, Commissioner Berry's answer to your question is interesting. I wanted to say something else about that in connection with this.

The Commission does not enjoy, I guess, in some people's respects, and especially the media, the collegiality apparently that existed before some of us got there. There are differences of opinion about many things that happened. I do think one needs to know that we need to respect what those differences are without having to be necessarily disagreeable about them.

On the matter of the subpoena, that refers primarily to hearings. It is a matter of not subpoenaing people but is a matter of subpoenaing documents that will support a hearing.

My contention about hearings is that I am a little bit disturbed about the whole hearing process. We had a public hearing in San Jose on the growth industries, and we spent a lot of money for that hearing. I am not so sure that we got a lot out of that hearing.

You mentioned going across the country to go to places where circumstances happen to exist, like the Commission went to Miami prior to my coming on the Commission. We had a lot of people come, and a lot of money was spent. I am not so certain we got our dollar's worth. At the press conference in Miami to release the report I didn't see anyone there from the general public, even though it was in a public auditorium.

Perhaps we need to find out whether we need to just collect testimony on an issue from people and subpoena that rather than always having people appear personally before the Commission. The amount of time that we expend in hearings is not always as productive as we would like it to be, I think.

We do get some information, but the amount of time we have to spend in putting together the hearing record and to review it and get it out is sometimes much later in the ball game. With Miami we were much later in the ball game. We will be much later in the ball game with the reports from the hearings in Baltimore and San Jose.

I have not heard a public cry that people want to give us information. I think what we have here is a staff recommendation that it would be more efficient to do what we want to do in terms of collecting data, but not to subpoena people about the same kind of things you probably read about in the news recently and in public documents.

I am ambivalent about the whole situation, about subpoenaing records. It doesn't matter to me one way or the other. My remarks have to be—consider the fact that when I give a statement, it is a Commission statement, and my colleagues have a chance to say what it is that they believe about the Commission. I have to take my chances, and when the time comes, in terms of your questions,

to be able to respond with those kinds of things the Commission should be doing.

I will say to you that I think there is to be a big discussion as to whether or not this Commission centers on those matters of individual rights or group rights. I do think there is a clear question in my mind about whether or not civil rights policy and social policy intertwine or whether or not there is a barrier in between.

Perhaps as we go along in the Commission's work in its reauthorization, those discussions will come up again, but I thought it was important to put my viewpoints up on the table.

Mr. SENSENBRENNER. I am certain that all three of you individuals are familiar with the article that Professor Finn had published in the Wall Street Journal a couple of weeks ago. One of Professor Finn's criticisms is that the Civil Rights Commission has become more a captive of client groups, that we all know who they are, and that the independence of the Commission has thus been compromised.

I am wondering if the three Commissioners would care to comment on that allegation.

Mr. PENDLETON. I think that Mr. Finn's comments have a great deal of validity to them. Having come from one of those interest groups, having worked in the Urban League movement for several years, I do think that the way he has developed that position has some merit.

I think there are other things that need to be considered in the process of analyzing how the constituent groups begin to respond or react to the Commission and what it does and how the Commission responds to them.

There is a positive role for the constituent groups to play, but I would leave that to another question and another time.

Mr. SENSENBRENNER. Thank you.

Dr. BERRY. I would like to respond to that.

First of all, I think that if Mr. Finn has any evidence that this Commissioner is a captive of anyone, I would like him to present it. I resent such an implication, if that is what he in fact said. I don't recall the words in the article. To me, that is just as pejorative as some other things that one might call someone, including being a bigot. I am no one's captive, to my knowledge, so let him prove it if he asserts it.

Second, the constituent groups that are constituencies of this Commission were accorded that status by the Congress, which indicated that those were the constituent groups to which we should pay attention because it was the Congress', with a bipartisan support, understanding that there were certain constitutional requirements and certain constitutional protections which should be afforded these particular groups.

We do no work on any groups that the Congress has not said should be a group that we should do work on. That is No. 1. I have already pointed out—and could point out by going into detail, but I won't take up the time of this committee—that none of the studies that we have done in the social policy area concern groups that were not supposed to be bothered with or programs that don't have either a statutory basis, legislative history, or constitutional provi-

sions which indicate that they are designed for these particular groups that the Congress has said we should pay attention to.

There are lots of social problems that exist in this country that the Commission says nothing at all about. Lots of them. I could name lots of them, but I won't. We concern ourselves with problems that relate to the groups that the Congress said we should be concerned about. If there is any evidence that we have done otherwise, I would like somebody to present it.

Rabbi SALTZMAN. Furthermore, I would like to merely add that having served on the Commission the longest term of any present Commissioner, over the years constituent groups have never been fully satisfied with the amount of attention we have given to them.

The Commission, as an independent agency, has to make judgments about how it uses its resources. That is very difficult. We go through a painstaking process, with a great deal of research and deliberation, to make judgments about what are the most crucial issues we should address.

I don't think any group that Congress has ordered us to address as a problem issue in our society is totally satisfied with the amount of attention we have devoted. I think that speaks for our effort to bring objectivity, independence, and careful attention to those issues which are most relevant to the national interest.

Mr. PENDLETON. Mr. Sensenbrenner, I think perhaps in our collective comments one needs to consider the fact that as we have had this Commission for some 25 years, the number of individuals that the Congress has decided need to have attention could be the problem, more so than what the Commission has done.

I think when we look at the number of protected classes, as Commissioner Berry I think is alluding to, we have almost 75 percent of the persons in this country now being covered by some kind of protection.

If we keep on increasing the protection, there is no way we can satisfy that. As we begin to get into the issues people want us to study, that presents a problem, and presents a problem to me in how we look at that.

I have said for some time that perhaps one needs to look at the policies that we are being asked to work with to find out if they are the best policies to carry out this country's civil rights mission.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Mr. EDWARDS. The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you.

Dr. Berry, it is wonderful to see you again. We missed you terribly. It is awfully nice to have you here.

Dr. BERRY. It is good to see you.

Mrs. SCHROEDER. I want to thank you. I think you responded very well to a lot of different things. One of the questions I have relates to news stories last month saying the Commission had sent a letter to the President complaining about a lack of cooperation by administration officials in providing the Commission with the documents they needed.

I just wanted an update on the status of that issue. Have you gotten those documents at this point?

Mr. PENDLETON. It is my understanding that we have gotten most of what it is that we want. Things are on schedule, as far as I

understand them. We have a scorecard we are tallying up now to make certain that we have what we need to have.

The acting staff director tells me that he doesn't see the need at this point to do anything different from what we are doing right now. So, I would hope that we would have obtained it all and be able to use it in our report that deals with the enforcement budgets of the various agencies.

Dr. BERRY. Congresswoman Schroeder, I am glad you asked that question.

First of all, while we are receiving a number of the documents—and the staff director has said that that is the case—he will make a recommendation to the Commissioners, and the Commissioners will decide whether we have in fact received fully what we asked for. We will do that at our meeting when we meet on Monday. So, we can't say whether they have been fully responsive until we examine the report of the staff director.

The second point I would make is that this is a continuing issue because the Commission almost daily or weekly has additional requests to make of various agencies. It is the only way we can monitor and do our job.

The reason why we took the extraordinary step that we did take is because there are several ways to keep the Commission from doing its job. One way is to try to fire all the Commissioners. Another way is to not give us any information, so that we can't analyze it, or when we do analyze it, we can always be called to task and say, well, your figures are wrong, when people know they didn't give them to us in the first place, or they would keep us from doing studies. The third way to do it, of course, is to define us in such a way that we are confined to doing only things that are trivial.

So, this document issue, it is unfortunate that it took us almost 2 years to get some of the information we needed. We could have reported to the Congress and the American public long before now.

We don't know yet whether they have been fully responsive. The important thing is to not only get full responsiveness now, but to continue to get full responsiveness to our request.

Mrs. SCHROEDER. The thing that bothers me so much is that we have been very concerned about the EEOC, who was in here saying they can't even get the Justice Department to file an affirmative action plan. I chair the Civil Service Subcommittee, and we know there are a lot of Federal agencies that won't file these plans. Then, of course, we learn this morning that EEOC has been asked to withdraw their brief in an employment discrimination case and so forth and so on.

Your role versus the EEOC role versus the Government's role generally in civil rights, I think, is something that is of great concern to this committee and to many of us in Congress.

I guess what I want to know is do you think—and I suppose I should direct this to Mr. Pendleton—you finally have some kind of an agreement with the administration that future responses are going to be more timely, or are we going to continue this 2-year, dragging-out process.

Mr. PENDLETON. I feel confident that we have an agreement, an understanding, that the information is to be forthcoming. My con-

versations with people in the administration clearly indicate that that is the case. We can live and abide with that and take that as being the truth.

Mrs. SCHROEDER. I hope you can help the EEOC get some responses, too, because they were in here totally frustrated, saying all they can do is go have tea and try to encourage people to cooperate. They don't have the same powers you do, so it is a tough one.

Mr. PENDLETON. I would hope in an independent way we would stay out of that one until something came before us.

Mrs. SCHROEDER. I am not sure they don't need all the help they can get and, as I say, in the interim, many people get injured.

Mr. Chairman, I apologize because I have to go down to the Legal Services Corporation hearing, which is another issue in which you have no women on the Corporation board and all sorts of other problems going on. That hearing is going on simultaneously.

I thank you all for being here. Any ideas or any other help you can give us to keep this going, especially now that we have an administration mandate to further it, we certainly want to work with you.

Mr. EDWARDS. Thank you, Mrs. Schroeder.

The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman.

Alluding to what Congresswoman Schroeder was saying just a moment ago, I hope you don't find it unique in your agency that sometimes it is difficult to get information from the various agencies in the administration. At every hearing I have ever attended in my short time in the Congress, that complaint has been raised of every subcommittee, every committee, on every conceivable agency in the Government.

I hope the reluctance or the delay in getting information isn't attributed to delaying tactics that are motivated by other than the press of business and from just so many different requests. I found that to be the case in so many other respects, both in State government and in my short tenure here.

Do you find an overweening, shall I say, intent to deprive you of information or just the screening process and the press of business and the other matters that come before an agency?

Mr. PENDLETON. Let me try to be a bit parochial with where we are with the agencies and what we have to do.

We did list out a number of responses we got from agencies, that went all the way from being responsive to "if you want what you want, you have to file under the Freedom of Information Act."

Having been appointed by this Administration, I did make some phone calls to find out whether or not people really understood that we had a statutory right to information in terms of appraising the public of what is going on.

What I think really happened here was that people, especially this administration, have some fear that this Commission, in the way it reports, intends to beat up on them. Some people think every time a report comes through we are going to take it and process it in such a way that it makes it look bad for this administration.

I have tried my best, and I think I have done some of the smoothing over the waters, that that will not or should not be the case and we need to talk about where you have problems with us, as a Commission reporting on information that we have to report out. We want to be as responsive to your demands as we possibly can, but in keeping with our independent statutory mandate.

It is also important to understand that that kind of reluctance causes time delays. This Commission felt that in order to keep up with our statutory responsibility, we had to get the information and the only route we had to go, as I think my colleagues will support, is to potentially use the subpoena as a way to obtain what we have to obtain to stay on schedule with the process.

Mr. Sensenbrenner very aptly and rightly wrote a letter last year about our education report and how we were putting that out in terms of where the education budget really was at the time.

We wanted to avoid that process by getting the information in on time and getting the report done in a timely way.

Mr. GEKAS. I understand all that. By way of commentary, in the form of a nonquestion, I have found Chairman Edwards, for instance, is unhappy with lack of responses from the FBI and from the Department of Justice on other matters which are of importance to the committee, having nothing to do with the Civil Rights Commission or your jurisdictional questions.

I see that many times as a symptom of bureaucracy, that there are built-in delays, fear of breaching some kind of internal guideline, fear of breach of the Freedom of Information Act, fear of a lot of different constraints that have nothing to do with trying to keep that entity from doing its job.

I am sure that the Department of Justice doesn't want to stonewall Chairman Edwards on some of his requests from the department. Maybe they do, but if they do, it has nothing to do with the type of bias that you might be feeling is occurring in the reluctance or delay to get you information, is what I am getting across.

Mr. PENDLETON. I think it is also important to say, from a personal point of view, since I have been the Chairman of this Commission, whatever this administration does in civil rights is a matter of national attention. That is the way it is, so all I can say to that is amen.

Mr. GEKAS. I hope that that same kind of attention is given to the President's proposal to extend the Civil Rights Commission for 20 years.

Rabbi SALTZMAN. Without reflecting on my age, I have had the privilege of serving under three Presidents. I cannot address the ability of other agencies and commissions to get information, but let me point out that under the three Presidents I have served, because the Commission serves as the conscience of the Nation, which I think is the intent of the Congress, each administration, Republican or Democratic, has felt abused by the Commission at times by reason of our criticisms and our recommendations.

This extraordinary act during this administration by the Commission is the result of extraordinary delays and difficulties in securing information. It was not true in other administrations. We were compelled to act in this manner when our requests to the

President, a letter to the President apprising him of the difficulties we were having, failed to receive a response.

So, I think there was an extraordinary situation in this administration with respect to our ability to secure the information we are statutorily mandated, to secure.

Mr. GEKAS. But you are now in the process to evaluate the type of response that you have received, since you have received responses.

Mr. PENDLETON. Yes.

Mr. GEKAS. On another question that was raised on the subpoena power, is it any kind of a feasible compromise—and I am probably saying no to my own question as I am asking a question—to leave the subpoena power in place as it is now constituted but extend it nationally to duces tecum; that is, to just documentation, as was referred to in your testimony, that you might require regionally or nationally for a given smaller geographic area.

Mr. PENDLETON. That is the intent, Mr. Gekas.

Dr. BERRY. That is what we want.

Mr. GEKAS. Just duces tecum? You don't require——

Mr. PENDLETON. I think what has gotten confused here is the subpoenaing of the administration's records of information and the agencies' with the hearing process. All we want to do is to be able to do what you said to do. I am sorry, I am not a lawyer, duces who?

Mr. GEKAS. Duces tecum. He plays second base—— [Laughter.]

Mr. PENDLETON. Whoever he or she may be at this point, we need to be clear that that is all we are looking for. We are not looking to do more than just that.

Mr. GEKAS. The reason I have a puzzle in my own question is that that entails, unless we can work it by certification, the appearance of an individual to certify as to the authenticity of the documents and all of that; that you can waive the appearance of an individual if you are satisfied with the authenticity of the documents transmitted as such.

I would be in support of any kind of request to at least extend the subpoena power to that extent.

Mr. PENDLETON. We don't want the individual to come and bring it. The idea is for it to be cost effective, so would you please just send it to us, hopefully in a way that meets with our budgetary constraints.

Mr. GEKAS. I see no hurdle to that. There might be something I am missing, but I would be in favor of extending the subpoena power to that extent.

I have no further questions. Thank you.

Mr. EDWARDS. The gentleman from Ohio, Mr. DeWine.

Mr. DEWINE. Thank you, Mr. Chairman.

I wonder if the three Commission members could comment on the President's proposal to extend the life of the Commission for 20 years.

Mr. PENDLETON. Having been asked my advice about that kind of extension by those who helped to put it together, I support the President's request for 20 years. I think it is a clear indication that this President does support civil rights, recognizes there is a prob-

lem, and wants us to have enough time to work more closely with it and on it.

I do think that the staggered terms provide what one of my colleagues, the Acting Staff Director, says, which is to maintain some institutional memory at the Commission. I applaud the President for his actions and suggested to him some time ago in a meeting that I attended that he should do that and send it up.

I would imagine that the delay in that has been for a number of reasons, but I applaud his actions today and would hope this committee would consider that, as the chairman has said, in the process of how we extend the Commission.

Mr. GEKAS. If the gentleman would yield, that delay was by the same bureaucrats who delayed sending you the other——

Mr. PENDLETON. It is better you say it, sir, than I.

Dr. BERRY. If I could comment on the President's proposal, the Commissioners recommended staggered terms at a time when the Chairman of our Commission and one of our Commissioners had been fired in an unprecedented action, in which we thought in a matter of days all the Commissioners would be fired and that none of us who were on the Commission would be sitting as Commissioners.

So, we took the unprecedented action of recommending staggered fixed terms in order to protect the Commission from ever having that happen again, in order to preserve its independence and its institutional memory.

We have fortunately or unfortunately, depending on how one regards it, continued to sit on the Commission, the circumstances changed, but that was the origin of all of this.

As for the substance of the recommendation, I see nothing in the President's proposal that would insulate Commissioners from being fired again at the pleasure of the President.

It seems to me to propose staggered terms—which was only an emergency measure on our part in the first place and nothing that we really desired but we thought we had to do something—and then to subject the persons to firing at the pleasure of the President would not take us any further down the road than we were to start with.

Also, not to have anything in it that would insulate the Commissioners who were there from being fired wholesale, so that they could be replaced by all new appointees, again would raise the same kinds of issues.

So, the staggered terms sounds like a very principled position. We did, in fact, support it, but with the idea that people could not be removed except for malfeasance in office.

I like the 20-year proposal. I would like 25 or 30 years, or I would like until the end of discrimination, period, or better, if we could put a timetable on that, but I don't like the idea of Commissioners being removed at the pleasure of the President because it is inconsistent with the idea of independence.

Rabbi SALTZMAN. I fully support and concur with the President. In fact, I see that recommendation on his part really as a rebuff to the point of view of Professor Finn because it is a recognition that discrimination in our country will not be eliminated merely by the passage of good laws, by the good decisions of the Supreme Court,

and by the efforts of the administration; that we are dealing with a problem systemic and historical in this country that will take generations to overcome; that the existence of the Commission as an independent agency, to monitor the efforts of the Government, to move us forward, is crucial in order to fulfill the rhetoric of the Constitution to achieve equal opportunity. One day indeed, we may become a colorblind society. Unfortunately, it is not possible at the present time to act as if we were, when we are not.

We must at least, through affirmative measures, reduce the enormous barriers limiting equal opportunity. This may take a few generations. It requires more than simply the passage of good laws by the Congress. I think that is what that 20-year term implies.

Mr. DEWINE. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you.

Wouldn't it make sense, whether it is a Democratic or Republican President, that if we are going to have staggered terms, the existing members should be grandmothered or grandfathered in; and second, that they should not be removed except for cause. Otherwise, you would have a President, whether Republican or Democratic, able to put in a certain group of people, whether from the left or the right or whatever.

Dr. BERRY. That is exactly my point, Mr. Chairman. This kind of proposal, in order for it to maintain the independence of the Commission, would need to have the kind of amendments that I am inferring from the query that you have just presented.

Mr. PENDLETON. If I could, Mr. Chairman, I just want to be clear that I support the President's initiatives just the way they are. I think if I work for someone and I am not doing a good job and he or she wants someone else to do that job, then I should just get out of the way. I don't have any problem with that at all.

You are talking about grandfathering in. I have no problem with being dismissed if I am ineffective and the President so deems that. I have had some discussions and have done some reading about it, and I would imagine that other information needs to come forth to make certain that what is being proposed, or what I am hearing being discussed, that the President should not be able to remove the people except for cause. That might be a point that needs to be discussed further and some other information or background studies done to find out whether or not he can or cannot do that. Hopefully at some point it might be a she in that position who can or cannot do that.

I support where the President is in this initiative without any equivocation, without any changes at all.

Dr. BERRY. Mr. Chairman, if I may, I hate to disagree with my colleague in public——

Mr. EDWARDS. That is all right. Sometimes we disagree on the subcommittee, believe it or not.

Dr. BERRY [continuing]. But I find I must, and I will try to do so without being disagreeable.

The Chairman's statement is precisely inaccurate in terms of how it characterizes what Commissioners do. We do not work for the President. We do not work for any President. We are an independent, bipartisan Commission.

I don't work for any President. No Commissioner does. It is absolutely inconsistent, both logically, politically and in every way possible, for the Commission to even exist if its members think, believe and act as if they work for any President.

So, to have some President who is dissatisfied with my performance, or anyone else's on the Commission in the past, present or future, say I would like to remove you, I think that that is irrelevant. His judgment about whether I am doing his job is irrelevant to the performance. The only relevancy is is the Commission doing its job under the statute to appraise these laws and policies and to do what the Congress and other Presidents have signed into law that we should do.

Rabbi SALTZMAN. May I?

Mr. PENDLETON. There is a mediator here in the process.

Rabbi SALTZMAN. I think it is a difficult issue. I would agree that the Commission is not the instrument of the administration. It was not intended to be, nor was it intended to reflect the civil rights policy of a particular President. It was to administer the mandate of Congress and to function in an oversight role with respect to that mandate of Congress, as Congress defined in the law creating the Civil Rights Commission.

I think, on the other hand, the issue of whether a President has the authority to remove a member of the Commission or a member of any agency is debatable. There are agencies in which Commissioners once appointed, to avoid politicization of that agency, the President does not have that authority, except under malfeasance, to remove the individual.

I think, generally speaking, if the Commission is going to be subject to the political policy or whims of an administration, it will be indeed politicized and no longer able to function as Congress intended it to.

Yet, there may be an instance, for other than malfeasance, an individual Commissioner, should be removed for various reasons—illness or inability to serve because of the Commissioner's time constraints.

I think, however, the overriding concern must be to avoid the politicization of the Commission and to safeguard it from the pressure whereby it becomes the spokesman of the party or the President in power. That, I think, was not the intent of the Congress. I think that is the overriding concern on the issue you have raised, Mr. Chairman.

Mr. EDWARDS. I thank you for that observation. Mr. Pendleton., why have a 6-year term if the President can remove the Commissioners at any time, at his pleasure?

Mr. PENDLETON. I am not certain that all reasons for removing Commissioners are political ones. People just might be plain outright ineffective at that point once they have been appointed.

I think that if the appointment process comes to a President, unless that process is changed, then I think that person who does the appointing has the right to disappoint, if that is the case. I don't see anything wrong with that.

I don't know what else to say. If Congress decided at some point there needs to be another appointment process or some other way by which Commissioners are appointed, then that is something

else. I am looking at the existing process by which people are appointed to the Commission.

I think as Mr. Hope has said in the past, the way it was set up, it was set up to really not work. Perhaps in its setup we have the problem that we have right now. I am prepared to support the appointing authority. I think in any other job, if you are appointed by someone, that person has the right to remove you.

Mr. EDWARDS. This is the first time in the history of the Commission, though, that a President has tried to wipe out five of the six members of the Commission. I think it is not so much that the Chairman was fired. If you want to talk about it, it was the whole Commission which was under attack, as I read it. I think that was the President's prerogative, as the Commission was set up, to be able to do that. No other President did it, but that does not say that a President cannot do it.

Dr. BERRY. Mr. Chairman, I wanted to comment on your question about the staggered term. I wanted to say that we are treating this like it is a case of first impression. It is not.

Members of Congress know, as well as we do, that there are many independent agencies in this town, where the members serve staggered terms, and by statute they can only be removed for cause. That exists already. It is not like it is a new question.

Although the President appoints them and they are confirmed by the Senate, the President can't remove them until the end of that term. That was decided long ago in a case called Humphries Executor by the Supreme Court.

So, that issue is not a new issue. Just because you appoint someone, if the statute gives you the power to remove them only for cause, that doesn't mean that you can go ahead and remove them. So, there is no real connection between the two. It is not a new point.

Mr. PENDLETON. If I can recall some of the Commission's history, though, my predecessor was not the first person, as you say, who was fired.

Mr. EDWARDS. Father Hesburgh was fired.

Mr. PENDLETON. That is true. I could only say that the process that is intact, I can support it. If it is a new process, we support the new process.

Mr. EDWARDS. The gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. I have no questions, Mr. Chairman.

Mr. EDWARDS. Counsel?

Ms. GONZALES. Mr. Pendleton, one of the complaints implied in Professor Finn's article was the appropriateness of the Commission looking at the issue of the decline in black farming.

Yet, if one looks at the paper this morning there is indication that you and the Commission had sent a letter to the Department of Agriculture indicating the seriousness of the problem over there in terms of civil rights enforcement.

I wonder if you could comment on that report and on the newspaper article this morning.

Mr. PENDLETON. Much of the work on the report on the decline of black farming was done before I came to the Commission. I think what we have done in the appraisal process is to carefully

look at what has been, in a sense, an apparent denial of access of black farmers to the resources that are available to them in the Department of Agriculture.

I think whether or not it is, as Mr. Finn would call it, a responsibility of the Commission to get into that, I think what we are saying is that we want to make certain that the people have access to their constitutional guarantees, which is a point Mr. Finn and I can agree on.

The problems at the Department of Agiculture precede this administration, certainly, and I would hope that now that we have made our comments, that that is the kind of comment that would be taken advisedly by the Department of Agriculture and that we could see some substantive results from that.

What you get to I think is a definition of how we define the word appraisal of policy. I find that much of what we do in the appraisal process is, in a sense, a preaudit. In the case of the Agriculture Department, there is kind of a post-audit with respect to black farmers.

If those resources of the Department are not available on an equal opportunity basis, there is a very serious problem.

Ms. GONZALES. So we are talking not just generally about whether it is unfortunate that farmers generally are losing their land, et cetera, but what we are really talking about is that given the fact that there are moneys set aside to help farmers, are those moneys being given on an equal basis to blacks and whites?

That is really one of the primary issues that was addressed by the report, as I recall, especially with regard to a program that was specifically designated for minority or small farmers. Is that correct?

Mr. PENDLETON. I guess it is not so much that there is equal access or equal opportunity—what was it you said?

Ms. GONZALES. Equal access. I don't mean equal amounts of money being given. I am saying equal access to those amounts.

Mr. PENDLETON. I think what it appears to us is that the access is not as great as we would like to see it. We have made that comment. I think that gets more or less to the constitutional question rather than the social question.

Ms. GONZALES. Thank you.

Mr. EDWARDS. We thank the witnesses very much. You have been very helpful. It is nice seeing you all again.

We are now going to have a panel presentation by Chester Finn, Jr., professor of education and public policy at Vanderbilt University, and Joseph Rauh, who is a well-known expert in civil rights litigation and legislation and a longtime friend of the subcommittee.

Professor Finn and Mr. Rauh, we welcome you. Professor Finn, without objection, your statement will be made a part of the record. I understand that you will begin the panel presentation.

Welcome.

TESTIMONY OF CHESTER E. FINN, JR., PROFESSOR, EDUCATION AND PUBLIC POLICY, VANDERBILT UNIVERSITY, AND JOSEPH RAUH, ESQ.

Mr. FINN. Mr. Chairman, thank you.

I am Chester Finn. I am a professor of education and public policy at Vanderbilt.

It was a considerable honor to get Chairman Rodino's letter inviting me to appear here this morning, and I am glad to be here. I am both honored and slightly intimidated in my first such appearance to be flanked by one of the most celebrated advocates in this field, Joe Rauh.

You have my testimony. You have entered it into the record. I take it that you also have an article I wrote a couple of weeks ago, and I might suggest that it be made part of the record. I won't repeat all of it, then.

With your permission, I would like to submit another article, dealing with affirmative action, that touches on the Civil Rights Commission's responsibilities, also to accompany my statement.

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

Mr. FINN. Thank you, sir.

I would like to make five points this morning, all by way of discussing what I fear is the Commission's tendency to jeopardize its own ability to serve as the conscience of the Nation, which is the role I believe it properly plays.

I take for granted that the Commission will in some fashion be extended. I favor that. I regard myself as a friend and supporter of civil rights and as a friendly critic of the Civil Rights Commission as it has been performing its functions in recent years.

I was, frankly, quite surprised to hear Commissioner Berry suggest that the nature of my criticism was a new one, the notion that the Commission's proper responsibility is to look after the rights of individuals rather than the rights of groups.

In 25 years, approximately, of the Commission's existence, it seemed to me it would have been obvious that the rights of individuals were the essential reason for its existence, and that this would hardly be a novel point.

As I read the legislation creating the Commission, which refers to "discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin," I construe that as a statement of the rights of individuals, not as the rights of groups.

I don't believe the American democracy is constructed on the basis of group rights. I believe it is constructed on the basis of individual rights. As I read the constitutional history, the Founding Fathers considered and dismissed the notion of group rights and instead created a democracy ground in individual rights.

I think it is, alas, no coincidence that many societies in the world are organized around and devoted to group rights. Many of those societies are not democracies.

I was speaking yesterday with one of our most distinguished constitutional historians, Walter Berns, now at the American Enterprise Institute, who is recently back from being a delegate to the U.N. Human Rights Commission in Geneva, where he found group rights to be the order of the day among totalitarian and nondemocratic regimes, most of whom wish the United States no good at all.

He also observed from his own study of constitutional history that the notion of group rights leads quite inevitably and inexora-

bly to quotas because there is no way to assess the enforcement of group rights, other than in quantitative, numerical terms, and there is no way to stipulate the standard of enforcement other than by creating quotas of one kind or another.

This the Commission does not, evidently, find at all uncomfortable. I would like to quote a passage from the Commission's prepared testimony. I don't know whether Mr. Pendleton read it or not this morning.

"To eradicate such discrimination," the Commission says, "Federal courts and public agencies must be able to utilize remedies that take race, sex, and national origin into account, including goals and timetables and quotas, when necessary." That is the Commission's view of its responsibility toward the defense of civil rights in the United States, and I do not share it.

My first point, then, is that in the American democracy, civil rights dwell in individuals, not in groups. I do not believe the Civil Rights Commission sees it that way.

My second point is that the Civil Rights Commission should be encouraging steps to eliminate official color consciousness, gender consciousness, and ethnic consciousness from this society rather than to enhance such consciousness.

It is my impression that the Commission has been seeking to enhance color consciousness and group consciousness, rather than the contrary. I think the passage I just read from their testimony is pertinent to that.

My third point is that there is a distinction, a troubled distinction, but a real distinction between civil rights policy and social policy. I think this is a distinction that is important because people may disagree fundamentally about social policy, which comes down in many cases to spending priorities, but people shouldn't disagree in the same ways over civil rights.

So, if the Civil Rights Commission becomes an advocate for certain social policies, it becomes a competitor in the battle, in the battle in which the farmers compete with the maritime industry, the battle in which the psychologists compete with the pathologists.

I don't think civil rights should be competing in those battles as if it were simply an interest group seeking money in contrast to the defense contractors seeking money. Civil rights are much more fundamental, much more universal, and draw on moral authority, not on the power of the purse.

I suggest in my testimony that Congress in its wisdom may want to create a new agency to be an advocacy agency for Federal funds for programs for poor and disadvantaged persons. I would have no quarrel with the establishment of such an advocacy agency, much as the Office of Economic Opportunity once was.

I think that the poor and the dispossessed have a valid claim to have their own needs advocated in the budget battles, but I don't believe that is the function of the Civil Rights Commission. I think it is the function of the Civil Rights Commission to look after the civil rights of individuals, regardless of what group they belong to or what characteristics they may display.

Fourth, I have a basic difference of interpretation with the Commission. As I read the Commission's documents, such as I have had access to, the Commission takes the view that American society is

deeply and fundamentally prejudiced in its very fabric. I don't share that view of our country. I realize the Civil Rights Commission is not alone in its view. I simply think that it is an incorrect interpretation of the character of this society.

Worse than that, I suggest that this view, that the Nation is deeply and fundamentally prejudiced, is damaging to the very cause the Civil Rights Commission is supposed to be advancing, both because of its pessimism, which leads to a sense of hopelessness, to Rabbi Saltzman's sort of timeless view that it will be generations and generations and generations before we can expect to make significant progress, and also because this view leads to what you might call the permanent governmentalization of civil rights, a tendency that actually, in my view, reduces the burden on individuals to behave themselves with respect to other individuals.

The fifth point is that in my view, discrimination is evil regardless of the nature of the individual against whom it is done. It doesn't even matter if he is a white male firefighter. If he is discriminated against by virtue of characteristics that apply to him or to groups to which he belongs, that discrimination is evil.

I do not believe the Civil Rights Commission sees it that way. I believe they are engaged in what I will term "selective civil rights enforcement." They claim to have been told to look after the interests of particular groups in the society and not of other groups in the society.

I do not find that in their authorizing legislation. I find no singling out of groups. Rather, I find a ban on discrimination against individuals because of group characteristics. I believe if there is such a ban, it is a proper ban against discrimination, against individuals, and that it is equally applicable regardless of the nature of the individual or of the discrimination.

I object to the Civil Rights Commission's selective enforcement, I object to their tolerance of what is frequently these days termed reverse discrimination, and I object to their acceptance of the mechanisms in the society that lead to reverse discrimination.

That is the extent of my opening remarks, Mr. Chairman. I would be happy to respond to any questions before or after Mr. Rauh.

Mr. EDWARDS. Thank you, Professor.

[The statement of Mr. Finn follows:]

Statement of Chester E. Finn, Jr.

Prepared for Presentation to the

Subcommittee on Civil and Constitutional Rights

Committee on the Judiciary

United States House of Representatives

April 7, 1983

Mr. Chairman and members of the Subcommittee: My name is Chester E. Finn, Jr. I am Professor of Education and Public Policy at Vanderbilt University, Nashville, Tennessee. Of course I appear as an individual citizen, not as a representative of the institution that employs me.

I appreciate the Subcommittee's invitation to talk with you today about the work of the United States Commission on Civil Rights. My statement is very brief.

I should like to emphasize at the outset that I come as an ardent supporter of civil rights, and as one who reveres the landmark legislation authored by this Committee in 1957 and 1964 that created the Civil Rights Commission and set forth its major mandates. I take as given that Congress in its wisdom will see fit to extend the Commission's authorization beyond its current date of expiry and that therefore the continued existence of the Commission is in little doubt. I understand that the Subcommittee is weighing possible revisions in several specific provisions of the authorizing legislation, and is also pondering the proper duration of the statutory renewal. I shall not attempt to address those matters in my opening remarks, but would be pleased to offer my own opinions in any subsequent discussion.

What chiefly concerns me is not the phrasing of the statute but some of the interpretations and actions taken by the Commission itself in recent years. For while I do not doubt that the Commission has technically complied with the generous, even permissive, wording of its legislative mandate, a number of its actions and pronouncements do not seem to me to be in keeping with the spirit of the law or, indeed, of the Constitution.

I am not an attorney, but as I read the statute, the key provisions refer to "discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin."

The Commission thus has wide authority to gather information, make studies and appraise federal laws and policies "with respect to" such forms of discrimination

and denials of equal protection of the laws. (It also has somewhat more specific mandates to investigate allegations of discrimination in the exercise of voting rights.)

The essential question is what constitutes discrimination or the denial of equal protection. And in a number of instances I believe the Commission has itself developed quite different answers to that question than Congress intended, different than the Constitution or the major civil rights laws themselves indicate, and different than most American citizens would offer.

I believe this difference has three elements, and I will state them as simply as I can.

First, I believe this nation was founded on the principle that civil rights--fundamentally the rights of citizenship, of a member of the polity, of what the Romans called the _civis_--inhere in individuals, not in groups. While discrimination against an individual, or the denial of rights to an individual, may occur because the individual has some of the characteristics of a particular group--such as gender, color, religion, etc.--the inalienable rights themselves inhere in the individual, and any abridgement of them is an act of discrimination against the individual. That is a fundamental principle of democracy. It is explicit in the Declaration of Independence, the Constitution (perhaps especially in the Bill of Rights) and in the major civil rights legislation over the decades. To be sure, there have been all too many occasions in our history where acts of discrimination were perpetrated against many or all of the individuals in a particular group, but it is nonetheless the individuals who were discriminated against. Yet the Civil Rights Commission, in many of its reports and pronouncements, seems to me to have adopted the view that its responsibility is to look after the rights of groups. That, I submit, is a fundamental distortion of the concept of civil rights in a democracy.

It is well known that many of the nations in the world do not subscribe to the western democratic tradition of individual rights. If I may quote from a recent State Department position paper concerning some of the assaults on liberal democracy that have been encountered at UNESCO in recent years: "The heart of the problem lies in continuing attempts within the United Nations and its dependent organs to shift the priorities of the UN...away from the traditional Western concept of 'human rights' as a body of rules and norms governing the relationship between the individual and the State. This concept is under attack and has already been significantly eroded in the UN system in favor of 'human rights' of nations, peoples and collectivities. ....Once collective 'rights' are accorded equal status with individual rights, it becomes inevitable that governments are tempted to choose to place priorities on the more generalized 'rights' which ease the task of government. The basis of every totalitarian state is the argument that individual rights must be subordinated to the 'good' of the whole, and that the masters of the state, of whatever political leaning they may be, are qualified to select the course that society will take and determine what rights each individual will retain."

My second difference with the Civil Rights Commission follows from the first. Stated simply, I believe that the American democracy aspires to a condition in which individuals are treated as individuals without regard to any characteristics of any groups to which they may belong. This is often characterized as the ideal of a color-blind society, but it would be equally correct to think of it as gender-blind, religion-blind, and so forth. It was the classification and mistreatment of individuals according to their group characteristics that prompted the civil rights legislation creating the Commission. Yet it seems to me that in many of its reports and pronouncements the Civil Rights Commission has sought to accentuate the characteristics of groups, to encourage color-consciousness (and gender, religion, etc.), and to engage in the very kinds of group classifications that it

was established in order to help purge from the society.

The third difference concerns the proper definition of discrimination and denial of equal protection. It also concerns the distinction between civil rights policy and social policy. That is not an absolutely precise boundary, I acknowledge, but it is a distinction nonetheless, and an important one. Let me illustrate by quoting two provisions of the great Civil Rights Act of 1964, the same legislation, I would note, that gave the Civil Rights Commission essentially the mandate under which, with a few modifications and additions, it exists today.

The opening section of Title II, affording injunctive relief against discrimination in places of public accommodation, reads as follows: "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation... without discrimination or segregation on the grounds of race, color, religion or national origin."

The question I would pose to the Subcommittee, simply stated, is whether that passage was meant to ensure that any person with the desire and the wherewithal to obtain a hotel room could not be turned away from the door on account of race, color or religion, or whether it was meant to furnish hotel rooms to all persons. The first is an issue of civil rights policy. The second is an issue of social policy. When the government stipulates that you may not be turned away, it is protecting your civil rights. When it sets out to provide you with a hotel room, it is looking after your welfare.

I happen to believe that it is an altogether proper function of government to secure the general welfare, as provided in the Constitution, by collecting and distributing resources such that those with very few of their own are able to have a roof over their heads, food in their stomachs and clothes on their backs. But I do not believe those are civil rights issues. They are issues of social

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policy, and are necessarily embedded in legitimate disagreements over the proper level of common provision and the proper fiscal and social priorities of a government that never has enough resources to provide all the goods and services that everyone might wish.

Similarly, the opening section of Title VI of the 1964 Civil Rights Act, guaranteeing nondiscrimination in federally assisted programs, states that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

That does not specify the programs and activities that _should_ receive Federal financial assistance, for the Congress wisely recognized that those must be separate issues giving rise to separate decisions. The government may or may not choose to provide financial assistance to a given activity within the society. Those choices are the stuff of the budget, authorization and appropriations decisions that comprise much of the agenda of the executive and of the Congress, year in and year out. They are choices that change from time to time, and that prompt vociferous and altogether legitimate disagreement. What Title VI says, as I read it, is that _if_ Congress in its wisdom provides financial assistance to a particular program or activity, then no person can be excluded from participation in the program or activity on account of race, color or national origin. If there is a Food Stamp program, say, no one can be denied its benefits because he (or she) is black, white or brown, Protestant, Catholic or Jew. But Title VI does not say that there must be a Food Stamp program, or that there must be a certain level of spending in a given year for Food Stamps, and it certainly does not say that the presence or absence or size of a Food Stamp program is a civil rights issue. It is, to repeat, a legitimate and important issue of welfare policy, of social policy.

I do not want to belabor the Food Stamp example. But I do assert that over the

years the Civil Rights Commission has devoted more and more of its energies and attention to issues that I believe are properly regarded as issues of welfare policy or social policy; to the existence and funding levels and regulations and administrative operations of a wide array of transfer programs and social service programs and welfare programs.

Personally, I favor many of the same programs, and would hope that they might be generously funded, humanely administered, and their services efficiently delivered. But they are not civil rights programs--indeed I submit that there is no such thing as a civil rights program, that the very notion is a contradiction in terms--and that when the Civil Rights Commission undertakes to convert issues of spending priorities and program administration into civil rights issues it risks the loss of much of the moral authority that is its most valuable asset and strongest weapon.

For spending priorities are matters of legitimate debate. But civil rights must not be. Denying a person the right to rent a hotel room is a far, far different thing than declining to furnish him the funds with which to pay the hotel bill. Barring a person from the door of a grocery or a school or a bus or a library is fundamentally different than refraining from supplying him the wherewithal to purchase a loaf of bread, a college education, a bus token or a shelf of books. A humane society will do its best to supply that wherewithal, within the limits of its resources and consistent with its other needs, goals and obligations. But issues of wherewithal are not civil rights issues, and attempts to convert them into civil rights issues have the regrettable effect of throwing the noble concept of civil rights into the cauldron of competing interests and demands on the public fisc. This is not good for civil rights. It is not good for social policy, either.

This government is full of agencies with deep and abiding interests in the

outcomes of the budgetary battles that rage on Capitol Hill every year. These agencies generally operate programs that provide resources to particular constituencies in the society. Inevitably, these agencies also become advocates for the interests of particular groups in the society, be they farmers, college students, the maritime industry, the banking industry, the handicapped, the magazine publishers, the labor unions, the scientists, the suppliers of military hardware, or the users of national forests. The list is almost endless. These groups and the agencies that attend to their interests compete with each other. Some win. Some lose. Actually, they practically all win something, but seldom as much as they want.

The question that troubles me is whether civil rights are to be allowed to be viewed as just another set of constituency interests, as competitors for public funds and favor, and as contestants in the perennial disputes over spending priorities; or whether civil rights are something far more fundamental, the inalienable rights of every American, regardless of group or constituency interest. Indeed, I would go so far as to suggest that even the greediest financier, the most reactionary defense contractor, or the most vituperative of journalists has the same civil rights as the neediest minority child or battered woman, and that it is the solemn obligation of the Civil Rights Commission--whether the individual commissioners like it or not--to guard their rights with equal fervor.

I will not further belabor the point. The Subcommittee has access to all the reports of the Civil Rights Commission. I have reviewed only a few dozen of the more recent ones. Without meaning to single any out except as examples of a general trend, I must respectfully ask whether such pronouncements as the recent statement on the level of the Fiscal 1983 budget of the U.S. Department of Education is properly in the domain of civil rights or of social policy. As is by now clear, I believe it belongs in the latter category, and that the attempt by the

Commission to put it into the former is part of a trend that, over time, demeans the idea of civil rights itself.

It may well be that Congress should consider the creation of an advocacy agency within the federal government for the poor, the elderly, the disadvantaged and the weak. Such an agency would fight fiercely for the policies and funds that sustain the programs that in turn benefit its needy and deserving constituencies. It would be vocal and forceful in every domain of social policy, of welfare policy, and in the perennial battles over national spending priorities. I could see some merit in the creation of such an agency, and indeed recall that in its heyday the Office of Economic Opportunity performed in that role to a considerable extent. But no useful purpose is served by having the United States Commission on Civil Rights regularly slip over the boundary into the advocacy of welfare rights, the appraisal of the budgets of other agencies, and the evaluation of the adequacy of sundry social service programs in meeting various needs. It simply cannot be the voice of conscience if it is also a combatant in the battles.

I have two further general points. To state the first one simply, the Civil Rights Commission appears generally to subscribe to the view that American society is deeply and fundamentally prejudiced against any number of minorities (and, in the case of women, against a majority). I offer but one example among the many that might be supplied, this one drawn from the Commission's lengthy statement entitled "Affirmative Action in the 1980's...." "Discriminatory actions," the Commission states, "are not only pervasive, occurring in every sector of society, but also cumulative, with effects limited neither to the time nor the particular structural area in which they occur. This process of discrimination, therefore, extends across generations, across organizations, and across social structures in self-reinforcing cycles. ...Discrimination against minorities and women should now be viewed as an interlocking process involving the attitudes and actions of

individuals and the organizations and social structures that guide individual behavior. That process, started by past events, now routinely bestows privileges, favors, and advantages on white males and imposes disadvantages and penalities on minorities and women. This process is also self-perpetuating....."

The Civil Rights Commission is not, to be sure, alone in this view of American society. But I believe it is an inaccurate, misleading and in its way damaging depiction of our nation--damaging not because I would in any way deny or conceal the heinous acts of discrimination that have occurred and that continue to occur, but because I believe that this view of the society as somehow structurally unsound actually serves to deflect attention from acts of discrimination against individuals and to lighten the Constitutional, legal and moral obligation of every American citizen to abjure such acts.

Finally, I find the Civil Rights Commission uneven in its view of discrimination. Specifically, I find in its reports little evidence that the Commission holds all acts of discrimination to be reprehensible. I refer not only to its lack of evident concern with what is today termed, "reverse discrimination", but also to its enthusiasm for many forms of what is commonly termed "preferential treatment", which is of course the kind of treatment that gives rise to acts of reverse discrimination.

The Civil Rights Commission should be the conscience of the nation with respect to all forms of discrimination against individuals, whether we find those individuals admirable, worthy and deserving or reprehensible and mean. It should be our collective superego, a source of immense moral authority. It should be scrupulous in calling attention to actions that lead to discrimination or the denial of equal protection of the laws under the Constitution. It must, therefore, itself be beyond reproach. That I must come before the Subcommittee today to reproach it is a source of great personal sadness. But that I believe it can yet come to embody the principles and the spirit that ennoble our democracy is a source of enormous hope.

Thank you again for inviting me to appear before you today.

Commentary

"Affirmative Action" Under Reagan

Chester E. Finn, Jr.

In a press conference on the anniversary of his inauguration, Ronald Reagan stated that "I have been on the side of opposition to bigotry and discrimination and prejudice, and long before it ever became a kind of national issue under the title of civil rights. And my life has been spent on that side."

Yet the policies and actions of Reagan's administration during its first fourteen months were widely perceived to be unsympathetic to civil-rights progress, if not overtly hostile to the interests of minorities and women. Certainly that is the view of leaders of major civil-rights organizations. The NAACP's Benjamin Hooks told a Senate subcommittee in late January that he could not point to "any action of this administration that would give any hope of comfort to minorities." The National Urban League opened the 1982 edition of its annual report on "The State of Black America" with the statement that "At no point in recent memory had the distance between the national government and black America been greater than it was in 1981, nor had the relationship between the two been more strained." The American Civil Liberties Union distributed a newsletter in February describing "a presidential administration whose hostility to individual rights is relentless." A lawyer with the National Women's Political Caucus says of Reagan that "his record is absolutely deplorable." Apart from an occasional expression of ironic gratitude to the President for galvanizing the sluggish civil-rights movement itself—"He's giving us the glue that's bringing us together," said one Urban League official—the White House evokes little but criticism from such spokesmen and their echoes among the editorial writers and columnists of the major metropolitan newspapers.

One cannot of course know whether Ronald Reagan has ever harbored an unkind impulse or prejudiced thought, but it is now possible to glimpse the outlines of his administration's civil-rights policies and to begin to appraise their execution. The policies, unfortunately, are not as clear as they should be after more than a year in office. Their implementation has been uneven on good days, indefensible on bad ones. What is most regrettable about the administration's two or three authentic blunders, however, is that they cloud, indeed may permanently have polluted, the atmosphere of good faith that is essential if the excesses and distortions committed in the name of "civil rights" in recent years are to be corrected and the concept itself restored to a place of honor and approbation.

That it does not occupy such a place today is due largely to conflict between two quite distinct ideas, both of which have carried the banner of "civil rights" since the mid-60's, and to mounting popular disapproval of some of the actions taken by the federal government in their name.

The first consists of purposeful efforts to bar discrimination against individuals on the basis of their race, religion, sex, physical condition, national origin, and other such characteristics. These efforts are rooted in the Enlightenment ideas that undergird American democracy; in the Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments to the Constitution; in the civil-rights legislation of the 1860's and 1870's; in a series of Supreme Court decisions beginning with *Brown* v. *Board of Education*; and, especially, in the Civil Rights Act of 1964, that great congressional mandate for equal individual opportunity within a color-blind society.

In pursuit of this goal, the federal government has constructed elaborate means of safeguarding individuals against discrimination based on the attributes of groups to which they belong and has thereby sought to equalize their opportunities to succeed—or to fail—as individuals. These safeguards, in the main, continue to enjoy wide public approval.

The second set of actions taken in the name of "civil rights," however, has consisted of efforts to better the condition of designated groups within the society by redistributing social, economic, political, and educational resources. The underlying rationale has been variously phrased, but always partakes of the concept of achieving parity among groups defined according to the same characteristics that are proscribed in the treatment of individuals.

CHESTER E. FINN, JR. is professor of education and public policy at Vanderbilt University and the author of several studies of educational and social policy, including *Scholars, Dollars, and Bureaucrats*. Mr. Finn would like to thank Elise Rabekoff and Neal Devins for assistance in preparing this article.

Although foreshadowed by FDR in the "second bill of rights" described in his 1944 State of the Union message, this, too, is primarily a legacy of the mid-1960's, especially of the federal War on Poverty with its dozens of "compensatory" spending programs, and of Executive Order 11246, issued by President Johnson in 1965. That celebrated document required the government and its private contractors to take "affirmative action" to "ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." (Sex was added in 1967.) Every federal agency was ordered to "establish and maintain a positive program of equal employment opportunity" and the Secretary of Labor was empowered to adopt "such rules and regulations" as were necessary for government contractors to be pressed toward the same result.*

A few months earlier, Bayard Rustin had presciently observed that "The civil-rights movement is evolving from a protest movement into a full-fledged social movement—an evolution calling its very name into question. It is now concerned not merely with removing the barriers to full opportunity but with achieving the fact of equality."† Rustin itemized the problems facing blacks, problems which, "while conditioned by Jim Crow, do not vanish upon its demise. They are more deeply rooted in our socioeconomic order; they are the result of the total society's failure to meet not only the Negro's needs, but human needs generally."

Federal efforts to achieve "the fact of equality" were numerous and imaginative. Many of these sought to better the lot of the poor and disadvantaged in general, especially through the myriad social programs, ranging from Headstart to CETA to food stamps to adoption assistance, that were the building blocks of the contemporary welfare state. Others, however, responded to the demands of more limited groups—women, blacks, the handicapped, the elderly, Hispanic Americans, Native Americans—for divers benefits and services.

Even as the spending programs proliferated and grew, however, Washington developed several further strategies to apportion society's rewards more "equally."

The first was to eliminate such criteria as examinations for employment and tests for entry into selective schools that had the effect of distributing benefits unequally among groups even though the criteria were themselves objective or "colorblind."

The second was the "earmarking," "setting aside," or reserving of certain portions of federal money and other benefits for groups who would not have to compete for them through the processes that governed the allocation of the remainder.

The third was the creation of detailed regulations and procedures for non-federal entities (such as school systems and private employers) within the reach of federal policy that obliged them to make decisions in a race- (or sex-) conscious way.

It mattered little who occupied the Oval Office or which party controlled the executive branch. The Nixon administration, after all, introduced the concept of numerical hiring "goals and timetables," imposed the requirement that individual employers prepare written affirmative-action plans, and invented the "Philadelphia Plan," which amounted to a minority-hiring quota for federal construction contractors. During the brief tenure of Gerald Ford, a simple statutory prohibition against sex discrimination in federally-aided schools and colleges was translated into the voluminous Title IX regulations, intruding Washington into school dress codes, the offerings of university athletic departments, and, for a time, "father-son" and "mother-daughter" dinners. Ford's Office of Education also promulgated the "Lau Remedies," requiring school districts with twenty or more children who speak a language other than English to teach them in their primary language and to provide them with "bicultural" education as well.

But it was during the administration of Jimmy Carter that such "equalizing" strategies were most fully elaborated. This was due in part to the internal politics of the Democratic party that nominated him, for by 1976 the party of Thomas Jefferson had become a fractious assembly of groups that defined themselves by race, ethnicity, physical conditions, gender, and sexual orientation and that allotted delegate seats at its own convention acording to intricate ratios and quotas.

The administration that took office in 1977 set about to favor and reward these constituent groups by yielding to practically every one of their demands. Former Carter appointees in the executive agencies and the White House staff now reflect ruefully on their instructions not to turn away any group or movement that asserted rights or claims, however extravagant. In fact, of course, some—such as Catholics seeking aid for parochial schools—were turned away. But in the main, administration policy, as George Will put it, was "to divide the majestic national river into little racial

* The latent conflict between the color-consciousness of the executive order and the color-blindness of the previous year's Civil Rights Act continues to raise profound legal and constitutional questions about the extent of the President's authority in promulgating and enforcing the order. The Supreme Court's *Weber* decision quite unintentionally deepened those questions, as is incisively shown in a brilliant law note by Andree Kahn Blumstein, "Doing Good the Wrong Way: The Case for Delimiting Presidential Power Under Executive Order No. 11246," *Vanderbilt Law Review*, Vol. 33:921, 1980.

† "From Protest to Politics: The Future of the Civil Rights Movement," COMMENTARY, February 1965.

and ethnic creeks," making the United States "less a nation than an angry menagerie of factions scrambling for preference in the government's allocation of entitlements."

In that spirit, and pursuant to a one-paragraph congressional ban on discrimination against the handicapped, the Carter administration promulgated hundreds of pages of regulations mandating that subway stations and 19th-century college laboratory buildings alike be "retrofitted" for wheelchair use, notwithstanding the multibillion dollar cost—little or none of it reimbursed by Washington.

The civil-service "reforms" that Carter pressed through Congress radically changed the basis of the federal government's own "affirmative-action" plans. Prior to 1978, those plans rested—as do private-sector plans even now—on the concept of "under-utilization," defined by the government as the presence of "fewer minorities or women in a particular job group than would reasonably be expected by their availability." That construction at least allowed agency heads and the Civil Service Commission to base their "goals and timetables" on the distribution within particular geographic locations of minority-group members and women possessing the skills and qualifications needed for specific jobs in the federal service.

The 1978 reforms, however, replaced "under-utilization" with "underrepresentation," defined as "a situation in which the number of members of a minority-group designation . . . within a category of civil-service employment constitutes a lower percentage of the total number of employees within the employment category than the percentage that the minority constituted within the labor force of the United States. . . ." This wiped out all consideration of individual qualifications and of local job-market conditions; it said, in effect, that no government official could rest until every "designated" minority was represented in every grade and classification of federal employment in every agency in exact proportion to its incidence in the adult population of the United States as a whole: the most explicit, exacting, and inflexible quota system of all.

In its final weeks, the Carter administration also agreed to scrap the principal test that the government routinely administered to judge the qualifications of persons seeking to enter the civil service.* The reason was that minority-group members often failed the examination, which meant it purportedly had an "adverse impact" on them. So much for merit in the public sector.

As for non-federal employers, the Carter administration also made great "progress." Under Executive Order 11246 and its cousins, the enforcement of contract compliance had been handled by agencies with at least some general knowledge of the institutional character of their own contractors and the nature of the pertinent labor pools. Carter now consolidated the entire endeavor in the Labor Department and greatly enlarged its Office of Federal Contract Compliance Programs (OFCCP)—a zealous agency with a single responsibility and just one set of outside constituencies, namely, the groups whose interests are advanced by its enforcement efforts.

That agency set about with great vigor to expand the scope and reach of its activities. It came to rely heavily on the "back-pay" sanction, whereby an employer found to have been insufficiently ardent about affirmative-action goals could be compelled to grant up to five years' pay as compensation to those who supposedly would have earned it had he acted differently at an earlier date. It welcomed hundreds of complaints against employers from civil-rights organizations generally, and women's groups particularly, thereby effectively enlisting them as scouts and informants.

A FEW blocks away, the Equal Employment Opportunity Commission (EEOC), firmly led by Eleanor Holmes Norton, set out both to eliminate the huge backlog of uninvestigated discrimination complaints by individuals and to step up its self-generated anti-discrimination and affirmative-action efforts. One of its principal endeavors was to convince employers that they did not have to worry about charges of "reverse discrimination" if they gave preference to minority-group members and women. Offering its own interpretation of the history of the 1964 Civil Rights Act, the Commission published in the Federal Register its confident belief "that by the enactment of Title VII Congress did not intend to expose those who comply with the Act to charges that they are violating the very statute they are seeking to implement. Such a result would immobilize or reduce the efforts of many who would otherwise take action to improve the opportunities of minorities and women. . . ."

The Commission then set forth an ingenious Catch-22 in which persons who thought themselves victims of "reverse discrimination" could expect no help from the EEOC. For, after announcing that "These guidelines constitute the Commission's interpretation of Title VII and will be applied in the processing of claims of discrimination," the Commissioners explained that employers engaged in the work-force analysis that is part of affirmative action need not "establish a violation of Title VII" so long as they find that their past practices "have or tend to have an adverse effect on employment opportunities of members of previously excluded groups" or "result in disproportionate treatment." Race- and sex-conscious actions taken to end the disproportionality would not be held by the EEOC to constitute discrimination. Hence, anyone who felt himself

* See Walter Berns, "Let Me Call You Quota, Sweetheart," COMMENTARY, May 1981.

victimized by reverse discrimination would have to look elsewhere for redress—and the EEOC would cheerfully arm the employer with evidence that in its view he had acted lawfully.

The Carter administration also accelerated the government's efforts to set aside various pots of federal funds for the exclusive use of "minority contractors." A 95-page document published by the Commerce Department in early 1980 listed 25 major programs of "business contract opportunities" and explained that "most of these . . . are solely for minority business." The centerpiece was the "Section 8(a) Program" under which the Small Business Administration arranges for itself and other federal agencies to bypass the usual procurement procedures (including competitive bidding) in order to award contracts to minority firms. By the end of the Carter administration, nearly $2 billion a year was being spent in this manner, and it was clear that the idea had barely begun to tap the creativity of the executive branch. In March 1980, for example, the Department of Transportation, with no legislative sanction at all, issued a regulation stipulating that general contractors bidding on the department's many lush construction projects (including highways, airports, and mass transit) would have to assure the government that at least 10 percent of the value of the work would be sub-contracted to minority companies.

None of this, however, could have occurred without judicial sanction. The question was how to make sure that the courts would not fall back on the principles of "equal protection" and "nondiscrimination" to deny preferential treatment, set-asides, and quotas, whether undertaken by the government itself or by corporations, universities, and others acting with its encouragement.

That was an open question when Jimmy Carter assumed the Presidency, but not when he left it. For during those four years, the Supreme Court of the United States, following the lengthy briefs and fervent pleadings of Carter's Justice Department, gave its blessing to race-consciousness, set-asides, and quotas. The background and reasoning of the three key decisions, *Bakke*, *Weber*, and *Fullilove*, have been thoroughly examined in these pages and elsewhere.* But it is essential to recall that in the realm of civil-rights litigation, the courts have regularly paid careful attention to the policies, action, and legal reasoning of the executive branch, and have often allowed themselves to be led by it. Through 1980, there was little question in what direction they were being led.

THUS Ronald Reagan assumed office after a decade and a half in which the Presidency had vigorously sought to advance group interests through regulation, judicial interpretation, and government expenditure, and in which policy conflicts between group interests and individual rights, on the one hand, and between group interests and evenhanded national standards, on the other, were almost always resolved in favor of the interested groups.

Well before the 1980 election, one could see ample evidence of popular and congressional dissatisfaction. On Capitol Hill, the House of Representatives repeatedly voted to ban school busing, employment quotas, and other involuntary or coercive federal "enforcement" efforts. Poll after poll revealed that these votes conformed to public opinion. For even as indices of individual prejudice steadily declined, and support for such voluntary programs as compensatory education and job training remained high, the American people expressed mounting displeasure with group favoritism. A 1977 Gallup survey, for example, found that only 11 percent of all respondents (including just 12 percent of women and 30 percent of nonwhites) condoned "preferential treatment in getting jobs and places in college," while 82 percent of all men, 80 percent of women, and 55 percent of nonwhites believed that "ability, as determined by test scores, should be the main consideration."

This did not deter the Democratic party. "[M]uch more remains to be done," said its 1980 platform:

> An effective affirmative-action program is an essential component of our commitment to expanding civil-rights protections. The federal government must be a model for private employers, making special efforts in recruitment, training, and promotion to aid minority Americans in overcoming both the historic patterns and the historic burdens of discrimination. . . . Our commitment to civil rights embraces not only a commitment to legal equality, but a commitment to economic justice as well. It embraces a recognition of the right of every citizen—Black and Hispanic, American Indian and Alaska Native, Asian/Pacific Americans, and the majority who are women—to a fair share in our economy.

But this time the Republican alternative was clearly different. The voters, for once, were to have a choice. The 1980 GOP platform stated that:

> The truths we hold and the values we share affirm that no individual should be victimized by unfair discrimination because of race, sex, advanced age, physical handicap, difference of national origin or religion, or economic circumstance. However, equal opportunity should not be jeopardized by bureaucratic regulations and decisions which rely on quotas, ratios, and

* See William J. Bennett and Terry Eastland, "Why Bakke Won't End Reverse Discrimination," September 1978; Carl Cohen, "Why Racial Preference is Illegal and Immoral," June 1979, and "Justice Debased: The Weber Decision," September 1979; and the remarkable 122-page insert that Senator Orrin Hatch placed in the *Congressional Record* on September 3, 1980.

numerical requirements to exclude some individuals in favor of others, thereby rendering such regulations and decisions inherently discriminatory.

As is well known, the party—and Reagan himself—also promised to shrink the welfare state, to ease the burden of regulation on employers and other institutions in the society, and to emphasize economic revitalization as the surest route to individual and group betterment. "Faster growth, higher incomes, and plentiful jobs," said the platform, "are exactly what the unemployed, the underprivileged, and minorities have been seeking for many years."

Immediately after the election, various task forces and transition teams undertook to convert these principles and goals into specific policy prescriptions. The most comprehensive of these were embodied in the Heritage Foundation's celebrated 1093-page volume, *Mandate for Leadership*. This was not an official document, to be sure, but was widely and accurately regarded as the clearest statement of the new administration's proper agenda as seen through the eyes of Washington-savvy "Reaganites."

The Heritage document was especially clear about affirmative action, which "runs counter to American ideals" and "should be jettisoned as soon as it is politically possible to do so." While Title VII of the Civil Rights Act, barring employment discrimination, should be scrupulously enforced, the section of Executive Order 11246 requiring affirmative action by government contractors should be replaced by language banning both discrimination *and* preferential treatment, and employers should be forbidden to "maintain any records indicating the race, creed, color, sex, religion, or national origin of any applicant or employee." The Heritage recommendations, in short, were that "color-blindness" should again become the standard for employers, admissions offices, and federal agencies alike; and that "discrimination" should again be defined as a willful action, not a statistical imbalance.

Just as civil-rights policy comprised only a modest fraction of the multitudinous recommendations of *Mandate for Leadership*, so has it filled a relatively small space on the new administration's agenda. Yet it resists isolation. For as individual rights have been displaced by group interests, all governmental actions affecting the economic well-being, status, and power of identifiable groups have come to be viewed and debated as civil-rights issues. Of course it is expedient for any group to marshal its crusade for advantage behind the noble banner of civil rights. But it would also be unrealistic not to recognize that reduced federal social spending and high unemployment strike particularly hard at those whose well-being in fact depends on public-sector programs or—by virtue of being marginally employed in the private sector—on general prosperity.

There can be no doubt that Ronald Reagan's relations with civil-rights leaders, with their allies in the labor movement, and perhaps even with editorial writers of the New York *Times* would be warmer if he were not seeking to cut food stamps, to turn welfare over to the states, and to eliminate CETA in the middle of a severe recession. To be sure, as Rustin observed seventeen long years ago, these issues are "not civil rights, strictly speaking, but social and economic conditions," and it is well to resist the temptation to confuse them. But that is no small task in the best of times, and Reagan's social and economic policies make it more difficult, not least for himself, as callousness and indifference vie with kindliness and decency in the still hazy image the nation is trying to draw of the man it elected to lead it.

THE first clues a new administration gives as to the directions it will actually take after assuming office are often hidden in its personnel decisions. Here, with respect to both the symbolism and the substance of civil rights, the Reagan team enjoyed one triumph (the nomination of Sandra Day O'Connor to the Supreme Court), made one blunder, and fell into a trap.

The blunder occurred so fast that few noticed. Barely four weeks after inauguration day, Attorney General William French Smith announced that the new administration would abide by rather than contest the agreement Carter had made to jettison the PACE examination that the government used to gauge the abilities of applicants for civil-service jobs. Although the new administration won minor modifications in the consent decree, the decision not to join the fundamental issue of principle suggested that Reagan's people were unwilling to defend the concept of merit in the face of unequal test results. The special irony of this decision, as Donald J. Devine, the director of the Office of Personnel Management, observed several months later, "is that there is presently no 'adverse impact' upon minority-group members in filling PACE-covered positions."

The administration seemed a bit sheepish. The Attorney General acknowledged that the "revised decree does not achieve an ideal result or reflect the framework that might have been devised had this administration been in control of the litigation from the outset." Devine was blunter. He expressed "great reluctance" at having to carry out the agreement, and predicted that "the costs of implementation will be very high."

The personnel trap the administration fell into may have been unavoidable. Reagan's predecessors had encouraged civil-rights leaders to judge their commitment to equal opportunity by the number of minority-group members and women they appointed to policy-making positions in the executive branch. Embedded in this type of categorical hiring are the immediate benefit to the individuals

selected, the symbolic reward of the groups they represent, and the suggestion that the policies they shape will somehow be more attentive to the long-term interests of those groups than would the actions of white males.

This practice matured during Jimmy Carter's tenure, too, and created something of a backlash. A wry joke circulating in education circles, for example, as the enormous political superstructure of the new Department of Education was staffed with Carter appointees, held that each of the dozen assistant secretaries could hire four deputies so long as at least one of these was a woman, one a black, and one a Hispanic.

The Reagan administration did not go so far, but fell into the trap nevertheless. Rather than stating firmly that race, sex, and ethnicity would have no bearing whatsoever on personnel selection, the White House began circulating lists that identified presidential appointees by those very characteristics. Thus one learned that, as of December 3, 1981, out of some 2,865 non-career positions filled by that time, President Reagan had appointed 877 women, 80 Hispanics (many of them, of course, also women), and 130 blacks. In fact, that was a pretty good record, and many of the individuals appeared to be excellent, but merit seemed less important than their role as pawns on an affirmative-action chessboard.

The big chessboard, however, is not federal employment but the thousands of private employers and millions of employees whose moves are governed by affirmative-action rules made in Washington. Along with compulsory busing, this is the area of civil-rights enforcement that has stirred the greatest controversy, incurred the deepest resentment, and come closest to substituting group entitlements for individual rights. Here, surely, Ronald Reagan's unambiguous ideology, the explicit policies of his party, and the mandate conferred by his landslide victory would lead to historic changes in the assumptions governing employment decisions. What was obviously needed was a clear statement of principle, a consistent government-wide policy, and a commitment to hunt down quotas in every tangled thicket of regulation, enforcement procedure, and litigation until none remained.

This, unfortunately, is not what happened in 1981. From its early months, the administration seemed unable to decide whether federally-mandated race- and sex-conscious employment practices were an issue of principle or a problem of paperwork.

The Justice Department generally took the high road. "While well intended," Attorney General Smith told the American Law Institute in May, "quotas invariably have the practical effect of placing inflexible restraints on the opportunities afforded one race in an effort to remedy past discrimination against another. They stigmatize the beneficiaries. . . ."

William Bradford Reynolds, the Assistant Attorney General for Civil Rights, was eloquent and specific in his maiden appearance before a Congressional subcommittee in September:

> We no longer will insist upon or in any respect support the use of quotas or any other numerical or statistical formulae designed to provide to non-victims of discrimination preferential treatment based on race, sex, national origin, or religion. To pursue any other course is, in our view, unsound as a matter of law and unwise as a matter of policy.

After recounting the evolution of federal equal-employment-opportunity doctrine from nondiscrimination to "goals and timetables," he summed up:

> By elevating the rights of groups over the rights of individuals, racial preferences . . . are at war with the American ideal of equal opportunity for each person to achieve whatever his or her industry and talents warrant. . . . Nor is there any moral justification for such an approach. Separate treatment of people in the field of employment, based on nothing more than personal characteristics of race or gender, is as offensive to standards of human decency today as it was some 84 years ago when countenanced under *Plessy* v. *Ferguson*.

The Justice Department, therefore, would embrace "the principle of equal opportunity without preference in the field of public and private employment" but "in no way intends to relax its commitment to remedy proven discrimination."*

THE policies and actions of the Justice Department are consequential, to be sure. It is the government's principal litigator, it decides which cases to prosecute on what grounds, it formulates the remedies that Washington seeks from the courts, and during the Carter administration it was the author of the legal brief which urged the Supreme Court to sanction race-conscious university-admissions policies, race-conscious funding set-asides, and race-conscious decisions by private employers. At the very end of his term, Carter also gave the Attorney General the power to "coordinate" the civil-rights activities of all executive-branch agencies, though as yet this vague authority has not really been tested.

But the Justice Department does not write the regulations governing affirmative action by federal contractors, nor does it police compliance with them. Lyndon Johnson had entrusted that author-

* The Justice Department, particularly its Civil Rights Division, is now the focus of criticism by activists inside and outside the government who are displeased with Reagan administration civil-rights policies. Staff attorneys regularly leak copies of documents thought to be damaging, and a number of them have publicly threatened to resign in protest. (Their boss, Assistant Attorney General Reynolds, replied that they were most welcome to do so.)

ity to the Secretary of Labor, and Jimmy Carter consolidated the entire enforcement bureaucracy in the Labor Department. That vast enterprise now consists of almost 1,500 civil servants who monitor the employment practices of some 17,000 corporations, universities, and other contractors with more than 26 million workers. Because an employer with facilities in more than one labor market must maintain a separate affirmative-action plan for each, approximately 108,000 such plans are now required, and these must ordinarily be updated annually. A two-inch-thick manual explains how. There are five protected classes: women, American Indians and Eskimos, Asian or Pacific Islanders, non-Hispanic blacks, and Hispanics. Each contractor must survey his own employees and the available labor pool at each facility in relation to each job classification and its necessary qualifications (also organized in federal categories) and, where "underutilization" is detected, must establish and gain Labor Department approval for numerical "goals and timetables" to correct it. But these efforts are not permitted to result in the employment of one minority group to the disadvantage of others, or in the employment of one sex within a minority group to the disadvantage of the other. And so on and on.

The burden on employers, of course, is heavy. At a recent Senate hearing, the general counsel of Johns Hopkins University displayed a 2½-foot stack of documents weighing 65 pounds that her university had produced in compliance with OFCCP requirements. The process is manifestly costly and sometimes patently absurd (as when half of a Hispanic assistant professor of German must be hired to meet a "goal"). The basic issue, however, is not burden but principle: should the federal government ever require employers who have not engaged in discriminatory acts to meet quotas based on racial, ethnic, and gender classifications that are themselves proscribed by law?

One expected the Reagan administration's answer to be a resounding no and that its earliest actions would include, as the Heritage Foundation and various task forces had urged, replacement of the executive-order language mandating "affirmative action" by a flat ban on quotas, ratios, and preferences.

But while a suspension of "midnight regulations" did prevent some new and yet more exacting procedures devised in the last hours of the Carter administration from going into effect, it was many months before the new administration's own intentions began to emerge from the Labor Department. And when they did it was instantly apparent that the issue of affirmative action was being construed as simply a problem of excessive paper work. The first indication was contained in Labor Secretary Donovan's remarks to the National Press Club in late April, accurately characterized in the *Wall Street Journal* headline the next day: "Labor Department Will Take It Easy In Job-Bias Fight: Secretary Donovan Vows to 'Get Off Peoples' Backs,' Cut Down the Paperwork." For the Secretary had, indeed, stated that "The President and I are firmly behind affirmative action" but want to take enforcement "out of the arena of push-pull-slap-punch" and "to cut down on the damn paperwork." He mentioned that a department task force was reviewing the problem.

The results of that review, unveiled in late August, were by then predictable. Rather than sweeping away the entire concept of goals and timetables, the proposed new regulations simply reduced the number of businesses that would be required to establish them, the number of forms that would have to be completed, and the frequency with which affirmative-action plans would have to be updated. In addition, the concept of absolute statistical parity was replaced by a somewhat looser standard: precise hiring goals and timetables would henceforth only be required when the "utilization" of women and minorities was less than 80 percent of their "availability."

These new regulations are not yet in force, as the usual public-comment period was extended for additional months. In the meantime, seemingly no one is satisfied with the administration's pragmatic approach. Eleanor Smeal of the National Organization for Women called it "another major setback . . . for equality for women." Carol Grossman of the Women's Equity Action League expressed alarm that the higher threshold levels (government contracts of $1 million rather than $50,000, 250 employees rather that 50) would exempt "some of the largest educational institutions in this country." But the U.S. Chamber of Commerce stated that the proposed changes did not go nearly far enough; the Chamber's position, its spokesman said, was that "voluntary use of goals, timetables, and good-faith efforts" should replace mandatory requirements.

In its report card on the administration's first year, the Heritage Foundation also expressed considerable displeasure with the OFCCP. That agency "attempted some modest changes in its regulations," the Heritage writer noted, but this was "patchwork" that "does not address the real problems with contract-compliance programs. . . . OFCCP is continuing to view itself as a purely punitive agency. It has failed to follow [the previous Heritage] recomendations. . . ."

The Labor Department is continuing to review the voluminous comments elicited by its proposed procedures, and will not be ready to put revised regulations into effect before late spring. When it does, those familiar with the current deliberations say, the "threshold" will again be lowered somewhat, meaning that more contractors will be subject to affimative action, and while "voluntary" compliance will be "encouraged," there

will be no backing away from the concept of compulsory hiring goals and timetables.

It is little wonder that civil-rights groups and the Heritage Foundation are both perturbed. For it appears that the bureaucracy has kept control of an issue of fundamental principle and is treating it as if it were just another federal program in need of technical refinement, marginal recalibration, and political compromise. Race- and gender-based employment quotas will continue to be required of thousands of universities, corporations, and others that hold federal contracts. Seemingly the only issue in dispute is how many thousands.

ALTHOUGH the Labor Department may have lost sight of the underlying policy issue in affirmative action, critics of the administration have not. Shortly before Arthur S. Flemming was dismissed by the President, the U.S. Commission on Civil Rights that he chaired published a lengthy "statement" entitled *Affirmative Action in the 1980's: Dismantling the Process of Discrimination*. This document bears careful attention, for it undertakes nothing less than the permanent recodification of civil-rights doctrine.

No longer is "discrimination" to be construed as specific actions, inactions, and decisions by which individuals are denied specific rights or benefits that they would have received were it not for such immutable characteristics as race or sex. The new definition is altogether different. "Discriminatory actions," in the view of the Civil Rights Commission,

> are not only pervasive, occurring in every sector of society, but also cumulative, with effects limited neither to the time nor the particular structural area in which they occur. This process of discrimination, therefore, extends across generations, across organizations, and across social structures in self-reinforcing cycles. . . . Discrimination against minorities and women should now be viewed as an interlocking process involving the attitudes and actions of individuals and the organizations and social structures that guide individual behavior. That process, started by past events, now routinely bestows privileges, favors, and advantages on white males and imposes disadvantages and penalties on minorities and women. This process is also self-perpetuating. . . .

Not even the law can be allowed to stand in the way of progress. Although itself charged by the 1964 Civil Rights Act to "serve as a national clearinghouse for information in respect to denials of equal protection of the laws . . . ," the Commission now holds that "because civil-rights laws do not prohibit all forms of discrimination," because there may be "practical difficulties in establishing that a legal violation has, in fact, occurred," and because, "despite consistently unequal results, some discrimination is entirely lawful," then, "if civil-rights laws are interpreted to restrict the use of affirmative action to those acts that are or may be illegal, they can put beyond remedial reach essential components of the process of discrimination."

The Commission cannot accept that possibility. Therefore it is necessary either to go entirely outside the law, to what it terms "voluntary affirmative action," or to interpret the laws more generously. Conveniently, the Supreme Court has simplified both tasks. As the Commission exultantly explains, "The trilogy of Supreme Court affirmative-action cases (*Bakke*, *Weber*, and *Fullilove*), despite their limits as legal precedent, shows a strong commitment to affirmative-action measures designed to eliminate all forms of discrimination, *de jure* or *de facto*, illegal or legal. Only *Bakke* lacked an unequivocal outcome encouraging affirmative-action plans that include 'preferential' treatment and 'quotas.' *Bakke*, however, leaves ample room for effective affirmative-action efforts."

The reasoning is extraordinary. Anything, past or present, public or private, legal or illegal, that tends to work to the benefit of white males constitutes discrimination. Any actions taken to eliminate discrimination must be deemed either to be required by law or, at least, not forbidden by law. Such actions will normally include preferential treatment and quotas. But not to worry. For "when discrimination is a current that carries along all but those who struggle against it, there can be no true 'color-blindness' or 'neutrality.' In such contexts, all anti-discrimination measures, whether or not they take race, sex, or national origin into account, will help some individuals and hinder others. To criticize such efforts on the ground that they constitute 'preferential treatment' inaccurately implies unfairness. . . ."

It is small wonder that President Reagan asked for Chairman Flemming's resignation at about the time this report became public.* Not only were the Commission's views diametrically opposed to the principles of nondiscrimination that Reagan and his party had pledged to support during their markedly successful 1980 campaign; they also reversed the principles enunciated by liberal Democrats when Congress passed the 1964 Civil Rights

* Mr. Reagan proposed to replace Flemming with Clarance M. Pendleton, former president of the San Diego Urban League, who is black, and to replace Commission Vice Chairman Stephen Horn with Mary Louise Smith, former chairman of the Republican National Committee, who is white. The administration's third candidate for the six-member Civil Rights Commission was to have been B. Sam Hart, an evangelical minister from Philadelphia, who is black, but Hart's name was withdrawn, ostensibly because of irregularities in his personal financial affairs. It was also the case, however, that Hart's views stirred considerable controversy within the civil-rights community and on Capitol Hill, for the President had had the audacity to pick a person who disapproved of busing and quotas and who stated that "I do not consider homosexuality a civil-rights issue."

Act. As Justice Rehnquist recalled in his brilliant dissent to the *Weber* decision, such active participants in those deliberations as Emmanuel Celler, chairman of the House Judiciary Committee, and Hubert Humphrey, floor manager for the bill in the Senate, repeatedly insisted that nothing in the legislation would permit any policy save color-blindness. "Contrary to the allegations of some opponents," Senator Humphrey said, "there is nothing in it that will give any power to the [Equal Employment Opportunity] Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial 'quota' or to achieve a certain racial balance. That bugaboo has been brought up a dozen times; but it is nonexistent." Senator Thomas Kuchel added that "Employers and labor organizations could not discriminate in favor of or against a person because of his race, his religion, or his national origin. In such matters . . . the bill now before us . . . is color-blind."

Now it can be argued, as the Civil Rights Commission does, that this is all water long since passed over the dam: that the legislative history of the 1964 legislation has been superseded by the Supreme Court's blessing of race-consciousness in *Bakke*, of minority set-asides in *Fullilove*, and of "voluntary" affirmative-action programs that entail reverse discrimination in *Weber*. But the Court did not *require* race-consciousness, set-asides, or quotas; it merely said they were not forbidden. Besides, the Court may be persuaded to change its mind. There is ample scope for a President who knows what he thinks and who acts on the basis of his convictions to take specific actions to restore the definition of civil rights to the doctrine of nondiscrimination; to ask Congress to take complementary actions; and to go back to the judiciary with briefs very different from those the Carter administration submitted in the major cases of the previous four years.

But it is not clear that the Reagan administration has any such resolve. One need not dwell overmuch on the President's own confusion, when asked in a December press conference what he thought of the *Weber* decision. For the reporter explained only that this concerned a "voluntary agreement to conduct affirmative-action programs for training minorities and moving them up in the workforce," and made no mention of quotas or reverse discrimination. Reagan remarked that "if this is something that simply allows the training and the bringing up so there are more opportunities for them, in voluntary agreement between the union and management, I can't see any fault with that. I'm for that." This elicited a cheer from the New York *Times*, but embarrassed White House aides explained later that "the President and the Department of Justice find this racial quota unacceptable," and that Assistant Attorney General Reynolds had indeed spoken for Reagan when he said that the *Weber* case was "wrongly decided" and that the Justice Department would seek to persuade the Supreme Court to reverse itself in another case. Perhaps one day it will.

But there have been enough other instances of confusion and embarrassment. The worst disarray was to be found at the Equal Employment Opportunity Commission, whose acting chairman told Congress in October that he disapproved of the Labor Department's proposal to reduce the number of federal contractors required to file affirmative-action plans. Indeed, he opposed any lessening of vigilance or narrowing of scope. Yet a few months later, the EEOC's own new general counsel instructed staff attorneys to switch their emphasis from "class-action" lawsuits to individual suits, and to confine the employer's liability in sex-harassment cases to situations where management is itself accused of such harassment rather than—as in the current situation—holding the employer responsible for harassment of one employee by another.

In the meantime, the White House had nominated to be the next EEOC chairman a man whose only qualifications were his color (black) and his party affiliation (Republican). Faced with bitter protests from civil-rights groups, and mounting congressional opposition, the administration was forced to withdraw the nomination in February. (The young black attorney subsequently nominated is quite able indeed.)

Turf fights and bickering have also characterized the relationship between the Education and Justice Departments. Secretary Bell made two sensible proposals intended both to reduce the regulatory burden on colleges and universities and to curb harassment of them in the name of "civil rights." He suggested that Title IX, barring sex discrimination by federally-aided schools and colleges, was meant by Congress to cover only the treatment of students, not of employees, an interpretation that has some support in the legislative history and that has been sustained by some lower courts. He also urged the administration to assert that federal aid to college students did not constitute aid to the institutions they attended—an interpretation that would spare about 1,000 colleges and universities from compliance with the major aid-based civil-rights regulations (though not from others, such as Title VII, that apply to all employers). But in both instances, Justice said no, and the White House sided with it.

Common sense and Republican principle did prevail in most school and college desegregation cases. A number of protracted and acrimonious lawsuits involving state colleges and universities were settled through mediation and negotiation (though this administration, like its predecessors, has maintained the schizophrenic policy of requiring black and white colleges to integrate while

spending hundreds of millions of dollars a year to assist "traditionally black" colleges to maintain their distinctive institutional identities). And the executive branch has repeatedly signaled its opposition to mandatory busing at the grade-school level.

Finally, it seemed, federal officials were unafraid to acknowledge what most people had long known: involuntary pupil transfers for the sake of racial balance often do more harm than good. "[I]n many communities where courts have implemented busing plans," Attorney General Smith told the American Law Institute,

> resegregation has occurred. In some instances upwardly mobile whites and blacks have merely chosen to leave the urban environment. In other instances, a concern for the quality of the schools their children attend has caused parents to move beyond the reach of busing orders. Other parents have chosen to enroll their children in private schools that they consider better able to provide a quality education. The desertion of our cities' school system has sometimes eliminated any chance of achieving racial balance even if intra-city busing were ordered.

Assistant Attorney General Reynolds advised a Senate subcommittee in mid-October that in future school-segregation cases, the Justice Department would "define the violation precisely and seek to limit the remedy only to those schools in which racial imbalance is the product of intentionally segregative acts of state officials." And even in those instances, while seeking "removal of all state-enforced racial barriers to open access to public schools," the Department would abjure compulsory busing. "We are not going to compel children who don't choose to have an integrated education to have one," Reynolds bluntly explained to a House subcommittee on November 19, and Justice appears to have followed this doctrine, most recently by approving a voluntary desegregation plan for Chicago.

Reynolds did, however, urge Congress, then pondering an array of anti-busing bills and court-limiting measures, "not to draft the statutory prohibition so broadly that it bans as well other desegregation techniques" such as "involuntary transfers of teachers to break up state-created racially identifiable faculties." That, of course, implies the race-conscious assignment of teachers to schools as a *remedy* for segregation. And it recalled the one large inconsistency in Reynolds's testimony on employment discrimination the previous month. Then he had suggested that, while the Justice Department would not ask courts to order employers to use anything but "fair and nondiscriminatory selection procedures" in deciding whom to hire, the government would "seek percentage *recruitment* goals for monitoring purposes. . . . These recruitment goals will be related to the percentage of minority or female applicants that might be expected to result under a nondiscriminatory employment policy" (emphasis added).

If governmental race consciousness is unconstitutional, and if constancy is a virtue, one can infer from Reynolds's willingness to seek statistical recruitment goals, and his openness to race-conscious teacher assignments, that the nation's senior civil-rights enforcer has not entirely clarified the principles that undergird his department's policies and actions.

UNFORTUNATELY, this is not uncharacteristic of the Reagan administration's overall handling of civil-rights issues during its first year: a fitful and uneven process, in which the nation's long slide into color-coded policies and group entitlements was somewhat slowed but hardly stopped by an administration that seemed uncertain whether it really wanted to apply the brakes and not altogether sure where to find them.

In one excruciating instance, however, Reagan hit the wrong pedal and hit it hard. This, of course, was his decision to grant tax exemptions to segregated private schools. Although he attempted to recoup a few days later by asking Congress to outlaw such exemptions, and later still by asking the Supreme Court to resolve the matter, much harm was done. The problem is not that many private schools engage in racial discrimination as a matter of policy. The Internal Revenue Service is aware of only about 100 such institutions among more than 20,000 private schools. The problem, rather, is that in this instance the administration indicated its willingness to tolerate overt racial discrimination against individuals by institutions that, while unmistakably private, are nevertheless seeking favorable treatment from Washington. This was no case of group entitlements, of government-mandated equality of result, or of requiring preferential treatment for those previously disadvantaged by their sex or color. It was purely and simply a matter of old-fashioned racism and of what the government's policy ought to be toward those few schools that openly deny admission to black youngsters on account of their color.

No matter that Congress had never written a law specifically stating that such schools could not obtain tax exemptions. The Reagan administration inherited eleven years of court-sanctioned precedent. True, it also inherited a lively dispute about how to *enforce* the ban—how, for example, to handle a school that professed not to discriminate but that had only white students in attendance—and an even livelier debate occasioned by a handful of fundamentalist schools that assert a religious basis for their discriminatory practices. But there was no need to reverse the underlying policy. Worse, the decision to do so resurrected the ghost of Jim Crow. It signaled that perhaps the administration is not really color-blind, an impression reinforced by subsequent documentary

evidence that the White House had yielded to heavy pressure from Mississippi's Trent Lott and other Southern Congressmen acting on behalf of all-white private schools that had in fact been founded as refuges from public-school desegregation. Although the President had the grace to acknowledge that the whole issue was badly handled, it did lasting damage to his administration's credibility in the field of civil rights, as well as to the nation's image of private education.

THE administration inflicted another wound on itself with clumsy and irresolute handling of the delicate voting-rights legislation.* Because the right to vote is at once the most elemental of civil rights and the one with the most direct impact on elected officials, attention began to focus on it more than a year before the August 1982 expiration of portions of the existing federal law. But the administration refrained from taking a clear position on several complex issues when the House of Representatives considered them in the spring and summer of 1981. Not until the House overwhelmingly approved its version in October did the administration begin to get specific, and throughout the autumn the papers carried frequent reports of internecine warfare among Reagan's advisers. This generated considerable suspicion among civil-rights groups, which were also beginning to accuse the Justice Department of yielding to political pressure in its handling of voting-rights cases under the existing law, an allegation that administration officials, of course, vehemently denied.

With exquisitely bad timing, the administration finally chose to state its position on key details of the voting-rights bill to a Senate committee in late January 1982, in the midst of the controversy over private-school tax exemptions. Thus when Senator Kennedy declaimed that the administration faced a "crisis of confidence" in its handling of women and minority rights, and Attorney General Smith responded that "the President doesn't have a discriminatory bone in his body," the hearing room full of civil-rights activists erupted into laughter.

The major issue now in dispute, however, is grave indeed, and deserves solemn attention. The President would have been well-advised to spell out his position on it earlier. The question is whether an action is "discriminatory" only when it can be shown that the actor intended to discriminate, or whether an action with unequal effects or consequences can reasonably be termed "discriminatory" without reference to motivation or intent.

This is a familiar debate in school-segregation and employment-discrimination cases, but it did not enter the domain of voting rights until 1980 when the Supreme Court held that neither the Fifteenth Amendment nor the existing Voting Rights Act barred electoral arangements that were adopted without discriminatory intent even if their practical effect was to dilute the black vote in a particular community. At issue in the 1980 case was the constitutionality of the "at large" election that Mobile, Alabama has used to select its city commissioners since 1911. Although the population of Mobile is more than one-third black, no black had ever won election to the commission. Regrettable though this may be, Justice Stewart wrote, the Fifteenth Amendment "imposes but one limitation on the powers of the states. It forbids them to discriminate against Negroes in matters having to do with voting. . . . [R]acially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation," and the lower court had found that Mobile's black citizens "register and vote without hindrance." The Fifteenth Amendment, Stewart said, "does not entail the right to have Negro candidates elected."

Civil-rights leaders strongly objected to this decision, contending that it is virtually impossible to prove "intent," particularly with respect to local arrangements made decades earlier. They prevailed upon the House of Representatives to amend the Voting Rights Act to make explicit that plaintiffs need only prove discriminatory or unequal effects. (Another 1980 Supreme Court decision held that Congress has the power to adopt such a standard.) But critics of this change, now concentrating their efforts on the Senate, contend that the "effects" standard is tantamount to imposing racial quotas on election outcomes. It could mean, they say, that a community in which blacks comprise 20 percent of the electorate would be violating the law unless 20 percent of those elected to public office were also black. This, they suggest, might lead to federally-imposed "proportional representation" in local and state elections and would, contends Senator Orrin Hatch, "turn this country upside down."

President Reagan appears to agree with that view. In his December 17, 1981 press conference, he said that "the effect rule could lead to the type of thing in which effect could be judged if there was some disproportion in the number of public officials who were elected at any governmental level. . . . You could come down to where all of society had to have an actual quota system." Attorney General Smith testified on January 27, 1982 that "quotas would be the end result" and that "the only ultimate logical result would be proportional representation." A number of distinguished legal scholars have separately arrived at much the same conclusion.

The bill itself provides that "the fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute

* See Walter Berns, "Voting Rights and Wrongs," in last month's COMMENTARY.

a violation." But all parties agree that an "effects" test in the statute would make it far easier for civil-rights attorneys to prove discrimination and that actual election results, rather than simply electoral arrangements and voter participation, would be factors in subsequent litigation.

This is an authentically difficult issue, for the right to vote is basic; vigorous and successful voter participation by minority groups is the surest and least controversial means of enhancing their power and improving their condition; and it is indeed difficult to prove discriminatory intent in cases such as these. Yet it is also the case that to concentrate on "effects" is to move from equality of opportunity to equality of results; from color-blindness to color-consciousness; from nondiscrimination to something resembling quotas.

As it happens, the renewal of the Voting Rights Act is the first significant civil-rights legislation to move through Congress since the mid-70's. It is the first since *Bakke*, *Weber*, and *Fullilove* sensitized the nation to the issues of quotas, set-asides, preferential treatment, and reverse discrimination. Certainly it is the first since the political and ideological upheaval of 1980. And it entails a major role reversal. For nearly all civil-rights "advances" of recent years have been made by the federal judiciary in partnership with the executive branch, often to the dismay of the Congress. Here we have a markedly different sequence: a traditional definition of discrimination by the Supreme Court followed by a major effort in the Congress to give voting rights a broader construction and to make their violation far easier to prove.

This, then, is a significant event as well as a fundamental issue, and it is regrettable that the Reagan administration dithered and equivocated for so long. It is a shame that the administration's previous policies and actions were so erratic as to call into question both its opposition to quotas and its devotion to nondiscrimination. And it is unfortunate that the present debate over "intent" and "effects" in connection with the Voting Rights Act binds the two issues so tightly. For if hard cases, as the lawyers say, make bad law, so too does a pair of unpalatable options often lead to troublesome policy decisions.

WHITHER civil rights under Ronald Reagan? As with foreign affairs, it seems to depend more than it should on what day it is, who is in charge of a particular decision, what constituency is raising the loudest ruckus, and which agency is responsible for formulating the alternatives and executing the decision. The most ideological administration in recent history seems not to have its ideas sorted out, almost as if it had not realized that avoiding the Orwellian future so lovingly described by the Civil Rights Commission requires a coherent, alternative vision, a steady hand, personnel of unimpeachable character and competence, and the courage to rebuff all who seek governmental sanction for discriminatory practices, whether their intentions are benevolent or malign.

Even within the President's party, and well before the private-school and voting-rights contretemps, Elizabeth Drew reports that "several Republican politicians in Congress and elsewhere—the South included—were troubled by the administration's treatment of blacks. They saw an administration that, in its policies explicitly covering race and in its cutbacks in social programs, appeared to be systematically removing the props from under blacks." At the same time, one hears denunciations of the administration from tough-minded critics on the Right who accuse it of following a pattern of appeasement, muddle-headedness, and business-as-usual.

It is tempting to conclude that an administration that has managed to anger and disappoint its most conservative supporters as well as the most militant of civil-rights activists might be doing something right. But civil rights at home, like human rights abroad, is not a policy domain that takes well to pragmatism, compromise, or vacillation. It demands firm ideas, constancy, and high principle. Else the "angry menagerie" of which George F. Will wrote may grow angrier, and the prospect of reuniting the nation around shared ideals ever more remote.

Mr. EDWARDS. We will now hear from Mr. Rauh.

Mr. RAUH. Mr. Chairman, Mr. Sensenbrenner, I am pleased to come, before you, although I didn't have too much notice of today's panel, and I apologize especially to Mr. Sensenbrenner, who has on occasion raised the problem of a written statement when I have been here. It simply wasn't possible in the very short time that I had before appearing here this morning.

Mr. EDWARDS. Mr. Rauh, when you bat clean-up, we will excuse that.

Mr. RAUH. I also want to thank Mr. Finn for his kind remarks at the beginning. I suggest that flattery will get him everywhere, so I will try to do this on as aseptic a basis as possible.

I think you have to look back at what has happened in this country to understand why a distinguished professor and a civil rights advocate would disagree.

What our generation did—and that period is coming to an end—was to turn the legal system in America upside down. When we started right after World War II, the legal system in America discriminated and segregated. There were affirmative discriminations and segregations in the law. The law required that we have separate schools even here in the District of Columbia. The law required blacks and whites not meet together. The law forced segregation and discrimination.

My generation—and I am pleased to have had a small role in it—turned that upside down. Today, the law is totally changed insofar as discrimination and segregation are concerned. There was, in my lifetime, a legal revolution in this country, but—and this is always true in life, the buts—it hasn't resulted in practical changes in the lives of many of the people who have been discriminated against and segregated.

A great thing has happened in this country, but it has not fulfilled the hopes and aspirations of the people who had previously been discriminated against. You still have double black unemployment. You still have women paid 59 cents as against men. You still have less blacks getting housing. In other words, what we had was a legal revolution but it didn't have the practical effects that everybody hoped for.

We were all together in that we hoped the practical effects would have brought equality once you had the legal revolution. It didn't do that. The question is, do you stop now? Do you stop the civil rights revolution now or do you seek to make some recompense for past wrongs? That is really the difference on the panel.

Every point Mr. Finn makes comes back to his nonbelief in affirmative action, to his belief that it is reverse discrimination. That is the real difference between us. I want to go on now from the legal revolution to give it greater practical effect.

Different things are affirmative action for this purpose. For example, busing is a form of affirmative action, in opportunities seeking to give better education to children who have less and whose parents were discriminated against.

Obviously I believe in goals and timetables—I don't myself use the word quota because I don't know any place that really has a quota. If black qualified people aren't available, then you don't have to comply with any order I have ever seen. I do believe very

much in goals and timetables as an effort to deal with past discrimination.

You have had a great deal of talk about group rights and why that is bad. That isn't the question. There were group wrongs, and you have to rectify the group wrongs. Don't treat it as group rights; treat it as group wrongs.

There is not a black in America today who hasn't had some adverse effect from what happened before, whether you go back to slavery, or you go back to Jim Crow, or you go back to just the legal situation when we all started. Everybody has been affected, and we do need affirmative action to deal with these problems.

My feeling about the Commission—this has been a long way around for an introduction, and I apologize if anybody felt that that was too much of an introduction—is that they are on the right track.

I don't think, for example, that they have gone too far in their criticism of the President and what you might call his counterrevolution on civil rights. Maybe if I were on the Commission I would have gone a little further. I do feel that they are on the right track for they are seeking to deal with the problem of group wrongs we had in America for such a long time.

I always like to find something I can agree with my opponent on. I think I do agree with Mr. Finn that the American society is not totally prejudiced. I think the good sides are usually lost in considering only the bad sides.

I think you can't deny there is a good deal of prejudice. If you take the case of a member of this subcommittee and see him run for mayor, and you know that if he was white, he would be the obvious landslide mayor of Chicago, and if he is black and everybody says it is so close you can't tell who is going to win, you know there is prejudice. I personally want to give you my advice. I think you can make some money betting on Harold Washington, but that is just a piece of personal advice. I have been looking for people to bet with, but I can't find anybody yet. But, you can't have the Washington situation and not say there is prejudice.

The point I agree with Professor Finn on is that we are gaining on prejudice. This Washington thing is awful, but we shouldn't let it throw us off base. We are gaining on prejudice in this country. We have done a lot. I guess some of us would like to see the job completed through affirmative action. I think I am a little too ancient to see it all completed, but I don't think it is going to be as long as some of the testimony that you heard this morning.

I think the bill for Commission extension that President Reagan sent up is a pretty good bill. I just had a chance to look at it in the room here, so I haven't studied it, carefully, but it seem to be a pretty good bill.

I think it ought to include something about independence of Commission members. I don't know what you would like to say. I think in some bills Congress puts in "for cause" or something, I don't know the exact words for a standard for removal, but I think the Commission ought to have the same standard that most of the other governmental bodies have. I don't see why it is different than all the other bodies.

I don't purport to have made a study before I came up here of what the other bodies do, but I understand that most commissions, if not all, have some restriction on the President's discretion to remove. I think there ought to be some restriction—whether it is one phrasing or another.

I think, despite having this fundamental difference with Mr. Finn, there have been tremendous successes in civil rights. Many of them are due to people in this room. I want to say again that of all the civil rights successes that I have had a minor role in, nothing was more important than the Voting Rights Act last year, which we could have not gotten except by bipartisan support from both Congressman Edwards and Congressman Sensenbrenner.

I guess essentially I am an optimist about all this. But I don't want to stop until affirmative action has done some very important things to make the legal revolution into practical equality for those who were hurt by the previous discrimination and segregation.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Rauh.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you, very much. I have a very brief question for Mr. Rauh.

It seems that Professor Finn's article has stung like a bee because two of the Commissioners who appeared today, as well as the witnesses that we had last month, took great umbrage at some of the points that Mr. Finn dared to put in print in the Wall Street Journal.

It seems to me that this attitude seems to indicate that the supporters of the Civil Rights Commission think that everything that it does is divinely inspired and that it is not capable of making mistakes, either in fact or in emphasis. We are all human, we all make mistakes.

I am wondering what you can do, Mr. Rauh, to try to keep the Civil Rights Commission from dragging itself into some of the political debates that we have here on Capitol Hill that really are not overriding civil rights debates but are debates more on questions of national priority? I think that if the Civil Rights Commission continues in this trend, further reauthorization hearings of the Civil Rights Commission will become a lot more controversial.

Mr. RAUH. When you do it in 2003——

Mr. SENSENBRENNER. But the budget comes up every year.

Mr. RAUH. Excuse me, you are right. I stand corrected on that point.

This is a very difficult problem. I understand exactly what you are saying. I didn't feel stung by Mr. Finn's article. I felt it presented a position. It is really not different except in how it was phrased from the long-term fight over affirmative action.

I think one has to look at Mr. Finn's pieces in the context of his own beliefs. Indeed, on page 9, at the end, he really is saying that he is against what he calls reverse discrimination. I think if you use that term, against reverse discrimination, I think it is a derogatory term for affirmative action.

I don't think the article is new, but I do think it makes a point and the point has to be met.

Let's take food stamps as an example. Should the Commission not be for food stamps because, as you say, that is a matter of national policy. To me it is also a matter of civil rights, in these respects, Congressman Sensenbrenner:

First, there are a higher proportion of blacks needing food stamps because there are a higher proportion of blacks in poverty because of past discriminations. In a general sense food stamps have an alleviating effect on the past discriminations.

When you say you are for food stamps——

Mr. SENSENBRENNER. Can I interrupt there? As we know, there is a rather well-publicized prosecution going on involving a public official in Prince Georges County, MD, on food stamps.

This conservative Congressman is seriously considering introducing legislation to abolish the food stamp program and to simply increase the cash payments, either under AFDC or under some kind of welfare program, so that the recipient gets the cash directly, which he or she can utilize to spend on food or whatever. We would cut out all of the middlemen who are allegedly ripping off the system.

I am awful afraid that some people that have a knee-jerk reaction toward these things will look at the first part of that proposal, and say this is terrible and a violation of civil rights without looking at what is supposed to replace it.

Mr. RAUH. I was really not addressing myself to whether it should be cash or food stamps because I really don't know. I have listened to arguments on both sides——

Mr. SENSENBRENNER. But the point Mr. Finn is making, is that there are some preconceived notions on how the Government ought to approach a problem. It is cloaked in civil rights language.

As a result, anybody who seems to have a better idea on how to more effectively deliver essential services to poor people, many of whom are black and members of other minority groups, get tarred with the 1980's version of McCarthyism, saying they are against civil rights because of what the Civil Rights Commission says.

Mr. RAUH. I had my views before the Civil Rights Commission was set up in 1957, and I don't think you meant to suggest that I am following them. I think earlier you were suggesting the contrary.

Let's go back to your point. I think it would not be a civil rights issue at all on a determination whether people do better with cash than food stamps, as long as the effort is being made to get people what they need to eat.

The last thing I would ever suggest was that a person was a racist or a bigot or anything else because he or she wanted to change the system to make it work better. I think what happened in Prince George's County is an outrage and a disgrace to the very people that they allege that they represent.

I think your distinction makes my point. Cash versus stamps is not a civil rights issue, but the idea that people need food, that greater need is in the black community, that this results from past discrimination—that I think is related to civil rights. As I said, in a general way the food stamp program is part of affirmative action because it alleviates a series of group wrongs that resulted in a sit-

uation where so many more blacks than whites need help in the food area.

Mr. SENSENBRENNER. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Gekas.

Mr. GEKAS. Your answer is confusing to me. If indeed you are saying it is a civil rights concern as to the level of food delivery to the black or minority population, are you saying that the Civil Rights Commission should involve itself in the policy decisionmaking having to do with delivery of food substances to the minority communities? If so, then we are begging the question that Congressman Sensenbrenner was asking.

He is in favor of one system, I am in favor of another, a third person is in favor of another and we all want to help the poor minorities. Yet, by your answer, you are saying as long as we do that it is still a civil rights issue because it involves delivery of food to minorities.

The question still recurs, are you in favor of the Civil Rights Commission saying that food stamps is better than cash delivery or cash delivery is better than food stamps. That is what I want to know.

Mr. RAUH. I must say I am not as good an advocate as Mr. Finn was suggesting because I obviously am unable to make my position clear. I am sorry for that.

You use a very good word, Congressman, when you refer to it as a civil rights concern. I think that might be the better way to state what I am trying to say than civil rights issue.

I think it is a civil rights concern whether there is a method of delivery of food to those who were discriminated against. I think that is a civil rights concern. I think that if three people are giving different ways of doing that, getting the food there, then the three ways are a matter of management of Government and that would not necessarily be a civil rights concern.

The concern is that the food get there. If three management people are talking, going over my head on what is the best way for that, I wouldn't consider that a civil rights concern, although I would say the fact of getting delivery to the people is a civil rights concern. That is why a budget cut of food stamps, which is where I started, has a civil rights impact and why the Commission can properly get into that.

Mr. GEKAS. Am I inferring correctly when I infer from your statement that if three plans are put in front of the Congress for delivery of food, that this would not be a subject in which the Civil Rights Commission should involve itself?

Mr. RAUH. Yes; I think that is generally a true statement. That is a true statement if the three plans are different only in the management of how you get the food to the poor. If one of the plans would mean that you would only get half as much food delivered, I would say that raises civil rights concerns. If it is the technical question of—I don't like the word bureaucracy—if it is the technical question of Government management on how you get it there, I see that as much less and maybe not at all a civil rights issue.

Mr. GEKAS. Let's follow with the next question, if the chairman will permit me just one more question.

Mr. EDWARDS. Sure.

Mr. GEKAS. Let's indeed hypothetically demonstrate that one of the three plans in this hypothetical situation does result in an objective analysis in less food going to minority people or somehow that it becomes a civil rights concern.

Do you then feel that that concern rises to the level of an issue that should go before the Civil Rights Commission?

Mr. RAUH. I think if there were three plans and one of them really substantially reduced the amount of food that would be going to people, that is a civil rights concern.

Mr. GEKAS. We agree on that. Now I am saying in what way should the Civil Rights Commission get involved in that issue if you feel that they should? If you feel that they should not, then that is a different question.

Mr. RAUH. Life is a matter of priorities, sir. I wouldn't say that a management issue was the most important. I can see a civil rights underpinning to the problem. That is all. As just a civil rights underpinning, I don't know that if I were on the Commission I would want to deal with that problem when I had so many others. I can see where a budget cut, a direct budget cut of food stamps does raise civil rights concerns.

Mr. GEKAS. I agree it is a civil rights concern. We still haven't enjoined the issue.

Mr. RAUH. I am willing to say to you, if this is what you are trying to get from me, that I think if it is a civil rights concern, the Commission has a right to go into it. But, priorities should determine whether that is as direct a civil rights concern as others they will consider.

Mr. GEKAS. I have no further questions. Thank you, Mr. Chairman, for indulging me.

Mr. EDWARDS. Mr. DeWine.

Mr. DEWINE. If the chairman would indulge me for a couple moments, and if you witnesses will, too, let me, since we are on hypotheticals, propose another hypothetical.

One proposal that has generated controversy around this town, with all the Federal employees that work here, is the administration's proposal to move away from a seniority system to more emphasis on a merit system as far as Federal employees. I am going to very briefly summarize it. I have not studied the whole thing.

One of the arguments is the seniority system penalizes minorities, particularly women, blacks, Hispanics, because they have been later to enter into the system. The access has been later. Therefore, they do not have the seniority. Therefore, they do not advance. To take another example, they may be the first to be fired in a reduction-in-force situation.

Is that an example of a proper role of the Civil Rights Commission, to take a position one way or the other on that proposal, which is clearly a question of public policy? That is a public policy debate that is going to go on in this Congress in some form or another.

Mr. FINN. Congressman, I don't think that is an inappropriate topic for the Civil Rights Commission to have a view on insofar as it impacts on people by virtue of their race, color, and so forth. I do think that trying to foreordain what the conclusion of such an analysis might be is rather difficult——

Mr. DeWine. I agree.

Mr. Finn [continuing]. Because the notion of a merit system has frequently been criticized as being detrimental to civil rights because of possible bias in tests, because of inadequate educational preparation, and various other things.

Mr. DeWine. My point is the administration may or may not be right on their assertion that minorities would be favored under one plan or another.

My question is, in a matter where there is obviously debate and obviously two sides, who are both saying that their particular proposal or point of view will help minorities, will help blacks, will help women, is that something the Civil Rights Commission should jump into with both feet and take a position on?

Mr. Finn. Sir, my own view is the "will help" idea is not part of the Civil Rights Commission's legislative mandate; that the "discriminate against" concept is part of their legislative mandate; that their proper function is to review Federal laws and practices that might lead to discrimination against persons because of one or another of these attributes; that they should be seeking a system which does not discriminate on these bases.

I think that there are large numbers of organizations, including some with representatives in this room today, whose task it is to help women or to help minorities. The Civil Rights Commission was created to see that they are not discriminated against by virtue of their being women or minorities.

Mr. DeWine. Mr. Rauh?

Mr. Rauh. We were getting along pretty well up until this last sentence.

I can't accept the idea that the Commission is not to help minorities. It is the same dispute. It is not a different one that we have. I think it is to help. I think that is what affirmative action is.

On the basic point, seniority versus merit is murder for a guy who is a labor lawyer and a civil rights lawyer. I would say if you wanted to throw discord around in my province, you couldn't have found a better subject because it is so difficult.

On the whole, I believe seniority has to be tempered with some other alleviating methods. For example, in a depression or recession, whatever you want to call it, you can wipe out so much of the past gains by a harsh—harsh may not be the right word—by a precise application of seniority.

For example, in two plants out on the west coast that General Motors had, or maybe one plant it was, in the seventies, in the earlier recession, when they got rid of some employees, they wiped out every woman in the plant because the women hadn't been hired until just a few years previously.

This is a very dangerous thing on seniority. On the other hand, as Mr. Finn pointed out, there are elements in the merit system that may work against the rights of people. So, it is a very difficult subject.

I would say that a study by the Commission might be very helpful.

Mr. DeWine. Thank you, Mr. Chairman.

Mr. Edwards. Thank you, Mr. DeWine.

I will give Professor Finn a hypothetical, too. Incidentally, I think the subject is very important that we are considering here today because it does represent a point of view, that Dr. Finn enunciates with great scholarly skill, that is held by people with considerable influence and power in this country.

From my point of view, I have always thought the Civil Rights Commission did a pretty good job. I certainly wouldn't want to tell them that they can't do this and they can't do that because they are grown people and they are highly intelligent people and so forth.

Let's say that Congress created a Crime Commission to tell the American people what they ought to do about crime in the country. The local police and the Federal police and everybody else, including the Crime Commission finds, which is probably true, that crime in our country has a lot of its roots in the ghetto—in discrimination, in unemployment, in lack of schooling, in all sorts of social conditions.

Are you saying that the Crime Commission should stick just to crime and the proper way to arrest people and the resolutions, or could they get into wide-ranging discussions of the real roots of crime in the United States?

Mr. FINN. Sir, of course it would depend in the specific on the actual legislative charge that the Congress gave the Crime Commission when it was created as to what it was supposed to look out for or recommend about.

Of course, it is possible to envision such a Commission that would not just say here is what we see around us today, but also here is what we think are the origins and sources and reasons for what we see around us today. That would be an appropriate extension of the inquiry of the Crime Commission.

I think a Commission of inquiry into a particular problem may be different from a commission set up to protect the rights of individuals in the society. We could develop this notion at greater length, if you like, but I think that the charge of the Civil Rights Commission is quite clear.

I am not suggesting that they should never explain why they think an act of discrimination or a series of acts of discrimination is occurring and to call attention to the sources, but their proper function is on the act, not on the sources.

Mr. EDWARDS. Civil rights don't mean very much to a segment of the population that is unemployed and poor and discriminated against because of their color and put upon by the police, which is all white, we will say, so shouldn't the Civil Rights Commission comment on that—that we have an underclass of society, where life is so bad that they don't have any civil rights anyway?

Mr. FINN. Sir, I hope that is not true. Life can be very bad, and it is far worse for some than for others. I am familiar with the celebrated comment—I am not sure if it was Zola—about the rich as well as the poor having the undisputed right to sleep under bridges for want of any resources on the part of the poor with which to find a place in which to sleep.

I think even poor people, even those in abject misery, have civil rights that are in the Constitution and to statutes and are not affected by their economic condition. Now, the individuals them-

selves are gravely affected by their economic condition, and I think we have a proper function in society and in the Congress to attend to their economic condition, but I am afraid I am personally hard-pressed to say that that is what discrimination against them by virtue of race, color, religion, sex is.

Mr. EDWARDS. Thank you.

Mr. DeWine, do you have any other questions?

Mr. DEWINE. No, Mr. Chairman.

Mr. EDWARDS. Counsel?

Ms. GONZALES. Thank you, Mr. Chairman.

Following up on the chairman's last question, I noticed that in both the Wall Street Journal article and in your opening statement this morning, in quoting the provision of the statute that authorizes the Commission to go forward with its studies and reports, you have left out the last part of that provision. That provision says that not only is the Commission mandated to appraise the laws for discrimination or denials of equal protection of the laws, but they are also to make sure that there is no discrimination in the administration of justice, which is what I think the chairman is talking about.

What they are doing is looking at the laws and policies in this country to see if in the administration of those laws there is an unequal effect on people because of the fact that they belong to a particular racial or national origin group, et cetera.

By leaving that section out of your comments, are you saying that that adds nothing to what the Commission is empowered to do?

Mr. FINN. I left it out only for the purposes of brevity. No, I think there is quite a significant distinction, though, as you read the phrase "the administration of justice," whether you believe, as I do, that it refers to the administration of the law enforcement apparatus that we think of as the justice system or whether you regard it as referring to social justice.

If you regard it as referring to social justice, you have, of course, opened the door to the entire array of things the Civil Rights Commission has been doing.

I am not aware—and I can be called to account for this—of any legislative history that suggests that social justice, broadly conceived, was the intended meaning of that phrase when it was added.

Ms. GONZALES. But in all the different extensions that the Commission has had over the years, the Congress hasn't put in a footnote or amended the Commission's statutory authority because they believed the Commission has gone beyond what they should be doing; they haven't said that the "administration of justice" provision refers only to the criminal justice system. Isn't that correct?

Mr. FINN. I am not aware of any such footnote, so I believe you are correct. I am not sure such a footnote would be a bad idea.

Ms. GONZALES. To date there is none?

Mr. FINN. As far as I know, that is correct.

Ms. GONZALES. Thank you.

The other question I have refers to your complaint about the fact that the Commission is concerned at all with the issue of goals and

timetables and quotas; that the Commission talks in terms of using those remedies when necessary.

However, isn't it a fact—in your April 1982 article in Commentary magazine regarding affirmative action under Reagan you acknowledge that the Congress, the courts, and the executive branch, under both Democrats and Republicans, have all sought to protect group interests and that all three branches, furthermore, have required or permitted race-conscious remedies to address structural discrimination.

Therefore, one would think that your complaints really are more appropriately directed at the Congress, the courts, and the administration generally since the Commission is just making sure that the laws are being enforced?

Would you comment on that long-winded statement?

Mr. FINN. I appreciate your reading the article. That was the other article I was submitting for the record today.

This does indeed join the question of affirmative action, which Mr. Rauh, I think quite correctly, pointed out is a very substantial part of the essence of our disagreement, such as it is.

I think there is in affirmative action, as he has described it today quite accurately, a notion of economic reparations. I have no quarrel with the payment of such reparations, but I continue to believe they are not the same as the acts of discrimination against individuals, that the Civil Rights Commission is charged with guarding against.

The commentary article, as you know——

Ms. GONZALES. Excuse me one second. You would acknowledge that the courts have agreed that you can talk in terms of discrimination with regard to groups and remedies with regard to groups, and those have been approved? Whether or not one agrees with the remedies et cetera, the court has sanctioned those kinds of remedies, has it not?

Mr. FINN. I acknowledge that the Supreme Court in particular has not forbidden such remedies when undertaken, either privately or governmentally. It has not, to my knowledge, mandated them.

Ms. GONZALES. That is correct. But the Congress has in some cases. For example, the Civil Service Reform Act has, in fact, mandated that there be race conscious decisions. I bring that up again only to say that while it is not always mandated, it is mandated in some cases, and at least the courts have not outlawed those remedies. Therefore, it is the law of the land that they may be looked at.

Mr. FINN. That is correct. They may be looked at.

Ms. GONZALES. And considered as part of the remedies.

Mr. FINN. If they are remedies against discrimination, which I continue to assert is an act carried out against an individual.

Ms. GONZALES. So you disagree with the courts, to a certain extent?

Mr. FINN. Yes; that is not news.

Ms. GONZALES. Thank you. I did have one other question.

You also indicated either in your statement or your article that you believe the Civil Rights Commission should only review for discrimination in programs or policies where it suspects that there is discrimination.

Is that an accurate assessment of your position?

Mr. FINN. I used words to that effect. I think that the alternative to that is a complete open-ended fishing expedition in search of anything that might turn up that might be vaguely discriminatory.

You have to have some reason to think that an area you are going to look into is going to yield evidence of discrimination or you have no business looking into it in the first place, unless you are going to look into everything all the time.

Ms. GONZALES. So you would disagree with the role that they have played over the years in terms of monitoring the civil rights enforcement efforts of Federal, State, and local governments to see if there is discrimination?

The volumes of reports that they have done on enforcement efforts by the different Federal agencies would not be there unless they suspected that a particular agency was discriminating. You would limit them to just going in at that point?

Mr. FINN. When you are observing the implementation of a specific civil rights statute, and when you are going out to see how effectively a particular law, Executive order, provision, regulation has been administered, you are carrying out an oversight function that does not necessarily require that you suspect discrimination or bad enforcement or anything else.

When, however, you are taking on a general area of social policy that has no direct basis in civil rights statutes, I think you should be going there only if you have reason to think you are going to find discrimination when you get there.

Mr. EDWARDS. Can you give us a couple of examples?

Mr. FINN. I guess I continue to favor the example of the study of the budget of the Department of Education. As with Commissioner Berry, this is my field most of the time. She and I have a longstanding disagreement on the merits of the existence of a Department of Education. I would like to think that that is not a civil rights issue. Whether we have a Department of Education, indeed, whether its programs are funded, I regard as not a civil rights issue.

I am not sure I would go so far as Mr. Gekas and Mr. Rauh did in suggesting that it is a civil rights concern, though, I do not doubt that people with civil rights concerns are concerned, also, about the adequacy of programs run by the Department of Education.

But is the reduction of the budget request for the Department of Education a place where you expect to find evidence of discrimination against individuals on the basis of race, color, religion, national origin?

Mr. EDWARDS. Practically all of the budget of the Department of Education goes to disadvantaged children and minority kids.

Mr. FINN. Yes, sir. I do not believe, though, that reducing those programs should be presumed to be evidence of discrimination on the basis of these invidious categories, though. I quite agree that those are the populations served by the programs.

I happen to favor most of the programs and spending for them. I am trying to distinguish those from areas of discriminations against persons on the basis of these categories.

Ms. GONZALES. Again, following up on that last question, in your statement you talk about how it is inappropriate for the Commission to address itself to issues concerning the existence, continuance, or funding level of a program. You furthermore indicate that the regulations and administrative operations of those programs are also inappropriate matters studied by the Commission.

You basically then are saying that the Commission should not be looking to see if those programs are enforced in a nondiscriminatory manner? Is that correct?

Mr. FINN. No. If there is reason to suppose that there is going to be discrimination against individuals on the basis of the same categories in the administration of those programs, now that those programs exist, that is an appropriate object for the Commission to examine.

Ms. GONZALES. How does one reach the level of suspecting that there is going to be discrimination? Let's say there is a new program that is enacted. Do you wait until you suspect somehow that there is going to be discrimination in that program, or do you maybe from the beginning monitor it to see how it is being operated, to insure that it is not going to be enforced discriminatorily? If you wait, it may be too late to have any impact?

Mr. FINN. With an $800 billion Government and a $12 million Civil Rights Commission, I think that it is unreasonable to suppose that the Commission is going to monitor all programs at all times for possible evidence of discrimination—the fishing expedition phrase is crude, it is more like an oceanwide net—in the expectation that sooner or later something will swim into it.

Ms. GONZALES. Thank you.

Mr. EDWARDS. Mr. Kiko.

Mr. KIKO. I have no questions, Mr. Chairman.

Mr. EDWARDS. Mr. Rauh, do you have any further observations?

Mr. RAUH. No. I thank the committee very much. You are always courteous and friendly, and I have enjoyed being here.

Mr. EDWARDS. I thank you both very much. You have been very helpful, and we appreciate it.

You both are rooting for the Commission to continue. I didn't get your view, Professor, on the suggestion for some restriction on the President's ability to fire all the Commissioners without cause.

Mr. FINN. I am pleased not to be representing the President this morning. I think there is an inherent contradiction between the notion of fixed terms and the notion of being dismissed at will. If you are going to have fixed terms, you should be fixed in them, unless you do something terrible.

Mr. EDWARDS. You agree, Mr. Rauh?

Mr. RAUH. Precisely.

Mr. EDWARDS. Thank you very much.

[Whereupon, at 11:40 a.m. the subcommittee adjourned.]

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