THE PROSPECTS FOR A MODEL OR UNIFORM CIVIL RIGHTS ACT

Prepared for the Special Committee on Civil Rights
of the National Conference of Commissioners
on Uniform State Laws

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I. Introduction and Summary

At the 1963 annual meeting of the National Conference of Commissioners on Uniform State Laws, a Special Committee on Civil Rights Legislation was formed with authority "to study the existing laws in the field of civil rights legislation to see whether there are any areas which should be made the subject of uniform or model acts." Acting pursuant to this mandate, Professor Robert Braucher, Chairman of the Special Committee, and Professor Allison Dunham, Executive Director of the Conference, retained me to prepare a monograph of advice for the Committee and the Conference. They said that the report

Should be based on a survey of existing legislation and literature, consultation with such informed persons as the Reporter chooses, collation and evaluation of the Statutes in the light of the federal bill as it emerges, with particular attention to remedial alternatives, consideration of the various attitudes found in a national constituency, and the available procedures for utilizing expert advisers and obtaining the reactions of organized groups.

Professors Braucher and Dunham also said that the report should be largely an individual project that would focus on overall problems rather than drafting details, and that it would not involve extended factual research.

The paper that follows represents my attempt to fulfill the aims of the Special Committee. The method has been to collate

and analyze existing state anti-discrimination laws; to study professional commentary on these statutes, including selected reports
of state commissions on human rights; and to consult informally
with experts in the field. Basically, however, the product reflects
my own views on the many problems involved in deciding whether to
draft model or uniform legislation.

My conclusion is that a model act, prepared after a comprehensive study of existing state statutes, would make a substantial contribution to the clarification, technical efficiency, and uniformity of civil rights law. Although this conclusion is more easily justified with respect to remedial provisions, in my opinion it is likewise valid for substantive law. On the other hand, I have concluded that prospects for a useful uniform act are dim.

The model act that is proposed should include:

- (1) Provisions concerning the powers and procedures of human rights commissions, which, as will be seen, represent by far the principal instrument of enforcing civil rights legislature in the states.
- (2) Other remedial provisions, supplemental to the administrative process of the commissions, including penal and private damage sections.
- (3) Substantive provisions for employment, public accommodations, housing, hospitals, private schools, and de facto segregation in public schools. It should not include provisions relating to voting.
- (4) Miscellaneous provisions, such as a preamble, legislative findings, and clauses relating to severability, liberal construction, and authorization for municipal ordinances.

Since preparing this paper, the Harvard Student Legislative Research Bureau has sent me a copy of a model civil rights act they prepared in November 1963 at the request of the Governor of Michigan. I have examined this model act and have found nothing in it which leads me to alter my analysis or conclusions.

Section II of this paper contains a brief description of the history and current status of state laws against discrimination. Section III summarizes the key provisions of the Civil Rights Act of 1964. Section IV presents an analysis leading to the conclusion that it would be desirable to draft a model act. Section V contains reasons for doubting the wisdom of preparing a uniform act. Section VI discusses the scope of the proposed model act. And Section VII surveys the means by which a model act could be drafted for timely presentation to the state legislatures.

II. A Brief Survey of State Laws Against Discrimination

At least 34 states have statutes forbidding private discrimination in employment, public accommodations or housing, and scores of municipalities have enacted ordinances along the same line.

Many of these laws are enforced by administrative agencies, usually called "commissions," whose structure, power and procedures were orginally patterned after the National Labor Relations Board. The number of laws has grown at a steady pace during the past decade.

Prior to 1883, there was little state civil rights legislation on the books. Massachusetts, New York and Kansas prohibited discrimination in public accommodations with statutes having criminal penalties. In 1883, the United States Supreme Court provided impetus for intensified action by the states when, in the Civil Rights Cases, 1 it held that the federal government lacked power under the Fourteenth Amendment to bar discrimination by individuals not acting pursuant to some form of state authority. The ruling involved a series of seven cases in which Negroes, relying on the Civil Rights Act of 1875, sought to vindicate a right to the "full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement." The response was immediate. From 1884 to 1900, eighteen states legislated on the model of the Act of 1875 by prohibiting discrimination for reasons of race or color in places of public accommodation within their jurisdiction. Those violating the law were made subject to the criminal sanction of fine or imprisonment or made civilly liable in damages to the party aggrieved. In some states both remedies were available, but an election of one barred the other.

The next important step occurred in employment. The federal Committee on Fair Employment Practice, which was established by President Roosevelt in 1941 and whose existence was terminated at the end of World War II, suggested the availability of a new remedy. In 1945, the New York State Commission Against Discrimination (now the Commission on Human Rights) was created to enforce the state's policy against discrimination in employment. In the years since, 21 other states and numerous cities have authorized similar commissions. New Jersey in 1949 became the first state to employ the new form outside the field of employment by extending the jurisdiction of its agency to handle charges of discrimination in public accommodations. As will be explored more fully below, commissions now vary considerably in their statutory responsibilities. Many have power to act not only with respect to discrimination in employment and public accommodations, but also with regard to housing, education and hospitals. All combat discrimination on account of race, color, creed and national origin, and in some instances are authorized to deal with bias based on age and sex. 2

A critical fact is the headway made by commission enforcement at the expense of criminal and private remedies. These judicial remedies have been almost universally rejected as effective means of implementing state policies against discrimination, for reasons that have been summarized as follows: Prosecuting attorneys are reluctant to bring actions under the criminal statutes, and, even when actions are brought, juries are often unwilling to indict or convict. Individuals are often hesitant to make use of civil-action statutes because of the expense, effort, and threat of community opprobrium their use may entail; the difficulty of calculating damages and their inadequacy as a remedy for one whose primary interest is in finding a better home or job indicate that broad reliance upon civil remedies would be misplaced. 3

The broad outlines of structure, function and procedure are quite similar among the state agencies. The commissioners, usually appointed by the governor and sometimes subject to ratification by the state senate, serve for fixed terms ranging from two to six years, and in about half the states receive annual or per diem compensation. All agencies regard research into the incidence of discrimination and education of the public as major parts of their assignment and accordingly invest much of their resources into these activities.

But the fact-gathering and education alone have been shown to be ineffective, and coercive powers are consequently given human rights commissions. Action against a discriminating party normally begins by the filing of a formal complaint with the antidiscrimination commission. Investigation by field representatives of the commission follows because a finding of probable cause to believe the truth of the complaint is usually required before the commission can proceed further. "Probable cause" may mean no more than a finding that "there is evidence from which a reasonable hearing panel could find discrimination."

After a finding of probable cause, all statutes require conciliation. This is generally deemed to be the heart of administrative recognition. An overwhelming number of cases are settled at this stage, and the skill of commissioners and their counsel in subtly combining persuasion and coercion will often make the difference between success and failure in the administration of the statute. If conciliation is successful, an official consent agreement is usually drawn up by the commission's staff. It will usually settle the particular complaint and require a commitment by the respondent to obey the letter and spirit of the antidiscrimination laws in the future. Nearly all commissions have standard procedures for follow-up reviews of cases that have been conciliated.

Where conciliation is unsuccessful, the commission will order a hearing, a more formal procedure. Parties are served, witnesses are sworn, both sides present evidence, objections and motions are made, and the commission normally makes findings of fact and conclusions of law. If the commission finds that discrimination has been practiced, it issues an appropriate order. Most statutes authorize orders compelling hiring, reinstatement, upgrading, back pay, restoration of union membership, and extension of equal treatment with regard to housing and public facilities. Orders may also require affirmative action such as the filing of compliance reports and the posting of notices declaring a policy of equal opportunity.

The commission's orders are not self-enforcing, and it has no authority on its own to enforce them. Instead, to secure a contempt remedy, the commission relies upon judicial enforcement proceedings. That is, any respondent violating an order of the commission renders himself liable to a contempt citation for vio-

lation of an injunction issued in a judicial proceeding instituted by the commission for enforcement of its order, or by the respondent himself on appeal from the commission order. Such a contempt citation may mean a heavy fine or even jail.

commissions have had a highly successful record in obtaining enforcement orders. The appropriate court will generally issue it and an injunction if there is "substantial evidence" in the record to support it. The question whether the respondent has subsequently violated that order so as to render himself liable to a contempt citation for breach of the court's enforcement injunction will be determined by the court itself. No jury is required.

The chief variations among agency procedures are, first of all, who in addition to the "aggrieved party" may initiate a complaint; frequently it is the commission, one of its members, the attorney general of the state, or even, in Rhode Island, a private organization "chartered for the purpose of combating discrimination or racism, or of safeguarding civil liberties." Investigations also differ, as in the agency's power to subpoena witnesses or documents. Some but not all statutes grant individuals whose complaints are found to lack "probable cause" the right of appeal to a judicial body. In the conciliation process, commissions divide over whether publicity may be given to efforts to settle disputes, and hearings vary over whether judicial rules of evidence apply (usually they don't) and whether the commission is empowered to grant interlocutory relief. Other differences exist which will be referred to in the course of this paper.

In brief compass, these are the essential elements of the administrative process that is widely regarded as the most effec-

tive means of coping with discrimination at the state and municipal level. 4

States vary considerably in the coverage of their laws against discrimination and, to a lesser degree, in whether their laws are enforced through the administrative process. Several states have omnibus statutes which establish a human rights commission and contain provisions barring discrimination in employment, public accommodations, private and public housing, and private schools and hospitals. In addition, Michigan recently adopted a new constitution containing broad civil rights guarantees which have been interpreted as prohibiting all forms of discrimination.

Other states provide for administrative redress of discrimination in some but not all of these areas, and some have criminal or civil damages statutes to supplement the administrative remedy. All told, 27 states bar discrimination in employment (22 through human rights commissions); 33 in public accommodations (16 through commissions); 11 in private housing (10 through commissions); 10 in private schools (6 through commissions); and 19 in private hospitals (15 through commissions). In each of these categories, there are differences in the scope of the laws against discrimination which will be referred to later.

An important point to observe now is that there is a considerable body of law in this field, both in terms of the number of states that have entered it and the breadth of their penetration. Accordingly, existing statutes can serve as a good basis for subsequent efforts. This is not to lose sight of the fact that in certain areas the law is still rudimentary. For example, California and Illinois have recently enacted statutes designed to re-

duce de facto school segregation, that is, segregation not caused by deliberate official action but by factors, such as racial housing patterns, over which the school board has no control. In such situations, legislators in other states would have little to go on in developing their own laws.

What about the constitutionality of antidiscrimination statutes, including those establishing human rights commissions or employing criminal and private remedies? Railway Mail Ass'n v. Corsi6 and Green v. Continental Airlines7 seem to settle the matter under the federal Constitution as far as employment provisions are concerned, and the dismissal for want of a substantial federal question in Levitt & Sons v. Division Against Discrimination has been regarded as indicative of the Supreme Court's view of statutes outlawing discrimination in the sale or rental of private housing. 9 There has been one unusual suggestion that the Thirteenth Amendment's prohibition against "involuntary servitude" requires freedom of choice in certain personal service occupations, such as barbering. 10 There seems little doubt, however, particularly in view of District of Columbia v. Frank R. Thompson Co., 11 about the validity of state public accommodation statutes under the federal constitution. 12

The existence of numerous state supreme courts, many working from conservative precedents and differently worded constitutions, makes generalization more difficult. 13 Nevertheless, there is no reason to believe (nor is there supporting precedent) that there is any significant state constitutional bar to legislative action in the civil rights field. Every state supreme court that has considered the question has upheld the validity of employment and

public accommodation statutes as well within the police power. Housing laws likewise have generally been upheld, although the Supreme Court of Washington by 5-4 vote struck down a statute prohibiting discrimination in publicly supported but not in purely private housing; the ground given was that the law violated the state equal protection clause because it did not cover all rental housing. Provisions barring discrimination in private schools and hospitals, akin to statutes in the employment and public accommodation fields, like them have not been invalidated under either the federal or state constitutions.

III. The Civil Rights Act of 1964

The 1964 Civil Rights Act fundamentally alters the legal landscape. Not only does it provide the first legislative authority for a wide-ranging federal effort, but its enactment will have considerable influence on the formulation and administration of state laws against discrimination. Before examining the provisions of the new statute, it may be helpful to refer briefly to earlier federal laws concerned with discrimination. All of them had their origins in Reconstruction. 15

Reference has already been made to the Civil Rights Act of 1875, which the Supreme Court invalidated to the extent that its provisions attempted to require non-discrimination by private individuals in the field of public accommodations. The Congress made no further move, although the Supreme Court and the Interstate Commerce Commission each took steps, much later, to assure desegregated transportation and facilities in interstate commerce. 16

A second Reconstruction effort spawned a series of acts providing criminal and civil remedies against individual and conspiratorial efforts to deprive the Negro of "any right or privilege secured to him by the Constitution or laws of the United States."

There is no need to review the tortured and dismal history of these statutes; it is enough to acknowledge that they have led to a maze of yet unsolved legal problems and have provided little security of person to the Negro.

The third and final area of Congressional action before 1964

concerns the right to vote. An early statute that survives to the present day guarantees this right in forceful terms, "any constitution, law, custom, usage, or regulation of any State . . . to the contrary notwithstanding."18 The act was rendered ineffective, however, by the absence of remedial provisions. Not until the Civil Rights Act of 1957 was the first step taken to alter this state of affairs. In that year Congress gave the Attorney General the power to institute civil suits when voting rights were in jeopardy and prohibited intimidation, threats and coercion for the purpose of interfering with the right to vote in federal elections. 19 The results of the 1957 Act being disappointing, Congress in 1960 expanded these provisions to provide more effective means of solving the problem of systematic racial disfranchisement. The key additions called for the appointment of federal voting referees to help assure the right to vote and required the preservation of federal election records for 22 months after each election to enable the Attorney General to make necessary inspections. 20

This brings us to the Civil Rights Act of 1964. This statute contains provisions relating to many areas of public and private discrimination, although it does not touch private discrimination in housing, hospitals and schools. A summary of its provisions follows, with particular reference to those pertinent to the desirability and scope of a model act for the states. For more detailed reference, a copy of the full 1964 Act will be distributed with this paper.

Title I - Voting Rights. With respect to any election held in whole or part to elect federal officials, registration and

voting officials are prohibited from applying different standards, practices, etc., to different individuals within the same political subdivision. They are also barred from denying the right to vote for any immaterial error or omission in registration or other procedure prerequisite to voting. Any literacy or other qualification test in connection with such election must be in writing, and a copy must be supplied to the applicant upon request.

In any case brought by the Attorney General to enforce voting rights, a sixth grade education shall create a presumption of literacy. A three judge court and expedited procedures are provided for in certain cases in which the Attorney General seeks to enforce the provisions of this Title.

entitled to full and equal enjoyment of places of public accommodation, as defined in the act, free from discrimination based on race, color, religion, or national origin. Such places of public accommodation include: (1) inns, hotels, motels, or other establishments providing lodging to transient guests (except an owner-occupied building renting not more than five rooms); (2) restaurants, cafeterias, lunchrooms, lunch counters, soda fountains, and other eating establishments; gasoline stations; (3) motion picture houses, theaters, concert halls, sports arenas, stadiums and other places of exhibition or entertainment; (4) any establishment located in, or containing, a covered establishment, such as a barber shop in a hotel, or a department store with a lunch counter; (5) any establishment enforcing discrimination pursuant to any state or local statute or ordinance.

Enforcement of the rights protected under this title would be

by civil injunctive suits brought by the aggrieved individuals or the Attorney General. In individual suits, the court may allow the Attorney General to intervene; it may also appoint a lawyer for the complainant and waive court costs and fees. The Attorney General can sue to prevent a pattern or practice of resistance to the enjoyment of rights under this Title. All cases brought by him shall be expedited, and he may request a three-judge court.

In a state or local subdivision that has a law effectively prohibiting the discriminatory practice, no suit may be filed by an individual until 30 days after notice is given to the responsible agency. Federal courts may stay proceedings pending consideration by the state or local agency. In jurisdictions without such laws, the federal court may refer the complaints to the Community Relations Service created under Title X for a period of 60 days (extendable to 120 days). These referrals cannot be made in cases brought by the Attorney General, nor is he bound by the 30-day notice to state officials.

Section 207(b) states that nothing in this title:

shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent; with this title, including any statute or ordinance requiring non-discrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

Title III - Public Facilities. The Attorney General is authorized to bring suit to desegregate facilities such as hospitals, libraries, parks, swimming pools, that are owned, operated, or managed by state or local governments. To file such a suit, he must certify that the aggrieved individual is unable to initiate

a suit because he is too poor, unable to obtain a lawyer, or risks danger to personal safety or economic standing. Public schools and colleges, covered in Title IV, are excluded from coverage of this Title.

Title IV - Public Education. The United States Commissioner of Education is authorized to give technical assistance to state and local authorities in school desegregation; to arrange for training of teachers and school officials at institutes on desegregation; and to make grants to local school authorities for teacher training and employment of specialists in school desegregation. He is directed to make a survey of the lack of educational facilities in public educational institutions because of race, color, religion, or national origin. Racial imbalance is explicitly excluded from the definition of segregation, and transportation to correct racial imbalance is not authorized under this Title.

The Attorney General is given power, where individuals are unable to do so, to file suit to desegregate public schools or colleges. The definition of public school appears broad enough to include schools predominantly supported by government tuition grants.

Title V - Commission on Civil Rights. This Title extends the life of the Civil Rights Commission for four years and establishes new rules of procedure for Commission hearings.

Title VI - Federally Assisted Programs. This Title attempts to assure that no person in the United States shall be discriminated against under any program or activity receiving federal financial assistance. Included are such federally supported pro-

grams as aid for hospitals, impacted school areas, vocational training and rehabilitation, small business loans, area redevelopment, manpower retraining, public housing, and land grant colleges.

Provision is made for effectuation of this Title through agency regulations and for judicial review in cases where review is provided for by law in similar agency action.

Title VII - Employment. Employers, labor unions, apprentice programs, and employment agencies whose activities affect interstate commerce are prohibited from discriminating in employment or membership practices on the basis of race, color, religion, sex, or national origin. Certain exceptions are made with respect to aliens employed outside of any state, religious and educational organizations in their religious or educational activities, and jobs where religion or national origin is a bona fide qualification. It is also provided that nothing in the Title shall be interpreted to require any preferential treatment to any individual or group because of race, color, religion, sex or national origin.

It is declared unlawful to discriminate against any individual who opposes any practice made an unlawful employment practice by this Title or to advertise or refer any individual for employment with an expressed preference based on race, color, religion, sex or national origin.

Coverage includes employers and unions with 100 or more employees or members one year after the effective date of the law. The number will drop yearly by 25 until it reaches 25 or more in 1968.

An Equal Employment Opportunity Commission is established with a structure similar to the state human rights commissions

referred to in Section II of this memorandum. The Commission is authorized to receive complaints of discrimination, to investigate them, to seek voluntary compliance, and to refer cases to the Attorney General for his action. Members of the Commission may file complaints. The Commission is empowered to cooperate with state and local agencies charged with the administration of state fair employment practices laws. The Title also requires appropriate record-keeping by employers, employment agencies and labor organizations, except in cases where state agencies require similar record-keeping, and it requires employers, employment agencies and labor organizations to post notices containing summaries or excerpts from the pertinent provisions of the Title.

In a state or political subdivision with an effective law prohibiting discrimination in employment, a complainant must file first with the state or local agency. Before a complaint is filed with the Commission, the state or local agency must be given 60 days to resolve the complaint (120 days during the first year of enforcement of a law, for states enacting new laws). The Commission is then given 30 days (extendable to 60) to resolve the complaint. If efforts are unsuccessful during such period, the aggrieved party may bring a civil action in the appropriate federal district court. The court may appoint an attorney for the complainant, waive fees, and permit the Attorney General to intervene. The court also may grant the state agency or the Commission an additional 60 days to settle the complaint.

The Attorney General is authorized to file suits to end a pattern or practice of discrimination in employment. He is not bound by the limitations applying to individual suits. He may

request a three-judge court, and cases filed by him shall be expedited. In cases filed by individuals, in addition to injunctive relief the court may order affirmative relief, including hiring or reinstatement, with or without back pay.

Section 708 provides:

Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

Title VIII - Registration and Voting Statistics. The Secretary of Commerce is authorized to compile certain registration and voting statistics in areas recommended by the Commission on Civil Rights.

Title IX - Court Procedure in Civil Rights Cases. The United States may intervene in suits charging a denial of equal protection of the laws if the Attorney General certifies that the case is of "general public importance." It also provides for the appealability of orders of federal district judges that remand a civil rights case to the state court from which it was originally removed to the federal court.

Title X - Community Relations Service. There is established in the Department of Commerce the Community Relations Service referred to in Title II, which is authorized to seek voluntary solutions of community problems arising out of discrimination. It is provided that the Service shall, whenever possible, utilize the cooperation of appropriate state or local, public or private agencies, and that the activities of the Service shall be conducted without publicity, subject to criminal penalties.

Title XI - Miscellaneous. This Title provides for trial by jury in cases of criminal contempt arising under Title II, III, IV, V, VI, or VII. Civil contempt, without jury trials, would still be available to enforce any title of the Act. Persons are protected against being put twice in jeopardy under the laws of the United States for the same act or omission, and the Attorney General's right under existing law to intervene or to institute a proceeding is preserved.

Section 1104 provides:

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

There is a severability clause and a provision authorizing the appropriation of sums necessary to implement the Act.

IV. The Need for a Model Civil Rights Act

Before turning to direct consideration of the desirability of drafting a model civil rights act, it is important to establish that civil rights problems are of long-term importance, that the states will continue to play a major part in solving them, and that these efforts at local solution should be encouraged.

The first proposition -- that civil rights will continue to be of concern for the indefinite future -- is a premise of this paper. It is plain also that minority groups will press their goal of parity in many ways, and principally through the medium of law. The daily newspaper is the most vivid testimonial to these facts, and they therefore will not be belabored. Suffice it to say that the right to equal treatment in employment, public accommodations, housing, and elsewhere touches the lives not only of disadvantaged groups but also of the majority. The problem affects everyone and everything. No less important, its manner of resolution is a prime ingredient in the nation's moral consensus. Finally, the radiations of the official approach to civil rights are evident in such diverse fields as economic planning and foreign policy, and they thereby have dimensions beyond an immediate impact on community life.

Only slightly less obvious than the general importance of the subject matter is the continued critical role of the states in civil rights. As we have seen, until comparatively recently, the rules signaled hands off, at least in certain important areas.

Now the tide runs strongly in the opposite direction, with more

and more jurisdictions playing an affirmative role through enacted legislation. This trend should be encouraged. It is precisely in delicate areas of human relations that law should be administered as close to the people as possible. Just as the rigors of the Selective Service Act were mitigated by local enforcement, so may the conflicts sure to be aroused by aggressive civil rights legislation be tempered by such means. In short, one must agree with Dean Griswold's statement while testifying in support of the Civil Rights Act of 1964: "... I would be very much in favor of having this whole area administered by State agencies to the extent that they are willing and able to carry out that responsibility."²¹

It has been argued that because civil rights involves personal attitudes of a fundamental and often irrational character, government, including the states, should avoid intervening. Whatever surfact plausibility this statement contains, it is plain that the point of no return has been passed. The problem of private discrimination no longer is being relegated to exclusively private solution, and the real question facing the states, as recognized by Dean Griswold, is whether they or the federal government will take the necessary strides to cope with any particular manifestation of prejudice.

The 1964 Act, the first federal attempt at comprehensive regulation of civil rights, need not diminish the role of the states. In the first place, there are certain areas not covered at all by the 1964 law -- for example, housing and private schools. Secondly, by focusing national attention on questions of equal treatment, the Act will add momentum to existing currents in the states.

States possessing such laws will be encouraged to bring them into line with federal standards or to re-evaluate their statutes in other respects; states without antidiscrimination laws will find new pressures to enact them. Moreover, in apparent recognition of the desirability of local participation as well as the inevitable spottiness of federal enforcement, the federal act by its terms provides impetus for state action. In two main areas the statute specifically preserves state remedies -- Section 207(b) dealing with public accommodations and Section 708 dealing with employment, quoted above at pages 15 and 19. Perhaps even more important are the provisions that actively encourage prompt local enforcement. Sections 204(c) and 708(b) and (c), which relate respectively, to the prevention of discrimination in public accommodations and employment, provide that the federal remedy shall be stayed pending the enforcement of state or local laws that outlaw the challenged conduct. The paradoxical consequence of the federal statute thus may turn out to be intensified decentralized enforcement of civil rights legislation.

The thrust of these preliminary remarks, general as they are, would seem to favor drafting a model act. The reasoning is as follows: The problem of civil rights is acute; contemporary events, including passage of the 1964 Civil Rights Act, carry with them the likelihood of greater state activity in combatting discrimination; and such local involvement is desirable and perhaps necessary to the success of any over-all national effort on behalf of equal treatment. In these circumstances, a presumption would appear reasonable on behalf of technical assistance provided by an established professional organization such as the National Confer-

ence. Whether this presumption is valid and whether a model act should be the form of such assistance now remains to be discussed in more detail.

A. A Model Act Would Encourage Desirable Uniformity of Substantive Provisions.

A major criterion for considering the desirability of a model act, according to a statement prepared by a subcommittee of the Executive Committee of the National Conference, is its tendency "toward establishing uniformity of state law or at least toward minimizing its diversity." This means that (1) there should be a reasonable probability that the act when approved will be accepted by a substantial number of jurisdictions or, if not, that it will promote uniformity indirectly, and (2) the subject of the act should be such that diversity of state law will adversely affect the people.

Before proceeding further on the theme of uniformity, it will be helpful to comment further on the relevance of the new federal act. Where the act prohibits a particular discriminatory practice and there is no question about coverage, a state has considerable incentive to adopt federal standards. This is so because it is desirable to have a consistent body of law apply to any action by officials or private individuals. Indeed, the National Conference, in dealing with a proposed Real Estate Investment Trust Act and the Supervision of Trustees for Charitable Purposes Act, has twice recently acknowledged the benefits of maintaining consistency with relevant federal law. Applying this principle to the 1964 Civil Rights Act, it will be assumed, for example, that a state will adopt the standards contained in Sections 703(a), (b), and (c) in

barring discrimination by employers, employment agencies, and unions, if the state enacts a statute dealing with these forms of bias.

On the other hand, the federal act is not all-encompassing. As we have already observed, it does not cover certain types of discrimination, such as in private housing or hospitals. In these cases, a state is free to legislate or not at will, and opportunity exists for either uniformity or disparity. In other situations, the federal act deals with a particular form of discrimination, but goes only so far. For instance, it prohibits discrimination in certain establishments of public accommodation but not others; it prohibits segregation in public schools and colleges, but not in private schools or colleges. Where the federal act does not reach, the states are also at large -- free to prohibit or permit at will, and if to prohibit to do so in a uniform or non-uniform manner.

As to those areas not pre-empted, so to speak, by the federal act, it is necessary to consider whether uniformity of state civil rights law is either feasible or desirable. The problem of feasibility is plain. Differing local conditions and attitudes will surely render it impossible to obtain a general consensus on passage of rights laws or the nature of specific provisions.

Furthermore, in some states committed to civil rights, a greater urgency may be felt to cope with problems of, say, discrimination in public accommodations rather than de facto school segregation or housing discrimination. As for desirability, it could be argued that details of statutes dealing with any particular form of discrimination need not be uniform in order to be effective in sub-

stantially eliminating the evil. Thus, laws forbidding employment discrimination could contain exemptions for domestic servants or relatives of the employer and nevertheless effectuate the legislative policy.

Despite these considerations, I believe that a model act could have beneficial consequences in promoting uniformity. Whether total uniformity is possible is a question more pertinent to the drafting of a uniform rather than a model act and will be discussed below. For the present, it is enough to suggest that a measure of consistency can be encouraged among statutes that now vary considerably in important respects. Thus, some public accommodations statutes include more establishments than others. New York has a broad statute and Nebraska a more limited one. Many states have provisions prohibiting advertising that refers to race, creed, etc. Some, such as Washington, prohibit any efforts to aid or abet a violation; others lack such laws. Turning to employment, a few states (Massachusetts, Kansas, Ohio) require the prominent posting of notices to the effect that discrimination is not practiced in the establishment. Some statutes are more generous than others with exemptions; most exclude relatives, domestic servants or employees of educational, social and religious organizations, but some do not. Housing statutes vary in whether they include private dwellings or merely publicly-supported ones, and there are differences in whether they forbid advertising directed to biased rental or sale and whether they apply to mortgage lenders and other financial institutions. There are countless other examples.

While it would be unrealistic to assume that all states would be disposed to enact any one of these provisions or that any single

state would enact all of them, particularly in identical form, the appearance of a model act supported by reasoned explication and responsible sponsorship could well encourage uniformity.

Whether uniformity among state laws is desirable as a matter of policy raises other questions. It is certainly true that, unlike the commercial area where it is inconvenient if not worse to have different state laws possibly apply to the same interstate transaction, there appears no compelling necessity for consistency in civil rights legislation.

But this is not the whole story. In the first place, the same observation is pertinent to matters that in the past have been the subject of model acts -- for example, the State Administrative Procedure Act, and the Act to Provide for the Appointment of Commissioners, both of which have been enacted by a substantial number of states. Secondly, civil rights legislation affects citizens who travel from state to state (public accommodations and private hospitals) and citizens who may wish to change their residence from one state to another (housing and employment). To the degree that laws differ, to quote the official Conference criteria, they "will tend to . . . prejudice, inconvenience or otherwise adversely affect the citizens of the states in their activities or dealings in other states or . . . in moving from state to state."24 Finally, a broader approach may be taken. Because moral values presumably underlie civil rights legislation, it would seem desirable to try to translate what common attitudes exist throughout the United States into legislation that will establish uniform civil rights in the states. The American Law Institute in drafting the Model Penal Code responded to similar considerations. 25

B. A Model Act Would Encourage Desirable Uniformity in Remedial Provisions.

Whatever doubts may persist concerning the potential consistency among substantive civil rights provisions, there would seem little question that states would be inclined to adopt similar remedial rules. The reason for this is plain. If a state tries to cope with discrimination, it will want its legislation to be effective, and accordingly it will try to employ good enforcement provisions. In practice, as we have seen, this would ordinarily mean a human rights commission with a battery of enforcement techniques. There will of course be cases where a legislature will be reluctant to clothe its commission with particular powers (e.g., to subpoena papers) or to give complainants particular rights (e.g., to appeal a negative finding of probable cause). But ordinarily, it seems fair to assume, a state will want to take advantage of legislative techniques that will effectuate its policy most firmly.

Because certain statutory provisions have been demonstrated to be desirable, a model act could assist in bringing these provisions to general attention. For example, statutes vary in giving human rights commissions power to initiate complaints. As already pointed out, some commentators have concluded on the basis of apparently convincing statistics that private individuals are frequently deterred from bringing complaints through ignorance of the remedy or the time, trouble and expense involved. A model provision might lead states to provide more generally for the initial action by commissioners. Another instance relates to the division in the states over whether judicial rules of evidence

apply to the hearing held after conciliation attempts fail. general rule is that they do not, but Kansas and Illinois have recently joined the states that require adherence to judicial rules. Extensive investigation might be necessary to determine the better procedure, but the answer would seem attainable. A third example relates to the question whether a civil rights law ought to forbid divulgence of conciliation proceedings. been argued that statutes which cloak these events are desirable, and instinct suggests this is correct; if confirmed through empirical means, an appropriate provision could be incorporated in a model act which would stand a good chance of general adoption. A final example arises out of the broad question of the desirability of criminal or private civil remedies to supplement commission enforcement. Study might disclose that penal sanctions should be eschewed as unrealistic because their severity deters prosecutors from invoking them or because they cause deep-seated resentment. On the other hand, bearing in mind the fact that the new federal act contains no criminal sanctions, it might be thought desirable for states to maintain these in the enforcement arsenal as a means of handling intractable violators of civil rights laws. In either event, a thoughtful model act might encourage uniformity.

The National Conference has only recently recommended for general adoption the Model State Administrative Procedure Act, a remedial statute. A model civil rights act could likewise encourage draftsmen to avail themselves of techniques designed to facilitate the enforcement of substantive rights.

C. A Model Act Would Provide Important Drafting Assistance to State Legislatures.

Fully apart from the effectiveness of a model act in encour-

aging uniformity in substantive and remedial law, the National Conference might render an important service in providing valuable technical assistance to the states. Specifically, it could formulate statutory language which takes alternative approaches to antidiscrimination legislation or assists draftsmen in avoiding pitfalls that have been exposed under existing laws. In view of the uncertainties about the likelihood of attaining consistent legislation among the states, technical assistance might be the greatest value of a model act.

Examples abound. We have already referred to the varying coverage of public accommodation laws; from these a model could be gleaned to afford draftsmen the opportunity to select among available examples. Employment statutes frequently have exemptions for religious or educational institutions; although the trend appears to be toward inclusive coverage, such provisions could assist interested states in preparing their own provisions. The fair housing laws vary considerably in the portion of the housing marketing covered, ranging in comprehensiveness from Alaska, whose law covers all housing accommodations, to states with many exemptions. Once again, although there is a marked trend toward broad coverage, draftsmen would benefit from having before them the full range of exemptions as presently contained in state statutes. A final example also comes from the housing field. New York and California have followed the decisions in Shelley v. Kraemer 26 and Barrows v. Jackson²⁷ by enacting laws declaring restrictive covenants absolutely void; the form and scope of such statutes would seem helpful to states contemplating similar action.

A model act could probably provide even more useful techni-

cal assistance for enforcement or procedural provisions. Thus, almost all statutes give commissions the power to petition courts for interlocutory relief pending the administrative decision.

Some statutes but not others require a commission to reconsider any conciliation agreement with an employer not satisfactory to the complainant. And there are some rarely used supplemental remedies, such as license forfeiture (Michigan), the award to informers of one-half of any fine collected (District of Columbia), or the discharge of any public official who practices discrimination (Illinois).

These different means of implementing legislation will appeal to some states and not others. A model act could make them readily available and, through commentary, suggest their likely effectiveness. It seems clear that this would be a substantial service.

D. The Value of a Model Act Would Not be Seriously Impaired by Its Largely Technical Contribution or the Availability of Existing Statutes and Professional Commentary.

The most substantial argument against undertaking a broad study of state civil rights statutes with a view to the drafting of a model act is that the prime contribution of such an act would be technical rather than theoretical, and that existing statutes and secondary materials provide ample assistance to draftsmen concerned with mechanical problems.

In support of this line of thought, it is useful to consider the issues confronting the American Law Institute as it embarked upon the drafting of the Model Penal Code. There, as Professor Wechsler pointed out at the time, the need was for a comprehensive re-examination of the substantive penal law. Offenses were incon-

sistently defined, justifications and excuse in homicide and other crimes were applied in varied ways, the reach of attempt, conspiracy and other inchoate crimes was uncertain, and the impact of knowledge gleaned from the psychological and social sciences had not been assimilated. Accordingly, Professor Wechsler recommended a full-scale study of the criminal law, to consist of a draft code and a commentary to place the literature on penal law in good order.²⁸

The terrain to be covered in the civil rights field is neither so vast nor mysterious. The chief inquiries would be into the best means to effectuate legislative value choices that seem less the product of scientific study than moral and political attitudes. Except in a few situations where experience is minimal, such as legislation against de facto segregation, knowledge in the pure sense is but one and perhaps a minor ingredient of a decision to enact a civil rights law. Once the decision is made, it must be assumed that the legislator will want the law to be effective. The descent to problems of implementation is swift, and existing statutes arguably provide ample guidelines. Questions of coverage of course remain -- what kind of private housing to exempt, what public accommodations to cover, which size employers to include. But these issues, it will be seen at once, are of an entirely different character from those confronting the American Law Institute as it embarked upon its study.

These considerations cannot be lightly dismissed. Taken at full weight, they lead to the conclusion that a model civil rights act would be of limited value. And even after the substantial discount required by the arguments that follow, they remain of suf-

ficient force to warrant close scrutiny before it is decided that a model should be prepared.

My own view is that these negative considerations do not impair the desirability of a model civil rights act. To begin with, although the major contribution of such work probably would be in the remedial area, we have seen that there are certain substantive problems that could be solved or at least clarified by comparative study of existing law. Second, a model that deals principally with remedial alternatives and techniques should not automatically be disparaged; the Model Administrative Procedure Act, the Uniform Declaratory Judgments Act, and other statutes testify to the Conference's long-standing concern for proper implementation of substantive rights. Third, the assistance likely to be provided legislators and draftsmen by existing statutes and secondary materials is problematical. It is true that the statutes are numerous and the commentary voluminous and sometimes incisive. But as far as can be determined, there has been no systematic effort to explore in depth just how these statutes work, whether some work better than others, whether enforcement can be made more efficient and sure. Fourth, if such a study is needed, it seems plain that it should be conducted by an organization, such as the National Conference, that has a reputation for objectivity, has no political ax to grind, and combines technical resources with access to responsible representatives of the full national constituency. Fifth, since the ultimate question is what kind of statute should be framed to cope with discrimination, any comprehensive study should ideally produce not only informed comment, but a prototype of legislation -- a task for which the Conference is obviously

well-equipped. Finally, the passage of the Civil Rights Act of 1964 in a heated political climate, largely generated by differences of opinion on means of reducing racial discrimination and tensions, raises new questions that make particularly timely a comprehensive look at the distribution of responsibility in a federal system for dealing with Negro-white relations.

E. Conclusion

For the reasons stated throughout this section of the paper, it is concluded that the National Conference should embark on a sustained study of civil rights problems with a view to drafting a model act.

At this point, it seems desirable to refer to an important proposition that is regarded as self-evident among civil rights leaders and others concerned with state antidiscrimination laws -- that without enthusiastic administrative personnel backed by sympathetic political supervisors, even a superlatively drafted rights law will not attain its aims.

This proposition is relevant at the present juncture for two reasons. In the first place, the critical importance of the administrative and political support given civil rights laws could be offered as militating against the desirability of drafting a model act. That is, one might conclude that differences among state statutes are unimportant compared to differences in motivation among officials to enforce any civil rights law, and, consequently, effort could better be expended in improving administration rather than drafting new technical provisions. Despite a certain seductiveness, this argument does not stand up. It is of course

a truism that no law can be effective if not enforced. But this does not mean that variations of substantive and remedial law in any given field are unimportant. That issue must be faced on its own merits. In this discussion, we have referred to many differences among existing state laws against discrimination. Others may disagree, but we have concluded that many of these are significant, or at least cannot be judged insignificant without closer examination. Accordingly, whatever the importance of administrative vigor and political commitment, there would seem ample basis for lawyers to try to develop more workable legislation by using the technical tools of their profession.

The second reason for drawing attention to the concern of civil rights leaders over failures of administration is, in a sense, the converse of what has just been said. It is that no matter how good the legislation, those entrusted with its enforcement have a strangle-hold on the policies it embodies. And the likelihood of administrative or political undercutting would seem great in a field, such as civil rights, where passions and votes are inevitably engaged. The lesson to be drawn from this undoubted fact, however, is not that a good law is irrelevant, but that it may not be enough, and that it is no reason to refrain from trying to improve existing legislation.

V. The Questionable Value of a Uniform Civil Rights Act

We have now presented in support of a model act a battery of considerations, some of them relating to the possibility of partially unifying state laws against discrimination. The question is naturally presented whether these same considerations, and perhaps others, might justify the drafting of a uniform rather than a model act. Study of the problems involved in light of the criteria of the National Conference leads me to conclude, however, that the drafting of a uniform act would be inadvisable, certainly for substantive provisions and probably for remedial provisions as well.

The Conference criteria are not altogether clear in determining whether an act should be designated as "uniform" or "model." In fact, the two main standards seem to operate inconsistently in the case of civil rights legislation. The 1963 Handbook of the Conference provides:

The designation 'Uniform Act' should have special significance and should normally be limited to acts which have a reasonable possibility of ultimate enactment in a substantial number of jurisdictions. The designation should normally not be applied to any act which Commissioners from a substantial number of states oppose as unsuitable or impracticable for enactment in their states.²⁹

The first quoted sentence might lead to the conclusion that a uniform act would be appropriate. Many states will be reexamining existing civil rights laws in light of the federal act, and many more will be moved to pass legislation dealing with discrimination. A high proportion of these states share common atti-

tudes to the problem, and if the National Conference could develop a technically sound piece of legislation, it is not out of the question that a "substantial number of jurisdictions" would enact it.

This line of argument fails to hold up, however, at least for substantive provisions. In the first place, the second sentence of the Handbook criteria seems applicable; that is, in the present mood of public opinion, Commissioners from Southern states surely would regard a civil rights act as "unsuitable or impracticable" for their jurisdictions. Second, the likelihood of complete or virtual uniformity would seem slight, even among states of roughly common tradition and inclination. Thus, it is difficult to imagine general accord on the type of housing to be exempt from the reach of antidiscrimination legislation, the precise public accommodations made subject to the act, or the size of employers and labor unions who would be required to refrain from biased hiring. Third, differences would undoubtedly emerge over which civil rights laws are needed in any given jurisdiction. For example, some states might cover all areas but housing, others might omit private hospitals, and still others private schools. There also would seem inevitable disparities within each class of statute; some states might omit employment agency discrimination, others discriminatory advertising, and others discrimination on account of age or sex.

These considerations appear compelling as to substantive provisions, but the question is less clear as to a uniform act dealing only with remedies. Why should not a "substantial number of jurisdictions" adopt common means of enforcing their civil

rights legislation? There may be broad differences over the desirability or comprehensiveness of such laws, but we have already alluded to the fact that, at least presumptively, states will want to administer what laws are on the books in an effective manner.

The argument on the contrary is, first of all, that Commissioners from states opposed to all civil rights legislation naturally would regard the remedial provision "unsuitable or impracticable." In the second place, there seem enough differences among existing remedial statutes to doubt the prospect for inducing a large number of jurisdictions to adopt any particular proposal. Thus, as has already been observed, laws differ as to who may bring complaints, the investigatory powers of commissions, conciliation and hearing procedures, and the utilization of supplementary civil and criminal remedies, not to mention such details as the time within which complaints and appeals must be filed. Third, it is difficult to gauge the degree to which states with existing human rights commissions will be amenable to adopting the product of the Conference. This would depend in part on the scholarly merits of the Conference's work, but it also could turn on the immediate political situation within each state and a likely resistance to re-examination of a touchy area of the law, at least in some areas. Whatever the reason, it is doubtful that a substantial number of jurisdictions would revise their laws in full, at least without a strong showing that the uniform civil rights act is markedly superior to existing enforcement provisions.

The above reasoning leads to the conclusion that prospects for adoption of a uniform act are dim. It is not possible, how-

ever, to rule it out completely. If it is decided to proceed with a model act, detailed study might uncover suitable areas for uniform treatment. For example, certain substantive provisions designed to comply with the minimum terms of the federal act and certain remedial provisions that experience has demonstrated are clearly desirable could be inserted in a basic uniform act, which could be supplemented by "interchangeable parts" to permit states variety within a determined range. For less convincing provisions, a model (rather than uniform) act could be devised to enable jurisdictions to suit their special needs. Accordingly, although my present judgment is negative, a final verdict on a uniform act cannot be delivered at this time.

VI. The Scope of a Proposed Model Civil Rights Act

On the assumption that a model act is desired, this section will explore its likely range. Should it include all subjects of private discrimination or only some? What should be its coverage within each substantive area and what types of provisions would be most effective? If administrative enforcement is desirable, what should be the precise means of commission action? Should supplemental remedies be added and, if so, which ones? These are some of the questions to which we now turn.

A. Substantive Provisions

It is obvious that a state's decision to ban private discrimination, whether employment, public accommodations, housing or otherwise, entails a legislative value choice of a fundamental character. This choice is perhaps composed primarily of moral and political ingredients, but it also involves attitudes towards the role of the state, the efficiency of the economy, the international image of the nation, the morale of the citizenry, and no doubt other matters. Each legislator will have his own views as to these, and each legislature its own consensus, and it would be vain to expect any model act, no matter how scrupulously prepared, to be enacted if it conflicted with the consensus in any state.

These remarks are made by way of preface in order to underscore one special aspect of a model act in the civil rights field. Unlike the penal law or probate law, for example, where some legislation is necessary for the society to function, a state need not have a civil rights law. Accordingly, if a model is drafted, it must be on the assumption that certain legislatures will choose to intervene, or at least seriously consider doing so, because they wish to curtail certain forms of discrimination. In proceeding on this assumption, we do not of course intend to minimize the importance of the ultimate value choices that are the sole prerogative of the respective state legislatures.

One further preliminary matter should be dealt with. An early question in preparing a model act would be whether to draft an omnibus law with provisions creating a commission plus substantive sections for the major areas of employment, public accommodations, housing and education. Such laws have the virtue of simplicity and of a consistent enforcement procedures. On the other hand, it would be possible to draft several laws for each area of discrimination if it is thought that different enforcement techniques should be used against different types of bias or if it is suspected that an omnibus statute might be less salable to states that have only a shaky consensus in favor of antidiscrimination legislation.

We turn now to consideration of the various substantive areas.

1. Employment. This subject matter appears to be clearly within the scope of any proposed model act. As pointed out above, 27 states prohibit discrimination in employment. Further, the Civil Rights Act of 1964 explicitly encourages decentralized enforcement by requiring a delay of 60 days in the filing of charges by an aggrieved person in cases where proceedings have been com-

menced under the state or local law that prohibits the alleged unlawful employment practice.

The chief questions to be explored in the formulation of model provisions are the definition of unfair practices, the scope of the act, and the exemptions from coverage.

The minimum definitional criteria would seem largely determined by sections 703 and 704 of the federal statute, which prohibit discrimination in broad terms on account of race, color, religion, sex and national origin by employers, employment agencies and labor organizations. It can be fairly assumed that states legislating against employment discrimination would want the opportunity to enforce their own laws whenever possible rather than invite federal action, and to do so it would be necessary to emulate the standards of the 1964 Act. States might, of course, wish to go further. For example, following the lead of some jurisdictions, a model act should probably include provisions that would forbid discrimination on account of age (Rhode Island), or certain special remedies against discrimination by employers who are public contractors or subcontractors (Michigan, Nevada).

Regarding coverage, the federal act by 1958 will include employers and labor organizations with 25 employees or more. Most states go further, with the majority forbidding discrimination in establishments with more than four or six employees. The model act could simply leave this figure open.

The exemption problem may be more difficult. The federal act contains exemptions for "a bona fide occupational qualification," for aliens employed outside any state, for religious and educational institutions in certain circumstances, and, in ambiguous

terms, for communists and security risks. A model act might omit some of these exemptions as undesirable or as inappropriate for a state statute. On the other hand, exemptions not explicitly contained in the federal act but present in some state statutes, might be thought worthy of inclusion, such as those for agricultural employees or domestic servants. Perhaps the best solution would be to draft appropriate exemption provisions in each of these cases for those jurisdictions that want to consider them.

2. <u>Public Accommodations</u>. This subject matter is likewise clearly appropriate for model legislation on the basis of existing state activity and the enabling provisions of the federal statute which defer to local endorsement.

The federal act, by the breadth of Section 201, to some degree settles the traditionally difficult question of which establishments should be covered by state law. However, there are certain establishments not covered by the federal act, such as department stores and drug stores, and states would have the option of going beyond Section 201. In the past two main drafting techniques have been used -- a general prohibition against discrimination in "all business establishments of every kind whatsoever" (e.g., California), or a specific listing of all establishments that are intended to be covered (most states). Where a list is made, it can be tailored to suit each constituency. For example, "places of amusement" or "non-profit organizations" could be omitted. And there is the usual provision (also found in the federal act) excepting "private clubs." In each case, a judicial question of definition would be raised by an exemption.

3. Housing. This area of potential private discrimination should also be included. Its importance in assuring equal opportunity in the society is obvious and accordingly it has been the legislative concern of many jurisdictions.

A distinction must be made between private housing and housing that is publicly owned or assisted. Title VI of the 1964 Act puts the stamp of congressional approval on the 1962 Executive Order 31 which directed federal agencies to prevent discrimination in the sale or rental of "residential property and related facilities" owned or assisted by the federal government. Discrimination in state owned housing is also unlawful under Title III of the 1964 act (as well as the equal protection clause of the 14th amendment). Despite these prohibitions, a model act probably should include sections barring discrimination in publicly owned or assisted housing similar to those in force at the present time.

The principal problems concern bias in private housing, as to which more and more states have recently acted. A model should include commercial and residential property and vacant land, and should prohibit discrimination in the sale, rental or lease of housing by the owner, agent or other authorized person. Services should also be covered. Because of the general view that no statute can be effective without coverage of real estate brokers and mortgage lenders, there should be provisions for them. At least one state forbids discrimination based on sex (Colorado), and an optional provision could be framed to cover this.

Once again the exemption issue is presented. The general rule is to exclude religious institutions in appropriate cases,

the rental of rooms within an apartment, and the rental within a two or three family house occupied by the owner. The last two provisions are the housing equivalent of "Mrs. Murphy's" establishment in the public accommodations field (which are excluded under the federal act if containing no more than five rooms for rent to transient guests). In such cases, the tough legislative issue is to locate the point where claims of personal association outweigh the antidiscrimination policy, and ultimately each legislature must make its own judgment.

Miscellaneous provisions should probably be included. For example, newspaper and other advertising that solicits only a certain clientele would surely be barred. Similarly, it may be made unlawful to inquire orally or in writing about any applicant's race, creed, color or national origin. In view of recent scholarship, it might also be thought desirable to attempt the difficult task of drafting a statute permitting discrimination based on race if it is designed to <u>further</u> integrate housing — the so-called benign quota.³² In addition, as already mentioned, at least two states outlaw restrictive covenants and a model law could cover this. There well may be other pertinent provisions.

4. Hospitals. This important area of discrimination, which is not explicitly covered in the federal law, should probably be included in the model act. The subject is presently dealt with explicitly by Massachusetts, New Jersey, New York, New Mexico and Pennsylvania, and in several other states public accommodation statutes have been judicially interpreted to apply to hospitals and clinics.

There are the usual questions of scope -- whether to include

all medical institutions, or to exclude publicly assisted hospitals covered by Titles III and VI of the 1964 Civil Rights Act; whether to exempt denominational hospitals; whether to deal with discrimination as it affects patients only or to include also the problems of doctors and nurses who are denied access to facilities on arbitrary grounds.

Most of these questions involve basic legislative choices, but a model act could probably provide drafting assistance.

5. Private Education. Model provisions are probably desirable to deal with discrimination by private schools and universities, which are excluded from the scope of the federal act.

Several states have enacted fair educational practices acts, and other states include private schools or colleges in their public accommodation laws. A principal question would be which route to follow. Massachusetts, one of the fair practice states, prohibits discrimination in

any institution for instruction or training, including but not limited to secretarial, business, vocational, trade schools, academies, colleges, universities, primary and secondary schools, which accepts applications for admission from the public generally and which is not in its nature distinctly private, except [religious or denominational educational institutions].

It would be possible, of course, to draft a more limited statute than Massachusetts', confining its reach perhaps to universities or secondary schools or special schools, such as those for the blind or handicapped. Idaho has moved in this direction by barring discrimination in "nursery schools" and private schools of "special instruction." Special attention might be paid to vocational schools because not only "education" is involved but

"employment" because of the direct relation to apprenticeship programs. The latter are covered by the federal act and many state statutes.

Existing state laws ordinarily contain an exemption for denominational schools and at least one state (Pennsylvania) reserves the right of any institution to accept and administer
gifts upon any terms and conditions laid down by the donor, presumably including race and religion. These matters, too, would
seem grist for a model act.

- 6. Public Education. In considering a model for this subject matter, a sharp distinction must be drawn between the problem in states, mostly Southern, whose official policy is unsympathetic to integrated schooling and states that are officially committed to integration, or at least to ending segregation.
- a. Model state legislation would seem inappropriate as a means of solving the problems of jurisdictions officially opposed to integrated education. Brown v. Board of Education 33 having settled the law, the need now is vigorous and intelligent enforcement. It can be safely assumed that no state desiring to maintain segregation would adopt or implement even the most pallid provision designed to alter the status quo. The burden will have to be borne by the federal government and private litigators; this is the premise that underlies Title IV of the Civil Rights Act of 1964 and should guide us here.
- b. Where state policy is in favor of integrated schooling, the problem of discrimination will not ordinarily take the form of intentional segregation by a school board or similar body.

 Where it does, the Brown case would govern to invalidate the im-

proper drawing of district lines, assigning of pupils, etc.

State law would seem superfluous in these cases, and a model provision unnecessary.

A different conclusion is called for by the problem of "de facto segregation," that is, separate schooling not resulting from intentional discrimination by a state or local official, but rather a product of segregated housing patterns and the neighborhood school concept. It is in this arena that Northern combatants are jousting, and recent case law and literature reflect the seriousness and pervasiveness of the struggle. State legislatures have begun to respond. California has empowered its Department of Education to advise on "problems involving the ethnic distribution of pupils and school attendance areas." Illinois took a further step by amending the general school law to make it a duty of public school boards, in building or acquiring schools not to do so in a manner that promotes segregation on the basis of race or nationality. Boards were also directed to change, as soon as practicable, existing attendance units in a way that takes into consideration the elimination of segregation.

There would appear good reason to draft provisions, perhaps based on the California and Illinois laws, that are designed to cope with de facto segregation. The problem is important and difficult, the federal act does not reach it, and attempts to make progress through the medium of the Brown case have so far been mixed. Consequently, this is an area where precise state legislation might clarify the responsibilities of officials and assist measured steps to end the circle of segregation in housing and education in the North.

- 7. <u>Voting</u>. In states where there have been documented reports of discrimination in voting registration, this is ordinarily part of a wider pattern of discrimination against the Negro undertaken with at least the tacit consent of state and local officials. The federal government, acting on this assumption, has sought and finally obtained from Congress comprehensive legislation designed to end bars to Negro voting. States resisting these laws would plainly be loath to pass their own laws, and in the other states no legislation is needed. Accordingly, it is recommended that voting provisions be excluded from a model act.
- 8. Miscellaneous Provisions. There is support in the 1964 federal statute, some state laws, and in scholarly writing for at least two types of catch-all provisions. As explained in a recent article by Professor Bonfield, 34 the first covers all persons who intentionally aid, compel, or coerce another to violate any section of an antidiscrimination act. The second type protects all persons against whom reprisals might be taken for their part in helping to effectuate the statutory scheme by preventing landlords, employers, and all others covered from discriminating in business against any person because he obeys or defends the statute. A model act could deal with these provisions in several ways. It could adopt Professor Bonfield's broad suggestion of making both catch-all provisions apply to all forms of discrimination. It could apply both provisions to less than all forms of discrimination, in the manner of section 704 of the 1964 Civil Rights Act. which relates exclusively to employment. Or it could apply one but not both of these provisions to certain types of discrimination.

B. Remedial Provisions

It is plain that if a model act is desired, it will include a wide range of remedial provisions, including at least those necessary to establish a functioning human rights commission. In broad terms, our inquiry should be into the form of statute that would be most effective in implementing the substantive goals described above and, conversely, what remedial provisions should be avoided at all costs. In setting out the appropriate legislation, attention should be given also to provisions that have been successfully utilized by one or more states but are as yet not widely employed. In practice, one of the omnibus statutes might serve as a prototype for the model act.

1. Human Rights Commissions. Many of the pertinent issues have been discussed in Section IV above, including the complaint, the investigation, the conciliation procedure, the formal hearing following an unsuccessful conciliation, and the enforcement mechanism. These matters will not be reviewed here except to emphasize that the quest in all cases should be to discover which type of statute is most effective for each stage of the administrative process. That there are significant differences is attested to by the secondary literature and the reports of the commissions themselves. For example, in its 1962 report, the Michigan Human Rights Commission recommended that the state legislature facilitate enforcement by increasing the maximum time to file private complaints from 90 days to 6 months, permitting the Commission to initiate investigations on its own motions, granting it the subpoena power, and altering the appellate procedure to deny respondents a trial de novo. 35 Similarly, the 1962-63 report of the

Colorado Commission urged the state legislative to adopt the major reform of enacting an omnibus act and the comparatively minor one of emulating states like Massachusetts by authorizing the Commission to maintain the status quo pending final determination of complaints in housing and employment cases. 36

These instances are merely illustrative. A large part of the drafting process would probably consist of exploring, through diverse means, just what provisions are desirable for a modern commission.

2. Penal Provisions. Considerations run both ways on the important question whether a model act should contain criminal provisions as a supplemental means of enforcing a state's policy against discrimination. Arguing against a penal provision are the facts that prosecutors may be reluctant to act, that a jury must find the defendant guilty beyond a reasonable doubt, that such statutes will inevitably be construed narrowly, and, perhaps most important, that the policy against antidiscrimination should not be enforced through a sanction, such as the criminal law, that is both punitive and stigmatizing.

These considerations apply mainly to states which do not have an antidiscrimination commission. Where such an agency exists, however, it can be fairly maintained that supplementary penal provisions will give the state a necessary weapon against the intransigent violator, particularly since the 1964 federal act contains no penal provision. One possible solution, of course, would be to recommend supplemental penal provisions in certain substantive areas, say public accommodations and employment, but not in others, if substantial grounds could be discovered to distinguish among areas of discrimination.

The severity of punishment provided for in existing penal laws varies considerably. New Hampshire's public accommodations statute has a range of from \$10 to \$100, Delaware's up to \$500 fine and 90 days in jail, while Colorado permits incarceration up to one year. Several states (Montana, Idaho, Kansas) have statutes with no specific penalty. While the issue is obviously discretionary, a model act might be useful to a certain point, for example in demonstrating that the more severe statutes are not enforced.

Some jurisdictions have special penal provisions which should be studied in the course of drafting a model act. For instance, Maine has different penalties for first and subsequent violations of its public accommodations statute; the District of Columbia gives informers whose information leads to conviction one-half of the fine collected; Montana requires a majority of commissioners to approve each decision to prosecute; Illinois has a provision enabling a court to order prosecution under its civil rights law; and Michigan and Pennsylvania provide special penalties for different types of violations, such as an employer's failure to post public notices that he is hiring on merit.

3. Private Damages. As in the case of the criminal remedy, it has been widely claimed that private actions are ineffective for the simple reason that very few people sue. Once again, however, civil damages may be a useful supplemental remedy; there seems little reason to deny an individual the right to recover for the insult and inconvenience caused him, as well as monetary damages occasioned by discrimination.

Various states have special provisions whose effect would have

to be studied before a definitive model is drafted. For example, Massachusetts provides that an individual may recover against only one person for each violation of its public accommodations statute; Michigan permits the recovery of treble damages; and some states, including California, allow recovery of punitive damages.

4. Other Remedial Provisions. In addition to the three basic means of enforcing civil rights legislation that have already been discussed, there are other possible forms of relief. For example, many states provide for the revocation of the operating license of establishments that manifest bias in serving the public. Several states provide that discrimination on the part of any contractor or subcontractor in any public contract constitutes a material breach, with forfeiture and even criminal remedies following. And an Illinois statute calls for the discharge of any state official who discriminates in the course of his duties.

Problems of evidence would also have to be considered. The most important question, of course, would be whether or not to follow the majority by freeing the formal hearing after conciliation efforts fail from the rules applicable to judicial proceedings. The statute could also deal with the question of statistical evidence in hearings. And various presumptions are possible; for example, New Jersey has such a provision to assist in enforcing its public accommodations law -- any written document purporting to relate to any establishment and to be made by an owner or manager is made presumptive evidence in any civil or criminal action that it was authorized by such person.

All of these matters would have to be evaluated for possible inclusion in model legislation. In addition, other remedies that

seem not to have been employed to the present time might justify themselves; for instance, publicity devices might be useful to shed unwelcome light on errant companies and individuals and thereby encourage compliance with the law.

C. Administrative Law Provisions

- 1. Commission Structure. Among the relevant questions under this heading are the number of commissioners and their salary, term of office, and method of appointment.³⁷ Although these issues are closely related to varying state customs and administrative practices, I am inclined to think that a model should deal with some of them, at least to set the framework for the antidiscrimination agency. For example, a recommendation could be made as to whether human rights should be enforced through an independent commission, as in most states, or by cabinet officials in the executive branch, such as the Departments of Labor or Education. The appointment process -- specifically, whether by the governor alone or with the consent of the state senate -- also would appear a subject on which a model act could speak with authority. Other provisions, such as length of term and salary, would appear in-appropriate for model legislation.
- 2. Separation of Functions. Antidiscrimination commissions have been criticized on both constitutional and policy grounds because they often embody in a single agency powers of accusation, investigation, prosecution, and decision. The commission counsel, who ordinarily performs a wide variety of roles, is often the focal point of these attacks, which seem related to the broader charge that certain commissions have acted aggressively to promote racial

integration rather than merely to remedy overt acts of discrimi-

Separation of functions raises an important problem of administrative law and one that is inherent in the creation of any administrative agency, including a human rights commission. The real issue for draftsmen of a model act would be whether to attempt a major analysis of the constitutional problems involved. This appears an unsound idea in view of the widely disparate traditions within each jurisdiction and the subtle nature of the questions. Accordingly, despite the pervasiveness of the problem, it is recommended that the model act refrain from explicit comment on it.

3. Election of Remedies. Several states have provisions which require an election between a civil judicial remedy and the commission procedure. There are important differences, however, in the way they impose the election requirement. Some statutes provide for dismissal of a complaint in the administrative agency after a civil action has been begun. Conversely, some prohibit the commencement of a court action while commission proceedings are pending. States also differ in other respects, such as whether they regard an election as irrevocable and, if not, how evidence adduced in one forum should be treated in the other. And Massachusetts has the unusual provision that limits any person aggrieved under its public accommodations law to recovery of private damages against only one person for any one act of discrimination or restriction. 38

My tentative opinion is that a model act might make a contribution in this area, specifically in whether or not to require complainants to make an election of remedies and, if so, at what point and of what kind. This judgment is based partly on the importance of the issue to enforcement of civil rights statutes and partly on a suspicion that the policy underlying the election requirement might be found to be outweighed by the burden it imposes on complainants. On the other side, of course, is the consideration that to enable complainants to pursue more than one remedy smacks of double jeopardy for the respondents. Whatever the ultimate conclusion, differing state laws might be harmonized by a recommendation based on careful study of existing practices.

4. Judicial Review. Issues of reviewability have been the prime source of litigation involving human rights commissions.

One set of cases concerns who may appeal commission findings; all statutes permit respondents some form of judicial review and most grant this right to complainants and other aggrieved parties. A second main question is which agency "orders" are reviewable.

Here statutes differ considerably not only as to the stage at which review can be taken but also the nature of the proceedings. For example, on the perennial question of the appealability of commission dismissals based on a finding of no "probable cause," should review be by a court or an executive department and should it be on a trial de novo or more limited scale?

This subject would seem appropriate for a model act and might well be one in which field research could be valuable. The aim would be to determine which scheme of judicial review is fairest to all parties concerned and most efficient from the point of view of facilitating a prompt disposition of complaints.

D. Miscellaneous Provisions

There are a number of other statutory sections that are more or less standard in form which would probably be included in any model act. Among these are a preamble containing findings of fact and a statement that citizens of the state are entitled to be free of discrimination as a "civil right"; a statement that the civil rights law should be construed "liberally"; a severability clause in the event that a court declares any section of the statute unconstitutional; a provision authorizing municipal ordinances to supplement state remedies; and a clause announcing the effective date of the act.

As conventional as these provisions seem, some are of considerable importance and in almost every instance there is room for thoughtful drafting. For example, the declaration of a "civil right" often triggers special penal provisions of state law; in the case of severability, some sections may be thought so interdependent that one should not function in the event of the invalidation of the other; or it may be decided that the act's purposes would be better served if it pre-empted local ordinances, as does California's housing law; and perhaps the Employment Title of the 1964 Civil Rights Act should be emulated in providing that certain sections of a statute take effect before others.

VII. The Drafting Process

The way stations along the road to a properly drafted model act would seem to include determination of the general areas to be covered; familiarity with the types of provisions that might be suitable within each area; isolation of the controversial issues; and resolution of these issues. The earlier discussion in Sections IV and VI touched on some of these matters and perhaps provides an inkling of the kind of research and analysis that could be employed in the drafting process.

If it is decided to go forward, it will be necessary to give intensive study to existing statutes, commission reports, and secondary literature. As already mentioned, the reporter could use one of the existing omnibus statutes as the basis for the model act. In addition, it would undoubtedly be helpful to consult with a sampling of persons who have had first-hand or scholarly relations to civil rights laws. This would include members of antidiscrimination commissions, complainants and their lawyers, respondents and their lawyers, and sympathetic "neutrals," such as law professors, legislators, and staff members of the Anti-Defamation League. The Harvard Law Review's discussion of human rights commissions suggests the potential value of field research, and I should think that it would be liberally employed.

One means of achieving both of the above goals -- consultation with informed persons and field research -- would be through an advisory committee. A group of, say, eight to fifteen persons of varying points of view and from different geographic regions, to

assist the reporter by gathering data, reviewing preliminary drafts, and advising on questions of policy not sufficiently grave to call to the attention of the National Conference or its Executive Committee. Accordingly, I would recommend the formation of such an advisory committee if model legislation is prepared.

The drafting timetable presents a problem. Preliminarily, it may be useful to consider the following tentative schedule, which is believed to be fairly realistic.

Jan. 1965 -- Reporter to begin work in earnest.

May, 1965 -- Consultation with advisory committee on issues of policy, scope of field research, lines of approach, and possibly on a preliminary draft of a statute.

Aug. 1965 -- Presentation to the annual meeting of preliminary draft or tentative outline of statute, issues of policy for immediate resolution, and other matters.

Dec. 1965 -- Consultation with advisory committee on first draft (or revised first draft) of detailed statute.

May, 1966 -- Consultation with advisory committee on revised draft of detailed statute.

Aug. 1966 -- Presentation to the annual meeting of final draft of statute, with request for approval.

Dec. 1966 -- Presentation to special session of Conference of revised final draft (if necessary), with request for approval.

Jan. - March 1967 -- Presentation of approved statute to 1967 session of state legislatures.

This timetable represents an attempt to strike a reasonable balance between the inconsistent demands of thoroughness and punctuality, with the objective of completing a finished product in time to submit to the states at their 1967 legislative sessions.

There may be holes in this timetable, but the information available suggests that it is not seriously out of line.

The problem referred to above stems from the assumption that a statute will be timely if it is available for the 1967 sessions. The assumption is based on the fact that only a few state legislatures -- no more than ten -- meet in even years, and accordingly the great bulk of jurisdictions will be able to examine the model for the first time in 1967. Accepting this line of reasoning, 1967 will be soon enough.

Although the factual premise is true, the conclusion may not follow. The number of legislatures meeting in 1966 may be few, but they comprise some of the most important states -- New York, Pennsylvania, and California, to name some. These states are leaders in this and other fields, and if they decide to act on civil rights in 1966 (without the opportunity to resort to the model legislation then under preparation), much of the model's influence could be vitiated.

What is the alternative? It can only be to have the proposed model available for the 1966 legislative session. But this will be difficult in view of two possible snags. The first relates to the demands of careful and imaginative drafting. The above timetable would have to be accelerated to the point of providing the 1965 annual meeting with a first draft of the statute, with the opportunity on that occasion for discussion among the reporter, his advisory committee, and members of the Conference. Further meetings would have to be held throughout the Fall of 1965 as the work of the reporter progressed, and there would have to be some mechanism for final approval in December 1965. A serious question exists whether sound legal work could be done under this regime.

The second problem under the accelerated schedule is the or-

ganizational mechanism of the National Conference; that is, assuming the need to finish by the 1966 legislative sessions, could the Conference's constitutional process of consultation and consecutive approval at two annual meetings be satisfied? This is, of course, a question for experienced representatives of the Conference. (At this point, it seems well to emphasize that the timing question has been stimulated by the fear that 1967 may be too late for maximum influence of a model act; if this is incorrect, the original timetable is reinstated, assuming that it is found satisfactory on its own terms.)

A word about cost. Much depends of course on the length of the project, which could run anywhere from a minimum of 15 months to a maximum of three or four years (if the basic schedule outlined above is itself deemed overly ambitious). Perhaps the most reasonable estimate is two years. Cost per year would include a payment to the reporter, money for his research, stenographic and traveling expenses, traveling money for meetings of the advisory committee, an honorarium for members of the committee, if that is the practice, and no doubt some other miscellaneous expenses. My experience being limited in these matters, the financial question will be left in this form.

Footnotes

In line with instructions from Professors Braucher and Dunham, the footnoting is intentionally kept light; no attempt is made to document every statement of fact or to attribute ideas that have appeared elsewhere. For this reason, it will be helpful to bear in mind the contents of the appendices, in particular Appendix D (selected bibliography on civil rights legislation) and Appendix B (citations to pertinent state statutes). Statutory citations will not be given in footnotes; instead, reference will be made to the states having laws of a particular kind, and these can then be checked in Appendix B.

N.D.

- 1. 109 U.S. 3 (1883).
- 2. For an extensive review of the history, see Konvitz and Leskes,
 A Century of Civil Rights 155 et seq (1961).
- 3. Note, 74 Harv. L. Rev. 526 (1961).
- 4. For a more detailed description of antidiscrimination commissions, see the "General Articles" listed in Appendix D.
- 5. The New York Law Against Discrimination, which will be distributed with this paper, is technically not an "omnibus statute" because it does not include the state's provisions prohibiting discrimination in private education. (These are administered separately by the Commissioner of Education.)

 Nevertheless, the New York law is a good prototype of a comprehensive state statute.

- 6. 293 N.Y. 315, 56 N.E.2d 721 (1944), aff'd 326 U.S. 88 (1945).
- 7. 372 U.S. 714 (1963).
- 8. 56 N.J. Super. 542, 153 A.2d 700 (1959), aff'd 31 N.J. 514, 158 A.2d 177, appeal dismissed 363 U.S. 418 (1960).
- 9. See Note, 74 Harv. L. Rev. 527, 545-46 (1961).
- 10. Avins, Freedom of Choice in Personal Service Occupations:

 Thirteenth Amendment Limitations on Antidiscrimination Legislation. 49 Cornell L. Rev. 228 (1963).
- 11. 346 U.S. 100 (1953).
- 12. See the scholarly memorandum prepared by Galer T. Butcher,
 Legislative Attorney, Library of Congress Legislative Reference Service, Hearings before the Senate Committee on Commerce on S. 1732, Pt. 2, 88th Cong., 1st Sess., p. 1315
 (1963).
- 13. See the discussion in Bonfield State Civil Rights Statutes: Some Proposals, 49 Iowa L. Rev. 1067, 1086-95 (1964).
- 14. O'Meara v. Washington State Board Against Discrimination, 58 Wash. 2d 793, 365 P.2d 1 (1961).
- 15. For fuller discussions of the early civil rights laws, see Maslow and Robison, Civil Rights Laws and the Fight for Equality, 20 U. Chi. L. Rev. 363 (1953); Gressman, The Unhappy History of Civil Rights Legislation, 50 Mich. L. Rev. 1323 (1952).
- Henderson v. United States, 339 U.S. 816 (1950); Morgan v.
 Virginia, 328 U.S. 373 (1946); 49 C.F.R. 180a (1961).
- 17. 18 U.S.C. 8 241 (conspiracy provision); 18 U.S.C. 8 242 (pro-hibition of individual action, in slightly different statutory language).

- 18. 42 U.S.C. \$ 1971.
- 19. 71 Stat. 637 et seq.
- 20. 74 Stat. 92 et seq.
- 21. Hearings before the Senate Subcommittee on Employment and Manpower of the Committee on Labor and Public Welfare on S. 773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess. 499, p. 490 (1963).
- 22. 1963 Handbook of the National Conference of Commissioners on Uniform State Laws, p. 222.
- 23. 1963 Handbook, p. 65, 68.
- 24. 1963 Handbook, p. 223.
- 25. See Wechsler, The Challenge of a Model Penal Code, 65 Harv. L. Rev. 1097, 1098-1101 (1952).
- 26. 334 U.S. 1 (1948).
- 27. 346 U.S. 249 (1953).
- 28. See generally Wechsler, note 25 supra.
- 29. 1963 Handbook, p. 224.
- 30. States with such laws are Massachusetts, New Jersey, and Pennsylvania.
- 31. Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962).
- 32. E.g., Bittker, The Case of the Checkboard Ordinance: An Experiment in Race Relations, 71 Yale L.J. 1387 (1962); Hellerstein, The Benign Quota, Equal Protection, and "The Rule in Shelley's Case," 17 Rutgers L. Rev. 531 (1963).
- 33. 347 U.S. 483 (1954).
- 34. Bonfield, supra note 13, at 1109-10.
- 35. Michigan Fair Employment Practices Commission, 1962 Annual Report, pp. 26-27.

- 36. Colorado Anti-Discrimination Commission, 1962-63 Report, pp. 16-17.
- 37. A somewhat outdated but still useful tabular analysis of commission structures is contained in Note, 3 Race Rel. L. Rep. 1085 (1958).
- 38. See the discussion in Note, 74 Harv. L. Rev. 526, 569-71 (1961).

Appendix A - State Antidiscrimination Laws (As of March 18, 1964)

(Appendix V to the opinion of Mr. Justice Douglas in Bell v. Maryland, 84 Sup. Ct. 1814, 1846-47 (1964))

(Prepared by the United States Commission on Civil Rights.)

State	Privately Owned Public Accommodations	Private Employment	Private Housing	Private Schools	Private Hospita
Alaska California Colorado Connecticut Delaware Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky ⁵ Maine Maryland ⁶ Maryland ⁶ Massachusetts Michigan Minnesota Missouri Montana Nebraska New Hampshire New Jersey New Mexico New York North Dakota Ohio Oregon Pennsylvania	Owned Public Accommodations 1959 1897 1885 1884 1963 1961 1885 1885 1885 1885 1885 1885 1885 18	THE STATE OF THE S	College State of the College S		
Rhode Island South Dakota Vermont Washington 10 Wisconsin Wyoming	1885 1963 1957 1890 1895 1961	1949 1963 1949 1957		1957	21957 21957 21957 21961

The dates are those in which the law was first enacted; the underlining means that the law is enforced by a commission. In addition to the above, the following cities in States without pertinent laws have enacted antidiscrimination ordinances: Albuquerque, N. Mex. (housing); Ann Arbor, Mich. (housing); Baltimore, Md. (employment); Beloit, Wis. (housing); Chicago, Ill. (housing); El Paso, Tex. (public accommodations); Ferguson, Mo. (public accommodations); Grand Rapids, Mich. (housing); Kansas City, Mo. (public accommodations); Louisville, Ky. (public accommodations); Madison, Wis. (housing); Oberlin, Ohio (housing); Omaha, Nebr. (employment); Peoria, Ill. (housing); St. Joseph, Mo. (public accommodations); St. Louis, Mo. (housing and public accommodations); Toledo, Ohio (housing); University City, Mo. (public

- accommodations); Yellow Springs, Ohio (housing); and Washington, D. C. (public accommodations and housing).
- 1. Alaska was admitted to the union in 1959 with these laws on its books.
- 2. Hospitals are not enumerated in the law, however, a reasonable interpretation of the broad language contained in the public accommodations law could include various health facilities.
- 3. The law appears to be limited to business schools.
- 4. Hospitals where operations (surgical) are performed are required to render emergency or first aid to any applicant if the accident or injury complained of could cause death or severe injury.
- 5. In 1963, the Governor issued an executive order requiring all executive departments and agencies whose functions relate to the supervising or licensing of persons or organizations doing business to take all lawful action necessary to prevent racial or religious discrimination.
- 6. The law exempted 11 counties; in 1964, the coverage was extended to include all of the counties.
- 7. See 1963 Mich. Atty. Gen. opinion holding that the State Commission on Civil Rights has plenary authority in housing.
- 8. The statute does not cover housing per se but it prohibits persons engaged in the business from discriminating.
- 9. The statute relates to vocational, professional, and trade schools.
- 10. In 1962, a Washington lower court held that a real estate broker is within the public accommodations law.

Appendix B - Citations to State Antidiscrimination Laws

1. Statutes Creating Antidiscrimination Commissions

Because some commissions are created as part of a broad antidiscrimination law, the statutory references below often include provisions dealing with employment or other substantive areas. Twenty-two states have established antidiscrimination commissions.

- 1. California. Calif. Labor Code, secs. 1414-1432 (Supp. 1963).
- 2. Colorado. Color. Rev. Stat., secs. 25-3-1--25-3-6, 69-7-1--69-7-7; 80-24-1--80-24-8 (Supp. 1960).
- 3. Connecticut. Conn. Gen. Stat. Ann. Rev., secs. 53-34, 53-36 (1960); 53-35 (Supp. 1963).
- 4. <u>Illinois</u>. Ill. Rev. Stat., ch. 48, secs. 855--866 (Supp. 1963); ch. 127, secs. 214.1-214.5 (1953).
- 5. <u>Indiana</u>. Ind. Stat. Ann., secs. 40-2307--40-2317 (Supp. 1964).
- 6. Kansas. Kan. Rev. Stat., secs. 41-1001--41-1009 (1961, as amended Supp. 1963).
- 7. Maryland. Ann. Code Md., art. 49B, secs. 11-1-3; 11-16 (Supp. 1964).
- 8. <u>Massachusetts</u>. Mass. Gen. Laws Ann., ch. 6, secs. 17,56; ch. 151B, secs. 1-9 (Supp. 1963); ch. 151C, secs. 1-5 (1957).
- 9. <u>Michigan</u>. Mich. Stat. Ann., secs. 17.458 (1)--17.458(11) (1960); Mich. Constitution of 1963, art. V, sec. 29 and art. I, sec. 2.
- 10. Minnesota. Minn. Stat. Ann. secs. 363-01--363-13 (as amended through 1963).
- 11. <u>Missouri</u>. Ann. Mo. Stat., secs. 213.010--213.030, 296.010 --296.070 (Supp. 1963). Mo. Laws of 1957, [S.C.S.H.B. 125] p. 299, secs. 1-5 (Temporary).
- 12. Nevada. Nev. Rev. Stat., secs. 233.010--233.080 (1963).
- 13. New Jersey. N. J. Stat. Ann., secs. 18:25-1--18:25-28 (Supp. 1963).
- 14. New Mexico. N. Mex. Stat. Ann., secs. 59-4-1--59-4-14 (1960).

- 15. New York. N. Y. Exec. Laws, art. 15, secs. 290-301 (as amended 1964).
- 16. Ohio. Ohio Rev. Code Ann. secs. 4112-01--4112.99 (Supp. 1963).
- 17. Oregon. Ore. Rev. Stat., secs. 651.020--651.060 (1963) and 659.010--659.990 (1963).
- 18. Pennsylvania.Pa. Stat. Ann., tit. 24, secs. 5001-5010 (1962); tit. 43, secs. 951-963 (Supp. 1963).
- 19. Rhode Island.Gen. Laws R. I., secs. 28-5-1--28-6-21. (as amended 1963).
- 20. <u>Washington</u>. Rev. Code Wash. Ann., secs. 49.60.010--49.60.320 (1962).
- 21. West Virginia. W. Va. Code of 1961 Ann., secs. 265(156) 265 (161).
- 22. <u>Wisconsin</u>. Wisc. Stat. Ann., secs. 15.85-15.855 (1957); 111.31--111.37 (Supp. 1964).

2. Employment Statutes

Twenty-seven states have statutes that prohibit discrimination in employment.

- 1. Alaska Stat., tit. 23, ch. 10, secs. 23.10.190 --23.10-235 (1962).
- 2. California. Calif. Lab. Code, secs. 1410-1432 (1959).
- 3. Colorado. Colo. Rev. Stat., secs. 80-24-1--80-24-8.
- 4. Connecticut. Conn. Gen. Ann. Rev., secs. 31-122--31-128 (1960)
- 5. <u>Delaware</u>. Del. Code, tit. 19, secs. 710-713 (1960).
- 6. <u>Hawaii</u>. Hawaii Rev. Laws, secs. 90A-1--90A-9 (Supp. 1963).
- 7. Idaho. Idaho Code, secs. 18-7301--18-7303 (Supp. 1963).
- 8. <u>Illinois</u>. Ill. Ann. Stat., ch. 48, secs. 851-866 (Supp. 1963).
- 9. <u>Indiana</u>. Ind. Stat. Ann., secs. 40-2307--40-2315 (Supp. 1964).
- 10. <u>Iowa</u>. Iowa Code Ann., sec. 735, 735.6 (Supp. 1963).
- 11. Kansas. Kan. Rev. Stat., secs. 41-1001--41-1009 (1961).
- 12. Massachusetts. Mass. Gen. Laws, Ann. ch. 151B, secs. 1-10 (1958).
- 13. <u>Michigan</u>. Mich. Stat. Ann., secs. 17.458(1)--17.458(11) (1963).
- 14. Minnesota. Minn. Stat. Ann., secs. 363.01-363.13 (1957).
- 15. <u>Missouri</u>. Ann. Mo. Stat., secs. 296.010--296.070 (Supp. 1963).
- 16. Nevada. Nev. Rev. Stat., secs. 233.010-233.080 (1963).
- 17. New Jersey. N. J. Stat. Ann., secs. 18:25-1--18:25-28 (Supp. 1963).
- 18. New Mexico. N. Mex. Stat. Ann., secs. 59-4-1--59-4-14 (1960).
- 19. New York. N. Y. Exec. Law, secs. 290-301 (1951).
- 20. Ohio. Ohio Rev. Code, secs. 4112.01--4112.99 (Supp.1963
- 21. <u>Oregon</u>. Ore. Rev. Stat., secs. 651.020--651.060, 659.010-659.990, 696.300 (1963).
- 22. Pennsylvania. Pa. stat. Ann., tit. 43, secs. 951-963 (Supp. 1963).

- 23. Rhode Island. R. I. Gen. Laws, secs. 28-5-1--28-5-39 (1957).
- 24. <u>Vermont</u>. Vt. Stat. Ann., tit. 21, secs. 495-495c (Supp. 1963).
- 25. <u>Washington</u>. Wash. Rev. Code, secs. 49.60-010--49.60.320. (1962).
- 26. West Virginia. W. Va. Code Ann., secs. 265-156--265(161) (1961).
- 27. <u>Wisconsin</u>. Wis. Stat. Ann., secs. 111.31--111.37 (Supp. 1964).

3. Public Accommodations Statutes

Thirty-three states and the District of Columbia have statutes that prohibit discrimination in public accommodations.

- 1. Alaska Stat. tit. 11, ch. 60, secs. 230-40 (1962).
- 2. California. Cal. Civil Code, secs. 51-53 (Supp. 1963).
- 3. Colorado. Col. Rev. Stat. Ann., secs. 25-1-1--25-3-6.
- 4. Connecticut. Conn. Gen. Stat. Ann., secs. 53-34--53-37 (1960).
- 5. <u>Delaware</u>. Del. Laws, Ch. 181, Vol. 54 (1963).
- 6. <u>Idaho</u>. Idaho Code Ann. secs. 18-7301--18-7303 (Supp. 1963).
- 7. <u>Illinois</u>. Ill. Stat. Ann., tit. 38, secs. 13-1--13-4 (Supp. 1963).
- 8. <u>Indiana</u>. Ind. Ann. Stat., secs. 10-901--10-914; 40-2307--40-2317 (Supp. 1964).
- 9. <u>Iowa</u>. Iowa Code Ann., secs. 735.1--735.2.
- 10. <u>Kansas</u>. Kans. Gen. Stat. Ann., sec. 21-2424 (1949). Kans. Gen. Stat., ch. 279 (1963).
 - 11. <u>Maine</u>. Me. Rev. Stat. Ann., ch. 137, sec. 50 (Supp. 1963).
- 12. Maryland. Md. Ann. Code, art. 49B, sec. 11 (Supp.1964).
- 13. <u>Massachusetts</u>. Mass. Gen. Laws, ch. 272, secs. 92A, 98 (Supp. 1963).
- 14. Michigan. Mich. Stat. Ann., secs. 28.343--28.344 (1962).
- 15. Minnesota. Minn. Stat. Ann., sec. 327.09.
- 16. Montana. Mont. Rev. Code Ann., secs. 64-211 (1962).
- 17. Nebraska. Neb. Rev. Stat., secs. 20-101--20-102 (Supp. 1963).
- 18. Nevada. Nev. Rev. Stat., secs. 233.010--233.080.
- 19. New Hampshire. N. H. Rev. Stat., secs. 354.1--354.4 (Supp. 1963).
- 20. New Jersey. N. J. Stat. Ann., secs. 10:1-2--10:1-7.

- 21. New Mexico. N. Mex. Stat. Ann., secs. 49-8-1--48-8-6 (Supp. 1961).
- 22. New York. N. Y. Exec. Law, secs. 290--301.
- 23. North Dakota. N. D. Century Code, sec. 12-22-30 (Supp. 1963).
- 24. Ohio. Ohio Rev. Code Ann., secs. 2901.35--2901.36
- 25. <u>Oregon</u>. Ore. Rev. Stat., secs. 30.670--30.680, 659.037 (1963).
- 26. <u>Pennsylvania</u>. Pa. Stat. Ann., tit. 43, secs. 951-63 (Supp. 1963).
- 27. Rhode Island. R. I. Gen. Laws, secs. 11-24-1--11-24-8 (1957).
- 28. <u>South Dakota</u> S. D. Laws of 1963, sec. 1001.
- 29. <u>Vermont</u>. Vt. Stat. Ann., tit. 13, secs. 1451-1452 (1958).
- 30. Washington. Wash. Rev. Code, secs. 9.91.010, 49.60.010--49.60.320 (1962).
- 31. West Virginia. W. Va. Code Ann., secs. 265(156)-265(161) (1961).
- 32. Wisconsin. Wis. Stat. Ann., sec. 942.04.
- 33. Wyoming. Wyo. Stat. Ann., secs. 6-83.1--6-83.2 (Supp. 1963).
 - Washington, D. C. D. C. Code Ann., secs. 47.2901--47.2904, 47.2907, 47.2901 (1961).

4. Housing Statutes

- a. <u>Public Housing</u>. Eighteen states have statutes that prohibit discrimination in public housing.
 - 1. Alaska. Alaska Stat. tit. 11, ch. 60, secs. 230-240 (1962).
 - 2. California. Cal. Health & Safety Code secs. 35700-44 (Supp. 1963).
 - 3. Colorado. Colo. Rev. Stat. Ann. secs. 69-7-1 to -7 (Supp. 1961).
 - 4. Connecticut. Conn. Gen. Stat. Ann. secs. 53-34 to -36 (Supp. 1963).
 - 5. Idaho. Idaho Code Ann. secs. 18-7301 to -7303 (Supp. 1963).
 - 6. Illinois. Ill. Ann. Stat. ch. 56 1/2, sec. 100.1-100.20 (Supp. 1963).
 - 7. Indiana. Ind. Ann. Stat. sec. 10-901 to -902 (Supp. 1964).
 - 8. Massachusetts. Mass. Gen. Laws Ann. ch. 121, sec. 26FF(e) (Supp. 1963). Mass. Gen Laws. Ann. ch. 151B, secs. 1-9 (Supp. 1963).
 - 9. Michigan. Mich. Stat. Ann. secs. 5-3011 5.3057 (Supp. 1963).
 - 10. Minnesota. Minn. Stat. Ann. sec. 462.481 (1963).
 - 11. Nevada. Nev. Rev. Stat. secs. 233.010-233.080 (1963).
 - 12. New Hampshire. N. H. Rev. Stat. Ann. secs. 354:1-5 (Supp. 1963).
 - 13. New Jersey. N. J. Rev. Stat. sec. 18.25-1--18.25-28 (Supp. 1963).
 - 14. New York.

 N. Y. Pub. Housing Law secs. 156, 223; N. Y.

 Civ. Rights Law secs 18(a)-(e); N.Y. Exec.

 Law secs. 290-301 (Supp. 1964).
 - 15. Oregon. Ore. Rev. Stat. secs. 659.010-115, 696.300 (1963)
 - 16. Pennsylvania. Pa. Stat. Ann. tit. 35, secs. 1661-64 (1964).
 - 17. Rhode Island. R. I. Gen. Laws. Ann. secs. 11-24-1 to -8 (1957).
 - 18. Wisconsin. Wisconsin Stat. Ann. secs. 66.40-.45 (Supp 1964).

5. Education Statutes

- a. <u>Private Schools</u>. Ten states have statutes that prohibit discrimination in all or some private schools. Those that are starred have comprehensive fair education acts, enforced by commissions.
 - 1. Illinois. Ill. Ann. Stat., secs. 654, 669 (Supp. 1963).
 - 2. <u>Indiana</u>. Ind. Rev. Stat., secs. 40-2307--40-2317 (Supp. 1964).
 - 3. Kansas. Gen. Stat. Kans. Ann., sec. 21-2424 (1959).
 - *4. Massachusetts. Mass. Gen. Laws, ch. 151C, secs. 1-5 (1958).
 - 5. Minnesota. Minn. Stat. Ann., secs. 127.07, 127.08 (1960); 137.16 (Supp. 1963); 155.11 (as amended through 1963).
 - *6. New Jersey. N. J. Stat. Ann., secs. 18:25-1--18-25-28 (Supp. 1963).
 - *7. New York

 N. Y. Education Law, sec. 313 (1964); N. Y. Exec. Law, art. 15, secs. 296 (4), 296 (6) (1964).
 - 8. Oregon. Ore. Rev. Stat., 345.240--345.250 (1961).
 - *9. Pennsylvania. Pa. Stat. Ann., tit. 24, secs. 5001-5010 (1962).
 - *10. Washington. Rev. Code Wash., sec. 9.91.010.
- b. <u>De Facto Segregation</u>. Two states have statutes relating to de facto segregation.
 - 1. California. Calif. Ed. Code, sec. 363 (Supp. 1963).
 - 2. <u>Illinois</u>. Ill. Stat. Ann. secs. 10-21.3, 10-22.5 (Supp. 1963).

- b. <u>Urban Renewal or Publicly Assisted Housing</u>. Seventeen states have statutes that prohibit discrimination in urban renewal or publicly assisted housing.
 - 1. Alaska. Alaska Stat. tit. 11, ch. 60, secs. 230-240 (1962).
 - 2. California. Cal. Health & Safety Code secs. 33050, 35700-44 (Supp. 1963).
 - 3. Colorado. Colo. Rev. Stat. Ann. secs. 69-7-1 to -7 (Supp. 1961).
 - 4. Connecticut. Conn. Gen. Stat. Ann. secs. 53-34 to -36 (Supp. 1963).
 - 5. Illinois. Ill. Ann. Stat. ch. 67 1/2 secs. 63-91 (Supp. 1963).
 - 6. Indiana. Ind. Ann. Stat. secs. 48-8501 to -85067 (1963).
 - 7. Massachusetts. Mass. Gen. Laws Ann. ch. 151B, secs. 1-9 (Supp. 1963).
 - 8. Minnesota. Minn. Stat. Ann. secs. 462.481, .525(8), .641 (1963).
 - 9. Montana. Mont. Rev. Codes Ann. sec. 11-3917 (Supp. 1963).
 - 10. Nevada. Nev. Rev. Stat., secs. 233.010-233.080 (1963).
 - 11. New Hampshire. N. H. Rev. Stat. Ann. secs. 354:1-5 (Supp. 1963).
 - 12. New Jersey. N. J. Rev. Stat. sec. 18.25-28 (Supp. 1963).
 - 13. New York. N. Y. Civ. Rights Law secs. 18 (a)-(e), N. Y. Exec. Law secs. 290-301 (Supp. 1964).
 - 14. Oregon. Ore. Rev. Stat. secs. 659.010-.115, 696.300 (1963).
 - 15. Pennsylvania. Pa. Stat. Ann. tit. 35, secs. 1661-64, 1680.307, 1711 (1964) Pa. Stat. Ann. tit. 43, secs. 951-63 (Supp. 1963).
 - 16. Washington. Wash. Rev. Code secs. 49.60.010, .320 (1962).
 - 17. Wisconsin. Wis. Stat. Ann. secs. 66.405-.45 (Supp. 1964).
 - c. Private Housing. Eleven states have statutes that prohibit discrimination in nonpublicly assisted private housing.
 - 1. Alaska. Alaska Stat. tit. 11, ch. 60, secs. 230-240 (1962).

- 2. California. Cal. Civ. Code secs. 51-53 (Supp. 1963).
- 3. Colorado. Colo. Rev. Stat. Ann. secs. 69-7-1 to -7 (Supp. 1961).
- 4. Connecticut. Conn. Gen. Stat. Ann. secs. 53-34 to -36 (Supp. 1963).
- 5. Massachusetts. Mass. Gen. Laws Ann. ch. 151B, secs. 1-9 (Supp. 1963).
- 6. Minnesota. Minn. Stat. Ann. secs. 363.01-363.13, 507.18 (Supp. 1963).
- 7. New Hampshire. N. H. Rev. Stat. Ann. secs. 354:1-354:5 (Supp. 1963).
- 8. New Jersey. N. J. Rev. Stat. sec. 18:25 18:25-28 (Supp. 1963).
- 9. New York. N. Y. Exec. Law, secs 290-301 (Supp. 1964).
- 10. Oregon. Ore. Rev. Stat. secs. 659.010-.115, 696.300 (1963).
- 11. Pennsylvania. Pa. Stat. Ann. tit. 43, secs. 951-63 (Supp. 1963).

Appendix C - Appellate Cases on State Antidiscrimination Law

1. Supreme Court of the United States

Hall v. De Cuir, 95 U.S. 485 (1877). An Act of Louisiana interpreted to require those engaged in interstate commerce to give all persons traveling equal rights and privileges without racial distinctions is unconstitutional as a burden on interstate commerce.

Ry. Mail Ass'n v. Corsi, 326 U.S. 88 (1944). Section 43 of the New York Civil Rights Law prohibiting discrimination in employment can validly be applied to a labor organization. It does not deny equal protection under the Fourteenth Amendment nor is it repugnant to Art. 1, \$8, ch. 7 of the Federal Constitution, conferring on Congress power over the postal service. Congress has not clearly manifested an intent to occupy this field of regulation so as to exclude state regulation.

Bob-Lo Excursion Co. v. Michigan, 333 U.S. 28 (1948).

A Michigan corporation engaged chiefly in roundtrip transportation of passengers from Detroit to a Canadian Island was convicted in criminal prosecution of violating the Michigan Civil Rights Act for refusing passage to a Negro solely because of race.

Held, this is foreign commerce, but the local interest attaching to the business allowed the state act to be applied without contravening the Commerce Clause.

<u>District of Columbia v. John R. Thompson Co.</u>, 346 U.S. 100 (1953). Appellant was convicted under Acts of the District of Columbia for refusing to serve a Negro in its restaurant. Held,

Congress may delegate self-government to the District of Columbia which is as broad as the police power of a state and under which it may prohibit discrimination against Negroes by local restaurants.

Colorado Anti-Discrimination Commission V. Continental Air
Lines, Inc., 372 U.S. 714 (1962). Federal Statutes and Executive
Orders do not preempt the field so as to prevent Colorado from
applying its Anti-Discrimination Act to an interstate carrier,
and the Colorado statute does not unduly burden interstate
commerce.

2. California

a. Supreme Court

Greenberg v. Western Turf Ass'n, 140 Cal. 357, 73 Pac. 1050 (1903). Violation of statute for refusal to admit to place of public amusement entitles the person so refused puntive damages where malice is shown, and the statute is a valid exercise of the state police power.

James v. Marinship Corp., 25 Cal. 2d 721, 155 P. 2d 399 (1944). The Civil Rights Law is an expression of public policy and will be applied to a union even though unions are not expressly included within the statute. As applied, one statute is valid.

Williams v. Int. Brotherhood of Boilermakers, 27 Cal. 2d 586, 165 P. 2d 903 (1946). Same as immediately above.

Orloff v. Los Angeles Turf Club, Inc. 30 Cal. 2d 110, 180

P. 2d 32l (1947). Plaintiff ejected from a horse racing course in violation of statute prohibiting proprietor of places of public amusement from refusing admission was entitled to injunctive relief notwithstanding that the statute specifically provided for recovery of monetary damages only.

Burks v. Poppy Construction Co., 57 Cal. 2d 463, 370 Pac. 2d 313, 20 Cal. Rptr. 609 (1962). Construction Company engaged in developing and selling tract of housing, was within statute prohibiting discrimination in all business establishments, and can be enjoined under Civil Code 88 51, 52. No denial of equal protection because publicly assisted housing is a reasonable basis of classification.

Lee v. O'Hara, 57 Cal. 2d 476, 370 P. 2d 321, 20 Cal. Rptr. 607 (1962). Real estate brokers included in all business establishments: Civil Code §§ 51, 52.

Vargas v. Hampson, 57 Cal. 2d 479, 370 P. 2d 322, 20 Cal. Rptr. 618 (1962). Complaint charging real estate broker with refusal to sell because of ancestry stated a cause of action for injunctive relief under statute prohibiting discrimination in rendering of services in all business establishments.

b. Intermediate Appellate Courts

Piluso v. Spencer, 36 Cal. App. 416, 172 P. 412 (1918). Cal. Civ. Code \$5 51 and 52 as applied to "inns and hotels," includes a public resort for protracted accommodation as well as temporary refreshment, and the statute therefore applies to lodgers for indefinite periods.

Jones v. Kehrleim, 49 Cal. App. 646, 194 Pac. 55 (1920). Cal. Civ. Code § 51 requiring all persons to be awarded equal accommodations and privileges in theaters, etc., and § 52 making persons liable in damages who deny same for reasons applicable to race are valid. The offer of a seat only in an all-Negro section of a theater violates the statute.

Hutson v. Owl Drug Co., 79 Cal. App. 390, 249 Pac. 524 (1926). Findings below held to show plaintiff was denied full accommodations at soda fountain on account of race, in violation of Civ. Code, 88 51, 52.

Evans v. Fong Poy, 42 Cal. App. 2d 320, 108 P. 2d 942 (1941). Saloons within "other places of public accommodation" 88 51, 52.

Stone v. Board of Directors, 47 Cal. App. 2d 749, 118 P. 2d 866 (1941). Mandamus to city officials to admit Negroes to municipal pool stated a cause of action and was the proper remedy under Civ. Code, §§ 51, 52.

Suttles v. Hollywood Turf Club, 45 Cal. App. 2d 283, 114 P. 2d 27 (1941). A race track is a place of public accommodation or amusement under Civ. Code, 88 51, 53.

Pacific Turf Club, Inc. v. Cohn, 104 Cal. App. 2d 371, 231

P. 2d 527 (1951). Under Civ. Code, 8 51, 52, a turf club is not entitled to restrain an individual convicted of a felony from attending races, even under instructions of the Horse Racing Board, unless he is observed behaving in a manner injurious or obnoxious to others or committing an illegal act.

Long v. Mountain View Cemetery Ass'n., 130 Cal. App. 2d 328, 278 P. 2d 945 (1955). Cemeteries not within all other places of public accommodation: 88 51, 52.

Coleman v. Middlestaff, 147 Cal. App. 2d 833, 305 P. 2d 1020 (1957). Dentist not within the statute under other places of public accommodation: Civ. Code, \$5 51, 52.

Lambert v. Mondel's of California, 156 Cal. App. 2d 855, 319
P. 2d 469 (1957). A retail store is a place of public accommodation within Civ. Code §§ 51, 52.

McClain v. City of South Pasadena, 155 Cal. App. 2d 423, 318

P. 2d 199 (1957). A municipal regulation limiting use of municipal pool to residents of city does not violate \$8 51, 52 when Negro plaintiff was a non-resident.

Reed v. Hollywood Professional School, 169 Cal. App. 2d 887, 338 P. 2d 633 (1959). Private school is not a place of public accommodation within Civil Code 88 51, 52.

Gardner v. Vic Tanny Compton, Inc., 82 Cal. App. 2d 506, 6 Cal. Reptr. 490 (1960). Vic Tanny gymnasium is not a place of public accommodation or public amusement under Civ. Code, \$5 51, 52, since it is not open to common use.

3. Colorado

Darius v. Apostolos, 68 Colo. 323, 190 Pac. 510 (1920).

Bootblack stand within place of public accommodation under Rev.

Stat. §§ 609, 610. As so applied, the statute is constitutional.

Crosswaith v. Bergin, 95 Colo. 241, 35 P. 2d 848 (1934).

Under Rev. Stat., 8 609, 610 held constitutional in Darius v.

Apostolos, 68 Colo. 323, 190 Pac. 510, a person need not show pecuniary damage; evidence that restaurant cashier stated colored person would have to eat in kitchen while white companions were served in dining room stated a cause of action for damages.

Colorado Anti-discrimination Commission v. J. L. Case Co., 380 P. 2d 34 (Colo. 1963). Fair Housing Act section empowering commission to order "such other action as will effectuate etc." is unconstitutional as a delegation of legislative power, but is severable.

4. Connecticut

Faulkner v. Solozzi, 79 Conn. 541, 65 Atl. 947 (1907).

Barber shop not within Pub. Acts 1905, P. 323, c. 111 - "place of public accommodation."

Int. Brotherhood of Electrical Workers Local 35 v. Commission on Civil Rights, 140 Conn. 537, 102 A. 2d 366 (1953). The evidence necessary to support a Commission finding of discrimination is more than a scintilla or suspicion and must be sufficient to justify a refusal to direct a verdict on a trial.

5. District of Columbia

Central Amusement Co., v. District of Columbia, 121 A. 2d 865, (D. C. Mun. App., 1956). A bowling alley is a place of public amusement under D. C. Code 5 1-107 (1951). The Act does not violate due process because it applies only to the city of Washington.

Tynes v. Gogos, 144 A. 2d 412 (D. C. Mun. App. 1958). The D. C. Civil rights laws are penal in character and do not give rise to a civil action for damages. A civil action for humiliation, embarrassment, etc. could not be maintained under Comp. St. 1894 c. 16 \$8 148, 150, 151, 154. The laws were valid exercises of police power by the District of Columbia legislature.

6. Illinois

a. Supreme Court

Cecil v. Green, 161 Ill. 265, 43 N. E. 1105 (1896). Soda fountains are not public accommodations under Act June 10, 1885, 8 1.

People v. Forest Home Cemetery Co., 258 III. 36, 101 NE 219 (1913). The Civil Rights Law of 1911 as applied to places of public accommodation or amusement does not include a cemetery.

Pickett v. Kuchan, 323 Ill. 138, 153 N.E. 667 (1926) Civil Rights Statute \$\$ 1, 2 requiring places of public amusement to furnish equal facilities to all members of the public is constitutional.

b. <u>Intermediate Appellate Courts</u>

White v. Pasfield, 212 Ill. App. 73, (1918). Under Civil Rights Act 8 1, 2 (1911), requiring equal treatment in places of public accommodation and amusement, an injunction will not issue because the statute gives an express remedy at law.

Horn v. Ill. Cent. R. R., 327 Ill. App. 498, 64 N.E. 2d 574 (1946). A complaint against a railroad for damages for denial (on account of race) of accommodations in restaurant in railroad station was insufficient to state a cause of action under common law liability of railroad, Civil Rights statute, or Public Utilities Act, in absence of allegation that restaurant was operated for convenience of passengers and patrons and that plaintiff was such.

Chicago v. Corney, 13 Ill. App. 2d 396, 142 N. E. 2d 160 (1957). Members of a mixed racial group who conducted themselves in an orderly manner in a restaurant had, under the Civil Rights statute, a right to wait for service as long as the restaurant was opened and cannot be convicted of disorderly conduct because the owner refused to serve them and insisted they leave.

7. Indiana

Fruckey v. Eagleson, 43 N.E. 146 (Ind. 1896). An offer of separate accommodations to a Negro did not satisfy the statutory requirement of full and equal advantages, privileges, and facilities in a hotel under Rev. Stat. \$\$ 3291-3293 (1894).

Chochos v. Burden, 74 Ind. App. 242, 128 N. E. 696 (1921).

An ice cream parlor is not an eating house within the Civil

Rights Act (Burns! Ann. Stat. 1914 \$8 3863, 3864) since it does

not serve meals.

Bailey v. Washington Theatre Co., 112 Ind. App. 336, 41 N. E. 2d 819 (1942). In an action to recover a penalty for violation of the Civil Rights Statute §§ 10-901, 902, an instruction that only the owner of the theater was liable and not his employees was erroneous.

8. Iowa

Humburd v. Crawford, 128 Iowa 743, 105 N.W. 330 (1905).

Code \$ 5008 as applied to eating houses does not include a private boarding house where meals were served only pursuant to previous arrangement.

Brown v. J. H. Bell Co., 146 Iowa 89, 123 N. W. 231 (1909). Code 8 5008 "all other places where refreshments are served" does not include a merchant's booth in a pure food show, rented from a retail grocers' association holding the show, for which admission was charged generally. It is valid only when applied to a place which in its nature is of public character.

State v. Katz, 241 Iowa 115, 40 N. W. 2d 41 (1949). Evidence admissible to show policy of defendant to refuse service to colored people in action under the Civil Rights statute.

9. Kansas

State v. Brown, 112 Kan. 814, 212 Pac. 663 (1923). Restaurants and lunchrooms were not deemed included in the statute prohibiting discrimination in any inn, hotel, or boarding house, or any place of entertainment or amusement for which a license is required. Gen. Stat. § 3791 (1915).

Brown v. Meyer Sanitary Milk Co., 150 Kan. 931, 96 P. 2d 651 (1939). Ice cream parlor not place of amusement within Gen. State 21-2424 (1935).

Stovall v. City of Topeka, 166 Kan. 35, 199 P. 2d 516 (1948). Unlicensed theaters not within the public amusement section of Gen. Stat. 88 13-401, 910, 14-401, 21-2424 (1935).

10. Massachusetts

Commonwealth v. Sylvester, 13 Allen (95 Mass.) 247 (1866). In absence of proof that a billiard room was licensed, there is no violation of statute requiring equal treatment in places of public accommodation.

Bryant v. Rich's Grill, 216 Mass. 344, 103 N. E. 925 (1914). Under Rev. Laws c. 212 8 89, forbidding discrimination in public places on the ground of race and imposing a forfeiture to the person aggrieved, the right to commence a civil action is in the nature of a remedial suit which can be maintained by the aggrieved and in which a preponderance of evidence is sufficient although the act is also made a criminal offense.

Crawford v. Kent, 341 Mass. 125, 167 N. E. 2d 620 (1960).

Dancing school is a place of public accommodation under Mass.

Gen. Laws Ann. 88 92A, 98. It does not fall within the exception for education purposes.

Massachusetts Commission Against Discrimination v. Colangelo, 344.

Mass. 387, 182 N. E. 2d 595 (1962). The Fair Housing Practices

Law G. L. c. 151B, § 4 does not exceed the limits of the police

power and is constitutional.

11. Michigan

Ferguson v. Gies, 82 Mich. 358, 46 N. W. 718 (1890). Under Public Acts 1885, P. 131, \$ 1, a restaurant keeper who refuses to serve a Negro in a certain part of his restaurant for reason of race, is civilly liable though he offers to serve him by setting a table in a more private part of the house.

Bolden v. Grand Rapids Operating Corp., 239 Mich. 318, 214
N. W. 241 (1927). Comp. Laws Supp. 1922, 88 15570, 15571, providing equal accommodations in theaters, does not prevent proprietor for excluding rough, boisterous, and rowdyish elements. The statute is a valid exercise of the police power.

Goldsberry v. Kamachos, 255 Mich. 647, 239 N. W. 513 (1931). A restaurant proprietor is not liable for waitress' refusal to serve Negro customers against his order.

12. Minnesota

Rhone v. Loomis, 74 Minn. 200, 77 N. W. 31 (1898). Saloons not included in the statute. Gen. Laws 1885 c. 224 \$8 8002, 3. The Act is not on undue interference with private business and is constitutional.

Erickson v. Sunset Memorial Park Ass'n., 259 Minn. 532, 108 N. W. 2d 434 (1961). Covenant in deed to lot in public burial ground restricting interments to Caucasian decedents was rendered void by statute prohibiting discriminatory covenant in writings relating to real estate.

13. Nebraska

Messinger v. State, 25 Neb. 674, 41 N. W. 638 (1889). A barber shop is a place of public accommodation within the Act of 1885 entitling all citizens to the same civil rights. This Act is constitutional, but only so far as it relates to citizens of Nebraska.

Neff v. Boomer, 149 Neb. 361, 31, N. W. 2d 222 (1948). An injunction will not issue under R.S. 1943, \$\$ 2-1202, 20-101 to prevent invasion of civil rights to attend a horse race absent a showing of intent to deny admission.

14. New Jersey

a. Supreme Court

Garifine v. Monmouth Park Jockey Club, 29 N. J. 47, 148 A. 2d 1 (1959). Irrespective of R. S. 10:1-2, the operator of a race track had right to exclude plaintiff, a suspected bookmaker, from his race tract so long as the exclusion was not based upon race, creed, color, etc.

Levitt v. Division Against Discrimination, 31 N. J. 514, 158 A. 2d 177 (1960). Publicly-assisted housing accommodations includes FHA and VA housing, under N. J. Stat. Ann. 18:25-4, 5, and statute, as applied, is valid.

Jones v. Haridor Realty Corp., 31 N. J. 384, 181 A. 2d 481 (1962). Publicly-assisted housing accommodations includes FHA and VA housing, under N. J. Stat. Ann. 18:25-4, 5. The Act is constitutional since it specifies a reasonable classification under the state police power.

b. <u>Intermediate Appellate Court</u>.

State v. Rosecliff Realty Co., 1 N. J. Super. 94, 62 A. 2d 488 (1949). Public swimming pools are places of public accommodation within N. J. Stat. Ann. § 10: 1-2

15. New York

a. Court of Appeals

Kooper v. Willis, 9 Doly 460 (N. Y. 1881). The word "inn" means a place that provides food, lodging, or both to guests, and hence encompasses a restaurant that provides only food.

State of New York v. King, 110 N. Y. 418, 18 N. E. 245 (1888). Penal Code \$ 383 making it a misdemeanor to exclude from place of public amusement on account of race is constitutional under the police power. Refusal to sell tickets is sufficient evidence of intent to exclude.

Grannon v. Westchester Racing Ass'n., 153 N. Y. 449, 47 N. E. 896, (1897). The Civil Rights Act gives no protection in a place of public amusement to one who is properly ruled off the turf under the rules of the Jockey Club.

Burks v. Bosso, 180 N. Y. 341, 73 N. E. 58 (1905). A bootblack stand is not within all other places of public accommodation under laws of 1895, ch. 1042, P. 974.

Gibbs v. Arras Bros., 222 N. Y. 332, 118 N. E. 857 (1918).

A saloon is closer to a tobacco and cigar store than a restaurant, and hence is not a place of public accommodation within Civil Rights Law § 40.

Johnson v. Auburn & Syracuse Elec. R. R. Co., 222 N. Y. 443, 119 N. E. 72 (1918). A dancing pavilion within a park maintained by a street railroad as an auxiliary to its passenger business is a place of public accommodation with Cons. Laws, ch. 6, § 40.

Holland v. State Commission Against Discrimination, 307 N. Y. 38, 119 N. E. 2d 581 (1954). The findings of the commission were supported by substantial evidence that inquiries of the appellant expressed prohibited limitations as to creed or national origin. Executive Law § 296.

Castle Hill Beach Club, Inc. v. Arbury, 2 N. Y. 2d 596, 142 N. E. 2d 186 (1957). Private clubs are not subject to public accommodations provisions, Civil Rights Law, 8 40. The fact that a club is a private membership corporation is not conclusive if the only persons excluded are members of minority groups.

Janpierre v. Arbury, 4 N. Y. 2d 238, 149 N. E. 2d 882 (1958). Dismissal of petitioners complaint of discrimination under Executive Law \$\$ 290, 296, 297, by a single member of the commission on ground that probable cause did not exist, is reviewable by the courts.

b. Appellate Division

Joyner v. Moore-Wiggins Co., 152 App. Div. 266, 136 N. Y. Supp. 578, aff'd 211 N. Y. 522, 105 N. E. 1088 (4th Dep't 1912). Civil Rights Law, 8 41 is a valid exercise of the state police power and a theater owner violated the statute when he refused to seat a Negro in the orchestra circle, instead offering a seat in the gallery.

Wollcott v. Shubert, 159 App. Div. 194, 154 N. Y. Supp. 643 (1st Dep't. 1915), aff'd, 217 N. Y. 212 (1916). An equitable suit for injunction does not lie under Civil Rights Law 88 40, 41, but only a suit to recover the statutory penalty.

Christie v. 46th St. Theatre Corp., 265 App. Div. 255, 39

N. Y. S. 2d 454, aff'd. 292 N. Y. 520, 54 N. E. 2d 206 (3rd

Dep't. 1942). Sec. 40-b of Civil Rights law as applied to theatres is constitutional since operators have no vested right in the rule of common law giving them right to decide whom to admit. The exclusion of motion picture theatres does not make statute discriminatory.

Lake Placid Club, Inc. v. Abrams, 6 App. Div. 2d 469, 179

N. Y. S. 2d 487, aff'd. 6 N. Y. 2d 857, 160 N. E. 2d 92 (3rd

Dep't. 1958). The SCAD has power to waive time limits of its own rules as to application for reconsideration, to determine whether petitioner was place of public accommodation within meaning of Exec. Law, § 296.

Board of Higher Education of the City of New York v. Carter, 16, A. D. 2d 443, 228 N. Y. S. 2d 704 (1st dep't. 1962). The Board is not an employer under Executive Law 8 292 subject to jurisdiction of State Commission for Human Rights, but is within the general jurisdiction of the Commission "to take other action" against discrimination.

16. Ohio

a. Supreme Court

Kellar v. Koerber, 61 Ohio 388, 55 N. E. 1002 (1899). A place where liquor is sold at retail is not included within "all other places of public accommodation and amusement" as used in Bates!

Ann. Stat., 8 4426-1.

McCrary v. Jones, 34 Ohio 612, 39 N. E. 2d 167 (1941). Under Gen. Code, 88 12940, 12941, the owner of a bar could not refuse to serve Negroes because they refused to pay a higher price than that charged white patrons.

Gillespie v. Lake Shore Golf Club, Inc., 56 Ohio 222, 91 N. E. 2d 290 (1950). Negroes were entitled, under Gen. Code., \$8 12940, 12941, to a mandatory injunction requiring an incorporated golf club to permit them to play on a course operated as a public course without discrimination because of race. The leasing of a formerly public course to a membership club did not change its public character.

Fletcher v. Coney Island, 165 Ohio 150, 134 N. E. 2d 371 (1956). An injunction will not issue under R. C. 88 713.13, 2901.35, 2901.36 of the Ohio public accommodations and amusement law because it is not the remedy provided by the Act.

b. Intermediate Appellate Courts

Harvey, Inc. v. Sissle, 53 Ohio App. 405, 5 N. E. 2d 410 (1936). Retail store selling women's apparel is not a place of public accommodation within Gen. Code, 8 12940.

Rice v. Renaldo, 119 N. E. 2d 657 (Ohio App. 1951). Dentist not within places of public accommodation under Gen. Code, 8 12940.

17. Pennsylvania

Everett v. Harron, 380 Pa. 123, 110 A. 2d 383 (1955). A recreation park constitutes a place of public accommodation resort or amusement within the meaning of 18 P. S. 5 4654, and an injunction may issue thereunder to prevent a multiplicity of suits.

18. Washington

Anderson v. Pantages Theater Co., 114 Wash. 24, 194 Pac. 813 (1921). Where colored person obtained ticket for seat in theater and was not permitted to sit because of his color in violation of RCW 8 2686 (1915), an action for damages is founded upon tort, and damages may be founded upon personal humiliation.

Finnesey v. Seattle Baseball Club, Inc., 122 Wash. 276, 210 Pac. 679 (1922). A spectator ejected from ball park for betting on the games, could not recover damages under Rem. Code, § 2686 (1915), relating to discrimination because of color.

Goff v. Savage, 122 Wash. 194, 210 Pac. 374 (1922). The sale of soda water in a drug store is not a matter of public accommodation within Rem. Code, 8 2686 (1915).

Randall v. Cowlitz Amusements Inc., 194 Wash. 82, 76 P. 2d 1017 (1938). \$300 damages awarded to patron ejected from a seat on lower floor of theater because he was a Negro was not excessive.

Browning v. Slenderella Systems of Seattle, 54 Wash. 2d 440, 341 P. 2d 859 (1959). A reducing salon is a place of public accommodation under R. C. W. 9.91.010 and ignoring a Negro is as much a violation as an open refusal to serve. A civil action for humiliation and emotional distress is proper.

O'Meara v. Washington State Board Against Discrimination, 58 Wash. 793, 365 P. 2d 1 (1960). The provision in RCW 49.60.030 that there shall be no racial discrimination in the sale of housing financed in whole or part by government loan is unconstitu-

tional under the State's equal protection clause and because it coerces an individual in his private affairs.

19. Wisconsin

Jones v. Broadway Roller Rink Co., 136 Wis. 595, 118 N. W. 170 (1908). A roller skating rink to which the public is invited on the sole condition of paying a fixed charge is a place of public amusement within St. 1898, 8 4398c.

Ross v. Ebert, 275 Wisc. 523, 82 N. W. 2d 315 (1957). Neither common law nor the Fair Employment Code gives Negro applicants an enforceable right to union membership over objections on racial grounds of the members of the union, who are absolutely entitled to determine the composition of their voluntary association.

Appendix D - Selected Bibliography

A vast amount of legal writing has been devoted to civil rights legislation. Some of it is excellent, some helpful, some mediocre, and some worse. The listings that follow make no pretense to exhaustiveness, but instead comprise the books and articles that have struck me as the most valuable in obtaining an understanding of this broad field.

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- American Jewish Congress, Report on Twenty State Anti-Discrimination Agencies (Dec. 1961) (Pamphlet)
- American Jewish Congress, Summary of 1962 and 1963 State Anti-Discrimination Laws (1963) (Pamphlet) (Similar Pamphlets, 1961, 1959 and 1957)
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- National Institute of Municipal Law Officers (NIMLO), Civil Rights Ordinances (Report No. 148) (1963) (Pamphlet)

b. Employment

- Pollitt, Racial Discrimination in Employment: Proposals for Corrective Action, 13 Buffalo L. Rev. 58, 88 (1963)
- The Library of Congress Legislative Reference Service, State Laws Dealing with Non-Discrimination in Employment, in Hearings before the Senate Subcommittee on Employment and Manpower of the Committee on Labor and Public Welfare on S.773, S. 1210, S. 1211, and S. 1937, 88th Cong., 1st Sess. 499 (1963)

c. Public Accommodations

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Sped - Civil ghts W.G. Smill

BIG GOVERNMENT AND STATES RIGHTS

The opposition equates big government with socialism, and states rights with freedom from government. What do they mean? What are they trying to protect?

Their "states rights" government protects their freedom against pursuit of happiness by all. The issue is whether the government works just for them or for everyone.

They have the power, prestige and support of their government at home. They have: the vote and easy registration, playgrounds, libraries, swimming pools, public accommodations, protection and law enforcement, and assistance in obtaining licenses, and getting jobs like school teachers, policemen, and firemen. They have a "rule of men", not a "rule of law", to protect and preserve their special privilege. They fight to keep their preferential status. Their worry and concern is understandable, because they believe we are encroaching on "their government."

We want government for the "have-nots" as well as the "haves,"
-- government which serves the general welfare.

In civil rights the issue is clearly exposed: they fight for "states rights" to remain dominant. They say it is big government, socialism, or communism to have government for the people, to have fair government, to have everyone equal under the law.

We did not suddenly interject government into the area of human relations where it had never been. We merely propose to change the role of government from oppression to help. We want to eliminate the government in which the blackjack and police dog enforce minority status. This is not new or big government — it is simply forcing them to share "Their Government" with the rest of us, so that we all have and enjoy the Government they now claim as theirs.

WGSmith:10-8-64

WO 7-4730

file in Courts

CENTER FOR YOUTH AND COMMUNITY STUDIES, HOWARD UNIVERSITY WASHINGTON, D.C. 20001

CIVIL RIGHTS ACTIVITY AND REDUCTION IN CRIME AMONG NEGROES

by

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INTRODUCTION

In this preliminary report, data, presented on a possible reduction in crime among Negroes in certain cities during periods of organized community action for civil rights in those cities. The existence of such a phenomenon has been remarked upon by leaders of "direct action" civil rights groups in several communities. Yet, to date there has been no documentation of this phenomenon except for newspaper accounts of the one-day "March on Washington for Jobs and Freedom" of August 28, 1963.

According to the Washington Evening Star, there were only seven "major crimes" recorded by the District of Columbia police in the 24-hour period ending at 8:00 a.m. on August 29, 1963. (1) The Star noted that during the same time period in the previous week, there had been nineteen such crimes. Thus, reported major crime in Washington apparently dropped 63% for the day of and the night after The March.

Somewhat more surprising is an article which appeared in the New York

Times. A reporter spent most of August 28th in Harlem and then wrote a

story about the serious but happy mood that seemed to pervade Harlem on
that day. (2) The story in the Times concluded with the following:

"Police cars patrolled Harlem's streets all day, thinking it would be a big day for robberies, with so many Negro residents away from home, for the trip to Washington.

But in the evening, the desk sergeant of the 26th Precinct reported no robberies or other crime."

It has been the opinion of the authors of the present paper that in
the long run, the effects of the civil rights movement on the self-image
and social behavior of the American Negro will be as important as the movement's direct effect on segregation patterns. Two of the authors have already written extensively about the student civil rights demonstrators themselves ---

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their attitudes, behavior and motivations and the psychological significance of anti-segregation activities in their life histories to date. (3,4,5) The present paper represents the initial phase of an inquiry into possible community-wide "side-effects" of the civil rights movement.

Data will be presented that, in a preliminary way, tend to document the existence of an association between well-organized "direct action" for civil rights and a substantial reduction in crimes of violence committed by Negroes. We shall discuss the findings, their limitations, and their implications and shall offer some thoughts about further research.

The historic Niagra Movement in 1905 was the foundation for a national organization whose declared purpose was to wage a war against racial injustice, The National Association for the Advancement of Colored People. Since its inception, the NAACP has sought the support of both Negroes and whites in an effort to mount an effective protest against lynching, unfair characterization of the Negro in the news and entertainment media, job and housing discrimination, and segregated public accommodations. Almost from the very beginning, the NAACP sought redress for racial injustice in the nation's courts. Citizen participation in NAACP efforts was invited largely in the area of fund-raising to support the enormous costs of litigation. There was very little the lower class Negro citizen was asked to do, personally, to strike a blow for his rights.

During the World War I period, the National Urban League began its work of helping Negro immigrants from the rural South adjust to urban living. This organization typically worked on two levels. First, attempts were made to educate and train Negroes to live in an urban setting. Almost every segment of the Negro community was involved in teaching, learning, or fund-raising. Second, the Urban League undertook to negotiate with employers in an effort to open new opportunities for Negroes. Although the Urban League has been, in a sense, a "grass-roots" organization it rarely has urged its constituency to mount a public protest against prevailing systems of injustice.

It has been said that the work of the NAACP and the Urban League has laid the economic, legal and educational groundwork for the present civil rights movement. The 1954 Supreme Court decision and the successful adjustments to urban living made by many Negroes serve as a testimony to the effectiveness of their efforts.

However, it is not the use of legal skill, negotiation, or education which is the focus of this paper. We are concerned here with the process of "direct action" which began on a large scale in the 1955 Montgomery, Alabama bus

has been via

boycott, found new expression in the student "sit-in" movement; was dramatized by the "Freedom Rides"; and continues to express itself in the street demonstrations and voter registration efforts of today. What is "direct action"? Whom does it involve? How does it differ from other civil rights activities?

In the context of the so-called "Negro Revolt", "direct action" is a nonviolent confrontation between the prevailing power structure of the community and an emerging center of power which demands changes in the legal, social, political, and economic fabric of the community. A the main through of "direct actions nonviolent public demonstrations, civil disobedience, economic boycott and various actions designed to test the legality of local laws and customs.

"Direct action" involves different segments of the Negro community, depending on the particular technique being used. Economic boycotts and voter registration campaigns often directly commit a majority of the Negro community to the effort. "Sit-ins" and street demonstrations traditionally involve college-age Negroes, but there is a mounting evidence that a wider segment of the Negro population is becoming directly involved in these especially active forms of protest.

Those members of the Negro community not directly involved in "direct and vicariously action" are often indirectly involved nonetheless. The violent reactions of whites, that is often the price of "direct action" strikes close to home.

Friends and relatives are often directly involved. The "battle plans" are drawn up in the Negro areas and are often public knowledge there. Negroes are often questioned about the movement by their white employers. There is often strong community pressure to actively join in the "fight for freedom".

Contrast, then, the community involvement characteristic of a "direct action" movement with that of a local community's involvement in a battery

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of NAACP lawyers fighting a legal battle in the Supreme Court in Washington.

Clearly, the average man sees himself as more immediately involved in a "direct action", where willingness to be counted is the major requirement for participation, than he is in a legal that requires long years of professional training for participation in the front line.

METHODOLOGY

data was collected from various sources, including official crime reports, medical records, newspaper accounts and individual interviews with residents. Originally, a systematic attempt had been made to obtain relevant and reliable crime records from 16 cities, 12 of them Southern. This was largely unsuccessful, a number of problems. For example, two cities with crucial roles in the history of the civil rights struggle had changed their crime reporting criteria and the organization of their reports from year to year within the period in which we were interested. In another city, a Negro colleague of professorial rank in a local college, was denied access to the police reports which he had seen on the shelves of the public library just the day before. A general problem in the crime statistics which we were able to obtain was the absence of racial breakdown in most of the data.

Two central crime information agencies were contacted for their help -The Uniform Crime Reporting Section of the Federal Bureau of Investigation
and The Crime Information Center of the National Council on Crime and
Belinquency. They were of limited assistance and we have drawn some
inferences from data from several cities; but we have found only one
Southern city with the kind of published crime reports that would be
maximally useful to us in this research, and that is City Z. Using an
alternate approach, we have obtained hospital emergency room statistics
and other relevant data from a small town which we shall call "Town X",
and we have a fairly reliable picture of developments there. Finally,
via interviews, we collected some important anecdotal material which

describes direct interaction between delinquent gangs and a young civil rights leader in "City A."

In evaluating crime data our focus has been upon major crimes committed by Negroes, with special emphasis upon aggravated assaults. There are several reasons for this focus. Local police departments report major crimes to the F.B.I. under the heading of "Part I Offenses." (Other offenses in this category aside from aggravated assault are homicide, manslaughter, rape, robbery, burglary, larceny and auto theft. Minor offenses, such as drunkenness or gambling are much less uniformly reported by police departments and are not considered accurate indices of local crime pictures.) Of major crimes against persons, aggravated assault is by far the most frequent, so that variations in the number of assaults from year to year (or month to month) are likely to be statistically more meaningful than would be variations in homicide or rape, for example. Furthermore, aggravated assaults frequently result in some kind of medical attention to the victims, so medical personnel in hospital emergency rooms may keep records that may usefully supplement what appears (or does not appear) in police reports. Finally, as the F.B.I. Manual on Uniform Crime Reporting states, assaults are a fairly sensitive "index of social disorder in a community". (6) and armed robbery,

of course, one must always keep in mind that, except for homicide, all crime statistics are reflecting merely the top of an iceberg of unreported crime. It has been suggested that mest criminal acts never comes to the attention of the police. (7)

There is another problem in doing a study of this kind. There is a paucity of written material about the chronological development of "direct action" for civil rights in various geographical areas. There is a great

need, we feel, for someone to chronicle the contemporary history of these developments. For our part, we have relied upon the New York Times Index for Cities Z and A, an unpublished document written by college students detailing developments in Town X, and interview material for all three communities.

City Z is a large industrial and educational center located in the Deep South. The city has had a reputation for being "progressive", within the confines of segregation. Many of the city's Negro college students come from the North. The city has a well established Negro middle class. Although the police force is interracial, the Negro officers customarily restrict their arrest power to Negro suspects.

The civil rights movement in City Z, according to local citizens, began in 1960 primarily as a student movement in response to the initial "sit-ins" in Greensboro, N. C. However, the white community's reaction to the students' increased pressure for equality soon welded the whole Negro community (and its established leaders) into a unified force in support of direct action.

Two economic boycotts of downtown stores with segregated facilities and employment practices were nearly 100% effective in terms of participation. In the Christmas season of 1960 and again at Easter of 1961, reportedly no more than a handful of Negroes could be seen shopping downtown on any given day. In response to this boycott by the whole Negro community, as well as in response to numerous public demonstrations by the students, the major downtown stores finally did upgrade employment opportunities for Negroes, and all their lunch counters were desegregated by the end of 1961. There was virtually no organized civil rights protest activity in 1962, in sharp contrast to the extremely active years of 1960 and 1961. (Late in 1963, public protests resumed, focussing upon segregated eating places.)

Crime statistics included in City Z's annual police reports reflect trends which suggest that civil rights activities may be related to a reduction of crime within the Negro community. The general police and crime activity over the four year period 1959 through 1962 is reflected in Table 1.

TABLE 1

	1959	1960*	1961*	1962	
Population	487,000	Data Missing	Data Missing	504,000	
Police-Patrolmen	519	519	538	541	
Total Part I Offenses (Major Crime)	16,809	17,290	19,414	20,431	

*Years of sustained civil rights activity

This indicates that City Z's slow increase in population was matched by a roughly proportional increase in patrolmen. Major crime has also increased in the city's general population.

Various "direct action" protests were common occurrences in City Z in 1960 and 1961; there were no such activities in 1959 and very few in 1962. Table 2 shows that in 1960 the number of Negro vs. Negro assaults coming to the attention of the police decreased 31% from the 1959 figure. During 1961, the Negro vs. Negro assaults remained at this low 1960 figure. However, in 1962 -- a year which saw civil rights activity in only one month -- the annual rate for Negro vs. Negro assaults returned to the 1959 figure.

Aggravated Assaults
(known offenses, by race)

1959	1960*	1961*	1962
531	371	373	536
85	79	100	101
8	9	13	19
5	5	5	9
	531 85	531 371 85 79	531 371 373 85 79 100

*Years of sustained civil rights activity.

Aggravated assaults within the white community did not vary in the same manner as did the Negro vs. Negro assaults. On an annual basis, the figures for cross-race assaults are too small to be particularly noteworthy.

The known offense data concerning aggravated assault cases are reported not only annually but also on a month-by-month basis. Such figures would appear useful in making a closer inspection of the possible relationvariations in ship between civil rights activity and changes in Negro crime rates. These monthly data, however, are not broken down by race, as were the annual data inferences from these data of an reported in Table 2. Therefore, any association between civil rights activity and assaults by Negroes must be Knowledge on the that whites account reports of for only a small proportion of the total aggravated assault. For the period 1959-62, only 16.5% of the reported and recorded assaults were attributed to whites; thus, in any given month, one might assume that Negroes account for about four out of five of the 'known offenses' in the aggravated assault category.

TABLE #3
Aggravated Assaults
(Known Offenses)

	1959	<u> 1960*</u>	1961*	1962
Monthly Average (all races)	52	38	41	59
Annual-Assaults by Negroes	539	380	386	575
Annual-Assaults by Whites	90	84	105	110
Annual Grand Total	629	464	491	711

*Years of sustained civil rights activity.

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It is of some interest to note, as in the topline of Table monthly averages for assaults in City Z. In the period 1959 through 1962 there were sixteen months in which newsworthy civil rights protest activity occurred (fifteen months in 1960 and 1961, one month in 1962). The average number of assaults in these "civil rights months" was 39; the average number of assaults in "non-civil rights months" was 52, one-third higher than in the "civil rights months".

Of all the 48 months from 1959 through 1962, only three had less than thirty reported assaults. These were the months of October, 1960 (27), November 1960 (23), and January 1961 (25). It turns out that this period (October 1960 - January 1961) was an especially significant one in terms of the history of City Z's civil rights movement. We have already noted the successful boycott of downtown stores which occurred from about December 15, 1960 to January 15, 1961. But this was preceded by a peak of mass activity in October and November 1960. Mass arrests of deconstrators and the confinement of the city's civil rights leaders both took place during of an available was of assault.

It is also interesting to note that, except for the period just mentioned it was largely in the warmer months of 1960 and 1961 that most of the civil rights activity took place. Crime is at its greatest during the warmer months. The months of May, June and July in both 1960 and 1961 were all months of civil rights activity, whereas these same months in 1959 and 1962 were inactive, as far as direct action for civil rights is concerned. The average number of assaults in these "civil rights months", compared with these "non-civil rights months" was 46 versus 56.

Certain anecdotal material from interviews appears relevant to the process by which the "direct action" for civil rights might have affected a violence-prone segment of the Negro community in City Z.

In 1960 and 1961, a student civil rights leader decided to spend as much time as he could in poolrooms and bars talking with lower class Negroes about "the issues" over which the civil rights groups were then doing battle with the "white power structure." Although his success in gaining really active recruits was limited, he discovered several surprising things. First of all, virtually everyone in the bars and poolrooms was well acquainted with all the details of the "sit-ins" and boycotts as they occurred. Secondly, the two issues of mistreatment by the police and segregated employment were very meaningful ones to these people, and they found common cause with the civil rights demonstrators over them. Thirdly, and most impressive, a sense of the hope and of the power of organized direct action began to creep into the lives of these ordinarily rather hopeless people. This is illustrated, somewhat humorously, in the following incident which this student observed from a distance. One afternoon during the boycott, a bartender became verbally abusive to a patron who was apparently speaking rather loudly. Some of the other patrons told the bartender, "Let him talk! Let him talk!" When the bartender persisted and became even more abusive, all the customers joined in telling him, "You better let him talk or we'll all leave". The bartender let him talk.

The student placed this incident in the perspective of a "definite change of attitude" in the lower class people with whom he had chosen to acquaint himself. Buring the period of direct action civil rights activity, "a 'cat' would have something to live for -- not just a five day week, then get it off his chest by getting drunk on Saturday night."

CITY A

Our second city, designated City A, is in the Deep South not far from City Z. It has a population of 60,000, virtually no Negro middle class, and a reputation for police brutality and unequal administration of justice.

Details of the crime picture are not available from its Police Department.

City A is brought up here only because the young leader of the civil rights movement there has been quite successful in converting members of delinquent juvenile gangs into nonviolent workers for civil rights. The leader was interviewed several times, and his reports were corroborated by others familiar with his work.

The leader's work with the gangs grew out of necessity, not design. Soon after he had begun organizing meetings and protest marches and had come into conflict with the police, he discovered that his group's activities were receiving unasked-for"protection" of a violent sort. For example, young people from delinquent gangs would "protect" a civil rights meeting in a church by standing outside throwing bricks at white policemen. Soon the civil rights leader -- a former seminary student -- was able to persuade the delinquents that they were needed instead as guards against violence, assigning them the job of "policing the area to make sure no violence occurred and to make sure nobody was waiting outside who should be inside at the meeting."

Over the past two years, about 200 members of four different gangs of out-of-school, out-of-work Negro teenagers have received some training in nonviolent techniques and have become rather effective workers for voter registration, thus, the regular members of the local civil rights group, most of whome are in school or have jobs. Reportedly, delinquency among the gang members has diminished markedly, although sometimes the civil rights leader has had to personally "cool off" gang wars and personal rivalries to avert the bloodshed that used to be the order of the day.

TOWN X

Town X, which has a population of less than 20,000, is situated in a rural part of a border state. The Negro population is about one-third of the total. The town is controlled by a small number of wealthy whites who are adament segregationists.

At the time of the Civil War, at least half of the Negroes were enslaved, and Town X was the major slave trading center for the area. Geographical factors have made the city isolated, and even today, it lacks a train service. In the 1920's the city became a "Company town" in which almost the entire labor force, white and Negro, were employed by one firm. After the second World War, however, various factors caused the decline of the "Company", so that early in the 1950's its machinery finally ground to a reluctant halt.

This alteration in the economic status quo produced a meteoric rise in unemployment. A federal report in 1962 described the town as "economically founding distressed". Despite the foundation of numerous small industries during the last ten years the unemployment rate among Negroes is still between 30 and 40%. The new factories, being obligated to the city council, apparently preferred white workers, and as more and more Negro job applications were ignored, the first stirrings of racial unrest were heard in the community. For the Negroes benevolent exploitation by a small group had been replaced by total inattention. The disintegration of the "Company" had removed the barriers of social structure which had, for years, kept the Negro community in a state of enforced "contentment". A Negro adult from Town X summed it up recently: "At one time we coloreds here used to admire the whites and look up to them. But, then something happened - I don't know, everybody was out of work - and they didn't look so good any more."

Late in 1961, members of several interested organizations visited Town

X to investigate conditions there as they affected Negroes. Gradually, the

local chapter of the NAACP, which had been virtually inactive for years, and was

composed mainly of middle class Negroes, was superseded by the formation of a

local committee for nonviolent "direct action". Early in 1962 demonstrations

took place which were met with resistance from the white community. Throughout

the year outside help continued to arrive in the town, and further sit-ins and

picketing took place. About 90% of those arrested for misdemeanors in 1962

civil rights activities were so-called "Freedom-Riders" from outside Town X. Be
cause of some disagreements within the local movement, the winter of 1962 - 63

was quiet and relatively uneventful.

The spring of 1963 heralded the arrival of CORE officials and members of student organizations. The local nonviolent action group was under new leadership, and demonstrations were in active progress by May. A mass arrest took place, which highlighted the movement in the national press. In June, the Negro community had an explosive reaction when two teenagers were sent to reform school for illegal demonstrating. Prior to this, some local leaders had experienced difficulty in raising crowds to demonstrate; they had to beseech them to remain in their homes, lest violence should ensue from inadequately planned demonstrations. An army of police reinforcements occupied the town and the situation resembled one of martial law for much of the summer. Gradually, the mutual fear of violence eased, and negotiations were resumed. Demonstrations were suspended in August and September while a temporary compromise was being worked out.

Perhaps the most important single fact about the movement in Town X is that it was conducted almost entirely by <u>lower class</u> Negroes. After the pattern of most revolutionary movements, a few key leaders were middle class. But, in fact,

most middle class Negroes remained aloof from the action, and by their passivity incurred hostility and contempt as "Uncle Toms", with the result that their property was sporadically damaged by angry youngsters on the periphery of the movement.

Because of the longitudinal nature of the civil rights action outlined above (five months of maximal organization in 1963, some activity in 1962, none in 1961), Town X was thought to be a propitious place to investigate the incidence of crime among Negroes in temporal relation to the movement. For the purpose of the study it was decided to investigate the period of May through September for the years 1961, 1962, and 1963. It is felt that this period reflects the situation in terms of a progression from virtual inactivity to explosive action. This progression seems to be reflected in data on major crime in the town. The police reports of Town X for the months of May through September show that the number of Part I Offenses recorded during this five-month period in 1963 was 31, a very low figure. During this period in previous years, records show 49 reported offenses in 1962 and 73 in 1961. By way of contrast, the number of reported offenses in the four months before "direct action" began in 1963 and in the three months after it had subsided, showed approximately the same crime rate as the previous two years (see table 6. page 27). Unfortunately, these figures do not include reports of assaults, and there is no racial breakdown, although it is known that Negroes normally account for about 50% of the arrests for "major crime" in Town X*.

^{*} An examination of Magistrate's Court's gross records of people arraigned on a variety of mean crimes indicates a similar trend. In the summer of 1962, 53% fewer local Negroes were arraigned on the various charges than were arraigned in the summer of 1961. The summer of 1963 saw a slight rise in the total, in that a reduction of only 25% below the 1961 figure was apparent. It is fair to assume, though, that the reason 1963 showed more cases than 1962 is that a substantial number of disorderly conduct and trespass arrests took place as part of 1963's civil rights effort by local Negroes. (The 1962 civil rights arrests, it will be recalled, were largely of people from out of town, though that year's efforts were obviously watched by the local populace with avid interest.)

Because the relevant police records are unavailable, we thought of studying the Emergency Case records of the General Hospital in an effort to estimate the number of injuries resulting from assaults by Negroes during the time periods in question. Table , page 22, shows the incidences including those arising from racial rioting and police violence. The last line in Table is corrected to exclude these cases, and represents the "routine" number of cases treated. Both tables exclude assaults perpetrated in the local labor camps, as it is felt that those were essentially non-connected with the movement. We were told that the Negro migrant workers, who come to the area during the summer months to harvest the crops, would not associate themselves in any way with the movement, and, in fact, stayed away from the town because they were "scared". (Parenthetically, it is interesting to note that the incidence of assault among the migrant workers showed no appreciable change. Indeed a slight increase was apparent, whereas the "routine" cases from local Negroes diminished sharply).

While it is felt that these figures do not represent the total number of assaults, they would seem to reflect a fairly constant proportion of the incidences and thus be suitable for our purposes. The one Negro physician in the community quite independently supported the accuracy of the trend shown in these hospital records in stating that "during the summer of 1963 I stitched only three or four cases, when in other years I would have seen a dozen in the same period of time".

Many local leaders were interviewed in conjunction with the study, and their anecdotal impressions are of some interest. For example, the Public Health Inspector, whose duty it is to control the spread of venereal disease particularly among crime-prone lower class Negroes, well known to him, observed: "Many of the contacts I sought, who would normally have been in jail, were living at home or could be found with their friends."

One of the principal Negro leaders estimates that there was much less crime in general: "People became interested in the movement, and were reluctant to do anything to jeopardize its progress. Most of the 1962 arrests were "Freedom Riders" - not locals. By 1963 there was a unification of common interest, and people who before were indigent and depressed, suddenly found that they had something to live and fight for".

Another local movement leader had anticipated trouble from the "winos" (alcoholics) and for this reason she felt that they should not be included in the protest marches. However, she was surprised to find that with special attention from the sober and more responsible members, they behaved themselves admirably and turned out to be exemplary, if somewhat passive, demonstrators. A student leader attests to this and quotes the case of a young alcoholic who had a long history of arrests. "He apparently was accustomed to being in the County Jail, but while the movement was strong and active he never was in trouble, although he continued to drink." When the student returned to the town later in the year, months after all activity had ceased, he met the man leaving the jail; had just been released and was heading for the bar.

Many factors may influence this apparent decrease in the incidence of crimes involving personal violence. Most of the local people quoted above mentioned that the ban on retail sales of alcohol and the imposition of a curfew were important inhibitors. One reliable report, however, indicates that "boot-legged" alcohol was readily available for anyone who wanted it. Group identification and interest in the Cause, strengthened by the persuasion of the leaders, were the factors most commonly selected for mention. One leader said that during the scuffles wanted in the found ourselves breaking ranks to intervene in sidewalk and family squabbles, so that there may well have been more than an indirect influence".

The civil rights struggle in Town X was not totally devoid of incidental violence. A student civil rights worker, who spent the summer in Town X,

summer of 1963. "There was a great deal of interest during early July in the movement from this group - young, violent types. As soon as the police had a permanent hold, and the movement continued to threaten to demonstrate but never did, they provided the biggest lobby to continue demonstrations, even at gun and bayonet point, and constantly threatened to act on their own if the movement itself would not. They spoke to us often about this, because we (the college student staff) also wanted to resume demonstrations. They never carried out any of their major threats, although one assumes that they were the group responsible for the various crimes related to the movement from the Negro ward," as throwing bricks at policemen and attacking the property of whites and so-called "Uncle Toms."

Nevertheless, there are certain factors in Town X that make it quite surprising that <u>more</u> violence did not occur. Among the lower class Negroes of Town X, there is a great contempt for the local police force. Arrests and jail sentences do not carry any social stigma; imprisonment is merely something unpleasant which must be endured. On one occasion during the summer, a group of jeering Negroes surrounded a white policeman who had drawn his gum, and dared him to shoot. The same attitude of sullen hostility was in evidence toward the dogs which were used occasionally by the Police. (The dogs were returned to their kennels, we understand, when it became clear that they had failed to have the desired effect on the demonstrators.) In other words, Town X could be considered a "tough" town with a "tough" population of unemployed Negroes, whom became actively involved in "direct action" programs for civil rights. The fact that crimes of violence apparently decreased during this tense summer would hardly have been a predictable phenomenon.

TABLE \$

TOWN X

PART I OFFENSES (Murder, Robbery, Burglary, Larceny)

	1961	1962	1963
May through September	73	49	31
January through April	38	49	35
October through September	21	31	30
Total (Annual)	132	129	96
Total Adult Arrests by the Police Force - all offenses	(dat@ mis- sing)	386	429

TABLE & 5

TOWN X
Emergency Room Cases - Assaults by Negroes

	MA Y	JUNE	JULY	AUGUST	SEPTEMBER	TOTAL
1961	1	7	7	2	4	21
1962	1	4	0	7	1	13
1963 All Cases 1963	0	1	4	4	1	10
"Ordinary" Cases	(0)	(0)	(0)	(4)	(1)	5

Table 6. This table represents the number of injury cases arising from assaults by Negroes in Town X, which were treated in the Emergency Room of the local ospital.

The figures include only assaults which occurred within the city limits, and do not take into consideration the assaults perpetrated by members of the migrant labor force (see text).

The bracketed figures in the last row are corrected to <u>exclude</u> assaults directly connected with civil rights action -- e.g. injuries incurred during clashes with the police.

The period represented is May through September of 1961, 1962, and 1963.

The material we have presented raises many questions, certainly raises more questions than it has answered. We hasten to state categorically that the findings are suggestive, by no means conclusive.

There seem to us to be four areas that warrant discussion and exploration:

- (1) To what extent are the data reliable?
- (2) Assuming the data <u>are</u> reliable and suggest a diminished incidence of crime committed by Negroes during periods of "direct action" for civil rights, what are the possible explanations for this relationship?
- (3) What implications might all this have for an understanding of violence in populations of the poverty-stricken and socially disadvantaged?
- (4) What further research is indicated to shed light on the effect of organized social movements on the behavior of lower class populations?

We have already remarked that probably the majority of criminal acts go unreported and that collection of crime data by Police Departments is often quite unreliable. One can never be sure what factors, including chance, may be operating to influence the preporting process. Even when one finds a Police Department (such as the one in City Z) that prides itself on its crime reporting, there is still much to be desired in the uniformity of crime reporting from city to city.

Nonetheless, even taking these limitations into account, it is interesting that the statistics we have collected show the trend that they do, and that supplementing the police statistics with hospitalEmergency

Room records (as we have done in Town X) reveals the same trend. It is possible to argue that this apparent trend is based on a change in contact between the police and the Negro community. Perhaps the police were so busy with civil rights demonstrators that their contact with or recording of crimes of violence within the Negro community was altered; i.e. their attention and concentration of forces were elsewhere. Or, perhaps, during economic boycotts Negroes are more careful to shield crime from the eyes of the police and white authorities. If

While Peal possibility, there is at least anecdotal evidence to the contrary. During periods of "racial tension" in the South, the police force generally pays particularly close attention to the Negro sections of town and keeps a close vigil for potential violence of all kinds. Furthermore, where we have been able to supplement police data with medical information, as in Town X, the incidence of medically recorded injuries resulting from personal violence has shown a decrease during civil rights activity.

Obviously, it would further strengthen the case four hypothesis if we could present parallel data from comparable communities which have had no "direct action" civil rights programs. Unfortunately, we have not yet been appropriately able to obtain accomparative data.

Assuming for the time being, then, that the reduction in the incidence of crime was <u>real</u>, not merely apparent, how might this be explained?

Perhaps when there are important events upon which the attention of any community is focused there is distraction from the forms of behavior which might otherwise lead to crime.

Is the reduction of crime in these instances an epiphenomenon of the focusing of group attention on unusual publice events? (There are some reports, for example, that crime in Washington, D. C. was reduced somewhat during the period following President Kennedy's assasination. (Would the same have been true of the 1962 Cuban Crisis or of a World Series?)

Or, perhaps the explanation lies in a deterrent effect of the increased number of policemen on patrol during periods of protest, or the potentiality of such an increase. In City Z, at least, this "deterrence" could not have been a large factor in the sustained diminution of assaults during 1960 and 1961. The major form of protest during that time was an economic

boycott which did not involve the local police very extensively.

There is a substantial amount of material derived from sociological and psychological data and theory that might suggest

action" for civil rights and reduced crime among Negroes. A long term effect of segregation upon lower class Negroes has been a blocking off of their social and self assertion -- economically, socially, and psychologically. (8) (3) (5) Open expression of their resentment against second class status has been blocked off in both South and North. We would agree with other authors that this damming-up of resentment is one reason for the high incidence of crime among the lower class Negroes; (8)(9); this is further supported, by the fact that the vast majority of violent acts by Negroes are directed toward other Negroes. To put it another way, one might say that for the lower class Negro, avenues have been closed off by the social structure, so that violent crime against members of his own race is one of the channels of least resistance open to him for the expression of aggression.

When he becomes aggressive against segregation, the Negro's sense of personal and group identity is altered; race pride partially replaces self-hatred, and aggression need not be directed so destructively at the self or the community. The concept of "prosocial acting out" has been set forth elsewhere (3)(4) to describe risky, aggressive, somewhat impulsive actions which the actor

sees himself taking "for the good of society." These actions are thus distinguished from the diffuse lashing out against social institutions that characterizes "antisocial acting out" -- although in some cases, the psychodynamic roots of the two types of behavior may be quite similar.

When large scale "direct action" civil rights activities are launched in a community, the leaders face a herculean task of community organization. The members of the community must be recruited, trained, and organized into a disciplined, nonviolent army. Networks of communication and transportation must be arranged, for large numbers of people must be united behind a single minter effort. It is the pooling of resources, the setting up and certifying of goals, priorities and make methods in a community effort to produce social change that draws neighbors together in an organization whose very existence would tend to discourage crime (particularly crimes of violence against each other). If the community organization process is successful, each man, through the combined strength of his and his neighbors! efforts, can have that seat at the "community bargaining table" that has traditionally been denied him. Each man learns that possibly his personal welfare and certainly the welfare of the movement requires unity in the Negro community. As a result of the need for unity, people begin to know their neighbors and their neighbors' problems. A spirit of common convern pervades the community and serves to discourage crimes of violence.

The data we have presented do not indicate any long-lasting effect of organized civil rights activity upon the crime pictures of City Z and Town X - although seemingly permanent gains have been made with the juvenile gangs of City A. In looking at the crime data from City Z and Town X, it is clear that after the major civil rights action had ceased, the number of reported crimes by Negroes returned fairly promptly to the frequency that was customary before the "movement" began. It is impressive, though, that a reduced crime rate for Negroes was sustained in City Z for two full years before going back up to former levels. Furthermore, when crime rates returned to frequencies comparable to earlier years, there was no "rebound phenomenon" of a net increase in violence which (had it occurred) might have been attributed to frustration of hopes which had been "stirred up" by the civil rights movement. Indeed, in City Z the 1962 frequency of assaults by Negroes is somewhat below what one would expect in view of the increase in population over 1959.

It is apparent from these data that direct or vicarious participation in the partial successes of civil rights "direct action" movements did not solve all the problems of violence-prone, socially disadvantaged Negroes. In recent months in Town X, for example, the leaders of the civil rights movement have become less and less interested in equal access to public accomodations but increasingly adamant about obtaining Federal relief of poverty and unemployment in the area. Whether civil rights leaders across the nation are feeling a continuing responsibility to plan for and press for improvements in the life conditions of the low-income Negro is a question that cannot be dealt with here, although there are several recent signs pointing in

this direction.* This shift in emphasis by civil rights groups represents an increasingly sophisticated awareness of the multifaceted nature of the problems faced by Negroes, both North and South. In spite of successes in the South, however, the direct action civil rights groups have been largely unable to organize the socially disadvantaged Negroes of the North -- perhaps because they have been perceived by the residents of Northern Negro slums as being mainly interested in public accommodations and voting rights. At this point in time, the deprived Northern Negro is cynical about the value of a public accommodations law or the right to vote. He lives in areas of the country where there are few statutory or semi-legal sanctions to prevent him from eating at a lunch counter, going to a movie, or voting. Yet, he is still denied equal employment opportunities, good housing, and respect from police officers. The Northern slum Negro sees himself as still not being "free," and until effective methods are found to combat his problems, he will often choose between the unfortunate alternatives of either accepting his fate or lashing out with hate and violence. In the authors opinion it seems unlikely that the Civil Rights groups will be able to effectively organize the socially deprived Negro in the urban North; it may instead be the black "hate" groups that will be successful, unless substantial efforts are made to relieve the social and economic deprivation of the Northern Negro.

^{*}For example, in November 1963, the "militant" Studen Nonviolent Coordinating Committee (SNCC) held its annual leadership conference on the theme of "Food and Jobs". The Meeting was held in Washington and featured conference-workshops with Federal Officials on the subject of existing programs that could possibly be of aid to the rural Negro in the South.

This brings us to our concluding remarks. We feel it should be emphasized that if our findings are verified, there is then a very strong argument that the kind of community organization and psychological mobilization inherent in the civil rights struggle may be of prime importance in the development and implementation of various crime prevention programs and "anti-poverty" programs. It would appear that such programs - which, after all, are often aimed at lower class Negroes - could learn a great deal from the interactional and motivational processes involved in the "direct action" civil rights surprisingly and the process of its development. XXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXX including both that of statistical reporting and anecdotal observations. This technique requires considerable further development. It is our hope that the need for such research will have been made more apparent by this presentation.

SUMMARY

Data are presented which suggest a substantial reduction in crimes of violence by Negroes in three cities during periods of organized protests and "direct action" for civil rights in those cities. The findings are based on official crime reports, medical records, newspaper accounts, and interviews with residents of the three communities (two cities in the Deep South and one in a Border state).

It is hypothesized that Negroes release long dammed-up resentment of segregation by asserting themselves (directly or vicariously) in "direct action" for civil rights Such emotional expression, when it occurs in a framework of community organization may reduce the need for aggressive outbursts of a violent sort, thus reducing the incidence of such crimes.

The authors note that further research into the functioning of the civil rights movement may produce fruitful implications for programs to prevent crime and battle poverty.

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On December 2, 1964 you requested me by letter to transmit to you specific recommendations on the coordination of functions of the various Federal agencies in the area of civil rights. In formulating these recommendations I have consulted with the following members of your administration:

Secretary Wirtz, Secretary Hodges, Secretary Freeman, Secretary Celebrezze, Acting Attorney General Katzenbach, Deputy Secretary of Defense Vance, Governor Collins, Governor Lawrence, Chairman Hannah, Assistant Secretary of Defense Paul, Assistant Secretary of Agriculture Robertson, Assistance Secretary of Health, Education and Welfare Quigley, Commissioner Keppel, Assistant Attorney General Marshall, Deputy Assistant Secretary of Defense Shulman, and others.

I, and members of my staff, have also met with representatives of various State and local agencies, business, civil rights, educational, religious, and professional groups.

On the basis of information developed from these consultations and from written material which has been submitted, I have prepared the following report on the coordination of civil rights activities within the Federal government.

INTRODUCTION

In the years since 1954, and especially in the last four years, the Federal Government has been moving on numerous fronts to assure equality of opportunity for all its citizens. Both the legislative and executive branches of government have implemented the basic law of the land, as interpreted by the Supreme Court. Three civil rights statutes have been passed by the Congress since 1957. Executive Orders issued by the President have created committees with special programs, all aimed at "the achievement of equal opportunity for all our citizens."

During these first years of the second century since the Emancipation Proclamation, there are some grounds for satisfaction. On every front, there has been some progress: education, voting, housing, employment. But the lag has been so great, the resistance in some cases so firm, the deprivations so deep, that only the combined resources of both the public and the private sectors, effectively cookdinated and administered with determination, can guarantee the kind of progress America must make in the years to come.

The depth of commitment by the Federal government to promote equality of opportunity for all Americans is manifested in the extensive involvement of many departments and agencies in

activities relating to civil rights. And while the nature and extent of this involvement must obviously vary from agency to agency, the passage of the Civil Rights Act of 1964 created for all Federal agencies the clear obligation to fulfill their respective responsibilities in a non-discriminatory mashion.

The breadth of current Federal civil rights activities is indicated by summarizing briefly the functions of agencies with major assignments in this area.

NEEDS TO BE MET

- 1. Responsibilities of Federal Agencies. Earlier this
 Report detailed the authority and the functions of the several
 Federal agencies and Committees with explicit civil rights
 functions. Every Federal agency, however, has important
 responsibilities in this area. Its own employment policies
 must be completely free from discrimination; it must vigorously
 enforce Title VI of the Civil Rights Act of 1964; and it must
 do everything within its power to promote and obtain full
 constitutional rights for all. There must exist an appropriate
 vehicle to guarantee that these obligations of the Federal Government are fully met.
- 2. Affirmative Collaboration Among Agencies. Each of the Federal civil rights programs serves a distinctive and needed role in the broad goal of promoting equal opportunity. But none of these programs operates in a vacuum, unrelated to the others. This is especially true since many civil rights problems arise from longstanding deprivations and denials in certain fundamental areas of human activity, e.g., education, housing, voting, and employment. Through closer collaboration and consultation among the appropriate Federal agencies we must seek more effective methods of eliminating these fundamental

causes of discrimination through affirmative action, as well as combatting the effects of this discrimination. We must also eliminate the waste of human and material resources that comes from overlapping or parallel programs. Procedures must be established promptly to insure such collaboration.

- 3. Consistency Among Agencies. There must be consistency and uniformity of action in the implementation of civil rights responsibilities by the Federal agencies.

 As stated in President Johnson's letter of December 2, the Federal government must "speak with one voice to those reached by these programs." Machinery must be established to assist the Federal agencies in devising common policies and procedures in resolving such differing interpretations of statutory and administrative authority which may arise from time to time.
- 4. Advance Planning to Avoid Crises. The Federal government must be prepared to deal effectively with potentially explosive civil rights situations before crises develop. Such advance planning and action requires a system of reliable intelligence to identify potential trouble spots and procedures to initiate prompt and effective remedies. The resources of all appropriate Federal agencies, in addition to those of the States, localities, and private groups, must be used toward this end.
- 5. Collaboration with States and Localities. Most of the States and local communities have initiated programs to

promote equal opportunity of their citizens. The Federal government must build on this effort, working in close partnership with all levels of government. This requires a system to permit mutual exchange of information and opportunities for collaborative program planning and execution.

- 6. Liaison with Private Groups. Private groups concerned with the promotion of equal opportunity must have ready access to all levels of the Federal government. The advice and counsel of private groups and citizens is vital in maintaining the offensive against remaining areas of discrimination and segregation in our national life and in mounting an affirmative effort to combat the stifling effects of educational and economic deprivation.
- 7. Planning and Evaluation. Many decisions in critical areas of public policy must await further implementation of existing Federal programs and the acquisition of additional knowledge and experience. But the machinery to reach such future decisions should be established now. It is also vitally important to evaluate on a continuing basis the broad posture of the Federal government in terms of administering existing civil rights atatutes and administrative regulations and recommending necessary changes and modifications. This requires a forum for continuing and informed discussion by the Federal officials with major civil rights responsibilities.

In summary, there is an immediate need (1) to establish a comprehensive and reliable system of civil rights information gathering and dispersal among Federal agencies and the States, localities, and private groups; and (2) to provide a suitable vehicle within the Federal government for reaching decisions made possible by more effective access to reliable civil rights information.

PUBLIC SUPPORT FOR PRESIDENTIAL PROGRAMS

From

XEBO

XEBO

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INTRODUCTION

This paper was prepared at the conclusion of the Trade Expansion Act program.

Its basic goal is the changing of attitudes that prevent the passage of legislation such as Civil Rights and the "War On Poverty." It also proposes means for closing the gap between the popularity of the President and the reluctance of Congress to implement the policies he advocates by:

- A. Having the White House take the lead in enlarging the area of understanding and cooperation with individual Congressmen in order to associate them more closely with the goals of this Administration.
 - In return for such cooperation Congressmen
 would benefit from a newly-implemented
 program of direct, year-around campaign
 assistance in such areas as campaign
 contributions and direct technical support
 for public affairs appearances on all media.
 (See Congressional Techniques.)

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B. A broad-based nation-wide program of public support for Administration measures which would reach down into the congressional districts to help break down the contention among Congressmen that they are often asked to vote for Administration programs which their constituents neither understand nor appreciate. (See Public Support Program.)

The experience gained in promoting the trade bill successfully--together with still newer techniques--should be brought to bear on all Administration programs, particularly those that suffer from aroused hostility (i.e., Medicare, Foreign Aid, Aid to Education, Public Housing), and which should be an integral part of the record which this Administration and much of the Congress must stand on in 1964.

A coordinated program of this kind which mobilizes
the Executive Agencies of the Administration, and depends
for its success upon closely connected public and congressional activities, must emanate from the White House in order
to reach the goals set out for it. There must also exist a
clear line of responsibility for implementing such an operation which requires full-time planning and development to be
effective.

PUBLIC SUPPORT PROGRAM

As in the case of "Congressional Techniques," some of the projects and techniques that follow were undertaken successfully in the Public Support program of the Trade Expansion Act, and some are new. All of these ideas could be employed in behalf of other legislative proposals as well as for Foreign Aid and similar Administration commitments if an office is created in the White House and given a clear line of responsibility to coordinate and organize this program.

1. Objectives.

To reach all Americans as quickly and effectively as modern communications techniques permit with the facts and goals of Administration programs, and with the reasons why they are in the nation's best interest; to accomplish this without added demands upon the President.

2. . Launching "Grass Roots" Campaign.

Just as in the Trade Expansion Public Support
Program, "grass roots" campaigns in all media could be
launched in a coordinated effort involving public affairs
departments of government agencies as well as outside
agencies and the communications media.

3. Disseminating Facts as the Basis for Conclusions.

CHEK

The public support program should be concerned primarily with facts on the basis that when the public is given the facts of a problem they can reach their own conclusions. The program should be informative in nature, an educational program, in other words, that disseminates information to make the issues clear. Indifference—always a formidable problem—should be attacked by creatively publicizing these issues in as many media as possible. This approach would generate broader, deeper understanding.

4. Initiating Programs and Other Functions.

In many cases programs would be initiated through this proposed White House office as they were for the Trade Bill. Another valuable service would be rendered by making available to those who need help quickly: speakers, speeches, specific data, information, reports, media material such as films, audio tapes, transcripts of speeches, etc.

5. Goal: Reaching All Americans.

A. Breakdown of U.S. Media.

A breakdown of all U.S. media follows. In a well organized and properly coordinated public support

OLENO

program the great bulk of the 28,032 national and local media which are read, seen or listened to by nearly all Americans would be provided with a constant flow of information in small, easily digested pieces.

- B. All U.S. media would receive information quickly, systematically and economically.
- C. As the basic information is widely disseminated the more time-consuming individual requests will be reduced and those that are made will have more meaningful results.

LOCAL MEDIA: 19,932

(XED)

Weekly newspapers	9,000
Daily newspapers	1,800
Special-interest publications	*
(labor, religious, commercial,	
chambers of commerce, etc.)	1,000
Company magazines	4,000
Radio stations	3,500
Television stations	580
NATIONAL MEDIA: 8,100	
Wire services, syndicates, etc.	400
General consumer magazines	100
National television and radio	
programs, networks, newsreels	100
Business, trade and professional	
nublications	7 500

BASIC ACTIONS:

XERO

All media must be told of the new Bill, what its importance is, and what kind of editorial assistance they will get and can ask for.

Two actions can help establish this, quickly:

- A letter to all media with special versions for each medium.
- A complete background kit to all media containing full information, fillers, editorials, telops, photographs, diagrams, etc., as appropriate for each medium.

CONSTANT ACTION:

The consumer press -- magazines, wire services, syndicates, columnists, freelance writers, newsreels, school newsreels, national radio and television networks and public affairs programs.

- The letter, background kit, and monthly progress report.
- 2. Suggested editorials and features.
- Where appropriate, lists of available films, photographs, etc.

In addition to the material sent to all newspapers, the 271 U.S. newspapers with over 50,000 circulation representing nearly 75 percent of U.S. readers should receive special attention:

- Personalized letters to the publishers, editorial-page editors, and city editors.
- Glossy prints of all photos and art contained in the regular newspaper mailing.
- 3. Offer of exclusive in their city three or five part by-lined illustrated articles by prominent officials.

CONSTANT ACTION:

CODY

XERO

Local radio and television stations --

- Weekly scripts for inclusion in existing news and feature programs, station break announcements, etc.
- For radio, open-end interviews with Government spokesmen.
- For television, the photos and other art sent to newspapers in telop and/or film clip form with accompanying scripts.
- Suggestions and outlines for local interviews.

The special-interest press--

- The letter, background kit, and monthly progress report.
- Suggested editorials and features.
- 3. The quarterly feature newspaper page.
- Special material, i.e., religious publications will get ways in which help can be given to the program from the pulpit.

Weekly and daily newspapers, local business, special-interest and company publications --

- 1. Weekly features of pictures, drawings, charts, or text in matrix form under a regular heading.
- Quarterly, a full newspaper page of pictures and text in matrix form.
- The monthly progress report.

CONSTANT ACTION:

Business, trade and professional media --

- The letter, background kit, and the monthly progress report.
- Monthly stories of business management 2. coming around to new ways of thinking about the bill being publicized.
- Case histories or organizations that have had success with policies similar to those requested in the bill being publicized.
- The quarterly feature newspaper page.
- Suggested editorials.

6. Creating a Centralized "Media Selection System".

- A. A media selection system that is comprehensive, flexible and contains up-to-date listings of editors should be created and maintained, thus enabling press releases, films, film strips or tapes to reach any and all of the 100,000 or more editors, any of whom could be selected in a matter of minutes by name.
- B. The system should be automated so that by feeding media information into data-processing equipment the use of printed directories would be by-passed.
- C. The media selection system should be complete and should cover every editor of: trade and technical journals, consumer magazines, professional and scholarly journals, wire services, feature syndicates, Sunday supplements, syndicated columns, religious publications, newsletters, photo services, daily newspapers (more than 20 different editors), weekly newspapers, local news bureaus, radio-TV networks and shows and stations, newsreels, house organs, security analysts.
- D. The media selection system should be highly selective to make possible a newly produced tailored mailing list for each release.

COPY XERO

- E. The file should be centralized so that it would no longer be necessary to keep ahead of dozens of printed directories and lists.
- F. All media should be listed by actual editorial interest, enabling releases to be targeted with pinpoint accuracy.
- G. The media selection system would make possible new and heretofore unused areas outside the familiar areas of specialty constantly used by government public affairs offices.

7. Role of Government Agencies and Departments

The public information offices of government agencies and departments are limited to public support of existing laws.

They can, however, help establish the <u>need</u> for Administration programs in the public's mind. This is the primary goal of a well organized, properly coordinated public support program. (How the Administration measures satisfy these needs is the second objective of such a campaign.)

CODY

They could contribute the following to such a program:

- a) Research committees could be established to provide data and work up reports.
- b) Existing capabilities could be used for producing and distributing such reports in quantity.
- c) Source material, information and data required by editors, producers, and others who may want to create media material covering the issue could be made available for efficient and immediate use.
- d) One or two people in the public information offices of the agencies could be delegated to appear at inter-agency meetings organized from the White House to act as project officers for the purpose of carrying out and following up on designated projects.
- e) Legislative aids in the agencies should be available to contribute necessary information at such meetings which could be of great help in organizing public support that would affect congressmen.
- f) The capabilities now available and in use could be enlarged to include some of the data and findings

to create a greater justification for the needs of the legislation. (Example: where films already exist showing the workings of the Social Security System for benefits for the aged, such films could be edited and enlarged to indicate the need for medical help for the aged.)

- g) Special reports, tailor-made for congressmen, could be worked up in the agencies covering districts and states, indicating their relevance to the legislative program involved.
- h) Inserts regarding the legislative programs could be added to speeches to be made by departmental officials.
- i) The contacts of the agencies and departments could be utilized in the overall program of the campaign. Some of these contacts could be in the area of businesses which have profited because of the agency, opinion leaders who are concerned with the issues and programs of the agencies, media people who have made the particular department their special interest, geographic areas that have been the recipients of benefits from the particular agencies, as well as specialized groups which have received benefits.

These contacts can be extremely useful for creating letter-writing campaigns, telegrams, telephone calls, etc., directly to the congressmen, as well as the creation of campaigns in the media.

8. <u>Unique Public Information Capabilities in</u> Government Agencies.

Each government agency and department has one or more uniquely developed public information capabilities. These functions and personnel should be catalogued for ready use in a coordinated, organized public support program.

(Example: The Defense Department has a well developed motion picture capability for producing and distributing public affairs films. Anacostia Naval Photo Center - Lynn Moore, Writer; Al Moses, Film Distribution Chief of Army Pictorial.)

9. Distribution of Governmental Material

HEW has nine regional offices throughout the United States. AID has State Department offices in major cities. HEW has 600 District Social Security Offices throughout the United States, the Commerce Department and

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Agriculture Department as well as the Post Office and other agencies together constitute a network for distribution of material the Government can legally circulate.

10. Government Agency Public Correspondence Reports.

Correspondence reports from government departments should be made available to opinion leaders and editors and others in sympathy with Administration goals.

11. Role of Non-Governmental Organizations.

Non-governmental organizations with special interest in bills could play a vital role in a coordinated public support program. Some of the functions they would perform (many of these were successfully performed by the Committee for a National Trade Policy on the Trade Expansion Bill) would be: to conduct polls, create conventions, fairs, act as the center for distribution of material as well as for the preparation of such material, act as liaison between congressmen and senators who might resent direct "propaganda" from the White House, and in general perform the functions that might embarrass the White House but would be quite suitable for outside agencies. The National Council for Senior Citizens would be such an agency in the case of Medicare.

12. Polls.

Private agencies with special interests in Administration programs could create greater interest by making public a greater number of polls.

13. Creating Editorials.

Editorials in leading magazines and newspapers as well as local newspapers and house organs would turn out a greater number of editorials if they felt they weregetting the "inside track."

14. Editorial Kits for Candidates.

Kits containing all available material such as speeches, comments from VIP's, tapes, films, charts and other material could be sent to candidates for office who want to associate themselves in their campaigns with the President's policies.

15. Press Releases.

Press releases wherever possible should be arranged to utilize the front pages of newspapers to keep the issue "alive" and uppermost in people's minds.

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16. Brochures and Charts.

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Brochures and charts of various sizes for insertion into reports as well as for placards, advertising bulletin boards, signs, television and lecture backup material, as well as slides of the charts could be made up and distributed to groups interested in the program.

17. Books and Authors.

Books already published or in process of being published could be further publicized and their authors interviewed where their subject matter relates to the programs, thereby affording greater access to press, TV, radio, etc.

18. Speakers' Bureaus.

Speakers bureaus, for both commercial and governmental speech-makers, could be used to include the subject material worked up into interesting speech form for the huge number of speakers who go around the country and talk at luncheons, etc.

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19. Speeches.

Speeches could be prepared for all government officials of Assistant Secretary level and above. (Segments of speeches for insertion wherever apropos could be made where an entire speech is not possible.) A comprehensive list should be maintained of speaking engagements to properly coordinate this function.

20. Conferences, Fairs and Conventions.

Special conferences, conventions and fairs could be arranged for the particular bills, and wherever possible booths could be set up in existing fairs relating to the particular Administration program.

21. Special Weeks Proclaimed by the President.

A special week, if not already designated by

Presidential Proclamation, could be created for the general

subject of the program so as to heighten the interest in

the subject. This week should be chosen (if not already

selected) to fall some time before the legislation appears

in either House, and should get the widest possible support.

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22. Educational Groups.

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Educational groups could be sent material for discussions and lectures in all phases of education from Parent-Teacher Associations to adult education groups.

23. Well-Publicized Personalities.

Personalities associated with the particular bill could be offered special speaking opportunities which could then be covered by the press because of the interest generated by their renown.

24. Closed-Circuit TV Programs.

Closed circuit television shows, sponsored by interested non-government agencies in major cities throughout the country, could be very useful in gaining support among opinion molders.

25. Production of New Films, TV, and Radio Material

A. New films could be produced and distributed by agencies of the government with motion picture production and distribution capabilities and by commercial companies. Films could also be kinescoped from TV shows produced by the News and Public Affairs Departments of TV networks (including national educational TV) for further distribution in 16mm. market. (See #27 below)

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B. TV and film cameras could be set up in an office in the White House or the Executive Office Building which would serve as a studio for the President and/or visiting dignitaries (to take home film record of visit) and/or for officials of Executive agencies without film capabilities who rely on the whim of TV, radio or film producers to record them. This film, audio and video tape could be used to make up films, radio and TV shows the Administration wants rather than waiting for those media producers to determine what and when particular issues should be aired. This material would also serve to make up shows with congressmen, as well as be available for political campaigns.

26. A Library of Tapes and Films of Presidential Statements for Legislative Programs

Addio and video tapes as well as films and transcripts of Presidential statements could be stored and catalogued through this White House function. Such a central reference library of media material (which would also include sources for films and tapes from TV networks, Movietone News, and others) would be valuable for the production of programs as well as fulfilling requests from

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film, TV and radio producers who require material of this nature from time to time.

27. Use of Existing Films.

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Existing films should be reviewed for distribution to motion picture theaters and televised public affairs programs to capitalize on their timeliness in relation to the Administration's programs. These films could also be distributed to the audience groups totalling 60 million viewers which may be reached via 600,000 16mm. sound projectors. These include: service clubs, professional and technical societies, industry and businesses, labor unions, youth groups, granges, hospital and medical societies, veterans organizations, women's clubs and suxiliaries, churches and religious groups, colleges, cultural and civic associations, community centers, foreman clubs, adult education centers, and local political clubs.

28. Creating More Interesting Radio and TV Programs New, creative formats can overcome TV and radio resistance to public affairs programming and encourage greater interest among the listening and viewing audience.

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29. Role of P.R. Firms and Ad Agencies

PR firms and ad agencies would be offered encouragement and guidance to sponsor conferences, luncheons, films, and radio and TV shows and other programs unique to their capabilities on behalf of clients who may stand to gain from Administration proposals.

30. Radio Programs Produced by PR Firms

Taped radio interviews with government officials should be produced and distributed by PR firms at the direction of this proposed office. These tapes could utilize the voices of <u>local</u> personages and Administration officials to make the programs more pertinent.

31. House Organs.

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House organs of companies in favor of the particular legislative program could be sent editorial material, columns, articles, facts and figures, ideas for an entire issue, for sections, etc.

32. "Capsule Lectures" on Radio

Arrange "capsule lectures" on Administration topics by professors from colleges in the locale of radio and TV stations.

33. A Proposal for a "Special" Presidential TV Program.

A sixty-minute TV and radio program could be created under White House guidance to carry the President's message on particular bills to the public over network stations. These programs could be produced by a coordinated committee of the best talent available in the TV and radio industry. The program should be publicized as a "Special Event" when its air date is set (by the White House), and scheduled to obtain maximum benefit: when a particular bill appears for consideration before the Congress, for example.

The program would not necessarily involve the President personally. (It may do so if he so wishes.) It would deal primarily with the need for an Administration measure from the point of view of the Administration and would be so publicized. This would afford the President the opportunity of "getting his message to the people."

The program should not carry commercial sponsorship but be regarded as a public service by the radio-TV industry. The National Association of Broadcasters could be the coordinating source with the White House on this project. It should be clearly established that this is an attempt to explain the Administration's side of a two-sided issue, which would encourage the opposition to clarify its position on an equal time basis, thus creating a truer dialogue and a clearer portrayal of where the Administration and its sponsors stand on vital issues that affect us all. These programs would appear at irregular intervals and should be afforded prime time--that is, between 7:00 and 10:00 p.m. Mondays to Fridays--to insure maximum audiences.

34. Parallel Elements of Public Support Program Found in PR Field

In conclusion, the Public Support Program would contain the functions found in various fields of: public relations, publicity, advertising, market research, production and distribution areas of all media. The program would utilize the techniques developed in all the above areas in the national interest. It would supply vitally necessary assistance to media and provide centralized

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organization and co-ordination within the White House.

And, perhaps most important, it would meet the needs of the public which is deeply interested in having the issues raised by a popular President explained to them in an interesting, clear, and easily understood manner.

These factors should insure the success of the program.

WF-CR

Ywm John Steward The decision of the 3-judge court in Alabama that Title II (Public Accommodations) of the Civil Rights Act of 1964 was based on two grounds:

- The Commission's power did not reach a restaurant who's customers were not interstate travelers:
- The Public Accommodations Section violated the due process clause of the 5th Amendment.

It would be improper to comment on this decision at this time since the matter will be adjucated further. The Supreme Court will have final determination when the matter comes to it on direct appeal. In short, due process has only begun and until it has been completed we can have no final determination -- which we must, of course, accept -- of the law of the land.

BACKGROUND MATERIAL (to be used with discretion:) There are serious doubts about the validity of the 3-judge court ∉s interpretation of the Constitution, and about the actual standing of the plaintiff, i.e., since the plaintiff had not been enjoined #1/1/ or in any way damaged, there is doubt as to whether the 3-judge court should have entertained jurisdiction. U.S. Courts do not mormally give free legal advice to someone who believes he may conceivably be damaged by some act of Congress.

Jile Rights Civil Rights

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Phil Stern called in this quote from Senator Russell which appeared in the Atlanta Constitution on July 16. It is from his July 15th speech.

"It is the understatement of the year

to say that I do not like this statute; however,

it is now on the books and it becomes our duty as

good citizens to learn to live with it for as long

as it is there...It is a form of anarchy to say that

a person need not comply with a particular statute

with which he disagrees."

Also, he mentions a statement by Mayor of Atlanta on the Civil Rights Act which appeared in Sunday Post.

If you want it, he will look it up.

The decision of the 3 judge court in Alabama that Title II (public accommodations) of the Civil Rights Act of 1964 is unconstitutional was based on two grounds: 1) the commerce power did not reach a restaurant whose customers were not interstate travellers; and, 2) the public accommodations section violated the due process clause of the Fifth Amendment.

It would be proper to comment on this decision at this time since the matter will be adjudicated further. The Supreme Court will have the final determination when the matter comes to it on direct appeal. In short, due process has only begun and until it has been completed we can have no final determination -- which we must of course accept -- o f the Law of the Land.

Backgroud material to be used at the Senator's discretion (our advice: don't use it)

Suffice it to say that there are serious doubts about the validity of the three judge court's interpretation of the Constitution, and about the actual standing of the plaintiff, i. e. since he had not been enjoined or in any way damaged, there is some doubt as to whether the three-judge court should have entertained jurisdiction. United States courts do not normally give free legal advice to anyone who comes in the door and thinks that he may conceivably be damaged by some act of Congress.

THE NEW CIVIL RIGHTS LAW

A let of people have asked me about the Civil Rights Act of 1964. They are good people, against discrimination and bigotry, and for an even break with everyone. Yet they are troubled. Doesn't the Act go too far, they say. Doesn't it encroach on states rights? Won't it take away some of my rights? These are important questions, and I would like to take this opportunity to tell you the facts about the new law.

The truth is that the Civil Rights Act of 1964 does none of these things. It is a new bill of rights for everyone, regardless of race, creed or color. It is dedicated to justice and fair play for every American, and every one of us will profit from it. And it is squarely in the American tradition.

First, let me clear the air of certain curious myths that have been circulated. The opponents of the civil rights law tried their best to confuse us in Congress, but they couldn't do it. Now they are trying to confuse the American people, and that won't work either.

Here are some of the lies that are told:

--"If you sell your house, you have to sell to a Negro".

The Truth is that there is no reference at all to housing in the Civil Rights Act.

-- "Your children will be sent out of the neighborhood to some Negro school". The truth is that there is no such requirement in the Act. In fact, the law specifically provides that it does not cover the assignment of children in order to overcome

racial imbalance in schools.

-- "From now on you have to admit Negroes to your churches, private clubs, and even your burial plots." The truth is that the public accommodations section of the Act covers none of these things, and individuals are completely free in each case to do exactly what they want.

--"Negroes have to be hired on every job, even if white people have to be fired to make room for them." The truth is that the Act does not in any way interfere with existing job rights. It establishes no "quotas". As a matter of fact, it actually provides that any "reverse discrimination" in favor of any group, even if intended to cure past discrimination, violates the law.

There are dozens of other lies and distortions going around, some of them made up by politicians for their own narrow ends.

We didn't believe them in Congress, and I hope you won't either.

What is the truth about the Civil Rights Act? The answer is that it is a moderate and good bill, which was supported by a hugh majority of members of Congress from all parts of the country — and of both parties. In fact, the representative from Atlanta, Georgia, got up in the House and said that although he was a life-long southerner, he thought it was a good bill and he was going to vote for it. And he did. And, as you may know, Mr. Weltner was overwhelmingly returned by his constituents in a recent primary.

Naturally, the Republican candidate for President voted the Civil Rights Actor against to even though most Republicans were for it. But the Republican candidate is against just about everything we do in

Perhaps amit, Congress, so I guess his vote comes as no surprise to you.

Let me tell you about this new bill of rights, and you tell me whether it "goes too far".

--The Act tries to make sure that no American citizen is unfairly denied the right to register and vote in federal elections. It is well known that in a few states Negroes and others are prevented from voting, and the Act tries to stop this by providing that the same standards apply to everyone and that legal technicalities cannot be used against anyone who has the qualifications to vote.

Does this "go too far"? I don't think so.

--The Act tries to make sure that no American is discriminated against under any program receiving federal assistance. This includes such federally-supported programs as aid for hospitals, small business loans, vocational training, area redevelopment, and land grant colleges. In all these activities, where federal assistance is needed, everyone is going to be treated alike.

Does this "go too far"? I don't think so.

-- The Act tries to make sure that no state prevents any of its citizens from using its parks, libraries, hospitals or other public facilities.

Does this "go too far"? I don't think so.

-The act gives the Attorney General the right to protect the rights of people who cannot begin a law suit on their own because they are too poor or can't find a lawyer who will help them or are threatened with personal danger if they do.

Does this "go too far"? I don't think so.

-- The Act gives the Secretary of Commerce, the Secretary of

Labor, The Commissioner of Education, and the Civil Rights

Commission authority to get the facts about discrimination in

this country, so that we will know what we are dealing with and
what we are talking about.

Does this "go too far"? I don't think so.

The Act also contains provisions to end discrimination in employment and in public accommodations, such as hotels, restaurants, and movie houses. These are also straight-forward and moderate, and both are squarely in the American tradition.

The public accommodation section tries to make sure that we don't have second-class citizens in this country. It means that no well behaved person can be rejected by an establishment open to the public just because of his color or religion or national origin. It means that no man or woman has to stare at a lunch counter or movie house and wonder if he is welcome. Now the law says that everyone is welcome, as long as he has the price of admission and is not drunk or disorderly. And that is the way it should be.

Some people say that this is an interference with the property rights of the owners of the establishments. But this is a red herring. We have long since passed the day in this country when people could trample on the rights of others in the name of their private interests. Our health inspection laws, our zoning ordinances, state statutes requiring businesses to close on Sunday, all involve limitations on property rights. We can do no less in the name of human rights, to make sure that a person can get a cup of coffee or see a good movie without being turned away because of the color of his skin.

The employment section is also reasonable and in the American tradition of fair play. It says that a man who can do a good day's work is not barred by an employer, a union, or an employment agency because of race, creed, color or national origin.

It also protects the ladies, I may add, against those who are either too hardhearted or inexperienced to recognize what a bonanza a good woman can be on a job.

The employment section is limited in its coverage. It applies only to companies that affect interstate commerce, and applies only to companies or unions above a certain size -- 100 employees or members at first, and then in a few years 25 or more. It exempts religious and educational organizations. And, as I have said, it makes sure that no individual or group gets preferential treatment, even to make up for past discrimination.

Some people may think that these provisions on public accommodations and employment provisions are something completely new, something that Presidents Kennedy and Johnson and the Congress dreamed up out of a clear blue sky. Nothing could be further from the truth. Both have their roots deep in American history and both are really quite mild compared to what the states have been doing for decades.

As long ago as 1875, Congress passed a law to eliminate discrimination in public accommodations. Just like the present law, it applied to inns, restaurants, and places of public amusement. The trouble with the law was that it was badly drafted by the Congress of the day, and the Supreme Court struck it down. There is no danger of that now, but that is not the point. The thing to remember is that almost a century ago we had a law designed to do just about what the new Civil Rights Act does.

There is also a tradition of federal action against discrimination in employment. During World War II, when the nation needed all the help it could get, President Roosevelt established a Committee on Fair Employment Practice to fight discrimination in jobs. He wanted the best men he could find to win the war on the home front. I need not remind you that now we are also engaged in a desperate struggle, and we need to use every qualified person. That is part of the reason for the present law, which follows the pattern of World War II by creating an Equal Employment Opportunity Commission to eliminate discrimination.

attempts to do away with the virus of discrimination. It is also consistent with similar action by the states that stretches back well into the nineteenth century. Indeed, by 1900 eighteen states had prohibited discrimination for reasons of race or color in places of public accommodation, and since then 13 other states and numerous cities have taken similar action. Regarding employment, while them [37] exactly half of the 50 states, bar discrimination by employers, unions and employment agencies, and 22 of these have established agencies similar to the Equal Employment Opportunity Commission to enforce their laws.

These states have gone much further than the 1964 Civil Rights

Act. Take public accommodations. Almost every state law covers

many establishments not covered by the federal act. For example,

Illinois prohibits discrimination in everything from clothing

stores and crematories, and Rhode Island bars bias in beauty parlors

and billiard parlors. The federal law is very limited by comparison;

it deals with none of these.

And the new law is limited in other ways, too. If a person is believed to be violating its provisions, the individual harmed or the Attorney General can obtain a court order to end violation. These states are much tougher. Many of them, in fact most of them, provide for criminal penalties for violators up to a \$500 fine and one year in jail, and a good many also let the victim of discrimination sue for damages up to \$500. The federal law has no such provisions.

State employment statutes are also tougher than the federal law. Not only do some states contain criminal provisions, but almost every one covers businesses and unions much smaller than the 1964 Act, which, as you recall, is limited at first to organizations of 100 or more persons, and later to 25 or more.

You may ask: If the Civil Rights Act is so weak and narrow in coverage, what do we need it for, especially if the states are already doing the job. The answer is that in this great country, the people have come to expect a minimum standard of decency that, unfortunately, is not always present in states that have not enacted laws against discrimination. And more than that. We are one nation and indivisible. That is the message of the Fourteenth Amendment. The time has come to stake out a measure of consistency in the enforcement of human rights as for decades we have tried to harmonize the law relating to property rights, under the Commerce Clause of the Constitution. A great nation could do no less, and we have done no less.

The 1964 Civil Rights Act does not attempt to bypass state and local laws against discrimination. Exactly the opposite is

true. In the American tradition of federalism, it carefully leaves for the states what they are able and willing to do by themselves. The entire scheme of the law is to maintain state remedies, to encourage state enforcement, and to keep federal power in reserve.

In three different places, the Civil Rights Act provides that there is no intention to interfere with existing patterns of state law. Once in the public accommodations section, again in the employment section, and once again among its general provisions, the Act clearly that state laws against discrimination continues in force and that nothing contained in the new Act precludes any person from asserting his rights under state law. This in truth is an Act for the states, as well as the people, and I fervently pray that the states will do the job on their own.

The Civil Rights Act goes even further to make sure that states and local governments are given the chance to end discrimination without federal intervention. In every important section of the new law, it is provided first that existing local agencies try to solve the problem, and only if that doesn't work does the federal government come into the picture.

Let me give some concrete examples. The public accommodations section of the 1964 law explicitly provides that in a state or city that also prohibits discrimination, no individual may file a suit until he gives ample notice to the responsible state agency. And the federal courts are instructed to go a step further by staying proceedings while the responsible state or local agency attempts to solve the problem. If that doesn't work, the federal

court still does not have to take action. Instead, the law provides that the court may refer complaints to a Community Relations Service created under the Act, which will try to obtain a settlement and voluntary compliance with the law. Only if all this fails will a court order such compliance. I do not see anything unreasonable about this, and neither did most of the Congress.

Just about the same rules apply to employment. In a state or city with an effective law prohibiting discrimination in employment, a person with a grievance must file first with the local agency. These agencies are given by law up to 120 days to resolve the complaint before the New Equal Employment Opportunity Commission can take jurisdiction. The Commission is given up to 60 days to resolve the complaint on a voluntary basis, and only if that doesn't work may an individual file a complaint in a federal court. I do not see anything unreasonable about this, and neither did most of the Congress.

Or take public education. It is now more than ten years since the historic decision of the Supreme Court outlawing school segregation. Progress has been slow during these ten years, and I know many legislators who wanted the Congress to take the ball away from those Southern communities that have not acted in good faith. But the Civil Rights Act does no such thing. Instead, it tells the United States Commissioner of Education to cooperate with local officials, to give them technical assistance by training teachers and school officials at institutes on desegregation. We know that the problems are many and difficult, but

the 1964 Act is a reasonable way of going about solving these problems. If it is met halfway, we can soon provide the kind of education that the Constitution contemplates to every child in the land, regardless of the color of his skin or the way he spells his name.

Ladies and gentlemen, this is a good law, a just law, and a moderate law. It is a law in the American way of democracy and fair play. It tries to give every man an equal chance to use his talents, to pursue his desires, and to provide for his family. It seeks to give every man his full constitutional rights under the laws of the land. It is a law for all Americans. It deserves your support.

THE FEDERAL DOLLAR AND

NONDISCRIMINATION

A GUIDE TO COMMUNITY ACTION

UNDER

TITLE VI

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THE CIVIL RIGHTS ACT OF 1964

TITLE VI-NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec. 601. 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.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Sec. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

Sec. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

Sec. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

A Guide to Community Action Under Title VI

TITLE VI" is a phrase which will be heard increasingly in the months ahead, as new government programs are begun and old ones are reviewed. This section of the Civil Rights Act of 1964 has a clear aim; federal assistance shall not be given any program that discriminates against any individual on the ground of race or national origin.

Entitled "Nondiscrimination In Federally Assisted Programs," Title VI says that "no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

This is among the most far-reaching of all the provisions of the historic law by which Americans now seek to end discrimination in every aspect of our national, state, and local life.

The law is the culmination of years of work by many citizens and their organizations. The same drive which led to the law's enactment must now be turned to its enforcement. The law will not work automatically. The efforts of Americans can now best be mobilized, not in a negative manner to punish, but in a positive thrust to achieve the equality of opportunity that is the nation's goal.

Public Help Vital

Nowhere is the aid of the public needed more than in enforcement of Title VI. However, Title VI is so comprehensive (190 federal programs are covered by it) that the layman might be disheartened at the prospect of trying to keep track of what it does, and how it does it. Moreover, its enforcement essentially is left to the agencies and bureaus of government, federal and state, rather than to the courts. This involves regulations and procedures not familiar to the general public.

But Title VI is not an impenetrable mystery. And, like the rest of the law, it does require the understanding of the general public, both in a broad way for general support and in more detailed, technical ways for active help in achieving its ends. This is important because it is different from the other parts of the law, less simple and obvious, and because, properly functioning, it can accomplish so much.

How Title VI Works

AT THE HEART of all the regulations and procedures for making it function properly is the provision for complaints from private individuals and organizations.

In the simplest terms, Title VI says that no one may be denied participation or be subjected to discrimination while participating in any program which receives federal money or other assistance.

The programs in our national life that receive federal money or other assistance are many and varied, and they include some of the most basic institutions and activities of our society. Education, employment, agriculture, business, housing, health care, and welfare are a few of these. In all, the Federal Government spent approximately \$15 billion in 1964 on the kind of assistance covered by Title VI.

Many of these programs receive federal aid in the form of grants to state agencies. The state agencies, in turn, administer the federal money, often combined with state funds, through a number of smaller units that are frequently—as is the case with schools—parts of a county or city government. In 1963, federal money averaged 14 per cent of the total revenue of all the states of the union, and as much as 32 per cent of the total revenue of some states.

Some kinds of federal aid often are unseen. The programs and institutions are run by state governments, or by county and city governments, as in the case of vocational education or of welfare departments. They include such things as hospitals, state mental health programs, employment security offices, agricultural extension services, and construction of highways and airports. There are also federal programs which give specialized aid to institutions largely supported by state funds-like research grants to state universities. And there are programs where the Federal Government deals directly with the city or county government-as in urban renewal, public housing, and airports-or even with private groupsas in the economic opportunity ("antipoverty") program.

An important distinction written into the law is that compliance is required only of the recipients of federal aid who are conducting programs for the benefit of others. A "recipient" does not include the individual who ultimately receives the financial aid or other benefit under the program. For example, an individual receiving un-

employment compensation is not a "recipient," but the state unemployment insurance office is, and must not discriminate against applicants for assistance. A farmer receiving federal aid is not required to adopt nondiscriminatory practices in operating his farm, nor are individuals receiving veterans' pensions or social security payments covered by Title VI.

Federal - State Cooperation

IN THE SITUATIONS covered by Title VI, the federal agencies in charge of dispensing funds or aid are charged with seeing to it that recipient state and local agencies or institutions comply with Title VI. If, acting as middle men, these state and local agencies administer funds to smaller units under them, they are supposed to see to it that these smaller units comply.

There is a long background and tradition for this interaction of the Federal Government with state agencies in administering funds designed to benefit all American citizens. The process has its roots deep in the nation's historical efforts to achieve a working balance between state and federal power. Title VI, in its language and in the regulations drawn up to implement it, faithfully follows this tradition. Emphasis throughout the administrative procedures for enforcement is on helping the state and local agencies and institutions make necessary adjustments smoothly and voluntarily.

Only where there is evidenced open intention or action not to comply does coercion come into the process. The sanction is the obvious one in such a situation—the federal agency may withhold funds, or sue for specific performance. But even when this is deemed

necessary, the regulations allow ample room and time for negotiation and persuasion.

In short, the idea is not to cut off funds, not to punish anyone, but to gain compliance with the working operation of the law. The cutting off of funds is an ultimate weapon, not to be used lightly, but the provision for it gives teeth to Title VI.

All of this is consistent with the main thought behind the title—which is that federal spending is for the benefit of all, and this purpose is defeated when some of those whom it is designed to help are cut off from the benefits, or are given them in different, diluted form. The intent is to include everybody who should be included, on an equal basis.

Statements of Assurance

or Compliance

THE REGULATIONS call for state-I ments of assurance or compliance, which are legal contractual agreements that state or local agencies and the units under them are or will immediately begin complying. Obviously, if there is refusal to make these statements of good faith, the withholding of funds is mandatory on the part of the federal agency administering the program. So far, there seems to be little tendency toward outright refusal to cooperate. Compliance by school districts, for example, seems to have the potential of accomplishing more desegregation than years of litigation under the 1954 Supreme Court school decision.

Enforcement may become complicated after the statements of assurance or compliance have been signed. Segregation and discrimination are deeprooted and far reaching; often they exist almost without notice. Signs may come down in waiting rooms, but people may continue exerting pressure for the old, customary arrangements. Policies may be adopted and regulations read to employees, but practices may continue as they always have.

In such situations, the complaint procedure and the work of private individuals and organizations could make the difference between whether Title VI is a fiction of form or a true rendering of the national will. In all instances, such work is a necessary part of a very large cooperative effort between the federal and state governments, and their citizens.

Compliance Reviews

THE REGULATIONS call for regular ■ reports to federal departments from state and local agencies and institutions to show the extent of compliance. These are to be confirmed by agents from the federal departments making visits, called "compliance reviews," to the local agencies and their units. The tremendous number of such visits that will have to be made and the time this will take is another indication of the need for private surveillance and checks in the meantime. There is also, of course, the importance of the viewpoint of people who are detached from the routine of governmental organiza-

Complaint Mechanism

Complaints may come from a person with a particular grievance, from someone who observes what appears to be an act or pattern of dis-

crimination under one of the programs, or from people or organizations that set out systematically to check on the various programs in a city or rural area. It will be a continuing process. It will involve a determined and conscientious effort to root out the stubborn remnants of outlawed customs, and a patient effort to help those less sensitive to such things to see violations of Title VI and remedy them.

New Opportunities

In cities, where such work toward equality of opportunity has been done in the past and where organizations specifically equipped for it exist, Title VI will mean new opportunities to solve many old problems. In small

towns and rural areas, where local minority leadership may be timid or intimidated, and where organization is lacking, enforcement of Title VI will be most difficult. Here, perhaps, is a new opportunity for organizations from the cities to strengthen leadership in these small town and rural areas to take advantage of the new opportunities opened up by Title VI.

Title VI has created many such new opportunities. In an age when people often complain that government is remote and inaccessible, here is an open invitation for citizens to work with their governments to achieve something that the nation wants. With the help of the people, Title VI can be one of the most significant achievements of our democratic process.

WHAT DOES TITLE VI COVER?

T o determine which local programs and institutions are receiving federal benefits covered by Title VI requirements, a community inventory may be organized under the following headings:

1. Construction Projects: Those that are financed or receive partial financing, equipment, or land from the Federal Government are covered by Title VI. While construction is being planned and while it is being carried out, checks can be made and complaints registered where there are violations of the nondiscrimination requirements. After construction is completed, the facility itself is subject to continuing Title VI compliance.

Such construction projects may include: Airports, College Facilities and

Dormitories, Dams, Defense Projects, Government Buildings, Highways, Lakes, Parks, Urban Renewal Projects.

All new construction proposals in your area sponsored by local and state government should be examined for Title VI coverage.

2. Public and Private Institutions: Those that receive any kind of federal aid for their operation and maintenance are covered by Title VI.

These may include: Conservation Projects, Colleges, Defense Installations, Health Centers, Hospitals, Libraries, Medical Schools, Mental Institutions, Nurses Training Schools, Public Housing Projects, Schools.

3. Government Services: Such services are covered by Title VI, even though operated by state, county, or

city governments, or special boards, if they receive all or part of their support or other aid from the Federal Government.

Examples of such services are:
Agricultural Extension Programs,
Aids To Businesses, Apprenticeship
and Manpower Training, Area Redevelopment, Disaster Relief, Economic Opportunity ("anti-poverty")
Programs, Forest Protection, Mental
Health, Public Health and Welfare,
Research Grants, Rural Electrification, School Lunches, State Employment Services, Student Loans and
Graduate Fellowships, Teacher Training, TVA, Vocational Rehabilitation.

Criteria for Title VI Coverage

IN GENERAL, when you examine local institutions and activities to determine if they are covered by Title VI, you are asking these questions about each:

- 1. Does it receive federal grants? Yes____ No___
- 2. Has it received federal assistance after the first of 1965, or is it seeking any? (Loans or grants prior to 1965 are not covered, but renewals, installment payments, and subsequent loans or grants are.) Yes_____No___
- 3. Have there been donations of federal equipment to the program or project? Yes_____No____
- 4. Do federal personnel work in the project as part of their jobs? Yes_____No____
- 5. Is it conducted in a building or on property provided in whole or in part by federal funds? Yes____No___
 - 6. Does it benefit from proceeds of

federal lands or property? Yes____ No___

- 7. Is it part of any program or institution receiving federal assistance?
 Yes_____ No____
- 8. Is it in any other way benefiting from federal assistance? Yes____No__

If the answer to any of these questions is "Yes", then the institution or activity is covered by Title VI. Although it may be operated entirely by a state or local governmental unit, or even a private agency, it receives federal aid and therefore must not practice discrimination.

Excluded Activities

Three categories of federal programs are excluded from the requirements of Title VI:

- 1. Federal contracts of insurance, and federal contracts of guaranty. These include federally-insured bank loans and guarantees for mortgage loan repayment under some federal housing (FHA) programs.
- 2. Direct grants or loans, such as loans made directly to farmers by the Farmers Home Administration, or veterans' pensions, or social security payments.
- 3. Employment, except where the purpose of the federal program is to provide employment, as in Area Redevelopment projects and Economic Opportunity ("anti-poverty") programs. Title VII of the Civil Rights Law covers equal employment opportunity.

It should be noted, however, that a section of the regulations under Title VI has been interpreted as involving,

in some cases, employment practices. In examining programs and institutions, a report on whether or not employment is desegregated should be included in complaints about other matters, as well as in complaints about segregated employment alone. It would then be up to the federal agency involved to determine whether the employment question is covered for this particular program by the administrative regulations under Title VI.

Inventory of Local Programs

A SYSTEMATIC examination of Title VI coverage would involve drawing up a list of all the different activities in your community that are federally benefited. Your own sources of information and knowledge of the area will tell you some of these programs. A check with the various local offices of each of the federal agencies (listed in your telephone book) will add activities to your list, as will inquiries to state agencies.

If there are further uncertainties in your mind, or if there is lack of cooperation, you should call or write directly to the agency's national headquarters in Washington, D. C. A list of federal departments and agencies covered by Title VI will be found starting on page 17.

A central source of information about the programs and institutions covered by Title VI in your community, and the names and addresses of persons or offices to contact for each, is the U. S. Commission on Civil Rights, 1701 Pennsylvania Ave., N. W., Washington, D. C. 20425.

Partial List of Major

Federal Programs

To HELP you begin your local interestive list of the most commonly found programs benefited by federal assistance. It will also suggest appropriate inquiries about specific local institutions. For example, if a hospital receives neither Hill-Burton aid nor federal research grants, it still may be covered because it receives federal funds through the local public welfare agency for care of indigent patients.

Executive Office of the President

Office of Emergency Planning Disaster Relief and Repairs

Office of Economic Opportunity ("anti-poverty" program)

Youth Programs (Job Corps, Work-Training, Work-Study)

Community Action Programs (Slum Clearance, Remedial

Education, Adult Education, Voluntary Aid to Needy Children)

Programs to Combat Poverty in Rural Areas (Loans to Rural Families, Programs for Migrant Farmworkers,

Indemnity Payments to Farmers)

Employment and Investment Incentives (Loans to Small Business)

Work-Experience Programs (For Needy Persons Receiving Public Assistance)

Assignment of Volunteers in Service to America (VISTA)

Department of Agriculture

Agricultural Marketing Services
 Agriculture Commodity Distribution
 School Lunch and Milk Program
Farmers Home Administration Services
Soil Conservation Services
Federal Extension Services
Rural Electrification and Telephone Programs
Price Support Programs
Cooperative State Research Programs
Food Stamp Program
Agricultural Experiment Stations
Research Assistance to Educational and Other Institutions

Department of Commerce

Area Redevelopment Programs
Public Works Acceleration
Aid to Small Businesses
Highway Construction
Assistance to Support Mobile Trade Fairs
Research Assistance to Educational and Other Institutions

Department of Defense

National Guard (Army and Air Force)
Loan of Surplus Property
Civil Defense Activities
Civil Air Patrol
Research Assistance to Educational and Other Institutions

Department of Health, Education, and Welfare

Office of Education Programs
Vocational Education
Land-grant Colleges
Higher Education Facilities Construction
Student Loans at Institutions of Higher Education
Graduate Fellowships, Traineeships, and Institutes
Public School Construction and Maintenance in Federally
Impacted Areas
Library Services and Construction
Donation of Surplus Properties for Education, Public
Health, and Civil Defense

Public Health Services

Community and Environmental Health Activities
Community Health Practice, including Clinics and Research
Hospital and Medical Facilities Construction, Technical Assistance,

Research and Demonstrations (Hill-Burton Program)

Nurse Training and Nursing Research

National Institutes of Health Programs

Vocational Rehabilitation Programs

Welfare Services

Public Assistance

Child-Welfare Services Maternal and Child Health Services

Other Health and Welfare Programs

Research Assistance to Educational and Other Institutions

Department of the Interior

Indian Affairs

Payments for School and Road Assistance in Counties with

Federal Land

Granting of Leases and Other Privileges on Federal Land

Disposition of Land at less than Market Value

Other Activities Related to the Use of Federal Lands, including Parks, Territories, Wildlife Refuges,

Fish and Game Preserves, Etc.

Department of Labor

Manpower, Apprenticeship, and Training Activities

State Employment Services

Unemployment Compensation

Work-Training Programs

Research Assistance to Educational and Other Institutions

Department of State

Cultural Exchange Programs

Assistance to Refugees

Donations of Foreign Language Tapes and Other Educational Materials

Agency for International Development Grants to Organizations and Institutions

Department of the Treasury

Coast Guard

Leases, Permits, Licenses, Easements, and Other Uses

of Coast Guard Property

Maritime Instruction and Training and Other Utilization

of Coast Guard Personnel

Disposal of Materials to Sea Scouts, Coast Guard Auxiliary, and Non-Profit Organizations Research Assistance to Educational and Other Institutions

Atomic Energy Commission

Atomic Energy Research, Training, and Equipment in Universities and Hospitals

Payments to State and Local Governments in Lieu of Property Taxes

Civil Aeronautics Board

Compensations to Air Carriers

Federal Aviation Agency

Acquisition of Land for Airports Airport Construction

General Services Administration

Transfer of Surplus Property for Airport, Park or Recreation,

Historic Monument, Wildlife Conservation, or Street

Widening Purposes

Loan of Machine Tools to Non-Profit Institutions or Training Schools

Donation of Personal Properties to Charitable Institutions,

the American Red Cross, and Public Bodies

Allotment of Space to Federal Credit Unions

Grants for Compiling and Publishing Historic Documents

Disposal of Property for Education or Public Health

Provision of Free Space for Vending Stands Operated by Blind Persons

Housing and Home Finance Agency

Urban Renewal Projects
Public Housing Projects
College Dormitory Construction Loans
Senior Citizen Housing
Municipal Gas Works
Public Sewer Systems

National Aeronautics and Space Administration

Research Grants and Contracts to Universities and Other Organizations

National Science Foundation

Scientific Research Grants and Science Teacher Training in Universities and Hospitals Donation of Equipment to Public Schools

Small Business Administration

Small Business Development Company Loans Small Business Studies, Research, and Counseling

Tennessee Valley Authority

Transfers, Leases, and Licenses of Property to Public Agencies for Development for Public Recreation Cooperative Resource Development Programs Test Demonstration Farms for Fertilizer Experiments

Veterans Administration

Payment to State Homes State Home Facilities for Furnishing Nursing Care

A complete list of the programs covered by Title VI, and the governing regulations, may be found in the FEDERAL REGISTER, Vol. 29, No. 236, Part II, December 4, 1964; Vol. 29, No. 254, Part II, December 31, 1964; and Vol. 30, No. 6, Part II, January 9, 1965.

When you have developed a profile of the activities and institutions covered by Title VI in your area, you are in a position to begin a systematic check for compliance.

HOW TO CHECK FOR COMPLIANCE

The regulations drawn up under Title VI make it clear that nothing short of complete equality in all aspects of federally assisted programs and institutions is required. The regulations detail the different kinds of discrimination that must be avoided. These must not occur because of race, color, or national origin:

- 1. Persons are *denied* services, financial aid or other benefits.
- 2. Persons are provided with federal benefits that are different from what others receive, or are provided in a different manner.
- 3. Persons are subjected to segregation or separate treatment.
- 4. Persons are restricted in the full

- enjoyment of federal benefits, while others are not. (This can be subtle, but generally it would involve such situations as making a lounge in a hospital, or a library, available to minority groups only at certain hours.)
- 5. Persons are treated differently in determining whether they satisfy admission, enrollment, quota eligibility, membership or other requirement or condition.
- 6. Persons are denied an opportunity to provide their services or property to the federally assisted activity or institution, or are offered the opportunity in a different manner.
- 7. Persons are denied the opportunity to participate as contractors or

sub-contractors in a federally assisted project.

8. Persons are subjected to discrimination by criteria or methods of administration that accomplish *indirectly* what is prohibited directly.

To determine that none of these discriminations is taking place in the Title VI activities and institutions in your area, you will be involved in testing, observation, and interviews—the latter with both those in charge and the people who participate (that is, those who work in the program or institution, or receive services or benefits).

You will be attempting to determine that there is compliance: (a) in the physical facilities; (b) among the personnel and in the administrative procedures; and (c) in the providing of services.

The following check list is suggested

for each one of the activities and institutions in your Title VI community inventory, for general use as one approach to a systematic examination for compliance. This is not to be filled out and sent to anyone. It is suggested merely as one kind of work sheet that might be used in making checks and as the basis for preparing complaints, if violations of Title VI are found.

There is no requirement of confidentiality about any information relating to compliance with Title VI; in fact, the regulations provide that information shall be made available to "participants, beneficiaries, and other interested persons." If state or local officials in charge of Title VI programs, or heads of federally benefited institutions, refuse to answer your questions, or are evasive or non-cooperative, this alone is valid reason for filing a complaint.

TITLE VI COMPLIANCE CHECK LIST

Name of Institu Type of Facility	: Construction F	roject	Public or Pri	ivate
	Institution	Gover	nment Service_	
How Covered b	y Title VI:			
Statement of A	ssurance or Com	pliance Su No, give	ibmitted: Yes	_ No_

Person(s) Interviewed: I. Physical Facilities

- In a construction project, was selection of location and bid procedure free of restrictions that would prevent anyone offering his services or property?
 Yes_____ No____ If No, give details:
- 2. In a private or governmental institution, or an office for services, check all facilities available to the public—water fountains, rest rooms, restaurants and other leased facilities, waiting lines, service desks, and anything else that serves the people who use the facility:

Check If Any Is:	Not Available To All	Not Available In Same Manner	Segregated	Restricted
Water Fountains				
Rest Rooms	and it most			
Waiting Rooms				
Waiting Lines				
Leased Facilities				
Service Desks		100		
Offices				
Entrances		and the second		
Elevators				
Other				

Details on any items checked:

II. Personnel

1. If a program is administered by a special board (as in the "anti-poverty" program), were members selected without discrimination? Yes____No__

If No, give details:

a. Were persons selected to represent minority groups acceptable to sizeable segments of the minority community?

Yes No

If No, give details:

b. Do all board members, including minority group representatives, meet together regularly? Yes_____No___

If No, give details:

2. Are jobs or staff positions or professional participation based on a difference in treatment or eligibility (as making it necessary for a doctor to belong to a medical society that is segregated in order to practice in a hospital)? Yes _____ No____

If Yes, give details:

3. Wherever services are contracted out, were contractors selected without discrimination? (This may include doctors, nurses, technicians, as well as restaurant operators, caterers, vendors, etc.) Yes____No___

If No, give details:

If No, give details:

4. Since it is difficult for the layman to determine whether or not jobs are covered by Title VI, the following information should be recorded and reported, insofar as possible, for all jobs connected with the Title VI institution or activity:

a. Does the agency or institution treat job applicants or employees discrimination in all phases of employment (hiring, layoff, training, upgrading, transfer, rates of pay, etc.)? Yes No If No, give details: b. Are employees segregated in any manner (buildings, offices, reseating facilities, recreational areas, training, etc.)? Yes No If Yes, give details:	
III. Services	
1. If the institution or service is open to the general public (as at an employment office, library), determine by observation, testing, and intervif all parts, facilities, and services within it are available: In the same manner? Yes No If No, give details: Without segregation? Yes No If No, give details: Without restrictions? Yes No If No, give details: 2. If participation is through application for membership (as in a librate details) by eligibility (as in public welfare), determine by observation, testing, and interviews if:	iews
Any applicants are excluded? Yes No If Yes, give details:	
Any applicants are segregated? YesNo If Yes, give details:	
Any applicants are treated separately? Yes No If Yes, give details:	
Any applicants are restricted? Yes No If Yes, give details:	
Any applications are segregated for processing? YesNo If Yes, give details:	

Any applications are denied because of race, color, or national origin?

Yes_____No

If Yes, give details:

If Yes, give details:

3. Determine by testing, observation, and interviews if personnel of the institution or service treat all:

In the same manner? Yes. No. If No, give details: Without segregation? Yes. No. If No, give details: Without restrictions? Yes. No. If No, give details:

a. If the staff is integrated, do minority group staff members serve only minority group clients? Yes_____No___

If Yes, give details:

4. Where facilities or services are used predominantly by a minority group, are the facilities and services in fact equal (equipment, technical assistance, access to information, training opportunities, casework load, participation in planning and decision-making, etc.)? Yes_____No___

If No, give details:

In such a general guide to compliance, obviously it is not possible to delve into the fine details of each separate program covered by Title VI. The suggested observation, testing, and interviewing will more likely ferret out the varied and subtle manifestation of discrimination if carried out by a biracial team sensitive to and experienced in local customs and practices.

WHAT TO DO ABOUT NONCOMPLIANCE

PRIVATE CITIZENS and voluntary organizations enter into the administrative procedures for enforcing Title VI by filing complaints that some institution or activity covered by the regulations is practicing discrimination.

A typical regulation covering this vital phase says: "Any person who belives himself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this part may by himself or by an authorized representative file with the Secretary or any Agency a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the Agency or the Secretary."

In preparing a complaint, the following should be noted:

1. The complaint must be in written form. This could be a simple telling of the act or pattern of discrimination: what happened, when, where, by whom, and to whom. The information derived from the preceding check list may be used as a basis for reporting the complaint. It should, of course, be signed.

2. The complaint may be submitted not only by a person who feels he has been discriminated against, but also by someone who knows about the discrimination, or by someone (including an organization) who is an authorized representative of either.

3. The complaint must be filed not later than 90 days after the act of discrimination occurred, unless the time is extended, as set out in the regulations.

4. As the most direct, and likely most effective approach, it is suggested that the complaint be sent to the chief officer of the federal department or agency administering the particular program—the Secretary of Agriculture, the Director of the National Science Foundation, etc. Normally, you probably will wish to send a copy to the local or state official in charge of the program.

It is recommended that a copy of each complaint be sent also to the U. S. Commission on Civil Rights, which will follow through with inquiries about its progress.

The Complaint Procedure

The complaint procedure was established to enable citizens to start the administrative process that could end in the cutting off of federal funds to the offending agency or activity, but which preferably would result in an end to the discrimination.

An investigation of the complaint is

conducted ("promptly," say the regulations) by the concerned federal agency. If it fails to substantiate the complaint, the complainant must be notified in writing. If it substantiates the complaint, efforts are made informally to end the discrimination. If these fail, a hearing is scheduled. The accused unit is given adequate time to prepare for the hearing.

The hearing is conducted by officials of the federal agency. If the local unit is found to have violated Title VI, it may appeal this finding to the head of the federal agency. If he upholds the finding, he orders the funds to the particular unit cut off. This order would apply only to the offending unit—a school district, for example, not the entire school system; a single hospital, not all the hospitals in the state.

The funds cut-off order does not go into effect until 30 days after appropriate committees of Congress are notified that such a determination has been made. In the meantime, the local

unit may appeal the finding in federal court.

The regulations require that as far as possible identity of complainants and witnesses will be protected. Any threats, intimidations, coercions, or reprisals are prohibited by Title VI. The regulations also require that information about Title VI procedures be made available by the federal agencies and local beneficiaries to the general public.

Exact procedures in this process will probably vary from department to department of the Federal Government. Private citizens and organizations should not be content merely with making a complaint. There should be follow-up inquiries about progress of the complaint.

It should be obvious that complaints must be soundly based and reflect a legitimate and well-documented case. The most useful complaints are those that establish a pattern of discrimination.

Where to Write

The list of federal programs starting on page 8 is arranged under the various departments and agencies having jurisdiction over these programs. Complaints about any particular program should be addressed to the head of the department or agency. Thus, for any programs listed under the:

Department of Agriculture

Commerce Defense

Health, Education, and Welfare

Interior

Labor

State

Treasury

Dear Mr. Secretary:

The addresses of the other agencies are as follows:

The Chairman Atomic Energy Commission Washington, D. C. 20545

The Chairman Civil Aeronautics Board 1825 Connecticut Ave., N. W. Washington, D. C. 20428

The Administrator Federal Aviation Agency 800 Independence Ave., S. W. Washington, D. C. 20553

The Administrator of General Services General Services Building Eighteenth and F Streets, N. W. Washington, D. C. 20405

The Administrator Housing and Home Finance Agency 1626 K Street, N. W. Washington, D. C. 20410

The Director Office of Economic Opportunity 1200 Nineteenth Street, N. W. Washington, D. C. 20036

The Director Office of Emergency Planning Executive Office Building Annex (Winder Building) Washington, D. C. 20504

The Administrator National Aeronautics and Space Administration Washington, D. C. 20546

The Director National Science Foundation 1951 Constitution Ave., N. W. Washington, D. C. 20550

The Administrator Small Business Administration 811 Vermont Ave., N. W. Washington, D. C. 20416 The Chairman Tennessee Valley Authority New Sprankle Building Knoxville, Tenn. 37901

The Administrator of Veterans Affairs Veterans Administration Vermont Ave. bet. H and I Streets, N. W. Washington, D. C. 20420

The Staff Director U. S. Commission on Civil Rights 1701 Pennsylvania Ave., N. W. Washington, D. C. 20425



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THE POTOMAC INSTITUTE, INC.

1501 Eighteenth Street, N.W. Washington, D.C.



MARCH 1965

File Jullights (?)

Thank you. This is a good, happy, and joyous audience here tonight and you make me glad. I have been accused, among other things, of being a happy candidate. I plead guilty to the charge. And when you are happy, you make it my kind of audience, my kind of party, my kind of country.

However, tonight I would like to talk about a most serious subject, one of intimate importance to every one of us.

In the course of this election campaign, the Democratic candidates have sought to explore the many complex issues that face us all. We have discussed, as best we know how, the issues of nuclear war and uneasy peace, of man's responsibility to man, of poverty and sickness and proper care of the aged. We have talked of the needs for greater opportunity and the many challenges of freedom as we seek to enter the era of the great society.

I am not at all sure that candidates of the Republican Party have sought to do the same thing. For example, one thing I do know is that you cannot blame the poor for their poverty. If I understood him correctly, this is one of the things suggested by Senator Goldwater sometime ago. I say--if I understood him correctly. The campaign has been arduous. I have been travelling a great deal in the past few weeks and I still have a far road to In my travels, in my concern with public issues--even though I am thoroughly briefed every day -- I have somehow lost track of the whereabouts of Senator Goldwater and his running mate. I have difficulty telling which is supposed to be on the high road, which on the low one. I do not know what city or state they are in--except I do know that they are in a state of confusion. I say this with some regret. I wish that Senator Goldwater and his running mate were not running downhill, backwards, so fast. We have always sought to make this campaign serve its higher purpose: that of a major forum to discuss grave issues that bear upon man's future. Education is the goal of a political campaign -- not vituperation. We are concerned

with raising the complex subjects that bedevil our world--not raising the demons of fear and ignorance and prejudice.

This is the tragedy of a campaign that follows the tactics of desperation and hit-and-run of Senator Goldwater and his running mate. The temporary standard bearer of his fragment of the Republican Party is giving us a weird sort of unity, the unity of a select and odd few. He has brought together a collection of people, dissidents of progress, unhappy people, people desperately paddling up a creek to get away from the mainstream of American life. It is a strange banner he boasts, held aloft for him by a few financial haves, a few intellectual have-nots. With their guidance, Mr. Goldwater has said so many things, contradictory and elusive, that my image of him has become blurred. He now looks to me like Warren G. Harding come out of the West, only wearing a Brooks Brothers suit and eyeglass frames that can't possibly give him any vision. When it comes to serious discussion of the issues, he has offered us nothing but a joke, not an echo.

But now I would like to get back to the serious reason why I am here tonight, to talk about a subject of basic, overriding importance. That subject, stated in its simplest, is--happiness.

I assure you, there is nothing trivial or foolish about a concern with happiness. I am not merely talking about the happiness of a day at the beach or an outdoor barbecue. I am not merely talking about the very real happiness of listening to Louis Armstrong sing "Hello Dolly", or the traditional American joy of yelling insults at a baseball umpire. I am not even talking just about the happiness that all of you here tonight feel over the imminent prospect of the election of Lyndon Johnson to his first full term in the White House.

I am talking about all these and much more. For happiness, in its fuller meaning, is a paramount concern today. It has been a paramount concern since the very conception of this nation.

Thomas Jefferson made happiness an abiding concern of the new America.

His inclusion of the phrase--"the pursuit of happiness"--in the

Declaration of Independence was, in its time, revolutionary. Until then,
the formula used by John Locke and others was that man was inherently
entitled to something quite different--"Life, liberty, and property".

"The pursuit of happiness" stemmed from Jefferson's belief in equality.

He conceived of equality as a gift of nature, not as a gift of society or government. He challenged the traditional theory that nature created inequality of status. He believed that all men were born with the right to enjoy the same political privileges.

This idea of equality - so fundamental to the philosophy of democracy - is one of the hardest concepts for those who do not understand democracy to accept. It is also one of the hardest for democrats to explain. On the face of it, it denies daily experience and even insults common sense. Jefferson said that it is "a self-evident truth" that all men are created equal. John C.Calhoun said that this same proposition is "a self-evident lie". After all, no two humans are alike in anything--that much is self-evident to everyone. The human species has a rich and infinite variety of skills, feeling, potential, and hope. There are the moral men and there are the fakers, there are the stupid and the bright; there are the leaders--and there are those who are lost without leadership.

And yet we say and fervently believe that it is self-evident that all men are created equal. Without this belief, we cannot justify the idea of an equal vote for all. Without this idea, there could be no meaningful self-government or lawful participation in public affairs. Without it, the

struggle for social opportunity can neither be guaranteed nor secured. The architecture of democracy was built on the idea of universal equality. And the power of dictators and despots is built upon the idea that men do not have equality of rights.

I think that John Kennedy brought the idea of equal rights down to its fundamentals when he said: "I do not say that all men are equal in their ability, character, and motivation. I do say that every American should be given a fair chance to develop all the talents he may have". This is the working concept of equality; this is the ideal behind the clamor and hunger for greater equality of opportunity throughout the land. This is a basic goal of the Great Society.

De Toqueville first introduced the term--"the revolutionary tide of democracy". That tide became manifest in Jefferson's day; that tide is running stronger than ever today. Throughout the world, in every stage of development, people are struggling for the Jeffersonian ideals of equality and liberty--however they conceive of them. And we, Americans, from our earliest days, have been their model and hope.

Almost three quarters of a century ago, Lord Bryce said that the distinguishing feature of the American presidency was the fact that our president is expected to voice the aspirations of common people all over the world. And today, President Johnson, in offering the goal of the Great Society, is expressing that same concern. In his words, the goal is not "the grand vision of a powerful and feared nation—it concerns the simple wants of people".

The simple wants include happiness. We can be thankful forever that

Jefferson dropped the word "property" from Locke's formulation and made it

read, instead, "life, liberty and the pursuit of happiness". To our

founding fathers, property was a self-evident right, so obvious that there

was not need to reiterate it. And so it is today. But the idea of happiness

was revolutionary in its time. Never before had it been officially

proclaimed as a legitimate concern of government. Never before had anyone given such weight to the idea that government had a higher purpose than the traditional functions of protection of life, liberty and political institutions; that the greater aim of government is the happiness of man.

Let me explain Jefferson's idea of happiness. He said that man's greatest happiness is "the result of good conscience, good health, occupation, and freedom in all just pursuits". He recognized man's spiritual nature, and knew intimately the needs of emotion and intellect. He knew that only part of the pain and pleasure of life is to be found in material things. He said that happiness is an internal state, that it does not necessarily depend on wealth, nor splendor nor on social position. Private happiness, he said, could never be achieved in a society corrupted by tyranny or without freedom. Public happiness is attained when government is devoted to freedom, "encourages the blessings of instruction, and promotes the useful pursuits of peace". Happiness and freedom are thus permanently linked; he declared that "the freedom and happiness of man are the sole objective of legitimate government".

Jefferson well. Because we are, by his definition, a happy people, we are also a people bursting with energy, creativity—and a feeling of good will toward other peoples of the world. In our history, we have expressed this spirit in a thousand ways. If there is any one national American characteristic, it is the feeling I see expressed every day: a joy in living, a constant hope for the future, a compassion for one's neighbors—and by neighbors I mean the people of every race and religion, in every corner of this ever—smaller world.

We are people with a tradition of happiness and filled with hope. You know that in his heart, every American, no matter what his financial condition, really believes that he is a millionaire—only temporarily out of funds. You know that in his heart every America—no matter what his job or background—really believes that he can run his government and society just a little bit better than his

elected officials are doing. You know that in his heart, every American believes that he is a little smarter or better or kinder than his next-door neighbor. It's a strange, wonderful quality--and it accounts for a good share of our dynamism, our mobility, and our constant striving for self-improvement.

- I am not really concerned that the prophets of doom among us will make much headway. They talk of evil forces that account for man's every frustration. They talk of sinister conspiracy lurking behind every measure seeking to advance human welfare. They are the aginers--against the United Nations, against social security, against equal opportunity--really against people, I believe. I do not think they will make much headway because their appeal violates this basic American spirit of hope and happiness.
- Among other things they seek to raise the notion that something is terribly wrong somewhere; that our children are going to the dogs; that there is unaccountable crime and violence in the streets; that unless we somehow revert to mythical good old days, all is lost.
- They are wrong. Our children are not going to the dogs. If you cannot always understand them, think back and you will recall that your parents had some difficulty understanding you. I think that modern American education is one of our joys and triumphs; that it will help produce generations of Americans emotionally fulfilled and enriched, capable of better judgment than we had, incapable of becoming haters or aginners and with sound convictions, and Morality.
- Yes, there is crime. Yes, there is violence in the streets. Yes there is something wrong in America today. No one can deny it. (Although I am hardly convinced that crime is either greater or lesser than in the past-only better reported in police statistics and in the press). There is crime and violence—and there is something that can be done about it. We know now what breeds crime and violence. We know that today, in this age of

affluence for so many Americans, there remains much abject poverty and despair. The violence we see often represents nothing more than cries of helpless rage-cries that have too long been unanswered. The ultimate answer to crime and violence-to whatever evil that lurks in the United States today-- is neither the application of the policeman's club nor stern measures to curtail freedom.

Instead, it is the application of the Jeffersonian ideal. It is the granting of greater opportunity. It is getting rid of ghettos and slums. There is nothing wrong with American society today that cannot be solved by the granting of the American dream: the equal sharing in the opportunities for growth and happiness provided by this rich, blessed land of ours.

We cannot emerge into the Great Society singly, by individual regions, or races, or classes, or occupations. We cannot have new freedom while we are victims of old prejudices. We cannot achieve the dream of the "reat Society if we succumb to small nightmares about conspiracy and fear. We can achieve it only as a people united, responsible to each other.

I do not accept the fearful prophesies of the people of solemn mien and small heart. And neither will the American people on this election day.

With all the blemishes of mortals, we are strong and we are good. We remain-despite the claims of Communism--the standard bearers of the only authentic revolution, the democratic revolution against tyrannies. Our strength is not to be measured by our military capacity alone, nor by our industry or by our technology--although all three are mighty, unprecedented and without peer. We will be remembered, not for the power of our weapons, but for the power of our compassion, our dedication to human welfare.

We still need to prove some things to the world --and to the millions who are rushing in upon us. We need to prove that human brotherhood, under freedom, has more power to fire the imagination of peoples of the world than any other system. Brotherhood--based upon genuine understanding of differences among people--has never before been so strong a requirement of our national security.

I see, in the America of tomorrow, the true spiritual and cultural capital of the world. It will be heir to man's loftiest hopes and achievements. It will be a land of many races and religions, of peoples cosmopolitan and understanding of each other--yet each cherishing their unique traditions. It will be a land such as never existed before, and it will vibrate with the creativity and unleashed talents of millions.

The Great Society will come. But to speed its arrival we must strive to improve and refine the American character, which is humane and good, but far from ideal. Our social concepts—our human relations—have not caught up with our technical knowledge and practices. The technology that produces weapons of mass destruction has not really been applied to the true miracles possible: cleansing the earth of disease, educating mankind, bringing forth from the earth the food to feed and the fibre to clothe the poor of the world. To do so, we will have to internationalize our concepts of social welfare and social justice. We must seek for others throughout the world the same goals we seek for ourselves.

We live in an era of potential catastrophe; our physical sciences have made it so. We live in an era of potential glory; our minds and spirits together can make it so. The real strength of this America, the absolute assurance of the Great Society, is the quality of our heritage and our people--people with a commitment to freedom and happiness.

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