CRC

S/JGS ~~PCEEO~~ Complaints

COPY

March 22, 1965

Dear Mr. Brown:

Thank you for your message concerning the complaint you have filed with the Civil Rights Commission of the State of Michigan.

I am Chairman of the President's Committee on Equal Employment Opportunity, which handles complaints of discrimination in employment by the Federal government or its contractors.

Your message does not specify the nature of your complaint. However, in my capacity as overall coordinator of the Federal government's civil rights activities, I shall be happy to ask personnel of the United States Commission on Civil Rights to take appropriate action on your request.

Best wishes.

Sincerely,

Hubert H. Humphrey

Mr. Joseph Brown
2956 Glendale Street
Detroit 38, Michigan

CRC

March 12, 1965

John Hannah, President
Michigan State University
East Lansing, Michigan

Dear John:

As you know, at the first meeting of the Equal Opportunity Council I asked Commissioner Keppel to head a Task Force to develop and carry out a program for coordinating civil rights activities relating to education and to assure that the education programs of the federal government be administered in a fashion to achieve true equal educational opportunity for all Americans. I have since consulted with Commissioner Keppel, and with his enthusiastic concurrence, would like to ask you to serve as a member of the Task Force.

A number of federal Departments and agencies operate or administer programs which affect education within the United States. It is essential that administration of these programs under Title VI of the Civil Rights Act of 1964 be coordinated within the government and with the discharge of responsibilities assigned the Commissioner of Education and the Department of Justice under Title IV of that Act. At the same time, it is imperative that each of the programs be operated in a manner which will assure meaningful educational opportunities for our people. For these reasons, I view the work of Commissioner Keppel's Task Force as being of utmost significance and importance. I know you share my feeling that these needs must be met promptly and effectively and I am sure you will give Commissioner Keppel your full assistance.

Commissioner Keppel will be in touch with you shortly to supply additional information and arrange for the first meeting of the Task Force.

Sincerely,

Hubert H. Humphrey

Memo from:

JOE ROBERTSON

3/18/65

To: John Stewart

For your information

Mr. Robertson

UNITED STATES DEPARTMENT OF AGRICULTURE
CONSUMER AND MARKETING SERVICE
WASHINGTON, D.C. 20250

MAR 17 1965

To: George L. Mehren, Assistant Secretary, Marketing and Consumer Services
Joseph M. Robertson, Assistant Secretary for Administration
Thomas R. Hughes, Executive Assistant to the Secretary

From: Administrator Li Smith

Subject: Food distribution -- Forrest County, Mississippi

We have just been informed by Miss Evelyn Gandy, State Welfare Director in Mississippi, that the Forrest County Board of Supervisors will immediately inaugurate a food distribution program in that county. This is the county in which the Council of Churches desires to operate a pilot program.

Miss Gandy indicated that she had discussed the matter with Governor Paul B. Johnson, as well as with the Board of Supervisors in Forrest County. Apparently these discussions stimulated the above decision. The State Welfare Department is apparently going to make available qualified personnel to begin a certification program immediately. We shall see to it that food is likewise made available promptly.

In the event the Council of Churches selects another county in Mississippi for its pilot program, Miss Gandy has requested that we extend the courtesy of advising her in this respect as we did on Forrest County. We assured her that we would do so.

Howard Davis is meeting with Dr. McKenna of the Council of Churches this afternoon and will relay this information to him.

cc: William Seabron, SEC
Howard Davis, C&MS

S/P/CR/Agric.

COPY

March 2, 1965

Dear Dr. Hannah:

I appreciate very much receiving a copy of the Commission's report on equal opportunity in the programs of the Department of Agriculture.

I am confident that the Department is going to move ahead vigorously to attack the problems you have spelled out in your report. These are injustices which must be rectified.

Best wishes.

Sincerely,

Hubert H. Humphrey

Honorable John A. Hannah
Chairman
U. S. Commission on Civil Rights
Washington, D. C. 20425

UNITED STATES COMMISSION ON CIVIL RIGHTS
WASHINGTON, D.C. 20425

February 27, 1965

Honorable Hubert H. Humphrey
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

The Commission on Civil Rights presents to you this report pursuant to Public Law 85-315, as amended.

This report is a study of selected programs of the U.S. Department of Agriculture designed to alleviate problems among the rural population, and, in particular, among the rural population of the South. The Commission has found serious matters of concern and need for corrective action, but it is heartening to note the increasing awareness among Department officials of the need for change.

We urge your consideration of the facts presented and of the recommendations for corrective action. The report is scheduled for release on Monday, March 1, 1965.

Sincerely yours,

John A. Hannah
Chairman

Enclosure

DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D.C.

March 23, 1965

Mr. John Stewart
Assistant to the Vice President
United States Senate

Dear John:

Here is the proposed letter to the President which he requested we send him thirty days after receipt of his transmittal of the Civil Rights Commission report and a report to the Secretary which was developed by a Task Force within the Department.

We plan to send the letter to the President on Friday, this week, and would appreciate your comments immediately. The President's letter will have additional editing and we would consider including any changes you may suggest.

Sincerely yours,

"Bill"

William M. Seabron
Assistant to the Secretary

Enclosures

Dear Mr. President:

In response to your letter of February 27 regarding the U. S. Commission on Civil Rights report of racial discrimination in some aspects of Department of Agriculture programs, I am submitting to you this summary of corrective measures the Department is taking.

The Commission's ~~findings and~~ recommendations, with which I am in general agreement, embrace four broad areas. These are the need for: (1) Ending discriminatory practices in the administration of Department programs, (2) extending to all Department clientele without regard to race or color full and equal participation in these programs, (3) assuring equal employment opportunities in staffing Department agencies, and (4) establishing methods of review and evaluation of the implementation of the Department's equal opportunity policy.

In line with Administration policy and my own personal commitment, a number of actions which conform to the Commission's recommendations had been initiated prior to issuance of the report. Among these are: (1) The elimination of segregated office space in all of the agencies mentioned in the report, except in the Federal Extension Service whose cooperative State and county offices have set December 31, 1965, as the target date for completion of their office space desegregation, (2) enforcement of the Department's policy of prohibiting employees from attending or giving official support to segregated meetings and other events, (3) establishment of a policy forbidding the use of any standard other than merit or ability in employment, training, assignment, and promotion of Department employees, and (4) election of Negro Agricultural Stabilization and Conservation community committeemen in other than all-Negro neighborhoods, and appointment by Farmers Home Administration of Negro county committeemen for the first time. These initial steps are being vigorously augmented by continued action leading toward full implementation of

equal opportunity in all phases of employment and program administration.

Regarding the remainder of the Commission's recommendations -- desegregation of some other aspects of administration and establishment of methods of review and evaluation -- I have directed that the following actions be taken immediately: (1) Abolish segregation in the assignments of white and Negro staff to serve Department clientele, (2) eliminate segregated administrative structures and lines of authority, communication, and responsibility at all levels, (3) encourage increased participation of Negro farm and rural residents in Department programs through all appropriate action, including increased and improved educational contacts with rural Negro people, and (4) establish a system of review and evaluation, making full use of the Department's research, investigatory, and other resources.

In addition, I have established a task force headed by the Deputy Under Secretary and staffed by field as well as Washington personnel to conduct extensive and continued review and evaluation of the operation of Department programs to assure non-discrimination.

To further assist in implementing the Commission's recommendations, I will appoint a permanent public advisory committee on Civil Rights to review the activities of the Department with respect to equality of opportunity and to advise me on the effectiveness of our procedures and policies, as well as recommend changes where necessary. Also we will continue to undertake periodic informal consultation with individual civil rights leaders to invite their suggestions and evaluations of our equal opportunity safeguards.

All these resources and others will be fully utilized, Mr. President, as we firmly move toward complete elimination of racial discrimination in every activity of the Department.

Sincerely yours,

DRAFT - 3/22/65

To: The Secretary of Agriculture

From: Task Force Established to Review the Recommendations of the Civil Rights Commission:

Trienah Meyers, Chairman
A.L. Edwards, Sec.
James T. Glen, Sec.
Arthur Mead, Sec.
Elmer Mostow, OGC
James H. Starkey, Sec.

In response to the President's letter of February 27 regarding equal opportunity in farm programs and after consultation with representatives of the Office of the Vice President and the U.S. Commission on Civil Rights we submit this report on the recommendations of the Commission and the actions taken or contemplated by the Department.

For convenience we are stating each recommendation of the Commission followed by our report thereon.

"I. THAT THE PRESIDENT DIRECT THE SECRETARY OF AGRICULTURE TO END DISCRIMINATORY PRACTICES IN THE ADMINISTRATION OF DEPARTMENT PROGRAMS, AND THAT THE SECRETARY --

"A. Continue efforts to impress upon the administrators and field staff of every agency the necessity of abandoning practices of segregation, unequal treatment, and exclusion which have barred Negro farmers and rural residents from the services and benefits of these programs."

Since your review of the Commission's report with the Under Secretary. Assistant Secretaries, and Heads of Agencies, and since your appointment of this Task Force on March 8, we have analyzed and reviewed in depth the Commission's findings and recommendations in order to determine what must be done to fully comply with the recommendations. We have also reviewed the agency reports submitted to us and discussed with each of the four agencies the findings, recommendations, and the sufficiency of their actions and proposals.

All State, county and local offices of the four agencies have been furnished that part of the report pertinent to their activities. At the

same time agencies are reviewing the reports, they should be required to step up their efforts to impress upon their entire staff the need to immediately abandon any discriminatory practices. These agencies have issued instructions, have met with key field staff officials, and have developed other measures to eliminate discrimination.

> "B. Require the assignment to both white and Negro staff of the responsibility for work with Negro clientele participating in these programs."

The Secretary should immediately order the agency heads to require the assignment to both white and Negro staff members the responsibility of working with white and Negro clientele on an impartial basis. To assure that this requirement is fully met each of the agencies is now inaugurating a system of survey and evaluation which is discussed more fully below.

> "C. Require the abolition of all racially segregated administrative structures and lines of authority, communication, and responsibility at Federal, State, and county levels."

With regard to the Extension Service which is administered on a cooperative Federal, State, and local basis, plans to eliminate dual systems have been submitted under Title VI of the Civil Rights Act, and are being studied by the Office of the Secretary. To be approved these plans must include integration of staff. Plans filed indicate that racially segregated administrative structures and dual lines of authority and responsibility have been eliminated in all but three States. The situations in these remaining States will be corrected between now and July 1, 1965. The Agency Heads with Mr. Seabron's assistance should work closely with the States to assure the full integration of the personnel of the formerly dual administrative structure.

The reports also indicate that each State has discontinued the practice of holding separate State, district, and county staff conferences. Remaining barriers to informal and formal communication should disappear when all offices are desegregated. And, as noted below, the target date is December 31, 1965.

"D. Require that racial segregation of employees in Federal, State, and county offices be eliminated."

Segregated office space has been completely eliminated in FHA, SCS, and ASCS. In FES, in those cases where county offices are still segregated, negotiations are under way with county governments and the General Services Administration to obtain adequate space to house white and Negro agents together. The target date for this action is December 31, 1965.

In addition, review has been made of buildings we occupy which have separate lavatory and other facilities for Negroes. ~~We~~ The Department will eliminate this form of segregation. In instances where management of buildings, often the local Courthouse, is not eliminating segregated facilities, ~~we are~~ The Department is seeking other accommodations, in the same city or other nearby locations where this objective can be accomplished.

"E. Require that all meetings connected with Department programs be held on a desegregated basis and that the Federal non-discrimination policy be made known.

"F. Enforce Department policy prohibiting employees from attending, participating in, or in any other way giving official support to organizations, meetings, fairs, or other events which are segregated, which exclude either Negroes or whites from membership, attendance or participation, or which are intended for participants of one race only."

Your memorandum of June 23, 1964, and the Department regulations dated December 11, 1964, prohibit sponsorship or attendance at functions connected with our programs, participation in organizations' programs, fairs or other events which exclude Negroes. You have made it clear that this Department will not directly or indirectly sponsor any function on other than a nondiscriminatory basis. You should further make it the responsibility of each supervisor to ascertain that the meetings or other functions are not segregated or discriminatory before granting approval to attend or participate in any manner.

"II. THAT THE PRESIDENT DIRECT THE SECRETARY OF AGRICULTURE TO ENCOURAGE AND EXTEND FULL AND EQUAL PARTICIPATION IN DEPARTMENT PROGRAMS TO ALL CLIENTELE WITHOUT REGARD TO THEIR RACE OR COLOR, AND THAT THE SECRETARY--

"A. Direct every agency to seek increased participation by Negro farm and rural residents in those programs from which they previously have been excluded or in which they have been denied equitable service.

"B. Afford to Negro farmers the necessary assistance, information, and encouragement to accord them the equal opportunity to diversify their farm enterprises."

So that there will be no question as to the availability of Department programs to all people on an equal basis, all the agencies have been directed to take immediate steps to encourage and increase participation by Negroes. To better assist and direct changes in emphasis each agency should be directed to institute the following actions: (1) a quality analysis of services to Negro farmers and rural residents; (2) an overall review of personnel training programs; and (3) a study of current procedures and instructions with reference to how they relate to the quality of service and supervision given low-income Negro farmers. These actions will permit the pinpointing of inequities which will be promptly corrected and, therefore, lead to improved services to Negroes. Historically, for example, the Soil Conservation

Service has had as its objective the placing of the greatest number of acres under soil conservation practices. This has tended to favor the large landowner to the disadvantage of the small landowner, many of whom are Negro. This policy has now been changed. Henceforth, emphasis in program accomplishment will be placed on the number of farmers assisted rather than acres treated.

In addition to a concerted effort to extend assistance and guidance we are developing analytical tools to measure program effectiveness.

> "C. Assure that Negroes have the opportunity to participate in elections for local committees and that they are appointed to State, area, and local committees which share responsibility for the administration of Department programs."

All agencies have been directed to take steps to assure that the democratic process will be guaranteed in all nominations and elections and to assure that all segments of the community are fairly considered for representation on policy and decision-making appointive committees.

The aforementioned FES plans submitted to the Secretary provide for joint white and Negro planning committees.

By July 15, 1965, FHA will have bi-racial county committees in all counties where there are a significant number of Negroes who are farmers or rural residents. This accomplishment will enable FHA to end its use of the title "alternate committeemen" for Negro members and thus effect a true integrated committee structure.

The ASCS Administrator has informed us that they recommend that you are appointing a Negro member to the State Committee in three southern States and ~~are expecting to appoint~~ additional Negro State committeemen during the remainder of this year.

ASC county committees will place Negro candidates on the ballot for community committee elections in each of the southern States. This should lead to a substantial increase in the number of Negro community committeemen elected. Since under the law, county committees are selected by the community committeemen meeting in convention, the increase in the number of Negro community committeemen should lead to the selection of Negro county committeemen.

In order to assure maximum participation of Negroes in local elections either the mail ballot or the polling place will be used depending upon conditions prevailing in the community. Where polling places are used, every effort will be made to assure that the polling places are fully accessible to the Negro community.

Greater attention will also be given to the use of the petition system to nominate Negroes.

The SCS has directed its State conservationists to recommend Negroes as candidates for election to district boards. In addition SCS officials will suggest names of such Negro leaders to appropriate State offices for appointment to district governing bodies.

"D. Provide adequate safeguards to assure that the administration of Department programs by local committees does not thwart the participation of Negroes."

The need for adequate safeguards in seeing that the administration of the farm programs is in no case thwarted for Negroes by county committees has been discussed with the agencies involved. Specifically,

you should direct ASCS to assign to the Federally appointed farmer fieldman responsibility for seeing that the program decisions are administered on a nondiscriminatory basis. In addition, the Department's evaluative procedures must include ways to obtain data to disclose statistically where the possibility of racial discrimination may exist.

Finally, the committee system plays an important role in the administration of many farm programs. The election and appointment of Negroes as committeemen will tend to eliminate the possibility of local discriminatory decisions.

"III. THAT THE PRESIDENT DIRECT THE SECRETARY OF AGRICULTURE TO ASSURE EQUAL EMPLOYMENT OPPORTUNITIES IN AGRICULTURAL PROGRAMS, AND THAT THE SECRETARY--

"Require that employment, training, assignment, and promotion of all personnel be based on merit and ability without regard to the race or color of the employee or of the clientele to be served."

A regular review is made of employment and promotion of Negro professionals. A system to evaluate training and assignment of minority group personnel should be developed and included in the continuing review. In addition you should issue a specific directive requiring that (1) Employment, training, assignment, and promotion of all personnel be based on merit and ability without regard to the race or color of the employee or of the clientele to be served, (2) No Negro be assigned to work solely with or through members of his own race, and (3) All employees be assigned responsibility to serve the public without regard to their color or without regard to the color of the public being served.

Within SCS all Negro professional employees serving in the South have now been integrated with white conservationists working with both white and Negro landowners. The Service has for the past year conducted a recruitment program to obtain Negro personnel. This recruitment will be intensified.

In addition, SCS has employed and will continue to hire a substantial high number of Negro employees in the excepted temporary WAE category as aids to work units in southern States. It is hoped that increased use of this employment technique will result in more Negroes seeking Negroes for permanent positions in the Service.

FHA has instructed the State directors to step up recruitment of Negroes not only for utilization in their own counties and State offices, but for employment in States other than their own. In this intensive effort, Negro employees of FHA are being utilized to assist in the recruitment of other Negroes in a more intensive effort.

ASCS is establishing employment goals that will result in employment of a substantial number of Negroes in state and county offices in the South on a full-time basis. Also, ASCS will employ a substantial number of Negroes this summer as part-time county office employees and performance reporters in county offices in the South and elsewhere.

We suggest that the Department in its intensified recruitment effort, work through a member of the agriculture faculty who will act as a personnel liaison officer to assist in developing a more adequate roster of Negro applicants at each of the 16 former Negro land grant colleges.

"IV. .That the President direct the Secretary of Agriculture to establish methods for review and evaluation of implementation of equal opportunity policy in Department programs, and that the Secretary--

"Use the research units of the Department to determine the extent to which agricultural programs are achieving their objectives with respect to individuals of all races and colors. For this purpose racial data and statistics on persons receiving the benefits of Department programs should be maintained as part of an effective reporting and evaluation system. Such data should be used only for the purpose of evaluating the effectiveness of Department programs and should be maintained under safeguards which will prevent their use for discriminatory purposes."

In addition to the employment statistics discussed above, each of the four agencies referred to in the Commission's report has started to collect relevant data with respect to the program services afforded minorities. Manifestly, such data are important in any evaluation of the effectiveness of our programs for Negroes and other minorities. We are entirely in agreement with the Commission's statement that the data be used only for the purpose of evaluating the effectiveness of the Department programs. The Department must establish safeguards to prevent their use for discriminatory purposes.

The research capability of the Department should be utilized to determine the extent to which agricultural programs are achieving their objectives with respect to all individuals of all races and colors. Specifically, research units will provide consultation by analysts and statisticians with agency staffs on (1) identification of the types and kinds of data that are needed on a recurring basis relating to program applicants and participants, (2) the analytical procedures that would maximize insights into possible discrimination or reveal lack of participation, (3) obtaining the statistical base data to which the program statistics need to be related and (4) agency evaluation of achievements of objectives to assure that agricultural programs meet the needs of people of all races as indicated elsewhere in this report. The four agencies whose programs were reviewed in the Commission report have started collection of these

The agencies' evaluation should be carefully reviewed to assure that statistics and other data are adequate and meaningful and will be used in a way which will further our equal opportunity policy.

In addition to the above, we have been told that the Office of Inspector General will moniter the implementation of all aspects of the civil rights program in the Department. Auditors have been reporting and will continue to report on actions and occurrences related to various aspects of the civil rights program during the course of their regular audits.

To further assist the Department in implementing the Commission's recommendations, we recommend that:

(1) The proposed Advisory Committee on Civil Rights be established as soon as possible to review the activities of the Department with respect to equality of opportunity, to advise me of the effectiveness of these policies, and to recommend changes and amendments where necessary; and

(2) The Department should undertake periodic informal consultations with civil rights leaders to invite their suggestions and evaluation of its actions.

On File

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON

March 22 1965

Honorable Hubert H. Humphrey
The Vice President
United States Senate

Dear Mr. Vice President:

This is in response to the President's letter of January 5, 1965, requesting that I send you a statement of the measures we have employed or propose to initiate to achieve greater progress in the area of minority group employment. My response has been delayed because I asked the heads of the agencies of this Department to provide a current report on the status of our programs and planning for minority group employment.

The minority group employment program in this Department has received and will continue to receive attention and direction from me, from the heads of the agencies of the Department, and from the line managers and supervisors in all agencies. I have held a series of meetings with Agency Administrators on equal employment opportunity and this subject is discussed regularly and emphasized in staff meetings throughout the Department. The regulations of the Department and of its agencies make clear our policy that there will be no discrimination in employment. The inspection reports of the Civil Service Commission indicate generally that employees of the Department are aware of this program and that we mean business.

We are taking positive steps to attract and employ minority group personnel by contacting and visiting minority group leaders and organizations as well as schools and colleges in all parts of the country. Our activities in this regard include special teams that visit secondary and business schools to recruit, examine, and employ qualified persons. This has been very rewarding for clerical, typist, and stenographic employees. Professionals have been more difficult to obtain.

Five agencies of the Department have employed special minority group staff members to help recruit minority employees and work toward their progressive assignment. We are also asking our other minority group employees to help us locate and recruit minority personnel. In addition, we have asked the Department of Labor and others to refer minority group members to us for employment consideration.

Agencies of this Department have a continuing program for reviewing job assignments, interviewing employees, and reviewing appraisals of performance to make sure that full utilization is made of the abilities

of minority group employees and for possible upgrading or promotion where under-utilization is found. (See the enclosed employee questionnaire.)

A monthly reporting system is in operation (copy enclosed) which provides the Secretary and top Administrators with a monthly summary of the status of employment of Negroes. The availability of this kind of information has made employment of minority personnel a rather competitive activity in the Department and has increased Agency Head interest considerably.

The Department has established an Interagency Committee to help with the planning and execution of an effective, economical program for recruitment and employment of minority group members. This Committee will also facilitate the sharing of information concerning qualified minority group members and make possible a complete follow-through on candidates who express an interest in employment with the Department.

The opportunities for participation in the training programs of the Department are open to all and we encourage our employees to make full use of them. We are using the Training Act (PL 85-507) as well as our own internal training programs to encourage our employees to qualify for advancement. Agencies of the Department are employing minority group members as field aids or assistants in order to get people on the rolls so they can be trained for more responsible positions and more rewarding careers.

One extremely difficult problem has been to locate qualified people within reach on employment registers. We have found that the roots of this problem often extend to elementary and high schools as well as institutions of higher learning. We are cooperating with schools in an effort to build up the curriculum so that more people can qualify.. This involves keeping schools informed as to courses that are required for certain jobs, as well as making research grants to the schools, and through participating in cooperative programs to build up the staff of the schools involved. We have found that visits to schools and participation in activities such as the Joint Committee of the Department of Agriculture and Land-Grant Universities on Education for Government Service are valuable ways to keep the schools informed of mutual problems in regard to employment.

The Department has developed a system for recording and maintaining information on minority group employees. We are attempting to obtain approval for use of this system as a part of the automation of personnel records. This information would then be available for use in planning and evaluating the effectiveness of our minority group recruitment program.

Agencies of the Department have a regular program for keeping contact with minority group members who are on military leave or have returned to school, for keeping them informed of job developments, and to let them know that we are looking forward to their return to our employment. We have tried to keep abreast of closing of military installations and other Government operations as a means of picking up qualified minority group employees who may be caught in reductions in force or layoff.

We are attempting to select prospective minority group employees for summer employment and are exploring the possibility of training people through the Job Corps program to fill jobs in shortage or hard-to-fill areas. At present we are exploring the possibility of revising job standards and descriptions so that complex jobs can be broken down into simpler ones so they may be performed by less qualified personnel and thereby making them more available to minority group members who may not be so highly skilled. This approach, however, involves problems of job classification and employee ceilings.

I have recently appointed Mr. William M. Seabron to serve as Assistant to the Secretary for Civil Rights and Equal Opportunity in Employment and Housing where he will also continue to give attention and direction to this vital program. He will be replaced as Assistant to the Director of Personnel by a competent minority group man who will stimulate and direct Department equal employment opportunity efforts.

The Department's employment of members of minority groups, particularly Negroes, does not reflect the effort that has gone into the program of equal employment opportunity. I assure you we will continue to use every available technique and develop additional methods to find, employ, and promote minority group employees in the Department. We will perform in this area.

Sincerely yours,

Orville L. Freeman
SECRETARY

Enclosures 2

UNITED STATES DEPARTMENT OF AGRICULTURE
Office of Personnel
Washington D. C. 20250

February 4, 1964

PERSONNEL BULLETIN NO. 292-3

SUBJECT: Survey of Utilization of Manpower - Phase II

INFORMATION DUE MARCH 10, 1964

You will recall the manpower utilization survey conducted in the past nine months in response to a request of the President's Committee on Equal Employment Opportunity. This survey questionnaired employees in positions GS-1 through GS-5 and WB-1 through WB-9.

The Department is now extending this manpower utilization study to employees in higher grade positions. This part of the study will also be accomplished by having employees complete a questionnaire.

Questionnaires are to be completed by each employee under full-time appointment without time limitation in a position in the competitive service at GS-6 through GS-12 or WB-10 and above, located in the 50 States.

To assist the Office of Personnel in conducting this survey, each Agency Personnel Office is requested to:

1. Duplicate a supply of questionnaire forms needed for employees covered. Follow copy attached and do not deviate. The form and instructions must be back to back with agency identification at the top of the questionnaire side of the form.

2. Distribute the questionnaires to the covered employees with a franked envelope attached to each for mailing the questionnaire direct to the Office of Personnel.

(over)

INQUIRIES: Policies and Procedures Division, Extension 3473 or 3474

DISTRIBUTION: Agency Personnel Officers

PB-20

Bulletin Expires: December 31, 1964

Do not gather responses at any point for bulk transmittal to the Office of Personnel.

3. Report to Mrs. Verna Deane Brown, Policies and Procedures Division, Office of Personnel, by not later than March 10, 1964 the number of employees who were given questionnaires for completion.

The Office of Personnel will review the completed questionnaires, report on the results, and institute any programs necessary for the full utilization of the employees' abilities as indicated.

Carl B Barnes

Attachment

Director of Personnel

EMPLOYEE QUESTIONNAIRE

During the past nine months, the Office of Personnel surveyed and studied the utilization of the qualifications and skills of employees in positions up to GS-5 and WB-9. This study is now being extended to employees in higher grade positions. The purpose is to determine whether employees possess skills, training and education not being utilized in present jobs. Where this is found to be the case, placement efforts will be made so that the maximum utilization of employee skills will result.

Accordingly, to assist us in this review, we need your cooperation in supplying the information requested on the reverse side of this questionnaire. Before completing the questionnaire, you are asked to refer to the Pamphlet TIME OUT, subject "You and Your Career," distributed in January and February, 1964. This pamphlet will assist you in deciding what skills you may have that are qualifying for positions in other than your present occupation.

Please complete the questionnaire promptly and mail it in the attached franked envelope. Address it as follows:

Policies and Procedures Division, MU
Office of Personnel
Room 344-W Admin. Bldg.
U. S. Department of Agriculture
Washington, D. C. 20250

Your completed questionnaire is due not later than April 17, 1964.

AGENCY IDENTIFICATION
(PREPRINT)

1. NAME_____ YEAR OF BIRTH_____

POSITION TITLE_____ GRADE & SALARY_____

DUTY STATION: (CITY & STATE)_____

2. DOES YOUR PRESENT POSITION FIT IN WITH YOUR CAREER PLANS?

YES ☐

NO. ☐

IF YOUR ANSWER IS YES, SKIP QUESTIONS 3. AND 4.

3. IF YOU ANSWERED "NO" TO QUESTION 2., and you feel you can be better utilized in another occupation in the Department in which you are definitely interested, show here the occupation(s) and grade level(s) you have in mind:

_____
(Occupation) (Grade Level)

_____
(Occupation) (Grade Level)

THEN, show below education, experience or training you believe qualifies you for the above occupation(s) and grade level(s). EDUCATION BEYOND HIGH SCHOOL. (Name of institution and dates attended, degree(s) received, majors and minors)

EXPERIENCE. (Type of experience, dates of employment, employer, salary received)

SPECIALIZED TRAINING. (Identify and show dates of training)

4. Would you accept a position in the Department in the occupation(s) and grade level(s) you have indicated?

☐ Yes, at any location ☐ Yes, but only at following locations:

☐ No

5. Would you be interested in receiving career counseling? YES ☐ NO ☐

6. (Completion of this question is optional.) In your opinion, what is the most important step the Department should take to assure the maximum utilization of the talents, knowledges and skills of its employees?

_____
(Signature)

DEPARTMENT OF AGRICULTURE
WASHINGTON 25, D. C.

TO: Secretary Freeman

FROM: Joseph M. Robertson
Assistant Secretary for Administration

Mr. Secretary, here is the January report of full-time minority group employment in the Department.

This report shows the following:

1) Total full-time employment as of the end of January 1965 - 77,861, a decrease of 13,352 since June 30, 1964

2) Total Negro employment as of the end of January 1965 - 3,222, an increase of 166 since June 30, 1964, distributed as follows:

GS-1 through 4	- 47
GS-5 through 11	- 89
GS-12 through 18	- 6
Wage Board	- 17
Other	- 7

3) The following agencies have registered net increases in Negro employment this Fiscal Year in excess of 10:

ARS - 106
CMS - 16
FHA - 13

4) Agencies in the Department showing full-time Negro employment in excess of 100 at the close of January 1965:

Secy - 166 (includes Staff Offices)	
ARS - 1178	FHA - 118
ASCS - 455	FS - 213
CMS - 361	SCS - 155

5) Agencies showing full-time Negro employment at 10% or more of total full-time employment:

Secy - 26.0% (includes Staff Offices)	
NAL - 37.6	CMS - 26.3
Inf - 20.5	YADS - 10.3

Attachment

cc: Murphy, Baker, Mehren, Jacobson, Brady, Hughes, Sundquist, Schnittker, Agency Heads

UNITED STATES DEPARTMENT OF AGRICULTURE

CHANGES IN FULL-TIME NEGRO EMPLOYMENT IN THE 48 STATES AND D. C.
JUNE 30, 1964 to JANUARY 31, 1965

	ALL PAY PLANS			NEGRO EMPLOYMENT					
				CLASSIFICATION ACT				WAGE BOARD	OTHER
	Total Employment	Negro Total	Negro Percent	Total	GS-1 to 4	GS-5 to 11	GS-12 to 18	Total	Total
USDA									
Total 6/30/64	91,213	3,056	3.4	2,286	1,205	1,025	56	759	11
Net Change	-13,352	+ 166		+ 142	+ 47	+ 89	+ 6	+ 17	+ 7
Total 1/31/65	77,861	3,222	4.1	2,428	1,252	1,114	62	776	18
SECY									
Total 6/30/64	602	164	27.2	73	56	15	2	91	
Net Change	+ 36	+ 2		+ 2	+ 1	+ 1			
Total 1/31/65	638	166	26.0	75	57	16	2	91	
NAL									
Total 6/30/64	183	70	38.3	70	51	19			
Net Change	- 2	- 2		- 2	- 7	+ 5			
Total 1/31/65	181	68	37.6	68	44	24			
INF									
Total 6/30/64	238	48	20.2	43	30	12	1	5	
Net Change	- 14	- 2		- 2	- 2				
Total 1/31/65	224	46	20.5	41	28	12	1	5	
OMS									
Total 6/30/64	340	88	25.9	80	55	25		8	
Net Change	+ 2	+ 2		+ 2	+ 2				
Total 1/31/65	342	90	26.3	82	57	25		8	
OGC									
Total 6/30/64	340	19	5.6	19	6	13			
Net Change	- 9								
Total 1/31/65	331	19	5.7	19	6	13			

CHANGES IN FULL-TIME NEGRO EMPLOYMENT IN THE 48 STATES AND D. C.
JUNE 30, 1964 to JANUARY 31, 1965

	ALL PAY PLANS			NEGRO EMPLOYMENT					
				CLASSIFICATION ACT				WAGE BOARD	OTHER
	Total Employment	Negro Total	Negro Percent	Total	GS-1 to 4	GS-5 to 11	GS-12 to 18	Total	Total
OIG									
Total 6/30/64	831	19	2.3	19	14	5			
Net Change	- 40	+ 5		+ 5	+ 3	+ 2			
Total 1/31/65	791	24	3.0	24	17	7			
CMS									
Total 6/30/64	8,100	345	4.3	267	157	105	5	67	11
Net Change	- 48	+ 16		+ 29	+ 12	+ 16	+ 1	- 20	+ 7
Total 1/31/65	8,052	361	4.5	296	169	121	6	47	18
ARS									
Total 6/30/64	17,324	1,072	6.2	618	152	430	36	454	
Net Change	+ 333	+ 106		+ 42	+ 4	+ 34	+ 4	+ 64	
Total 1/31/65	17,657	1,178	6.7	660	156	464	40	518	
ASCS									
Total 6/30/64	5,740	448	7.8	395	291	103	1	53	
Net Change	- 101	+ 7		+ 10	+ 12	- 2		- 3	
Total 1/31/65	5,639	455	8.1	405	303	101	1	50	
CEA									
Total 6/30/64	119	7	5.9	7	6	1			
Net Change									
Total 1/31/65	119	7	5.9	7	6	1			
CSRS									
Total 6/30/64	94	1	1.1	1		1			
Net Change									
Total 1/31/65	94	1	1.1	1		1			

CHANGES IN FULL-TIME NEGRO EMPLOYMENT IN THE 48 STATES AND D. C.
JUNE 30, 1964 to JANUARY 31, 1965

	ALL PAY PLANS			NEGRO EMPLOYMENT					
				CLASSIFICATION ACT				WAGE BOARD	OTHER
	Total Employment	Negro Total	Negro Percent	Total	GS-1 to 4	GS-5 to 11	GS-12 to 18	Total	Total
ERS									
Total 6/30/64	1,013	81	8.0	81	30	47	4		
Net Change	- 67	+ 1		+ 1	+ 1				
Total 1/31/65	946	82	8.7	82	31	47	4		
FCS									
Total 6/30/64	90	1	1.1	1	1				
Net Change	- 1	+ 2		+ 2	+ 2				
Total 1/31/65	89	3	3.4	3	3				
FHA									
Total 6/30/64	4,999	105	2.1	102	46	55	1	3	
Net Change	+ 286	+ 13		+ 13	+ 1	+ 12			
Total 1/31/65	5,285	118	2.2	115	47	67	1	3	
FCIC									
Total 6/30/64	622	17	2.7	17	12	5			
Net Change	+ 3	+ 2		+ 2	+ 2				
Total 1/31/65	625	19	3.0	19	14	5			
FES									
Total 6/30/64	257	18	6.6	15	9	4	2	3	
Net Change	- 17	+ 1		+ 2	+ 2			- 1	
Total 1/31/65	240	19	7.9	17	11	4	2	2	
FAS									
Total 6/30/64	585	40	6.8	39	31	8		1	
Net Change	- 13				+ 1	- 1			
Total 1/31/65	572	40	7.0	39	32	7		1	

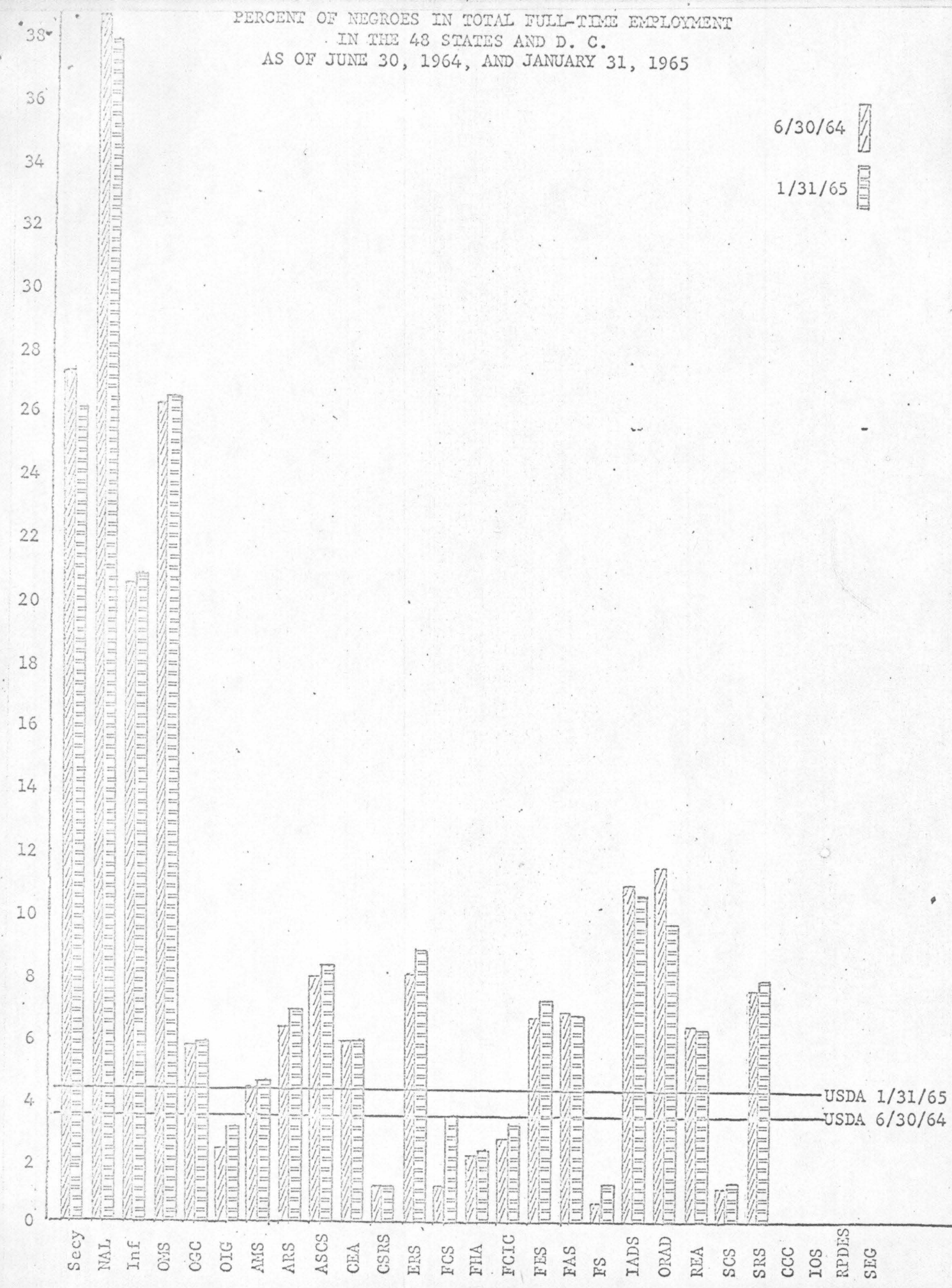
CHANGES IN FULL-TIME NEGRO EMPLOYMENT IN THE 48 STATES AND D. C.
JUNE 30, 1964 to JANUARY 31, 1965

	ALL PAY PLANS			NEGRO EMPLOYMENT					
				CLASSIFICATION ACT				WAGE BOARD	OTHER
	Total Employment	Negro Total	Negro Percent	Total	GS-1 to 4	GS-5 to 11	GS-12 to 18	Total	Total
FS									
Total 6/30/64	32,387	209	0.6	153	103	50		56	
Net Change	-13,293	+ 4		+ 19	+ 6	+ 11	+ 2	- 15	
Total 1/31/65	19,094	213	1.1	172	109	61	2	41	
IADS									
Total 6/30/64	65	7	10.8	7	3	4			
Net Change	+ 3								
Total 1/31/65	68	7	10.3	7	3	4			
IOS									
Total 6/30/64	6								
Net Change									
Total 1/31/65	6								
ORAD									
Total 6/30/64	35	4	11.4	4		3	1		
Net Change	- 3	- 1		- 1			- 1		
Total 1/31/65	32	3	9.4	3		3			
REA									
Total 6/30/64	968	61	6.3	57	30	25	2	4	
Net Change	+ 2	- 3		- 1		- 1		- 2	
Total 1/31/65	970	58	6.0	56	30	24	2	2	
SCS									
Total 6/30/64	15,094	146	1.0	132	62	69	1	14	
Net Change	- 426	+ 9		+ 15	+ 7	+ 8		- 6	
Total 1/31/65	14,668	155	1.1	147	69	77	1	8	

CHANGES IN FULL-TIME NEGRO EMPLOYMENT IN THE 48 STATES AND D. C.
JUNE 30, 1964 to JANUARY 31, 1965

	ALL PAY PLANS			NEGRO EMPLOYMENT					
				CLASSIFICATION ACT				WAGE BOARD	OTHER
	Total Employment	Negro Total	Negro Percent	Total	GS-1 to 4	GS-5 to 11	GS-12 to 18	Total	Total
SEG									
Total 6/30/64	8								
Net Change	+ 1								
Total 1/31/65	9								
SRS									
Total 6/30/64	1,173	86	7.5	86	60	26			
Net Change	- 9	+ 4		+ 4		+ 4			
Total 1/31/65	1,164	90	7.7	90	60	30			
CCC									
Total 6/30/64									
Net Change	+ 1								
Total 1/31/65	1								
RPDES									
Total 6/30/64									
Net Change	+ 24								
Total 1/31/65	24								

PERCENT OF NEGROES IN TOTAL FULL-TIME EMPLOYMENT
IN THE 48 STATES AND D. C.
AS OF JUNE 30, 1964, AND JANUARY 31, 1965



Ag

March 12, 1965

Honorable Orville L. Freeman
Secretary of Agriculture
Washington, D. C.

Dear Mr. Secretary:

As you know, at the first meeting of the Equal Opportunity Council I asked Commissioner Keppel to head a Task Force to develop and carry out a program for coordinating civil rights activities relating to education and to assure that the education programs of the federal government be administered in a fashion to achieve true equal educational opportunity for all Americans. I have since consulted with Commissioner Keppel, and with his enthusiastic concurrence, would like to ask you to serve as a member of the Task Force.

A number of federal Departments and agencies operate or administer programs which affect education within the United States. It is essential that administration of these programs under Title VI of the Civil Rights Act of 1964 be coordinated within the government and with the discharge of responsibilities assigned the Commissioner of Education and the Department of Justice under Title IV of that Act. At the same time, it is imperative that each of the programs be operated in a manner which will assure meaningful educational opportunities for our people. For these reasons, I view the work of Commissioner Keppel's Task Force as being of utmost significance and importance. I know you share my feeling that these needs must be met promptly and effectively and I am sure you will give Commissioner Keppel your full assistance.

Commissioner Keppel will be in touch with you shortly to supply additional information and arrange for the first meeting of the Task Force.

Sincerely,

Hubert H. Humphrey

COPY

March 17, 1965

Memo to the Vice President

From John Stewart

We have sent a letter to the Senators listed on the attached sheet requesting their cooperation in the efforts of the Defense Department to secure qualified Negro candidates for our Service Academies. As you recall, this letter was discussed with Howard Bennett and you asked me to see that it was sent out. We are also attempting to prepare a list of Congressmen with substantial numbers of Negroes in their districts who might also be willing to cooperate.

A copy of the letter is also attached.

United States Senate

COMMITTEE ON THE JUDICIARY

March 29, 1965

The Vice President
Executive Office Building
Washington, D. C.

Dear Mr. Vice President

I am grateful for your recent letter apprising me of the Defense Department's efforts to assure that qualified Negro candidates seek admission to the Service Academies. The statistics you have furnished with respect to the present enrollments at the Academies are illuminating.

You may be assured of my interest in this matter when seeking qualified candidates to the Academies.

Sincerely,

Joe Tydings

Joseph D. Tydings

JDT:dw

United States Senate

COMMITTEE ON THE JUDICIARY

March 22, 1965

The Honorable Hubert Humphrey
The Vice-President
Washington, D.C.

Dear Mr. Vice-President:

In Senator Bayh's absence, I am taking the liberty of replying to your very kind letter of March 17 concerning the broadening of minority group enrollment in our Service Academies. I have been in touch with Mr. L. Howard Bennett in this regard and have pledged the complete support of this office in this endeavor.

I shall bring this letter and my action in this matter to the Senator's attention immediately upon his return.

Sincerely,

Robert J. Keefe
Administrative Assistant to
Senator Bayh

JS/ep/CR - Navy Dept.

COPY

March 29, 1965

Dear Mr. Becker:

I appreciate your sending to me the correspondence of Louis W. Jones and the reply sent to him by the Department of the Navy. I can understand your concern. It illustrates one of the very toughest problems we face in the whole area of civil rights and equal opportunity: namely, how to translate general directives and orders into operating policies throughout the country. The Civil Rights Commission is planning to set up some regional offices in the near future. The Equal Employment Opportunity Commission will also have some regional activity. But I am sure that these are only partial answers. I wish I could give you a quick and easy solution to the problem, but, frankly, I do not have one.

I can, however, promise you that I intend to keep pushing people on this question and trying to do the best I can as we seek to devise more meaningful and effective procedures.

Best wishes.

Sincerely,

John G. Stewart
Assistant to the
Vice President

Mr. William L. Becker
Assistant to the Governor
for Human Rights
Governor's Office
Sacramento, California 95814

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

EDMUND G. BROWN
GOVERNOR

March 16, 1965

Mr. John G. Stewart
Assistant to the Vice President
Washington, D. C.

Dear Mr. Stewart:

A while back I believe I did send you a copy of a letter from Mr. Louis W. Jones, addressed to the President, on the subject of the Navy Department in San Francisco Bay. I attach another copy of his letter and also a copy of the response which he received from B. J. Semmes, Jr., Vice Admiral of the U. S. Navy. The inadequacy of this response was recognized and resented very much by Mr. Jones and the people with whom he shared this correspondence. It illustrates one of the real problems in implementing the work of the President's Committee for Equal Employment Opportunity, and I therefore thought you ought to see the full picture.

Sincerely

William Becker

William L. Becker
Assistant to the Governor
for Human Rights

Attachments

COPY

Louis W. Jones
511 Verano Court
San Mateo, California

COPY

December 30, 1964

The Honorable Lyndon B. Johnson
President of the United States
The White House
Washington, D. C.

Dear Mr. President:

The Navy Department is the San Francisco Bay Area's largest employer but thus far gives little evidence that it recognizes a role in problems of Bay Area population growth and diversity, and more particularly in the buildup of "social dynamite" in the central cities.

Other large employers and employers' associations are cooperating in a large-scale effort to meet these problems, but the largest employer, and the one best fitted to set an example, is silent. Twelve county and municipal human relations commissions, set up by ordinance, stand ready to consult with all community organisms exhibiting concern.

The San Francisco Naval Shipyard is adjacent to a tinder box of racial tension and potential violence - the well-known Hunter's Point housing area, which is now the focus of attention of the country's architecture students exploring redevelopment possibilities.

The Secretary of the Navy has spoken to this matter. His directive of 6 March 1963 expects local commanders to establish "effective liaison" with "influential local community organizations" including the NAACP and the Urban League, and to do this through command-community relations committees, with membership to include local leaders from all ethnic groups. The Twelfth Naval District Commandant has also spoken. His directive of 18 July 1963 implements the higher directive and specifies that meetings shall be "not less often than bi-monthly." Directives are of course meaningless without implementary action.

If these command-community relations committees exist the public does not know about them, does not know their membership, nor their areas of concern, whether meetings have been held, or where.

The inertia seems to be at the activity level. The evidence seems to indicate a total lack of information and the experience on the part of commanders as just how to

Louis W. Jones
511 Verano Court
San Mateo, California

proceed to establish communication and cooperation with organized community elements. This information and experience does not, however, seem to be lacking in such areas as United Crusade fund drives, Boy Scout activities, public ceremonies, and the like.

Almost two years have elapsed since the date of the Secretary's directive without discernible public impact. The nation cannot risk this foot-dragging.

As a private citizen I ask that you use the full authority of your office to bring about immediate dialogue between Naval activities in the San Francisco Bay Area and the many community elements who are deeply concerned about one of the country's gravest problems.

Very respectfully,

Louis W. Jones

DEPARTMENT OF THE NAVY
BUREAU OF NAVAL PERSONNEL
WASHINGTON, D. C. 20370

IN REPLY REFER TO
Pers-A212-mh

18 JAN 1965

Dear Mr. Jones:

The President has asked that I reply to your letter of 30 December 1964 regarding command-community relations committees in the San Francisco Bay area.

As you indicated in your letter, the Secretary of the Navy has directed commanders of Naval shore activities to form command-community relations committees for the purpose of continuing efforts toward obtaining unsegregated facilities off base insofar as members of the Armed Forces are concerned. Each command with 500 or more military members submits a report to the Secretary of Defense semiannually concerning off-base equal opportunity. These reports indicate that commanders are actively attempting to obtain unsegregated housing and other off-base facilities for military members of their commands. Our concern has been to provide for equality of treatment and opportunity for Navy members as a routine and continuing matter of personnel administration.

Sincerely yours,

B. J. SEMMES, JR.
Vice Admiral, USN
Chief of Naval Personnel

Mr. Louis W. Jones
511 Verano Court
San Mateo, California

Labor

March 12, 1965

Honorable W. Willard Wirtz
Secretary of Labor
Washington, D. C.

Dear Mr. Secretary:

As you know, at the first meeting of the Equal Opportunity Council I asked Commissioner Keppel to head a Task Force to develop and carry out a program for coordinating civil rights activities relating to education and to assure that the education programs of the federal government be administered in a fashion to achieve true equal educational opportunity for all Americans. I have since consulted with Commissioner Keppel, and with his enthusiastic concurrence, would like to ask you to serve as a member of the Task Force.

A number of federal Departments and agencies operate or administer programs which affect education within the United States. It is essential that administration of these programs under Title VI of the Civil Rights Act of 1964 be coordinated within the government and with the discharge of responsibilities assigned the Commissioner of Education and the Department of Justice under Title IV of that Act. At the same time, it is imperative that each of the programs be operated in a manner which will assure meaningful educational opportunities for our people. For these reasons, I view the work of Commissioner Keppel's Task Force as being of utmost significance and importance. I know you share my feeling that these needs must be met promptly and effectively and I am sure you will give Commissioner Keppel your full assistance.

Commissioner Keppel will be in touch with you shortly to supply additional information and arrange for the first meeting of the Task Force.

Sincerely,

Hubert H. Humphrey

JS/ep/CR - Defense

COPY

March 29, 1965

Dear Paul:

It is certainly my strong impression that the Department of Defense is truly attempting to make equal opportunity a reality at our Service Academies. I am sure Howard Bennett could provide all the particulars you would need.

Best wishes.

Sincerely,

Hubert H. Humphrey

Honorable Paul H. Douglas
United States Senate
Washington, D. C.

Congress of the United States

JOINT ECONOMIC COMMITTEE

(CREATED PURSUANT TO SEC. 5(a) OF PUBLIC LAW 304, 79TH CONGRESS)

March 24, 1965

The Honorable Hubert H. Humphrey
Vice-President of the United States
Washington 25, D. C.

Dear Hubert:

Thank you for your letter of March 17th, suggesting that I try to appoint Negroes to West Point and Annapolis. I have had this on my mind for some years, but have always met with a lack of enthusiasm from West Point and Annapolis. If they have really changed, I will try to do as you suggest, and I will be very glad to get in touch with Mr. Bennett, but I want to be sure there has been genuine reform and not merely face-saving talk.

Warmest best wishes.

Faithfully yours,

Paul H. Douglas

PHD/jce

C.R. Agencies - Def

COPY

March 17, 1965

Dear Senator Anderson:

In recent conversations with officials of the Department of Defense concerning that Department's activities in the area of civil rights, I discovered a situation which I respectfully bring to your attention.

The number of Negro officers at the upper levels of our military service is shamefully low. The problem stems fundamentally from a two-fold shortage of Negro officer input: few Negroes coming in from the ROTC programs of the services, and an even smaller number matriculating at and graduating from our Service Academies.

To help remedy this situation, the Department of Defense has been making efforts to assure that qualified Negro candidates are not failing to seek admission to the Service Academies because of lack of awareness of the benefits and opportunities accruing from an education there and from pursuing careers as officers in the Armed Forces. As a result of these efforts the number of Negro enrollees has been increasing. In 1963-64 out of approximately 9,700 cadets and midshipmen at West Point, Annapolis, and the Air Force Academy, there were only 31 Negroes. At the present time there are 49 Negroes out of 11,334 in the three Service Academies.

The purpose of this letter is to call this situation to your attention and suggest that you might wish to help in this effort to broaden minority group enrollment in our Service Academies. We have found that several Members of Congress when queried about this stated that they were hesitant to appoint Negroes to the Academies believing that they were denied full participation in the activities of the Academy. This is not true. I learn that they are accepted as an integral part of the Corps and are

COPY

encouraged to participate in any activity in which they are interested. Several have achieved leadership positions in the Corps of Cadets and Midshipmen.

If you wish to explore this matter further, you might communicate with L. Howard Bennett who is in charge of these activities for the Department. His phone number is Code 11, extension 50110.

I would appreciate whatever assistance you would find it possible to lend in furthering this effort.

Sincerely,

Hubert H. Humphrey

Honorable Clinton B. Anderson
United States Senate
Washington, D. C.

THE SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

MAR 3 0 1965

File

The Vice President
United States Senate
Washington 25, D. C.

Dear Mr. Vice President:

I am pleased to have your letter of March 17 and the copy of your remarks on the Administration's poverty program which you had prepared for discussion at the meeting of the Economic Opportunity Council on March 12.

I, too, am sorry that the developments in Selma, Alabama, prevented your being present at the meeting. I am hopeful that you can join us when we meet again.

Sincerely yours,

Secretary of Commerce

United States Senate

COMMITTEE ON
POST OFFICE AND CIVIL SERVICE

March 25, 1965

The Vice President
United States Senate
Washington 25, D.C.

Dear Vice President Humphrey:

This letter is in reply to your recent letter regarding the selection of Negroes to the Military Academies.

I want to assure you that I always give every consideration to each qualified candidate and will continue to help in the effort to broaden minority group enrollment in our Service Academies.

Sincerely,

Vance Hartke

Vance Hartke
United States Senator

OEO

March 12, 1965

Honorable Sargent Shriver
Director, Office of Economic
Opportunity
1200 Nineteenth Street, N.W.
Washington, D. C.

Dear Sarg:

As you know, at the first meeting of the Equal Opportunity Council I asked Commissioner Keppel to head a Task Force to develop and carry out a program for coordinating civil rights activities relating to education and to assure that the education programs of the federal government be administered in a fashion to achieve true equal educational opportunity for all Americans. I have since consulted with Commissioner Keppel, and with his enthusiastic concurrence, would like to ask you to serve as a member of the Task Force.

A number of federal Departments and agencies operate or administer programs which affect education within the United States. It is essential that administration of these programs under Title VI of the Civil Rights Act of 1964 be coordinated within the government and with the discharge of responsibilities assigned the Commissioner of Education and the Department of Justice under Title IV of that Act. At the same time, it is imperative that each of the programs be operated in a manner which will assure meaningful educational opportunities for our people. For these reasons, I view the work of Commissioner Keppel's Task Force as being of utmost significance and importance. I know you share my feeling that these needs must be met promptly and effectively and I am sure you will give Commissioner Keppel your full assistance.

Commissioner Keppel will be in touch with you shortly to supply additional information and arrange for the first meeting of the Task Force.

Sincerely,

Hubert H. Humphrey

JS/ep/CR - EEOC

March 29, 1965

Dear Mr. Biggert:

Thank you for your recent letter. I am indeed hopeful that the Equal Employment Opportunity Commission will be created in the very near future. You are certainly correct in noting that there is a great deal to be done before July 2, 1965.

I wish I could answer your questions but, in all honesty, these answers must await the publication of rules and regulations by the members of the Commission. It would be highly inappropriate, and a trifle presumptuous, for me to attempt to provide an opinion in the absence of duly nominated and confirmed members of the Commission.

I am, however, keeping your letter on file and will forward it to the appropriate persons in the Commission at the earliest opportunity.

Best wishes.

Sincerely,

Hubert H. Humphrey

Mr. Rody P. Biggert
Seyfarth, Shaw, Fairweather & Geraldson
111 West Jackson Boulevard
Chicago, Illinois 60604

HENRY E. SEYFARTH
LEE C. SHAW
OWEN FAIRWEATHER
RAYMOND I. GERALDSON
SELWYN H. TORFF
MATTHEW E. MURRAY
PHILIP V. CARTER
RAY J. SCHOONHOVEN
JOHN VAN AKEN
RAYMOND GOETZ
E. ALLAN KOVAR
WALTER P. LOOMIS, JR.
RICHARD D. OSTROW
JOSEPH E. WYSE
ROBERT H. JOYCE
WALTER L. ADAMS
WILFRED F. RICE, JR.
JOHN T. WEISE
RICHARD MARTIN LYON
ROBERT J. PALEY
JERROLD L. SAGER
ALLAN GUNN
HARVEY M. ADELSTEIN
RICHARD L. MARCUS
ABRAHAM A. DIAMOND
JOHN D. O'BRIEN
CHARLES J. GRIFFIN, JR.
KEITH A. REED
RODY P. BIGGERT
JERRY A. FULLMER
JOHN J. GILL
JAY G. SWARDENSKI
JUDY M. JACKSON
BARBARA K. LUNDERGAN

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
111 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604
TELEPHONE 431-9000
AREA CODE 312

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E. RILEY CASEY
(GALL, LANE & POWELL)
COMMONWEALTH BUILDING
WASHINGTON, D. C. 20006
EXECUTIVE 3-1776

March 16, 1965

Honorable Hubert H. Humphrey
Vice President of the United States
Executive Office Building
Washington, D. C.

My dear Mr. Vice President:

The date at which time the substantive provisions of Title VII of the Civil Rights Act shall become effective is fast approaching. While the meaning and intent of most of the provisions of Title VII are rather clear, many questions have nevertheless arisen with regard to the interpretation of this Title. It was hoped that the Equal Employment Opportunity Commission would have been created well in advance of July 2, 1965, so that appropriate rules and regulations could have been issued as an aid in answering some of the many questions. This letter is written in the hope that you, as Chairman of the newly created Equal Opportunity Council, might be of assistance in the absence of any rules and regulations issued by the Commission.

While Title VII is primarily aimed at eliminating racial discrimination in employment practices, the Title also includes prohibitions against discrimination on account of sex. Senator Bennett's amendment to Title VII seemed relatively insignificant when included in the Title. Our experience indicates, however, that this provision is a cause of greater concern among employers than the racial discrimination provisions.

Some of the questions arising in this regard are:

(1) What effect does Title VII have on existing collective bargaining agreements which discriminate between men and women with regard to seniority, job openings, etc., i.e., must the agreement be amended immediately, or does a pre-existing agreement demonstrate the lack of "intent" to violate the act, making it necessary to amend the agreement only at its next termination date;

(2) What effect does Title VII have on state laws prohibiting the employment of women over eight hours a day? Are these statutes now invalid in that they discriminate against women by preventing them from enjoying overtime? May an employer, in reliance on these state laws, refuse to hire women because he requires his employees to work overtime? May an employer refuse to hire women because he does not have separate locker room and lavatory facilities?

These are a few of the questions facing employers with regard to discrimination against sex. Your assistance in directing us to appropriate bulletins in this regard or persons charged with the responsibility of promulgating rules and regulations to be issued by the Equal Employment Opportunity Commission would be greatly appreciated.

Very truly yours,

R. P. Biggert

Rody P. Biggert

RPB:sf

JGS/ep/CR/EEOC

COPY

March 8, 1965

Dear Mr. Spitz:

I appreciate very much receiving a copy of your memorandum on Law.No. 170 prepared by the New York State Commission for Human Rights.

I know this memorandum will be of great assistance to us, particularly in working out effective relationships between the Equal Employment Opportunity Commission and New York State instrumentalities.

Best wishes.

Sincerely,

Hubert H. Humphrey

Mr. Henry Spitz
General Counsel
State Commission for Human Rights
270 Broadway
New York, New York 10007

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS
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March 1, 1965

Honorable Hubert H. Humphrey
Vice-President of the United States
The Capitol
Washington, D. C.

Dear Mr. Vice-President:

I understand that your office is charged with coordinating federal civil rights programs. The enclosed copy of Memorandum of Law No. 170 prepared by the Legal Division of the New York State Commission for Human Rights may be of some interest in connection with those activities. It analyzes the Civil Rights Act of 1964 in comparison to and interaction with the New York State Law Against Discrimination.

Sincerely yours,

HENRY SPITZ
General Counsel

Enc.

cc: Hon. Burke Marshall

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

MEMORANDUM OF LAW NO. 170

The Civil Rights Act of 1964 and New York Law

Part I Introduction

The Civil Rights Act of 1964 consists of eleven titles:

Title I	Voting Rights
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation
Title III	Desegregation of Public Facilities
Title IV	Desegregation of Public Education
Title V	Commission on Civil Rights
Title VI	Nondiscrimination in Federally Assisted Programs
Title VII	Equal Employment Opportunity
Title VIII	Registration and Voting Statistics
Title IX	Intervention and Procedure After Removal in Civil Rights Cases
Title X	Establishment of Community Relations Service
Title XI	Miscellaneous

New York State's Law Against Discrimination prohibits discrimination in employment in places of public accommodation, resort or amusement, in the sale, leasing or rental of housing or commercial space, and in the use of the facilities of non-sectarian, tax-exempt educational institutions. Title II of the Civil Rights Act of 1964 deals with discrimination in public accommodations and Title VII deals with discrimination in employment. Employment activities and public accommodations in New York are subject to the prohibitions of both the federal and the state law. Part I of this paper contains a discussion of Title II of the Civil Rights Act and of the points of contact and interaction between Title II and New York law, and a comparison of Title II with the New York Law Against Discrimination. Similarly, Part II of this paper consists of a discussion of Title VII of the Act and of the points of contact and interaction between Title VII and New York law, and a comparison of Title VII with the New York Law Against Discrimination. Certain provisions of Title XI which apply to the other titles are mentioned in the discussions of Titles II and VII.

Although this paper deals mainly with Titles II and VII, it should be pointed out that at least two of the other titles, Titles III and VI may, in part, also operate in areas over which the New York State Commission for Human Rights has jurisdiction under the Law Against Discrimination. Title III provides for the desegregation of public facilities by civil actions instituted by the U.S. Attorney General, upon receipt of an individual's complaint. The public facilities subject to Title III are defined as those owned, operated or managed by or on behalf of any state or subdivision of a state.

Some of the facilities that fall within this definition are also "places of public accommodation, resort or amusement" within the ambit of the Law Against Discrimination. Title VI mandates that programs and activities receiving federal financial assistance shall be free of discrimination. Some of the institutions which may be affected by Title VI, such as hospitals and schools, are either places of public accommodation or non-sectarian, tax-exempt schools subject to the Law Against Discrimination.

Appendices I and II chart certain aspects of the Civil Rights Act. Appendix I lists the administrative and court proceedings specifically provided by each title. The time limitations which must be adhered to in prosecuting each proceeding are outlined. Appendix II lists the relationships between the federal and state governments provided for by each title.

Appendix III contains a summary of the provisions of each title of the Civil Rights Act. Comparable provisions of New York law are summarized opposite each provision of the Civil Rights Act.

Part II

Title II Public Accommodations and the New York Law Against Discrimination

I. Places Covered

A. Under the Federal Law

The coverage of Title II extends to places of public accommodation that provide lodging, food, gasoline, or entertainment, or are physically related to those that do, and to a broad category encompassing "any establishment or place" where discrimination is supported by a state law, regulation or order.

A "place of public accommodation" within Title II is defined in section 201(b) to include each establishment of four specified kinds if it (1) serves the public and if (2) either its operations affect commerce, ~~or discrimination~~ or discrimination or segregation by it is supported by state action. The four kinds of places of public accommodation are:

1. Any inn, hotel, motel or other establishment which provides lodging to transient guests, except an establishment within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor as his residence. [All such inns, hotels, motels or other establishments providing lodging are deemed to affect commerce and are covered. §201(c)(1)].

2. Any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including one located in a retail establishment; and any gasoline station. [The operations of such an establishment affect commerce if it serves or offers to serve interstate travelers, or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce. § 201(c)(2)]

3. Any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment. [The operations of such an establishment affect commerce if it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce. § 201(c)(3)].

4. Any establishment which both (A) is either (1) physically located within the premises of an otherwise covered establishment, or (ii) within the premises of which is physically located an otherwise covered establishment, and (B) holds itself out as serving patrons of such covered establishment. [The operations of such an establishment affect commerce if the operations of the establishment within which it is physically located, or which is physically located within it, affect commerce under the applicable subdivision, (1) (2) or (3), of subsection 201(c). § 201(c)(4)].

The word "commerce" as used in this scheme is broadly defined to include travel, trade, traffic, commerce, transportation, or communication among the several states, between the District of Columbia and a state, between any foreign country or any territory or possession and any state or the District of Columbia, or between points in the same state through any other state, the District of Columbia or a foreign country.

As noted above, each of the listed establishments which serves the public is a place of public accommodation within Title II, although its operations do not affect commerce, if discrimination or segregation by it is supported by state action. Discrimination or segregation is supported by state action if it is:

1. carried on under color of any law, statute, ordinance, or regulation; or

2. carried on under color of any custom or usage required or enforced by officials of the state or political subdivision thereof; or

3. required by action of the state or political subdivision thereof.[1] [§ 201(d)]

The title does not apply to a private club or other establishment not in fact open to the public. If, however the customers or patrons of an establishment which is a place of public accommodation within the

1. There are statements in the Congressional Record indicative of a legislative intention that the mere licensing of an establishment, without anything more, or the nonaction of a state, without anything more, shall not be state action within the title. 110 Cong. Rec. 1879 (Feb. 5, 1964).

above definition (section 201b) are allowed to use certain facilities of a private club or other establishment not in fact open to the public, then those facilities of the private club available to the patrons of the covered place of public accommodation are also subject to the provisions of Title II. [§ 201 (e)]

Section 202 covers any establishment or place where discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a state or any agency or political subdivision thereof. The phrase "any establishment or place" in section 202 is not specifically limited to those establishments specified in section 201. As written, section 202 is much broader in its coverage than section 201, since it does not require that a "place" be a public accommodation or even that it be a place of business. Note that private clubs not in fact open to the public are excepted from the provisions of Title II and would thereby also be excepted from section 202.

Section 202 covers discrimination or segregation which is or purports to be required by a "law, statute, ordinance, regulation, rule or order" of a state, its agency or subdivision. Under section 201 the standard of whether discrimination or segregation by one of the listed places of public accommodation is supported by state action appears to be less restrictive in that it includes discrimination or segregation carried on under color of any custom or usage required or enforced by officials, and discrimination or segregation required by action of the state or one of its subdivisions.

The coverage of Title II is based, in each instance, either on the constitutional power of Congress to regulate interstate commerce, or on the constitutional power of Congress to enforce the 14th Amendment's limitations

on state action. In two recent cases the United States Supreme Court has held that Title II is a valid exercise of the congressional power to regulate interstate commerce. Heart of Atlanta Motel v. U. S.;[2] Katzenbach v. McClung.[3] The majority of the Court held that the commerce power was sufficient to uphold Title II, as applied to the motel and restaurant involved in these particular cases. Concurring opinions by three Justices stated that the congressional power to enforce the 14th Amendment's limitation on state action was a preferable or equal ground for sustaining Title II, and its application to the motel and restaurant involved in the cases.

B. Under the New York Law Against Discrimination

The New York statutes dealing with discrimination are based on the state's police power. There is therefore no limitation of coverage to establishments which affect commerce or to discrimination supported by state action. The Law Against Discrimination (hereinafter referred to as LAD) covers all of the establishments specified in Title II regardless of whether they affect commerce or of whether discrimination by them is supported by state action. Much broader in its coverage than Title II, the LAD also includes, among others, places where spiritous or malt liquors are sold, retail stores and establishments dealing with goods and services of any kind, clinics, hospitals, bath houses, swimming pools, laundries, barber shops, beauty parlors, golf courses, gymnasiums, billiard

2. 13 L. ed. 2d 258 (1964)

3. 13 L. ed. 2d 290 (1964)

and pool parlors, garages, travel agencies, and the public halls and elevators of buildings and structures, among the "places of public accommodation, resort or amusement" where discrimination is prohibited. (LAD §292.9)

The LAD's exclusion of "any institution, club or place of accommodation which is in its nature distinctly private" is comparable to the exclusion in the federal law of places "not in fact open to the public."

Only section 202, which appears to cover "any establishment or place" (in those limited instances where a state law or regulation is involved) approaches the breadth of coverage of the LAD.

II. Substantive Rights

A. The Federal Law

> "Section 201.(a) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."
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> * * * * *
>
> "Section 202. All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof."

Section 203 states that no person shall with respect to the rights and privileges secured by sections 201 and 202:

(a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive, any person thereof,

(b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering therewith,

(c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured thereby.

Apparently the rights and privileges secured by sections 201 and 202 are operative only through the prohibitions of section 203 and can be enforced only by civil actions to secure compliance with those prohibitions. This is the case with respect to enforcement by the person aggrieved; he has only a cause of action for preventive relief for a violation or threatened violation of section 203. [See § 204(a)] While not specifically limited to seeking to restrain violations of the prohibitions of section 203, the Attorney General can bring an action for preventive relief only when a person is engaged in a pattern or practice of resistance to the full enjoyment of rights secured by Title II [see § 206(a)]; such resistance would seem to constitute a violation of section 203(a).

In addition to creating rights enforceable by civil actions, §§ 201 and 202 create a concomitant privilege. The U. S. Supreme Court has held that a person who goes into a place of public accommodation covered by Title II to seek to exercise the rights given by §§ 201 and 202 may not be convicted of violating a state trespass law where the charge is based only on his unwanted presence or his refusal to leave the place without equal service. [Hamm v. Rock Hill, 13 L. ed. 300 (1964)]

B. Comparison with the LAD

Under section 296.2 of the LAD it is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement, because of the race, creed, color or national origin of any person:

> Directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, or

> Directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, creed, color or national origin, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed, color or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

Religious institutions and charitable or educational organizations operated or controlled by or in connection with them are excepted to the extent that they may limit admission to or give preference to persons of the same religion or denomination, and may make such selection as they calculate will promote their religious principles.

It is an unlawful discriminatory practice "for any person to aid, abet, incite, compel or coerce the doing of any" of the above forbidden acts, or to attempt to do so (LAD § 296.6). It is also unlawful "for any person engaged in any activity to which this section [§ 296] applies to retaliate or discriminate against any person because he has opposed any practices forbidden ..." under the LAD or because he has filed a complaint, testified or assisted in any proceeding under the LAD. (§ 296.7)

In addition, the exclusion of citizens by innkeepers, common carriers, theatres and other places of amusement, and the denial to persons of the full enjoyment of the privileges of hotels, inns, taverns, restaurants, public conveyances, theatres and other places of public resort or amusement because of race, creed, color or national origin, and discrimination in admission prices are misdemeanors under the New York Penal Law. (§§ 514, 515)

All persons are subject to the prohibitions of section 203 of Title II. Under the LAD, persons connected with the place of public accommodation,

resort or amusement are subject to the direct prohibitions of section 296.2, and they and all other persons are subject to the prohibition of aiding and abetting. Thus both statutes apply to all persons.

The LAD proscribes written and printed notices, communications and advertisements expressing a discriminatory intention or discouraging the patronage of persons of a particular race, creed, color or national origin. Title II does not specifically do so. While such a notice, communication or advertisement would no doubt constitute some evidence of an intention to violate Title II, it does not seem to be itself prohibited and might not suffice to establish a violation of the Title.

The federal statute specifically prohibits intimidation, threats and coercion (apparently regardless of whether directed against the person seeking to exercise the right or against anyone else) with the purpose of interfering with the rights secured by Title II. The actions covered by this clause are also prohibited by the LAD since they constitute the "indirect" (and perhaps the direct) refusal, withholding or denial of accommodations. The LAD specifically prohibits compulsion and coercion to induce a person to withhold the accommodation.

Title II does not specifically prohibit the aiding, abetting and inciting of actions in violation of the Title. This difference in coverage is less than may at first appear since under federal law a conspiracy "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right secured by" a law of the United States, such as Title II, is a felony. (18 U.S.C. § 241). Aiding, abetting or inciting which do not achieve the magnitude of a conspiracy may also be reachable under Title II to the extent that injunctive relief can, in certain limited

circumstances including knowledge, be enforced against persons other than the defendant in an action.

Section 296.7 of the LAD forbids retaliation against a person who opposes practices forbidden under the LAD or because a person has filed a complaint, testified or assisted in a proceeding under the LAD. Title II forbids punishing or attempting to punish any person for exercising or attempting to exercise rights secured by sections 201 and 202. The federal statute apparently protects against retaliation only the person who seeks to exercise his rights thereunder. The New York law protects, in addition to the person seeking to exercise his rights, third persons who oppose practices forbidden by the LAD or who assist or testify in proceedings under the LAD to secure persons their rights.

Intimidation, threats or coercion for the purpose of interfering with a right or privilege secured by Title II are prohibited by section 203 (b). The proscription of this type of activity is not specifically limited to instances in which the activity is directed against the person seeking to exercise the right secured by Title II. The LAD protects both the person seeking to exercise the right and those connected with places of public accommodation from compulsion and coercion.

III Proceedings

A. The Federal Law

Title II can be enforced by a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order or other order, brought in a United States district court either by the person aggrieved or by the United States Attorney General. "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured" by Title II, they are subject to criminal prosecution under Section 241 of Title 18 of the United States Code and they may be fined up to $5,000, imprisoned up to ten years, or both.

The person aggrieved may bring an action in a U.S. District Court whenever any person has engaged, or there are reasonable grounds to believe that any person is about to engage, in any act or practice prohibited by section 203. The court, in its discretion, may permit the Attorney General to intervene in such an action if he certifies that the case is of general public importance. Upon application by the complainant the court may, in such circumstances as it deems just, appoint an attorney for the complainant and authorize the commencement of the action without the payment of fees, costs or security. [§204 (a)].

If, in the state or political subdivision in which an alleged act or practice prohibited by Title II occurs, there is a state or local law both prohibiting such practice and establishing or authorizing a state or local authority to grant or seek relief or institute criminal proccedings, an aggrieved person may not bring a civil action before the expiration of thirty days after written notice of the alleged act or practice has been

given to the appropriate authority by registered mail or in person. Thirty days after giving such notice, an aggrieved person may institute a civil action under Title II, but the court may then stay proceedings in that action pending the termination of state or local enforcement proceedings. [§204(c)] Note that this restriction of a thirty day period before an action may be brought, and the provision for the granting of a stay do not apply to suits brought by the Attorney General under §206(a).

If the alleged act or practice occurs in a place which has no state or local law against it, an aggrieved person may immediately bring a civil action under section 204(a). The court may, however, refer the matter to the Community Relations Service established by Title X for so long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but not more than sixty days. Upon the expiration of that 60-day period the court may then extend it up to a cumulative total of 120 days, if it then believes there exists a reasonable possibility of securing voluntary compliance. [§204(d)] The provision for referral to the Community Relations Service applies only to cases instituted by aggrieved persons, concerning acts in places where there is no state or local law prohibiting the act.

The Community Relations Service is authorized to investigate fully and to hold necessary hearings with respect to complaints referred to it by the courts. The Service must endeavor to bring about a voluntary settlement between the parties. It must conduct hearings in executive session and testimony given therein can be released only by agreement of all parties with the permission of the court. (§205)

The Attorney General can bring a civil action for preventive relief whenever he "has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described..." [§206(a)].

Title II authorizes a suit by the Attorney General if a person or group "is engaged in a pattern or practice of resistance". Title II authorizes a suit by an aggrieved person if a "person has engaged" or "is about to engage in any act or practice prohibited by section 203." (underscoring supplied) The difference in wording indicates that an isolated or random act of discrimination is actionable by the person aggrieved but not by the Attorney General. The pattern or practice actionable by the Attorney General is one which a person or group "is engaged in" rather than one which the person or group "has engaged in" or "is about to engage in." This choice of the present tense may mean that the Attorney General can seek preventive relief only where there is a pattern or practice of resistance of a continuing nature.

The Attorney General initiates an action in the appropriate United States district court by filing a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to the pattern or practice of resistance, and (3) requesting preventive relief, including an application for a permanent or temporary injunction, restraining order or other order.

The Attorney General may have a court of three judges determine the case if he certifies that in his opinion the case is of general public importance. An appeal can be taken directly to the United States Supreme

Court from the judgment of a three-judge court. A suit brought by the Attorney General must be heard at the earliest practicable date and must be expedited in every way. [§ 206(b)]

In actions brought under Title II the federal district courts must exercise their jurisdiction without regard to whether the aggrieved party had exhausted any administrative or other remedy. [§ 207(a)] Note however that while the court must exercise jurisdiction it may, in a case brought by an aggrieved person, stay the proceeding or refer the case to the Community Relations Service. In an action under Title II the court may, in its discretion, allow the prevailing party a reasonable attorney's fee as part of the costs. The United States may not be allowed this attorney's fee but is liable therefor. [§ 204(b)].

The remedies provided in Title II are the exclusive means of enforcing the rights it contains. However the title does not preclude any individual, state or local agency from asserting any right based on any other Federal or state law not inconsistent with the Title. Specifically an individual, state or local agency is not precluded from asserting a right or pursuing a remedy, civil or criminal, under any federal or state statute or ordinance requiring non-discrimination in public establishments or accommodations. [§ 207(b)] Section 1104, which states that the Act should not be construed to indicate an intention on the part of Congress to occupy the field of any title to be exclusion of state laws, fortifies this provision.

B. Comparison and Interaction with New York Law

An act of discrimination within Title II gives an aggrieved person only a cause of action for preventive relief. Under New York law, the identical act can give the aggrieved person a right to complain in an administrative proceeding under the LAD, and a civil cause of action for a statutory penalty under sections 40 and 41 of the Civil Rights Law, and can lead to a prosecution in a criminal court under section 514 or 700 of the Penal Law. Because the technical rules of evidence apply in courts, and because in a criminal prosecution the charge must be established beyond a reasonable doubt, it is harder to establish in the court proceedings that a violation has occurred than it is in the LAD administrative proceeding. Civil actions under Title II are also subject to the technical rules of evidence and the cause of action must be proved by a fair preponderance of the evidence. In an administrative proceeding under the LAD the technical rules of evidence need not be observed although there must be some legally admissible evidence. The findings of fact arrived at in a LAD administrative proceeding are conclusive if supported by sufficient evidence on the record considered as a whole.

When an aggrieved person brings a civil action under Title II, he must maintain the initiative, go forward with the action, and sustain the burden of time and expense involved. Upon his application the court may, in its discretion, alleviate the burden somewhat by appointing an attorney for him and authorizing the commencement of the action without the payment of fees, costs or security. The court may also allow the U.S. Attorney General to intervene. In a civil action for a statutory penalty in

New York, the complainant must also bear the burdens of the litigation. In a LAD administrative proceeding, the Commission for Human Rights investigates the complaint, attempts conciliation, presents the complaint at a hearing, and then seeks court enforcement of its order. The person aggrieved need not retain an attorney and the Commission for Human Rights sustains the expenses involved. The problems in regard to evidence and the expenses involved may account for the fact that the New York civil action and criminal prosecution are much less frequently invoked than is the LAD administrative proceeding. A person who institutes a civil action under Title II will, in the discretion of the court, become liable for a reasonable fee for the defendant's attorney, in the event that the defendant prevails. In a LAD proceeding the complainant runs no risk of liability for a fee for the defendant's attorney.

Under Title II an aggrieved person cannot bring an action in New York until 30 days after he has given written notice of the alleged act or practice, by registered mail or in person, to the appropriate authority. Apparently, the appropriate state or local authority is one which may grant or seek relief. Since in New York local commissions, such as the New York City Commission on Human Rights, have no jurisdiction over complaints regarding public accommodations, notice will presumably have to be given to the State Commission for Human Rights before an action can be instituted. A question might arise, however, as to whether notice given to the New York State Attorney General or to the District Attorney of the county where the alleged act occurred satisfies the condition precedent to the institution of a civil action.

The notice requirement is that the appropriate authority be given written notice of the alleged act or practice. In contrast to this requirement, a complaint filed with the New York Commission for Human Rights must be signed and verified. An aggrieved person could, if he so chose, comply with the requirement of notification without filing a verified complaint over which the Commission for Human Rights would have enforcement jurisdiction. A person desirous of obtaining a federal forum to air his grievance and a federal decree to secure his rights might want to meet the notification requirement without filing a verified complaint in order to avoid a possible stay of proceedings by the federal court pending the termination of state or local enforcement proceedings [see §202(e)]. However, if the individual refuses to file a verified complaint the New York Commission can obtain enforcement jurisdiction by requesting the Attorney General to file a complaint before the Commission based upon the same alleged act or practice.

Title II specifically authorizes the granting of temporary injunctions and restraining orders. Upon commencing the action, the person aggrieved or the Attorney General can apply for temporary relief. The New York Commission for Human Rights is not empowered to grant temporary relief in a proceeding before it. At a later stage, in the course of a court proceeding to review or enforce its order, the New York Commission can obtain "such temporary relief or restraining order" as the court deems just and proper. (IAD §298)

Although the New York Commission can not itself grant temporary relief in a proceeding before it, the Commission has, in cases involving housing accommodations, acted to forestall the disposition of the accommodation

during the pendency of the complaint. This has been done by Commissioners who have conducted investigations. Having found probable cause to credit the allegations of complaints, Investigating Commissioners have requested the New York Attorney General to seek to enjoin the respondents from disposing of housing accommodations. The New York Attorney General has then instituted actions for permanent injunctions against the disposition of the accommodations pending the final determination of the Commission hearings.[4] The Attorney General has obtained temporary restraining orders and preliminary injunctions in some of those actions. Query whether this procedure may and should be used in public accommodation cases.

Under the LAD an aggrieved person must file his complaint within 90 days of the act complained of and the New York Industrial Commissioner or Attorney General must file a complaint within six months after the alleged unlawful discriminatory practice (LAD §297.3). Title II does not specify any period of time within which the U.S. Attorney General or an aggrieved person must commence an action. Under the wording of section 204, an aggrieved person would seem to have a cause of action for preventive relief if any person has in the past engaged in, or is about to engage in, an act prohibited by section 203. This individual cause of action may survive for so long as preventive relief is warranted by the particular situation. Thus, even after the 90-day period within which a LAD complaint must be filed, an aggrieved person may be able to give the requisite 30-days notice and then to commence a Title II civil action. Suits by the U.S. Attorney General appear to be limited either to the period during which

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4. The New York Attorney General can bring and prosecute or defend, upon the request of the State Commission for Human Rights, any civil action or proceeding which is necessary in his judgment for effective enforcement of the state's laws against discrimination, or for enforcement of any order or determination of the Commission. Executive Law §63.9.

the prohibited pattern or practice of resistance continues, or to the period during which preventive relief is warranted.

Section 300 of the LAD states that a proceeding thereunder shall, while pending, be exclusive and that a final determination therein shall exclude any other civil or criminal action based on the same grievance of the individual concerned. Actions under Title II are the exclusive means of enforcing rights based on Title II [§207(b)]. The federal courts may not require that an aggrieved party exhaust other remedies before resorting to Title II [§207(a)]. An individual or a state or local agency may assert any right based on another federal or state law not inconsistent with Title II, [§207(b)]. Finally, the Civil Rights Act shall not be construed to invalidate any provision of state law unless it is inconsistent with any of the purposes of the Act or any provision thereof. (§1104).

Sections 207 and 1104 of the Federal Act may deprive the defendant in an action under Title II of the ability to plead a pending or terminated proceeding under the LAD as a defense to a federal action. The clauses of section 300 of the LAD making pending LAD proceedings exclusive and final LAD determinations a bar may be held inapplicable to actions under Title II, since a contrary construction would seem to be inconsistent with Title II.

Another consequence of Sections 207 and 1104 of the Civil Rights Act appears to be that after the notice requirement is met, the two proceedings, the state administrative or ensuing state court enforcement proceeding, and the Title II civil action, can proceed simultaneously unless the judge stays the Title II action.

Title II authorizes the granting only of preventive relief in the nature of injunctions, restraining and other orders. The Commission for Human Rights can grant preventive relief in the form of cease and desist orders and can order the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to particular persons, and other appropriate affirmative actions.

An act violative of the substantive provisions of the LAD or of Title II does not necessarily entail criminal penalties. It might however give rise to a criminal prosecution or a suit for a statutory penalty in New York. In addition, a wilful violation of an order of the New York Commission for Human Rights is a misdemeanor punishable, following a criminal prosecution, by imprisonment for up to one year, a fine of up to $500, or both. (LAD §299)

A violation of a court order entered pursuant to Title II subjects the defendant, and others in certain circumstances, to criminal and civil contempt proceedings. In a criminal contempt proceeding, which may result in punishment, upon conviction, by a fine not more than $1000 or imprisonment for not more than six months, and perhaps by both, the accused may demand a trial by jury. In a civil contempt proceeding the judge may not impose a fine or imprisonment as a punishment. He may impose a fine for the injured party's use, which is measured by his pecuniary damage, and may order a defendant who has refused to do a mandatory affirmative act committed until he performs the act. The mandatory affirmative act, however, would have to be in the nature of preventive relief. Under the LAD there must be a state court proceeding to enforce an order of the New York State Commission, and a violation of a court order, issued in

such enforcement proceeding before criminal or civil contempt proceedings may be instituted. A criminal contempt in New York is punishable by a fine of up to $250, imprisonment not exceeding 30 days, or both. (Judiciary Law §751) The defendant is not entitled to a jury trial unless the contempt arises out of a labor dispute. (Judiciary Law §753-a) In a civil contempt proceeding in New York a fine must be imposed on the offender equal to actual loss or injury and is payable to the aggrieved party, if the case is not one where an action to recover the damages is specifically prescribed by law. If actual loss or injury is not shown, a fine may be imposed not exceeding complainant's costs and expenses plus $250, and is payable to the aggrieved party. (Judiciary Law §773) The offender may be imprisoned if his misconduct consisted of the omission to perform an act within his power, but only until he has performed such act. He may also be imprisoned for up to six months in lieu of payment of the fine imposed. Where the misconduct does not consist of the failure to perform an act, the offender may be imprisoned for a reasonable time, not exceeding six months. (Judiciary Law §774)

Part III

Title VII Equal Employment Opportunity and the New York Law Against Discrimination

I Federal-State Relationship

Title VII of the Civil Rights Act of 1964 insures a continuing primary role for state law and state enforcement agencies in the area of equal employment opportunity. The Congress has clearly indicated that this is its purpose - that the federal power should be invoked only where the state cannot, or will not, do the job. Three facets of the statutory scheme bear witness to this intention; first, the express preservation of the continuing full force and effect of state laws and remedies; second, the provision deferring federal proceedings in favor of state proceedings for stated periods of time; third, the provision authorizing federal-state cooperation and agreements ceding jurisdiction to the states.

A. Preservation of State Laws

Section 1104 of the Act states that nothing contained in it shall be construed to indicate an intent on the part of Congress to occupy the field of any title to the exclusion of state laws on the same subject matter, and that the Act shall not be construed to invalidate any provision of state law unless that provision of state law is inconsistent with any of the purposes or provisions of the Act. Similarly, Section 708 states that nothing in Title VII shall exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future state law, unless such law requires or permits an act unlawful under Title VII.

B. Deference to State Proceedings

A person aggrieved by an alleged unlawful employment practice under Title VII can file a charge with the newly created federal Equal Employment Opportunity Commission (§706(a)). If, however, the alleged practice occurred in a state which has a law prohibiting it and authorizing some authority to seek relief or to institute criminal proceedings, at least 60 days before filing such a charge, the aggrieved person must have "commenced" a state proceeding; a state proceeding is "commenced" by the filing of a written signed statement of the facts or, if any other requirement is imposed, by the sending of such statement by registered mail (§706(b)). When and if the aggrieved person thereafter goes to the federal Commission, that Commission must file a copy of the charge before it with the state agency (§706(d)). A member of the federal Commission can himself file a charge (§706(a)). In that case, if there is a state authority, it must, upon request, be given at least 60 days to act before the Commission takes any action (§706(c)).

The federal Commission has no enforcement power; it has 30 days, which it can extend to 60 days, within which to seek voluntary compliance with Title VII. If voluntary compliance is unattainable, the federal Commission so notifies the individual, who then has 30 days within which he may bring a civil action for an injunction and affirmative relief such as hiring, reinstatement and back pay. The federal district court in which such an action is brought has the discretion, upon request, to stay the case for up to 60 days pending the termination of state proceedings [§706(e)].

While a charge is before the federal Commission, state enforcement

proceedings can still be going on. Thus an agency, such as the New York State Commission for Human Rights, would have had a matter before it for the time taken by the federal Commission in seeking voluntary compliance in addition to the 60 days notice required, when the court action is first brought. There would then be the possibility of a judicial stay of the Title VII court action for another 60 days. It would appear that the two proceedings, the state administrative or ensuing state court enforcement proceeding, and the Title VII court action, could thereafter proceed simultaneously.

C. Cooperation and Agreements

As soon as is feasible the President is to convene a conference or conferences for the purpose of enabling leaders of groups whose members will be affected by Title VII to become familiar with the rights and obligations imposed by it, and to make plans for the fair and effective administration of the title. Representatives of state agencies engaged in furthering equal employment opportunity are to be invited to participate in those conference (§716(c)). The federal Commission may cooperate with state and local agencies administering fair employment practice laws; may with the consent of such agencies, utilize their services and employees; and may reimburse those state and local agencies with funds specifically appropriated for that purpose. The federal Commission may enter into a cession agreement with a state agency under which it shall refrain from processing charges in specified kinds of cases. Such an agreement could bar civil actions by aggrieved persons in the specified classes of cases, and could relieve persons subject to Title VII of the record-keeping requirements imposed by it (§709(b)).

II Unlawful Employment Practices

A. Prohibitions

The operative sections of Title VII, (i.e. Sections 703, 704, 706 and 707), do not become effective until July 2, 1965, which is one year after the date of enactment of Title VII.

Section 703 declares that discrimination because of an individual's race, color, religion, sex or national origin in employment, employment referrals, labor organization activities, and apprenticeship or other training programs is an unlawful employment practice.

> "Sec. 703(a) It shall be an unlawful employment practice for an employer--
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin.
>
> (b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.
>
> (c) It shall be an unlawful employment practice for a labor organization --
>
> (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;
>
> (2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training."

Section 704 makes retaliation against certain persons and the publication or printing of notices or advertisements indicating any preference, limitation, specification or discrimination based on race, color, religion, sex or national origin, unlawful employment practices.

"Sec. 704(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment."

a. Prohibitions compared with the New York Law Against Discrimination

The prohibitions of the New York Law Against Discrimination (hereafter referred to as LAD) apply, similarly, to discrimination because of race, color, creed and national origin. The prohibitions and enforcement provisions of the LAD do not,at the present time, apply to discrimination because of sex. However section 291 of the LAD declares that the opportunity to obtain employment without discrimination because of sex is a civil right. The New York Law proscribes discrimination against persons between the ages of 40 and 65, while the Civil Rights Act merely provides that the Secretary of Labor shall study the factors which tend to result in employment discrimination because of age (§715).

The discriminatory actions of employers prohibited by the two laws are fairly coextensive. Both cover the hiring and discharge of employees. The LAD uses the words, "to refuse to hire or employ or to bar or to discharge from employment" [§296.1(a)] while the Act uses the words, "to fail or refuse to hire or to discharge" [§703(a)(1)]. The inclusion of the words, "to fail...to hire" in Title VII does not make it broader than the LAD since an intentional failure to hire is within the ambit of the language "to refuse to hire" or "tc bar...from employment" that is used in the LAD. Title VII's language, "or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment" is almost identical to the LAD's clause "or to discriminate against such individual in compensation or in terms, conditions or privileges of employment."

Title VII uses the language, "(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee." [§703(a)] Any action of an employer which would under Title VII, constitute an unlawful limitation, segregation or classification of employees would also constitute discrimination in the "terms, conditions or privileges of employment" (the term used in the LAD) as the latter term is broad enough to encompass the entire employment relationship.

Similarly, the respective proscriptions on activities of labor organizations are fairly coextensive. Title VII uses the words, "to exclude or to expel from its membership, or otherwise to discriminate against any individual" [§703(c)(1)] while the LAD reads "to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer." [§296.1(b)].

Title VII, in addition, specifically prohibits the discriminatory limitation, segregation or classification of membership, the classification or failure or refusal to refer any individual for employment, and causing or attempting to cause an employer to discriminate. [§703(c)(3)]. The broad language of the LAD clause, "to discriminate in any way against any of its members or against any employer or any individual employed by an employer" covers much of the same ground. This LAD clause proscribes the discriminatory limitation, segregation or classification of its membership by a labor organization. It also covers the discriminatory classification for referral and the discriminatory failure or refusal to

refer union members or individuals employed by an employer. A labor organization's discriminatory classification for referral of an individual who is neither a member of the organization nor an employee would be covered by the LAD as an attempt "to aid, incite, compel or coerce the doing of" an unlawful discriminatory practice by the employer to whom the referral was made. A labor organization's attempt to cause an employer to discriminate would also constitute aiding, abetting, inciting, compelling or coercing a discriminatory practice or attempting to do so, within the coverage of the LAD.

Title VII states that an employment agency shall not "fail or refuse to refer for employment, or otherwise discriminate against any individual" and shall not discriminatorily "classify or refer for employment any individual." (§703(b)). The LAD makes it unlawful for an employment agency (or an employer):

> "to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color or national origin, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification." (LAD §296.1(c)).

While this provision does not specifically apply to the act of referring, it renders unlawful the various forms of preliminary screening upon which the actual discriminatory referral is frequently based. The act of discriminatorily referring or failing to refer for employment usually constitutes an attempt to aid, abet, incite, compel or coerce the doing of a forbidden act and as such is within Section 296.6 of the LAD.

Title VII prohibits discriminatory notices and advertisements printed or published or caused to be printed or published, by an employer relating to employment, by an employment agency relating to any classification or referral for employment, and by a labor organization relating to membership in it or any classification or referral for employment by it. (§704(a)). The LAD prohibits discriminatory notices and advertisements by employers and employment agencies. (§296.1(c)). A discriminatory notice or advertisement by a labor organization would violate the broad proscription of discrimination by a labor organization against a member, employer or employee, "in any way." (§296.1(b)).

The LAD specifically proscribes pre-employment inquiries and the use of application forms expressing any discriminatory limitation or specification, or the intent to make one. Title VII does not specifically do so. The New York Commission for Human Rights can force employers and employment agencies to desist from using such a form or question without having to show that it has been used in a particular situation for a discriminatory purpose. Under Title VII discriminatory forms and questions can no doubt be used as evidence to support particular charges of discrimination, but do not appear to be themselves illegal.

The LAD specifically prohibits aiding, abetting, inciting, compelling or coercing the doing of acts forbidden by the LAD, or attempting to do so. Title VII contains nothing comparable, except that section 703(c)(3) prohibits a labor organization from causing or attempting to cause an employer to discriminate. The difference in coverage is less than would appear on the face, since under federal law, a conspiracy of two or more persons "to injure, oppress, threaten, or intimidate any citizen in the

free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States" is a felony punishable by a fine up to $5,000, imprisonment up to ten years, or both. (18 U.S.C. §241) Aiding, abetting, inciting, compelling and coercing is also reachable under Title VII to the extent that injunctions can in certain limited circumstances, be enforced against persons other than the defendant in an action.

The LAD prohibits retaliation against "any person" who opposes practices forbidden by it, or who files a complaint, testifies or assists in a proceeding under the LAD. Title VII contains similar prohibitions of retaliation. Section 704 protects "any individual" from retaliation by an employment agency but protects only a "member or applicant for membership" from retaliation by a labor organization and protects only "his employees or applicants for employment" against retaliation by an employer. While the LAD seems to protect a larger group of persons from retaliation, under federal law acts of retaliation which also constitute the influencing or injuring of parties, witnesses or jurors are felonies. (18 U.S.C. §§1503, 1505)

B. Entities Covered

Section 701 lists the definitions, for the purpose of the Title, of the terms (a) person, (b) employer, (c) employment agency, (d) labor organization, (e) labor organization engaged in an industry affecting commerce, (f) employee, (g) commerce, (h) industry affecting commerce and (i) State.

The term "Commerce" includes trade, transportation and communication among the several states, or between a state and a place outside of it, or between points in the same state through a point outside of it, or within the District of Columbia or United States possession. Any activity, business or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, including any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, is an "industry affecting commerce" within Title VII. The term "person" includes individuals, partnerships, corporations and certain other entities. A person engaged in an industry affecting commerce will become an "employer" subject to Title VII:

> on July 2, 1965, if he has 100 employees;
> on July 2, 1966, if he has 75 employees;
> on July 2, 1967, if he has 50 employees; and
> on July 2, 1968 or thereafter, if he has 25 or more employees for each working day in twenty or more calendar weeks in the current or preceding calendar year. The term "employer" includes "any agent of such a person".

The term "employment agency" as used in the title means any person regularly undertaking with or without compensation, to procure employees for an employer or opportunities to work for an employer. The term includes an agent of such a person. The United States Employment Service and the system of state and local employment services receiving federal assistance are included in the term, but other agencies of the federal, state and local governments are specifically excluded. All employment agencies and those labor organizations that maintain hiring halls are covered as of the effective date, July 2, 1965.

Labor organizations must be "engaged in an industry affecting commerce" to be within the definition and ambit of the Act. The term includes any organization, agency, employee representation committee, group, association or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment. The term also includes any conference, general committee, joint or system board, or joint council engaged in an industry affecting commerce, which is subordinate to a national or international labor organization.

A labor organization is deemed to be "engaged in an industry affecting commerce" if it either:

1. Maintains a hiring hall or office which procures employees or opportunities to work, or

2. Has 100, 75, 50 and 25 members (for composite organizations the aggregate number of the membership of the member organizations is used) in each succeeding year beginning July 2, 1965, and

   (1) is the certified representative of employees under the National Labor Relations Act or the Railway Labor Act, or

   (2) represents the employees of an employer engaged in an industry affecting commerce, or

   (3) has chartered an organization within (1) or (2), or

   (4) has been chartered by such an organization as its local or subordinate body, or

   (5) is a conference, general committee, joint or system board or joint council subordinate to a national or international labor organization which includes a labor organization under (1), (2), (3), or (4).

b. Compared with Entities Covered by the IAD

Title VII is based on Congress' power under the Constitution to regulate interstate commerce. The activities regulated by Title VII must be connected with interstate commerce or commerce within a U.S. possession.

The LAD is based on the police power and, therefore, an employer, employment agency or labor organization subject to the LAD need not affect interstate commerce. As defined in the LAD the term "employer" includes those employing six or more persons.

The LAD definition of the term "employment agency" as "any person undertaking to procure employees or opportunities to work" is similar to the definition of that term in Title VII. While Title VII specifies "with or without compensation," the LAD includes both by not making compensation a part of the definition. There is a question as to whether the use of the adverb "regularly" to describe the kind of activities which subject an employment agency to Title VII, makes the federal statute less broad in its coverage of employment agencies than the LAD is. Title VII excludes federal, state and local government agencies other than the Employment Service from its definition of "employment agency." The LAD does not exclude government agencies.

The LAD definition of the term "labor organization" is similar to the definition of that term in Title VII. All labor organizations are subject to the LAD regardless of the number of members they have or of whether they maintain hiring halls.

C. Limitations and Exceptions

There are important limitations on both the coverage and the prohibitions of Title VII. There are, in addition, many exclusions and exemptions from the definitions of the terms, from the coverage of the Title and from the prohibitions of the Title.

In General, the proscriptions of the Title are of discrimination against individuals because of their race, color, religion, sex or national origin. Affirmative relief may be given to an individual where a factual finding

that he has been discriminated against is made. Relief then serves to rectify a wrong and to restore the injured party to his original position. The individual is not preferred, but is made whole. The last paragraph of section 703 imposes a limitation designed to insure that Title VII shall not make group imbalance actionable. Section 703(j) states that nothing contained in Title VII shall be interpreted to require anyone subject to the Title to grant preferential treatment to any person or group on account of an imbalance which may exist with respect to the number of persons of any race, color, religion, sex or national origin in the covered employment, labor organization or training program in comparison with the total number or percentage of such persons in any community, state, section or other area, or in the available work force therein. A finding or group imbalance in a particular situation can not be used as the basis for an order under Title VII. Otherwise "affirmative relief," would become "preferential treatment", since a finding of imbalance does not establish that any particular individual has been discriminated against.

A question arises as to the extent of this limitation. It apparently means that a finding that a person has been discriminated against cannot be based on evidence which tends to establish only that an imbalance exists. A judgment pursuant to a finding of discrimination based solely on such evidence, and which ordered affirmative relief, would be subject to attack on appeal. A judgment based only upon a finding of the complete absence of persons of a particular race, color, religion, sex or national origin who were readily available in the work force, might also be vulnerable on the ground that only imbalance has been proved. The question of what evidence in addition to complete absence of group representation is necessary to

establish discrimination has been a recurring one before the New York State Commission for Human Rights.

To be covered by Title VII employers must be engaged in an activity either in commerce or in which a labor dispute would obstruct commerce or the free flow of commerce. Covered employers must have had the requisite number of employees (ultimately 25) for each of twenty weeks, either in the current calendar year or in the preceding calendar year. It would appear that this last requirement is cumulative so that once an employer has had the requisite number of employees for twenty weeks (not necessarily consecutive) in any year, he would then be covered for that and the subsequent year regardless of whether he continued to have that number of employees. The United States, corporations wholly owned by it, Indian tribes, States and their subdivisions, and bona fide private membership clubs exempt from taxation under section 501(c) of the Internal Revenue Code of 1954 are excluded from the term "employer." The statute states that the President shall utilize his existing authority to effectuate the policy of equal employment opportunity for Federal employees.

Section 702 exempts from the application of the Title (1) the employment of aliens "outside any State," (2) the employment of individuals of a particular religion by religious groups to perform work connected with their religious activities and (3) the employment by an educational institution of individuals to perform work connected with its educational activities. Section 703(e) states that it is not an unlawful employment practice for an educational institution owned, supported or managed by a religious society or engaged in the propagation of a particular religion, to employ employees of a particular religion.

The wording of these provisions should be noted carefully since they differ with respect to the employees protected, the employers exempted, the type of work covered, the location of the work covered and the bases of discrimination permitted. Section 702 exempts the employment of aliens outside any "State," since, however, the definition of the term "State" specifically includes all United States territory [§701(i)] it is the employment of aliens outside of United States territory that is exempted.

There appears to be an overlapping of the exception, in section 702, of the employment of individuals to perform work connected with the educational activities of an educational institution and of the exception, in section 703(e), of the employees of a religious society's educational institutions. Since neither of the two exceptions appears to be exclusive, it would seem that a religious society's education institutions may make use of both exceptions. The religious society itself is exempt as to the employment of persons of a particular religion to perform work connected with its religious activities. A religious society's educational institution would appear to be exempt under section 702 with respect to the employment of individuals to perform work connected with its educational activities regardless of the basis upon which it discriminates. The exemption under section 703(e) for a religious society's educational institutions as to employees generally, including those not connected with educational activities, is limited to the hiring and employment of employees of a particular religion.

In addition to the exclusion of Indian tribes from the definition of "employer" there is an exemption for any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of giving preferential treatment to Indians living on or near a reservation.

Among the actions excepted from the phrase "unlawful employment practice" are: actions taken with respect to a member of the Communist Party or any other organization required to register as Communist-action or Communist-front by final order of the Subversive Activities Control Board, [§703(f)]; and the failure or refusal to hire and employ, or refer for employment, or the discharge of an individual who has not, or has ceased to fulfill a requirement imposed in the interest of national security under any security program pursuant to a U.S. statute or Presidential Executive order. [§703(g)].

Section 703(h) provides that it is not an unlawful employment practice for an employer to apply different standards of compensation or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production, or to employees who work in different locations, provided that those differences are not the result of an intention to discriminate. It is not an unlawful employment practice to give and act upon a professionally developed ability test provided it is not designed, intended or used to discriminate on the proscribed grounds (race, color, religion, sex or national origin). It is not an unlawful employment practice for an employer to differentiate on the basis of sex in determining compensation if the differentiation is authorized under the Fair Labor Standards Act, 29 U.S.C. 206(d). As the cited statute allows only differentials based upon (1) a seniority system, (2) a merit system, (3) a system which measures earnings by quantity or quality of production, or (4) a differential based upon any factor other than sex, in actuality no sex-based wage differentials are excepted from coverage by this provision.

In those instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or enterprise involved, discrimination on the basis of religion, sex or national origin by an employer, employment agency, a labor organization or a committee controlling apprenticeship or training is not an unlawful employment practice. [§703(c)(1)].

Finally, the title may not be construed to repeal or modify any Federal, state, territorial or local law creating special rights or preference for veterans. (§712)

c. Limitations and Exceptions Compared with the LAD

In contrast to Title VII, which covers only employers having 25 or more employees, the LAD covers employers who have six or more employees. Whereas the United States, its wholly owned corporations, the states and their subdivisions are specifically exempted from the Title VII definition of "employer", New York State and its subdivisions are included in the LAD term "employer" and have been held to be subject to it. [Board of Education v. Carter, 14 NY2d 138 (1964)] The LAD's exclusion of "a club exclusively social" would appear to exempt fewer clubs than Title VII's exemption of "a bona-fide private membership club", which is not specifically limited to purely social clubs.

Under the LAD the term "employer" does not include a fraternal, charitable, educational (other than public education) or religious association not organized for private profit. All employees of such organizations are excluded from the LAD as to all the bases of discrimination. The comparable Title VII exclusions are narrower. Public educational institutions have been held to be employers covered by the LAD (Board of

Higher Education v. Carter, supra), whereas they are excluded from the term employer under Title VII.

Title VII defines "employee" as an individual employed by an employer. The LAD excludes from its definition of "employee" and from coverage under the LAD "any individual employed by his parents, spouse or child, or in the domestic service of any person" (§292.6). Such individuals are not specifically excluded from Title VII. They would, however, be covered by Title VII only if the business activity in which such a person was employed by a parent, spouse or child affected commerce. Domestic service probably does not affect commerce.

Under Title VII it is not unlawful to discriminate on the basis of religion, sex or national origin where religion, sex or national origin constitutes a bona fide occupational qualification reasonably necessary to the normal operation of a particular business. Note that this bona fide occupational qualification exception does not allow discrimination on the basis of race or color. The comparable LAD provisions forbid discriminatory specifications as to age, race, creed, color or national origin "unless based on a bona fide occupational qualification" [§296.1(c), §296.1-a(c)]. Under Title VII, the bona fide occupational qualification exception applies to hiring and employment by employers, classification and referral by employment agencies and labor organizations, admission to and employment in apprenticeship or other training programs, and to the printing or publishing of notices or advertisements.

Many activities specifically excepted from the operation of Title VII are at present covered by the LAD. The fact that the Congress intended that such activities should not be subject to Title VII does not

necessarily confer an exception from the operation of the LAD. Section 1104 states that the act shall not be construed to indicate an intention to exclude state laws from the field in which any title operates nor to invalidate any provision of state law unless it is inconsistent with the purpose of the Act or any provision of the Act. The question may arise, however, as to whether the coverage by the LAD of an activity specifically excepted from Title VII is inconsistent with a purpose of Title VII.

For example, §703(i) of Title VII specifically exempts enterprises on or near an Indian reservation with respect to a publicly announced practice of giving preferential treatment to Indians. A question might arise as to whether an attempt to subject such a practice to the LAD's proscriptions would be inconsistent with the purposes of section 703(i) and therefore invalid.

III Equal Employment Opportunity Commission

A. The Federal Commission

Section 705 of Title VII creates the Equal Employment Opportunity Commission as an agency of the federal government. This federal Commission is to be composed of five members, not more than three of whom shall be members of the same political party. They are to be appointed to 5 year overlapping terms, one of which shall become vacant each year, after the original members of the Commission have served terms of one through five years. The members of the Commission are to be appointed by the President by and with the advice and consent of the Senate.

The President shall designate one member to serve as Chairman and one member to serve as Vice Chairman of the Commission. The Chairman is responsible for the administrative operations of the Commission, and shall appoint such officers, agents, attorneys, and employees as the Commission deems necessary to assist it in the performance of its functions. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

A vacancy in the Commission does not impair the right of the remaining members to exercise all the powers of the Commission. Three members of the Commission shall constitute a quorum. The Commission shall report to Congress and the President at the close of each fiscal year.

The Commission shall have power:

(1) to cooperate with and, with their consent, utilize regional, state, local, and other agencies, both public and private, and individuals;

(2) to pay witness fees;

(3) to furnish to persons subject to Title VII such technical assistance as they may request to further their complaince;

(4) upon the request of an employer or labor organization whose employees or members refuse or threaten to refuse to cooperate in effectuating the provisions of Title VII, to assist in such effectuation by conciliation or such other remedial action as is provided by this title;

(5) to make technical studies appropriate to effectuate the purposes and policies of Title VII and to make the results available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section 706, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters. [§705(g)]

The Commission has the authority to issue, amend or rescind suitable procedural regulations to carry out the provisions of Title VII. Those regulations must conform with the standards and limitations of the Administrative Procedure Act. [§713(a)]

It is felony to forcibly assault, resist, oppose, impede, intimidate or interfere with the officers, agents, and employees of the Commission while they are engaged in, or on account of, the performance of their official duties. (§714, incorporating by reference, Tit. 18 U.S. Code § 111).

Every employer, employment agency and labor organization subject to Title VII must make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary or appropriate for the enforcement of Title VII or the regulations or orders issued under Title VII. Employers,

employment agencies and labor organizations subject to Title VII must preserve those records for such periods and make such reports from them as the Commission shall prescribe by regulation or order after public hearing, as reasonable, necessary or appropriate for the enforcement of Title VII or the regulations or orders issued thereunder. The Commission shall, by regulation, require each employer, labor organization and joint labor-management committee subject to Title VII, which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of the Title, including, but not limited to, a list of applicants with the chronological order in which their applications were received. They shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. [§709(c)]

The above provisions of section 709(c), requiring the keeping of records and the making of reports from those records, do not apply to matters occurring in any state or political subdivision thereof which has a fair employment practice law during any period in which the employer, employment agency, labor organization, or joint labor-management committee is subject to such law. However the Commission may require such notations on records which the employer etc. keeps or is required to keep as are necessary because of difference in coverage or methods of enforcement between the state or local law and the provisions of Title VII. [§709(d)] There is a question as to the extent to which the clause regarding differences in methods of enforcement can be used to impose record-keeping requirements on persons who would otherwise be exempt from such requirements because they are subject to a state or local law. Query whether the absence of state or local record-keeping requirements of

general applicability, or even the absence of a requirement for the keeping of records regarding one specific type of information, constitutes a sufficient difference in the method of enforcement to impose a record-keeping requirement under section 709.

Executive Order 10925, issued March 6, 1961, and other executive orders and the rules and regulations issued under them may require government contractors and subcontractors to file reports relating to their employment practices. An employer subject to such a requirement and who is substantially in compliance with it shall not be required by the Commission to file additional reports pursuant to section 709(c). [§709(d)]

An employer, employment agency, labor organization or joint labor-management committee which believes that undue hardship would result from the application to it of any regulation or order issued under section 709, can either apply to the federal Commission for an exemption from its application or bring a civil action in the United States District Court where the records are kept. If the Commission or the court finds that the application of the regulation or order would impose an undue hardship, it may grant appropriate relief. [§709(c)]

The Commission has the authority to require the production of relevant documentary evidence and to examine witnesses under oath in regard to a charge filed with the Commission under section 706. [§710(a)] In connection with the investigation of a charge under section 706, the Commission and its representatives shall at all reasonable times have access to any evidence of any person being investigated or proceeded against, that relates to unlawful employment practices and is relevant to the charge. [§709(a)]

The Commission may serve a demand on any person named in a charge under section 706 for permission to examine or to copy evidence. A person upon whom such a demand has been served might possibly fail or

refuse to comply with it. A person required to comply with the provisions of section 709(c) or (d), regarding the keeping of records and the making of reports in relation to those records, might possibly fail or refuse to do so. Finally a person might possibly fail or refuse to comply with the Commission's demand that he give testimony under oath or produce documentary evidence. In all such cases, upon the application of the Commission, the United States District Court for the district in which the person is found, resides, or transacts business, shall have jurisdiction to issue an order requiring the person to comply with the provisions of section 709(c) or (d) or to comply with the Commission's demand. However the attendance of a witness may not be required outside the state where he is found, resides or transacts business and the production of evidence may not be required outside the state where it is kept. [§710(b)] The defendant in any such proceeding brought by the Commission under section 710(b) to enforce its demand, may petition the court for an order modifying or setting aside the demand of the Commission. [§710(d)]

Within twenty days after the service of a demand under section 709 or 710, the person served may file a petition for an order modifying or setting aside the Commission's demand in an appropriate District Court and may serve the petition upon the Commission. "The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court." The petition shall specify each ground which is relied upon in seeking relief and may be based upon any failure of the demand

to comply with the provisions of Title VII or with the limitations generally applicable to compulsory process, or upon any constitutional or other legal right or privilege of the person. No objection which is not raised in such a petition may be urged in defense of a proceeding initiated by the Commission under section 710(b) to enforce its demand, unless the Commission commences its proceeding within twenty days of the service of its demand upon the person, or unless the court determines that the defendant could not reasonably have been aware of that ground of objection. [§710(c)]

Every employer, employment agency and labor organization shall post and keep posted upon its premises a notice to be prepared or approved by the Commission. The notice shall be posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted. The notice shall set forth excerpts from, or summaries of, the pertinent provisions of Title VII and information pertinent to the filing of a complaint. [§711(a)] A willful violation of this notice posting requirement is punishable by a fine of not more than $100 for each separate offense. [§711(b)]

The Commission can cooperate with state and local agencies which administer state fair employment practice laws. The Commission can utilize the services and employees of those state and local agencies and, notwithstanding any other provision of law, may reimburse them and their employees for services rendered in assisting the Commission. It may do this for the purpose of carrying out its functions and duties under Title VII and within the limitations of funds appropriated specifically for the purpose of obtaining those services. [§709(b)]

The Commission can enter into agreements with state or local agencies in furtherance of its efforts to cooperate with them. Those agreements may provide that the Commission shall refrain from processing charges in specified cases or classes of cases. They may also deprive persons of the ability to bring civil actions under section 706 in the specified cases or classes of cases. The agreements may relieve persons in the state or locality of the record-keeping and report-making requirements of section 709. The Commission may rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of Title VII. [§709(b)]

B. Compared with the New York State Commission for Human Rights

The New York State Commission for Human Rights is composed of seven members appointed by the Governor by and with the advice and consent of the Senate for five-year terms. There is no restriction as to the party affiliations of the Commissioners. The Governor shall designate one member as Chairman and may also designate a member to serve as Vice-Chairman. The Chairman is the chief executive officer of the New York Commission.

As with the federal Commission, three members of the New York Commission constitute a quorum for the purpose of conducting business. A vacancy in the Commission does not impair the right of the remaining members to exercise all the powers of the Commission. The Commission reports to the Governor and the Legislature each year.

The Equal Employment Opportunity Commission functions only in the field of employment. The jurisdiction of the New York State Commission for Human Rights extends to discrimination in the fields of employment, public accommodations, housing, and to the use of the facilities of non-sectarian, tax-exempt educational institutions.

The New York Commission has powers similar to the powers specifically granted to the Federal Commission by section 705(g), quoted above. The most important distinction between the Federal and State Commissions is that when a charge is filed with it, the Federal Commission can only seek to obtain voluntary compliance with Title VII, while the New York Commission has the power to secure compliance with the LAD through the issuance of an order enforceable by the courts, whenever a complaint alleging a violation of the LAD is filed with it.

The New York Commission has the power to compel the attendance of witnesses and take their testimony under oath and to require the production for examination of books and records. (LAD §295.7)

The Law Against Discrimination contains no specific statutory provision comparable to section 711 of Title VII, which requires employers, employment agencies and labor organizations to post notices and provides that a wilful violation is punishable by a fine of not more than $100. However the New York Commission has, pursuant to its rule-making power, adopted General Regulation No. 1 which requires employers, employment agencies, labor organizations and labor management committees to post the Commission's notices indicating the substantive provisions of the Law Against Discrimination and the places where complaints may be filed.

The Law Against Discrimination contains no provision of general applicability requiring persons subject to it to keep records or make reports. Section 297.2 of the Law Against Discrimination states that if the Commission finds after a hearing that a respondent named in a particular complaint has engaged in an unlawful discriminatory practice, the Commission may include in its order, a requirement for report of the manner of compliance. Pursuant to this provision, the Commission has, by order, required certain respondents found to have committed unlawful discriminatory practices to keep specified records and to make certain reports. Section 295.5 of the Law Against Discrimination gives the New York Commission power to adopt "suitable rules and regulations to carry out the provisions of this article, and the policies and practice of the commission in connection therewith." It would appear that the Commission is thereby empowered to adopt regulations of general applicability imposing record-keeping and report-making requirements on those subject to the employment provisions of the Law Against Discrimination.

Each member of the Federal Commission may himself file a charge alleging a violation of Title VII whenever he has reasonable cause to believe that a violation has occurred. The individual members of the New York Commission do not have the power to themselves institute complaints alleging violations of the Law Against Discrimination. The New York Commission has the power to initiate informal investigations into specific practices but, like the Federal Commission, it does not have any enforcement jurisdiction in those informal investigations and can only seek to obtain voluntary compliance. The New York Attorney General and the New York Industrial Commissioner have the power to file

complaints with the Commission alleging violations of the Law Against Discrimination. The New York Commission may refer matters warranting further action to the Attorney General with the recommendation that a complaint be filed with the Commission and may thus obtain enforcement jurisdiction in an informal investigation.

The Federal Commission can refer matters to the U.S. Attorney General, recommending his intervention in a civil action by an aggrieved person under section 706 or recommending the institution of a civil action by the Attorney General under section 707. The New York Commission can request the N.Y. Attorney General to institute or defend a civil action or proceeding.

The Federal Commission may commence contempt proceedings to compel compliance with an order issued by a court in a civil action instituted by an aggrieved person or by any person whom a Commission member's charge alleged was aggrieved. The New York Commission may institute contempt proceedings to compel compliance with an enforcement order issued by a court in a proceeding instituted by the Commission itself, to secure a court order enforcing the Commission order.

Once a complaint has been filed, the New York Commission determines whether to follow it through to the institution of a court enforcement proceeding. The New York Commission can go forward with a case even though the complainant no longer desires to prosecute the matter. The New York Commission need not accede to a complainant's request that his complaint be withdrawn. The Federal Commission on the contrary can not, after a charge has been filed, decide to institute a civil action, but is dependent on the volition of the person aggrieved.

IV. Proceedings

A. Charges Before the Federal Commission

A person claiming to be aggrieved may file a charge with the Equal Employment Opportunity Commission. The charge must be in writing under oath, must set forth the facts on which it is based, and must allege that an employer, employment agency or labor organization has engaged in an unlawful employment practice. Whenever a member of the Equal Employment Opportunity Commission has reasonable cause to believe that a violation of Title VII has occurred, he may file a written charge, setting forth the facts upon which it is based, alleging that an employer, employment agency or labor organization has engaged in an unlawful employment practice. [§706(a)]

In a state or a political subdivision of a state which has a state or local law prohibiting an unlawful employment practice alleged to have occurred in it and authorizing a state or local authority to grant or seek relief or to institute criminal proceedings with respect to the alleged practice, the state or local authority is entitled to notice of the charge. An aggrieved person cannot file a charge with the Equal Employment Opportunity Commission until sixty days after proceedings have been commenced under the state or local law, unless the state or local proceeding based on the same practice has been terminated. During the first year after the effective date of the state or local law the sixty-day period is extended to 120 days. If the State or local authority imposes any requirement for the commencement of a proceeding other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to be commenced,

for the purpose of the notice requirement of Title VII, when a written and signed statement of the facts is sent by registered mail to the appropriate state or local authority. [§706(b)]. The "appropriate state or local authority" would appear to be one authorized to grant or to seek relief or to institute criminal proceedings with respect to the alleged practice.

A member of the Equal Employment Opportunity Commission can immediately file a charge alleging that an unlawful employment practice has occurred, regardless of whether a state or local law prohibits the alleged practice. Before taking any action with respect to a Commission member's charge alleging that an unlawful employment practice has occurred in a state or political subdivision having such a law, the Commission shall notify the appropriate state or local officials. Upon request, the Commission must afford them a reasonable time, but not less than sixty days unless they request a shorter period, to act under the state or local law to remedy the alleged practice. During the first year after the effective date of the state or local law the sixty-day period shall be extended to 120 days. [§706(c)]. The "appropriate state or local officials" would appear to be officials of the authority authorized to grant or seek relief or to institute criminal proceedings with respect to the practice.

An aggrieved person or a member of the Equal Employment Opportunity Commission must file a charge before that Commission within ninety days after the alleged unlawful employment practice has occurred. If a person aggrieved has followed the procedure set forth in section 706(b) of giving notice to a state or local authority, then he may file his charge within 210 days after the alleged practice has occurred, or within thirty days after receiving notice that the state or local agency has terminated the

proceeding under state law, whichever is earlier. Where an aggrieved person has given a state or local authority notice of an alleged unlawful employment practice, and thereafter makes his charge before the Equal Employment Opportunity Commission, the Commission shall file a copy of the charge with the state or local agency. [§706(d)].

The Equal Employment Opportunity Commission shall furnish the employer, employment agency or labor organization named as the respondent in the charge with a copy of the charge. The Commission shall make an investigation of the charge but shall not make the charge public. If the Commission determines, after investigation, that there is reasonable cause to believe that the charge is true, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. Nothing said or done during and as part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission who in any manner makes any information public in violation of the above provisions shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall be fined not more than $1000 or imprisoned not more than one year. [§706(a)].

After a charge has been filed, the Commission has thirty days within which to secure voluntary compliance. When a charge is filed by a member of the Commission and notice is given to a state or local authority, the Commission's thirty-day period commences after the period requested by the state or local authority to act to remedy the practice has run. The Commission may extend its own time to secure voluntary compliance from thirty days to not more than sixty days upon a determination by the

Commission that further efforts to secure voluntary compliance are warranted. If it fails to secure voluntary compliance within the allowed period of thirty to sixty days, the Commission shall notify the person aggrieved of the failure to secure voluntary compliance. [§706(e)] It is unclear whether, in the case of a charge filed by a member of the Commission, each person whom the charge alleges was aggrieved must be notified of the failure to secure voluntary compliance.

a. Comparison and Interaction with Complaints Under the LAD

Under the LAD, a complaint may be filed, not only by the person claiming to be aggrieved, but also by his attorney. The complaint must be in writing, signed and verified. The New York Attorney General, the New York Industrial Commissioner and any employer whose employees refuse or threaten to refuse to cooperate with the LAD may also file verified written complaints.

The complaint may be filed immediately, as there is no requirement in the LAD that notice be given to any other agency. As under Title VII, a complaint by an aggrieved person under the LAD must be filed within ninety days after the alleged act of discrimination. The New York Attorney General and the Industrial Commissioner have, however, six months after the alleged unlawful discriminatory practice within which to file a complaint. Thus these two state officials can initiate a LAD proceeding based on the grievance of an individual when a complaint by the individual himself would no longer be timely under either Title VII or the LAD.

Title VII requires an aggrieved person in New York to send a written, signed statement of the facts to the appropriate state or local authority before filing a charge with the federal Commission. Apparently the

appropriate state or local authority is one which may grant or seek relief or institute criminal proceedings. Since in New York State the municipal authorities, such as the New York City Commission on Human Rights, have no jurisdiction over complaints regarding employment, notice will presumably have to be given to the State Commission for Human Rights before a charge can be filed with the federal Commission. Section 291 of the LAD states that the opportunity to obtain employment without discrimination because of race, creed, sex, color or national origin is a civil right. Sections 700 and 701 of the New York Penal Law state that it is a misdemeanor to subject a person to discrimination in his civil rights because of race, creed, color or national origin. Both the District Attorney of the county in which the alleged violation occurred and (pursuant to section 63.10 of the Executive Law) the New York Attorney General, can institute criminal proceedings to punish a violation of section 700 of the Penal Law. A question might therefore arise as to whether notice given to the New York Attorney General or to the District Attorney of the county would satisfy the condition precedent to the filing of a charge before the federal Commission by an aggrieved person.

The Title VII notice requirement is that an aggrieved person send a written signed statement of the facts. In contrast to this requirement, a complaint filed with the New York Commission must be signed and verified. An aggrieved person could, if he so chose, comply with the requirement of notification without filing a verified complaint over which the Commission for Human Rights would have enforcement jurisdiction.

When a member of the federal Commission files a charge before it, the Commission shall notify the appropriate state or local officials. Again a question might arise as to whether, in New York, the appropriate officials

are only the members of the State Commission for Human Rights or, in addition, the New York Attorney General and the District Attorney of the particular county.

The federal Commission must give the appropriate state or local officials notice of a charge by a member of the federal Commission. In contrast to this requirement of notice, a complaint filed before the New York Commission must be signed and verified. The members of the New York Commission do not have the power to themselves file complaints before the Commission. The complainant may be a person claiming to be aggrieved or his attorney. A member of the federal Commission would not seem to be an aggrieved person within the meaning of the IAD. Assuming then, that the federal Commission submitted a statement of the facts signed and verified by the member of the federal Commission making the charge, the New York Commission might lack enforcement jurisdiction. In view of this situation, it is arguable that the appropriate official to receive notice of a charge made by a member of the federal Commission, is the New York Attorney General, who would be empowered to file a complaint before the New York Commission or to institute a criminal proceeding under sections 700 and 701 of the Penal Law.

If the person aggrieved, while giving notice, refuses to file a verified complaint with the New York Commission, or if a charge is made by a member of the federal Commission, the New York Commission for Human Rights can obtain enforcement jurisdiction by requesting the Attorney General to file a complaint before the Commission based upon the same alleged act or practice.

The federal Commission determines after investigation whether there is reasonable cause to believe that a charge is true. Complaints under

the IAD are investigated by a single Investigating Commissioner who determines whether there is probable cause to credit the allegations of the complaint. If the Investigating Commissioner determines that there is probable cause, the complaint is then presented at a hearing before three Hearing Commissioners, none of whom shall have been the Investigating Commissioner in the same complaint. Under Title VII a member of the federal Commission who files a charge is not specifically excluded from the deliberations of the Commission regarding the matter, or from participating in the Commission determination that reasonable cause exists to believe that the charge is true.

The Hearing Commissioners under the IAD determine, not whether there is reasonable cause to believe, but whether in fact the respondent engaged in any unlawful discriminatory practice. Upon a finding that a respondent has engaged in an unlawful discriminatory practice, the Hearing Commissioners issue an order requiring the respondent to cease and desist from the practice. The order, which may include affirmative action, is enforceable in the courts. In contrast to this order, a determination by the federal Commission that reasonable cause exists to believe that a charge is true creates only a civil cause of action for relief in which all of the factual issues must be tried de novo.

Under the IAD, as under Title VII, whatever transpires in the course of conciliation efforts may not be disclosed. The IAD does not impose a penalty for disclosure such as is contained in section 706(a) of Title VII. Unlike Title VII, the IAD does not require that complaints shall not be made public.

B. Civil Actions Under Section 706

The Equal Employment Opportunity Commission must notify the person aggrieved of its failure to secure voluntary compliance. Thereafter, within thirty days of such notification, the person aggrieved may bring a civil action against the respondent named in the charge for an injunction and appropriate affirmative action, which may include the reinstatement or hiring of employees, with or without back pay. If the charge was filed by a member of the federal Commission, then any person whom the charge alleges was aggrieved by the alleged unlawful employment practice may bring a civil action against the respondent named in the charge.

Section 706(e) states that a civil action may be instituted within 30 days after notification of the federal Commission's failure to secure voluntary compliance. The wording of the subsection implies that a civil action under section 706 can only be brought when the procedure of section 706 has been followed, and when there has been notification of the federal Commission's failure to secure voluntary compliance. This raises a question as to whether Title VII and the rights based upon it can be enforced only through the remedies provided by Title VII, i.e. the civil action under section 706 following a charge before the federal Commission, and the civil action under section 707 by the Attorney General. The elaborate procedural structure of Title VII provides the basis for an argument that Congress intended this elaborate specific procedure to be exclusive. In Title II of the Act dealing with public accommodations, however, Congress specifically stated its intention that the remedies of the title were to be the exclusive means of enforcing its rights, [§ 207(b)] while in Title VII it did not specify that the remedies provided were exclusive. There is at least one statement in the Congressional Record of an intention that the procedure

set forth in section 706 shall be alternative rather than exclusive. The then Senator Humphrey stated that an individual may bypass the federal Commission and go directly to the courts to institute a civil action to e enforce Title VII. (110 Cong. Rec., p. 13694, June 17, 1964) If an individual can go directly into court he can, as section 706 is presently written, bypass not only the federal Commission but also the state or local authority involved, which is only entitled to notice prior to the filing of a charge before the federal Commission. Query whether Congress intended that the individual should be able to bypass the state or local authority

An action under Title VII may be brought in any judicial district in the state in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to the alleged practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice. If the respondent is not found within any of the above districts then the action may be brought within the judicial district in which the respondent has his principal office. For the purpose of a transfer of venue under 28 U.S.C. §§ 1404 and 1406, the district in which the respondent has his principal office is considered a district in which the action might have been brought.

Each United States District Court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under Title VII. Title VII does not specifically make the jurisdiction of federal courts in Title VII civil actions exclusive. [§706(f)]

Upon application by the complainant, the court may, in such circumstances as it deems just, appoint an attorney for the complainant and

authorize the commencement of the action without the payment of fees, costs or security. In its discretion, the court may permit the Attorney General, upon timely application, to intervene in the civil action if he certifies that the case is of general public importance. "Upon request," the court may, in its discretion, stay the civil action for not more than sixty days pending the termination of state or local proceedings described in section 706(b), or the efforts of the federal Commission to obtain voluntary compliance. [§ 706(e)] Section 706(e) does not specify whose request the court has the discretion to honor in granting a stay. If the provision is intended to include the request of any interested entity or if the court's discretion extends to the source of the requests it may choose to honor, then a state authority such as the New York Commission for Human Rights can request a sixty-day stay of the federal civil action pending the termination of a proceeding before the New York Commission.

If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, it may enjoin the practice and order appropriate affirmative action. [§ 706(g)] It is not clear whether this requirement, that a violation must have been intentional, adds anything to the basic prohibitions of sections 703 and 704 which bar discrimination only when it is based on race, color, religion, sex or national origin, or merely restates what the prohibitions already require--that the violator must have intended to discriminate.

The appropriate affirmative action which the court can order may include the reinstatement or hiring of employees with or without back pay. When awarded, back pay is payable by the employer, employment agency or

labor organization responsible for the unlawful employment practice. "Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." The court shall not order the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if that individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged, for any reason other than discrimination on account of race, color, religion, sex or national origin or because of retaliation in violation of section 704(a). [§706(g)]

If an employer, employment agency or labor organization fails to comply with an order of a court issued in a civil action under section 706, the federal Commission may commence proceedings to compel compliance with the order. [§ 706(i)] In a criminal contempt proceeding the accused is entitled, upon demand, to a jury trial. "Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months." (§ 1101) The requirement of a jury trial and the limitations on punishment do not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, or to the misbehavior, misconduct or disobedience of any officer of the court. In a civil contempt proceeding, the judge may not impose a fine or imprisonment as a punitive measure. He may impose a fine for the injured party's use, which is measured by his pecuniary damage, and may order a defendant who has refused to do a mandatory affirmative act imprisoned until he performs the act. Note that it is only when the court order in a Title VII action requires a mandatory affirmative act that the defendant will be subject to possible

imprisonment in a civil contempt proceeding for failure to comply with the order. A court order in a Title VII action will not necessarily require a mandatory affirmative act.

In any action or proceeding under Title VII the court may, in its discretion, allow the prevailing party a reasonable attorney's fee as part of the costs. The federal Commission and the United States may not be allowed this attorney's fee, but are liable for it and other costs, just as a private person is. [§ 706(k)]

Any civil action under section 706(e) and any proceeding under section 706(i) to compel compliance with a court order is subject to appeal to the U. S. Court of Appeals of the circuit, as provided in Tit. 28 U.S.C. §§ 1291 and 1292.

b. Comparison with court enforcement proceedings under the LAD

The aggrieved person decides whether or not to seek court enforcement of Title VII. The federal Commission can, in a proper case, ask the Attorney General to institute a civil action, but does not control the decision as to whether court enforcement of Title VII shall be sought. In a LAD administrative proceeding, the Investigating Commissioner determines whether a public hearing shall be held and the New York Commission for Human Rights determines whether to seek court enforcement of its order. Both of these actions can be taken against the wishes of the complainant.

When an aggrieved person brings a civil action under Title VII, he must maintain the initiative, going forward with the action, and sustain the burden of time and expense involved. Upon his application, the court may, in its discretion, alleviate the burden somewhat by appointing an attorney

for him and authorizing the commencement of the action without the payment of fees, costs or security. If the Attorney General chooses to apply to intervene, the court has the discretion to allow the intervention, which may also alleviate the complainant's burden. In a LAD administrative proceeding, the New York Commission for Human Rights maintains the initiative throughout the administrative proceeding and the ensuing court enforcement action. The person aggrieved need not retain an attorney and the Commission for Human Rights sutains the expenses involved.

Civil actions under Title VII are subject to the technical rules of evidence and the cause of action must be proved by a fair preponderance of the evidence. In an administrative proceeding under the LAD, the technical rules of evidence need not be observed. In a subsequent judicial review or enforcement proceeding, the New York Commission's findings of fact are conclusive if supported by sufficient evidence on the record considered as a whole.

If in a civil action under Title VII the defendant prevails, the plaintiff may, in the discretion of the court, become liable for a reasonable fee for the defendant's attorney. Under the LAD, the complainant runs no risk of liability for a fee for the respondent's attorney since it is the New York Commission which institutes or defends court enforcement or review proceedings.

Section 300 of the LAD states that a proceeding under the LAD shall while pending be exclusive and that a final determination therein shall exclude any other civil or criminal action based on the same grievance of the individual concerned. A question may arise as to the effect of a LAD proceeding on an action under Title VII. The Civil Rights Act is not to

be construed to invalidate any provision of state law unless the state law is inconsistent with any of the purposes of the Act or any provision thereof (§ 1104). One of the purposes of Title VII appears to be to provide the individual with a federal remedy in addition to his existing state remedies. The clauses of section 300 of the LAD making pending LAD proceedings exclusive and making final LAD determinations a bar may be held to be inconsistent with this purpose of Title VII and therefore not applicable to actions under Title VII.

Title VII states that nothing in it shall exempt or relieve any person from any liability, duty, penalty or punishment provided by any present or future state law, unless such law requires or permits an act unlawful under Title VII. Sections 708 and 1104 of the Act appear to provide that, after the notice requirement is met, the state and federal proceedings or actions may proceed simultaneously, except that the court may stay the federal action for sixty days.

Under Title VII the court may enjoin the respondent from engaging in an unlawful employment practice charged in the complaint and may order such affirmative action as may be appropriate, including reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization responsible for the unlawful employment practice). Under the LAD the New York State Commission may order the respondent to cease and desist from the unlawful discriminatory practice and to take such affirmative action including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, restoration to membership in any respondent labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining

program, as in the judgment of the Commission will effectuate the purposes of the LAD, and including a requirement for report on the manner of compliance. The New York State Commission is not expressly authorized to order an employment agency or labor organization to give back pay.

A court order issued under Title VII may be enforced by civil or criminal contempt proceedings. In a civil contempt proceeding in a federal court the judge may impose a fine for the injured party's use, which is measured by his pecuniary damage, and may order a defendant who has refused to do a mandatory affirmative act imprisoned until he performs the act. [Parker v. U.S., 153 F2d 66 (1946)] Under the LAD, after the New York State Commission's order has been enforced by a court order, civil or criminal contempt proceedings can be instituted for a violation of the court order. In a civil contempt proceeding in New York, a fine must be imposed on the offender equal to actual loss or injury and must be paid to the aggrieved party, if the case is not one where an action to recover the damages is specifically prescribed by law. If actual loss or injury is not shown, a fine must be imposed not exceeding complainant's costs and expenses and $250, and must be paid to the aggrieved party. (Judiciary Law § 773) The offender can be imprisoned if his misconduct consists of the omission to perform an act within his power, and only until he has performed it. He may also be imprisoned for up to six months in lieu of payment of the fine imposed. Where the misconduct does not consist of the failure to perform an act, the offender may be imprisoned for a reasonable time not exceeding six months. (Judiciary Law § 774)

In a criminal contempt proceeding under the Civil Rights Act the accused may demand a trial by jury. The punishment upon conviction is a

fine not more than $1,000 or imprisonment for not more than six months. (§ 1101) A criminal contempt in New York is punishable by a fine of up to $250, imprisonment not exceeding 30 days, or both. (Judiciary Law § 751) The defendant in a New York criminal contempt proceeding is not entitled to a jury trial unless the contempt arises out of a labor dispute. (Judiciary Law § 753-a)

C. Civil Actions by the Attorney General under Section 707

The Attorney General may bring a civil action in the appropriate district court of the United States to enforce Title VII. He may do so whenever he "has reasonable cause to believe that any person is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described..." The Attorney General may bring an action only where there is "a pattern or practice of resistance" to the rights of Title VII while an aggrieved person may bring an action whenever someone "has engaged in an unlawful employment practice." The difference in wording indicates that an isolated act is actionable by the aggrieved person but not by the Attorney General.

Title VII does not specify any period within which the Attorney General must bring a civil action but does specify that an aggrieved person must file a charge within 90 days after the alleged act. The Attorney General has a cause of action when someone "is engaged in," resistance and the aggrieved person has a cause of action when someone "has engaged in" an unlawful employment practice. These differences in language raise the

question whether the resistance actionable by the Attorney General must be continuing when the suit is brought.

The Attorney General may bring a civil action by filing a complaint:

(1) signed by him (or in his absence the Acting Attorney General)

(2) setting forth facts pertaining to the pattern or practice

(3) requesting the relief he deems necessary to insure the full enjoyment of the rights described in Title VII, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for the pattern or practice.

The District Courts of the United States shall have and exercise jurisdiction of proceedings instituted by the Attorney General pursuant to section 707. It is the duty of the judge designated to try the case to assign it for hearing at the earliest practicable date and to cause it to be expedited in every way.

The Attorney General may request that a special three-judge court hear and determine the case by filing his request with the clerk of the District Court along with a certificate that, in his opinion, the case is of general public importance. The clerk shall immediately furnish a copy of the certificate and request to the chief judge or presiding judge of the circuit in which the case is pending. The chief judge or presiding judge shall immediately designate three judges who shall assign the case for hearing at the earliest practicable date, participate in the hearing and determination thereof, and cause the case to be in every way expedited. An appeal from the final judgment of the three judge court will lie to the Supreme Court of the United States.

c. Proceedings which the New York Attorney General May Institute

The New York Attorney General may file a complaint alleging that a violation of the LAD has occurred. He has six months after the alleged act

has occurred within which to file a complaint. His complaint may be based upon a single act rather than a "pattern or practice of resistance." The New York State Commission for Human Rights would thereafter determine whether to seek court enforcement in the matter and would most likely carry on any litigation to that end.

The New York Attorney General can, upon the request of the State Commission for Human Rights, prosecute or defend any civil action which in his judgment is necessary for effective enforcement of the laws of New York against discrimination or for the enforcement of any order or determination of the State Commission for Human Rights. (Executive Law § 63.9) The Attorney General can prosecute any person charged with the commission of a criminal offense in violation of any of the laws of New York against discrimination in any case where in his judgment, because of the extent of the offense, the prosecution cannot be effectively carried on by the District Attorney of the county where it was committed, or where in his judgment the District Attorney has erroneously failed or refused to prosecute. (Executive Law § 63.10)

New York, New York
December 23, 1964

Respectfully submitted,

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Human Rights
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Thomas DiMeo
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Actions and Proceedings Under the Civil Rights Act of 1964

Type of action. Who may bring. Relief sought.	Notice requirement. (Usually to the state or local authority which can seek relief or institute criminal proceedings.)	Time following the discriminatory act within which the proceeding must be brought. (Statute of Limitations)	Discretion to refer or stay the action.
Title I Voting Rights			
Actions governed by pre-existing statute, 42 U.S.C. § 1971.			
Title II Public Accommodations			
Civil action by person aggrieved, for preventive relief including injunction or order.	30 days prior to bringing the action, written notice to the appropriate authority by registered mail or in person.	None specified. ("Whenever any person has...or...is about to engage in any act or practice prohibited by section 203.")	If there is no state or local law, the court may refer the case to the Community Relations Service for up to 60 days and then may extend the referral for up to another 60 days. Where there is a state or local law, the court may stay the case pending termination of enforcement proceedings.
Civil action by the Attorney General, for preventive relief including injunction or order.	None.	None specified. ("Whenever...any person ...is engaged in a pattern or practice of resistance").	None where the Attorney General brings suit.

Actions and Proceedings Under the Civil Rights Act of 1964

Type of action. Who may bring. Relief sought.	Notice requirement. (Usually to the state or local authority which can seek relief or institute criminal proceedings.)	Time following the discriminatory act within which the proceeding must be brought. (Statute of Limitations.)	Discretion to refer or stay the action.
Title III Public Facilities			
Civil action by the Attorney General, on the complaint of the person denied equal utilization, for appropriate relief.	None.	None specified. ("Whenever...an individual ...is being deprived of or threatened with the loss of" equal protection of law.)	None.
Title IV Public Education			
Civil action by the Attorney General, on the complaint of the parent or person deprived, for appropriate relief.	A reasonable time to adjust the alleged conditions before bringing the action, notice to the appropriate school board or college authority.	None specified. ("Whenever...children... are being deprived... of the equal protection of the laws" or an individual "has been denied admission to...a public college...")	None
Title V			
Commission on Civil Rights			
Allegations before Commission on Civil Rights, by anyone, that citizens are deprived of their right to vote and have it counted, or are unlawfully accorded or denied the right to vote, for investigation including hearing.	30 days prior to any hearing, published notice in the Federal Register.	None specified.	

Actions and Proceedings Under the Civil Rights Act of 1964

Type of action. Who may bring. Relief sought.	Notice requirement. (Usually to the state or local authority which can seek relief or institute criminal proceedings.)	Time following the discriminatory act within which the proceeding must be brought. (Statute of Limitations)	Discretion to refer or stay the action.
Title VI Federally Assisted Programs			
Hearing before the federal agency empowered to grant financial aid, upon the agency's own motion, to terminate or refuse to grant or continue aid.	Sufficient time for the federal agency to determine that voluntary compliance cannot be secured before taking action, notice to the appropriate person or persons. Report must be filed with Congressional committees 30 days prior to cutting off aid.	None specified.	
Title VII Equal Employment Opportunity			
Charge before the E.E.O. Commission by a person aggrieved, for voluntary compliance.	60 days before filing the charge, a written and signed statement of the facts by registered mail or in person. 120 days before, during first year of state or local law.	90 days. If statement sent to state or local authority, 210 days or 30 days after termination of state or local proceeding, whichever is earlier.	Commission may extend its time to secure voluntary compliance from usual 30 days, for an additional 30 days.

Actions and Proceedings Under the Civil Rights Act of 1964

Type of action. Who may bring. Relief sought.	Notice requirement. (Usually to the state or local authority which can seek relief or institute criminal proceedings.)	Time following the discriminatory act within which the proceeding must be brought. (Statute of Limitations)	Discretion to refer or stay the action.
Title VII (Continued)			
Civil action by a person aggrieved, for injunction and appropriate affirmative action. (Apparently only on notification of E.E.O. Commission's failure to secure voluntary compliance.)	None.	30 days of notification of Commission's failure to secure voluntary compliance.	Court may stay the action for up to 60 days pending termination of state or local proceedings or Commission efforts to secure voluntary compliance.
Charge before the E.E.O. Commission, by one of the Commission members, for voluntary compliance.	A reasonable time not less than 60 days (unless shorter period requested) before the Commission takes action, notify the appropriate officials, 120 days before taking action during first year of state or local law.	90 days.	Commission may extend its time to secure voluntary compliance from usual 30 days, for an additional 30 days.
Civil action by a person alleged by a Commission member's charge to be aggrieved, for injunction and appropriate affirmative action. (Apparently only on notification of E.E.O. Commission's failure to secure voluntary compliance.)	None.	30 days of notification of Commission's failure to secure voluntary compliance.	Court may stay the action for up to 60 days pending termination of state or local proceedings or Commission efforts to secure voluntary compliance.

Actions and Proceedings Under the Civil Rights Act of 1964

Type of action. Who may bring. Relief sought.	Notice requirement. (Usually to the state or local authority which can seek relief or institute criminal proceedings.)	Time following the discriminatory act within which the proceeding must be brought. (Statute of Limitations)	Discretion to refer or stay the action.
Title VII (Continued)			
Civil action by the Attorney General, for necessary relief including injunction or order.	None.	None specified. ("Whenever...any person or group of persons is engaged in a pattern or practice of resistance...")	None
Ancillary actions under § 710 to enforce or review Commission's demands to obtain evidence and testimony and require record-keeping.	None.	None specified for enforcement. Petition to review Commission's demand must be brought within 20 days.	None.
Title IX Intervention			
Intervention by the Attorney General, in any action seeking relief from denial of equal protection of law under the 14th Amendment, for same relief as if he had brought the action.	None.	Upon timely application.	None.

FEDERAL-STATE GOVERNMENT RELATIONSHIPS UNDER THE CIVIL RIGHTS ACT OF 1964

Title I	Voting Rights
§101	Agreements authorized between the Attorney General and state or local authorities, that the preparation, conduct and maintenance of their literacy tests comply with the Title I requirements that such tests must be in writing, must be administered to each individual, and that acertified copy of the test and his answers must be furnished to the individual upon request.
Title IV	Desegregation of Public Education
§403 (Assistance)	Technical Assistance in the desegregation of public schools, which the Commissioner of Education is authorized to render upon the application of any state, municipality, school board, district or other public school operating unit.
§404 (Training)	Training Institutes for school personnel to handle the special educational problems of desegregation, which the Commissioner of Education can arrange for, through grant or contract with institutions of higher education. Individuals who attend such institutes full time may be paid stipends.
§405 (Grants)	Grants to a school board upon its application, for the inservice training of personnel in desegregation problems and to employ advisory specialists, which the Commissioner of Education can make.
§407 (Notice)	Notice requirement. The Attorney General must give notice to the appropriate school board or college authority, and certify that it has had a reasonable time to adjust the alleged conditions, before he brings suit (based upon a received complaint) for the desegregation of a public school or college.
Title V	Commission on Civil Rights
§504 [42 U.S.C. §1975c(a)(4)] (Information)	The Commission on Civil Rights shall serve as a national clearing house for information in respect to denials of equal protection of the laws, including but not limited to, the fields of voting, education, housing, employment, public facilities, transportation and the administration of justice.

Title VI	Nondiscrimination in Federally-Assisted Programs
§602 (Notice)	Notice requirement. The Federal department or agency empowered to extend Federal financial assistance may take no action terminating or refusing to grant or continue assistance until it has advised the appropriate persons (often a state agency) of the failure to comply and has determined that compliance cannot be secured by voluntary means.
Title VII	Equal Employment Opportunity
§705 (Cooperation)	The Equal Employment Opportunity Commission can cooperate and, with their consent, utilize regional, state and local public and private agencies and individuals.
§706(c) (Notice)	Notice requirement. The Equal Employment Opportunity Commission shall, before taking any action with respect to a charge filed by one of its members, notify the appropriate state or local officials (the State Commission for Human Rights in New York) and, upon request, afford them a reasonable time, but not less than 60 days unless a shorter period is requested, to act to remedy the alleged practice.
§706(d) (Filing of copy of charge)	When an aggrieved person has given a state or local authority notice of an alleged unlawful employment practice and thereafter makes his charge before the Commission, the Commission shall file a copy of the charge with the state or local authority.
§709(b) (Utilization of services)	The Equal Employment Opportunity Commission can cooperate with state and local agencies administering fair employment practice laws, can utilize their services and employees, and can reimburse them within the limitation of funds specifically appropriated for that purpose.
(Agreements ceding jurisdiction)	The Commission can enter into written agreements with state or local agencies administering fair employment practice laws, to refrain from processing charges in specified classes of cases, under which no person may bring a civil action under §706, and to relieve persons of record keeping requirements under §709.
§716(b) (Conferences)	The President shall convene one or more conferences to enable leaders of affected groups to become familiar with the rights afforded and obligations imposed by this title, and to make plans for its effective administration. The President shall invite (among others) representatives of state and local agencies engaged in furthering equal employment opportunity to participate.

Title X — Community Relations Service

§1002 (Informal mediation)

It is the function of the Community Relations Service to provide assistance to communities and persons in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin and to offer its services whenever peaceful relations are threatened upon its own motion or to request of a state or local official or other interested person.

§1003(a) (Cooperation)

The Community Relations Service shall, whenever possible, in performing its functions seek and utilize the cooperation of appropriate state or local, public, or private agencies.

Comparative Analysis Chart of the Civil Rights Act of 1964 and New York Law

Title I	Civil Rights Act of 1964 Voting Rights	New York Law	Reference
	[The existing law, 42 U.S.C. §1971(a)(1), provides that qualified citizens shall be allowed to vote without distinction of race, color or previous condition of servitude.]		
§101(a) [42 U.S.C. §1971(a)(2)]	Prohibits persons acting under color of law: (A) In determining whether any individual is qualified under State law to vote in a Federal election, from applying "any standard, practice, or procedure different from" those applied to other individuals within the same county, parish or similar political subdivision.	Provides uniform standards of citizenship, residence and, as to new voters, requires the ability to read and write English.	Election Law §150
	(B) From denying the right to vote in any Federal election because of an immaterial error.	If a voter signs his registration poll record in the wrong place he may correct the error.	Election Law §409
	(C) From employing any literacy test as a qualification for voting in a Federal Election unless (i) it is in writing and is given to each individual and (ii) a certified copy of the test and his answers is given to a person within 25 days of his request made within the 22-month period of time records are required to be kept by §1974-74e: Provided that the Attorney General may enter into agreement with State or local authorities that their tests in compliance with local or State law constitute compliance with this subparagraph.	The Education Commissioner prepares the test and papers of unsuccessful applicants are forwarded to the Education Commissioner.	Rules of the Board of Regents 8 NYCRR 22.6* 9 NYCRR 22.10 (a) *The reference is to the State of N.Y. "Official Compilation of Codes, Rules and Regulations."
[42 U.S.C. §1971(a)(3)]	(A) The term "vote" has the same meaning as in subsection (e) [includes all action necessary to make a vote effective].		

	Civil Rights Act of 1964	New York Law	Reference
Title I	Voting Rights (cont'd)		
	(B) The term "literacy test" includes any test of the ability to read, write, understand or interpret any matter.		
§101(b) [42 U.S.C. §1971(c)]	In an action brought for preventive relief by the Attorney General against violation of 42 U.S.C. §1971(a) and (b), there shall be a rebuttable presumption that a person who has completed the sixth grade in an accredited school where instruction is predominantly in English is sufficiently literate to vote in a Federal election.	An eighth-grade or high school certificate or diploma may be presented as evidence of literacy, but its genuineness and the identity of the voter are subject to challenge.	Election Law §168.2
		A certificate of literacy issued under the rules of the Board of Regents is conclusive of literacy.	Election Law §168.1
§101(c) [42 U.S.C. §1971(f)	"Federal election" means any general, special or primary election held in part for the purpose of electing or selecting any candidate for President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives.		
§101(d) [42 U.S.C. §1971 (h)]	A case instituted under §1971 shall be heard at the earliest practicable date. The Attorney General or a defendant in an action requesting a finding of a pattern or practice of discrimination pursuant to subsection e may request a special three judge court from which a direct appeal to the U. S. Supreme Court will lie.	A special proceeding under the election law has preference over all other causes in all courts.	Election Law §335

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation		
§201(a)	"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."	Discrimination because of race, creed, color or national origin is unlawful in all places of public accommodation, resort or amusement. Exclusion by innkeepers, common carriers, theatres and other places of amusement, and the denial of full privileges by hotels, inns, taverns, restaurants, public conveyances, theatres and other places of public resort or amusement, because of race, creed, color or national origin are misdemeanors.	LAD §296.2 Civil Rights Law §40 Penal Law §514.1, §514.3
§201(b)	Each of the following establishments which servesthe public is a place of public accommodation if its operations affect commerce, or if discrimination or segregation by it is supported by State action.	[There is no requirement that to be a place of public accommodation an establishment must affect commerce or that discrimination therein must be supported by State action. The statutes are based on the state's police power.]	LAD §292.9 Civil Rights Law §40
§201(b)(1)	Inns, hotels, motels or other establishments, providing lodging to transient guests unless located in a building which contains not more than 5 rooms for rent and which is actually occupied by the proprietor as his residence. All such inns, hotels, motels and other establishments are deemed to affect commerce and are covered. [§201(c)(1)]	All inns, hotels and motels are covered.	LAD §292.9

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§201(b)(2)	Restaurants, cafeterias, lunchrooms, lunch counters, soda fountains and other facilities engaged principally in selling food for consumption on the premises, including those located in a retail establishment, and gasoline stations are covered if discrimination or segregation by them is supported by State action or if their operations affect commerce. The operations of such an establishment affect commerce if it serves or offers to serve interstate travelers, or a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce [§201(c)(2)].	All restaurants, cafeterias, lunchrooms, lunch counters, soda fountains, and other places where food is sold for consumption on the premises and all gasoline stations are covered.	LAD §292.9
§201(b)(3)	Motion picture houses, theaters, concert halls, sports arenas, stadia and other places of exhibition or entertainment are covered if discrimination or segregation by them is supported by State action or if their operations affect commerce. The operations of such an establishment affect commerce if it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce [§201(c)(3)].	All motion picture houses, theatres, music halls, gymnasiums and places of entertainment are covered.	LAD §292.9
§201(b)(4)	Any establishment (A)(i) which is located within an otherwise covered establishment, or (ii) within the premises of which is physically located a covered establishment, and (B) which holds itself out as serving patrons of such covered establishment is itself a covered	The New York Law applies to all "places of public accommodation, resort or amusement" including the many types of establishments specified in §292.9 of the LAD.	LAD §292.9

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§201(b)(4)	establishment if discrimination or segregation by it is supported by State action or if its operations affect commerce. Its operations affect commerce if it is physically located within or there is located within its premises, an establishment affecting commerce within the meaning of §201(c). [§201(c)(4)].		
§201(c)	"Commerce" means travel, trade, traffic, commerce, transportation, or communication among the several states, or between the District of Columbia and a State, or between any foreign country or any territory or possession and any state or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.		
§201(d)	Discrimination or segregation is supported by state action if it (1) is carried on under color of law, statute, ordinance, or regulation; or (2) is carried out under color of custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.		
§201(e)	This title does not apply to a private club or other establishment not in fact open to the public, except to the extent that its facilities are made available to the customers or patrons of an establishment within the scope of subsection (b).	"Any institution, club or place of public accommodation which is in its nature distinctly private" is not covered	LAD §292.9

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§202	All persons shall be entitled to be free at any establishment or place, from discrimination or segregation because of race, color, religion, or national origin which is or purports to be required by any law, statute, ordinance, regulation, rule or order of a State or any agency or political subdivision thereof.	"No person shall because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation or by the state or any agency or subdivision of the state."	N.Y. Constitution Art. 1, §11 Penal Law §700. (See Penal Law §701 for penalty)
§203	Prohibits withholding, denial or deprivation of rights protected by §§201 and 202, attempted deprivation, intimidation, coercion and retaliation for attempting to exercise any right under §§201 and 202.	Prohibits the refusal, withholding or denial of accommodations; written or printed communications, notices or advertisements about accommodations of a discriminatory nature; aiding, abetting, inciting, coercion and retaliation.	LAD §296.2
§204(a)	Enforcement by civil action for preventive relief including permanent or temporary injunction, restraining order, or other order instituted by a person aggrieved, is provided when a person has engaged in or there are reasonable grounds to believe that a person is about to engage in an act or practice prohibited by §203. The court may permit the Attorney General to intervene and may appoint an attorney for complainant and authorize the commencement of the action without payment of fees, costs of security.	Enforcement by proceeding before Commission for Human Rights, whose orders may be judicially enforced; or by an individual suit for a statutory penalty; or by criminal prosecution by the county District Attorney or the New York Attorney General.	LAD §297 Civil Rights Law §41 Penal Law §514, §701.

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§204(b)	The court may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States is liable for costs the same as a private party.		
§204(c)	If an act prohibited by Title II occurs where there is a state or local law prohibiting the act and an authority to grant or seek relief or to institute criminal proceedings, then no civil action may be brought under subsection (a) until the expiration of 30 days after written notice has been given to the appropriate authority. Thereafter the court may stay proceedings in said civil action pending the termination of state or local enforcement proceedings.		
§204(d)	If there is no state or local law prohibiting such act or practice, a civil action may be brought under subsection (a); but the court may refer the matter to the Community Relations Service established by Title X for up to 60 days (which may be extended to a total of 120 days), if the court believes there is a reasonable possibility of obtaining voluntary compliance.		
§205	The Community Relations Service is authorized to make a full investigation of any complaint referred to it under §204(d) and to hold hearings, if necessary. Such hearings shall be conducted in executive session and testimony given therein shall only be released by agreement of all parties involved with the permission of the court. The Service shall endeavor to bring about a voluntary settlement.		

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§206(a)	Enforcement by civil action for preventive relief instituted by the Attorney General, whenever he has reasonable cause to believe that a person or group is engaging in a pattern or practice of resistance to the full enjoyment of rights secured by this Title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of such rights.	The N.Y. Attorney General may file a complaint before the Commission for Human Rights. The N.Y. Attorney General can prosecute any criminal offense in violation of the laws against discrimination where the prosecution cannot be effectively carried on by the district attorney or where the district attorney has erroneously failed or refused to prosecute.	LAD §297.1 Executive Law §63.10
§206(b)	The Attorney General may request a special three judge court from which an appeal will lie to the United States Supreme Court. A case instituted by the Attorney General under §206 shall be heard at the earliest practicable date and shall be expedited in every way.		
§207(a)	United States district courts have jurisdiction over proceedings under this Title and shall exercise it without regard to whether the aggrieved party has exhausted any administrative or other remedies.		

	Civil Rights Act of 1964	New York Law	Reference
Title II	Injunctive Relief Against Discrimination in Places of Public Accommodation (cont'd)		
§207(b)	The remedies provided herein are the exclusive means of enforcing the rights based on this title, but rights under other federal or state laws not inconsistent with this title are saved, including the remedies therefor.	The procedure provided in the LAD is, while pending, the exclusive means of dealing with acts declared unlawful by §296 of the LAD. The final determination excludes any other action, civil or criminal, based on the same grievance. If the individual institutes any action based on such grievance without resorting to the procedure under the LAD, he may not subsequently resort to that procedure. Nothing contained in the LAD shall be deemed to repeal any other provision of law relating to discrimination.	LAD §300

	Civil Rights Act of 1964	New York Law	Reference
Title III	Desegregation of Public Facilities		
§301	Suits by the Attorney General (a) Whenever the Attorney General receives a written complaint that on account of his race, color, religion or national origin, an individual is being denied the equal utilization of <u>any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof</u>, other than a public school or college, and the Attorney General believes the complaint is meritorious and certifies that the signer(s) of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and <u>the institution of an action will materially further the orderly progress of desegregation</u> in public facilities, the Attorney General <u>is authorized</u> to institute a civil action in an appropriate district court against such parties and for such relief as may be appropriate. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief. (b) The Attorney General may deem persons unable to initiate and maintain legal proceedings under subsection (a) when they are unable to bear the expense or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize their personal safety, employment, or economic standing, their families or their property.	"No person shall because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state." "For all the purposes of this chapter, no person shall, because of race, creed, color or national origin, be subjected to any discrimination." [Enforcement by a proceeding against an officer or body, or by an action for a declaratory judgment.] "...all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof..." are places of public accommodation in which discrimination is forbidden.	N.Y. Constitution Art. 1, §11 Public Housing Law §223 CPLR Art. 78 CPLR §3001 LAD §292.9 §296.2
§302	U.S. liable for court costs, including a reasonable attorney's fee.		

	Civil Rights Act of 1964	New York Law	Reference
Title III	Desegregation of Public Facilities (cont'd)		
§303	Saves the individual's right to sue for relief against discrimination in any facility covered by this title.		
§304	"A complaint as used in this title is a writing or document within the meaning of section 1001, title 18, United States Code." [18 U.S.C. §1001 provides that whoever makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000, or imprisoned not more than five years, or both.]		

Civil Rights Act of 1964	New York Law	Reference
Title IV	Desegregation of Public Education	
§401	Definitions	
	(a) "Commissioner" means the [U.S.] Commissioner of Education	
	(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.	
	(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, which is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.	
	(d) "School board" means any agency(s) which administers a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.	
§402	Survey and Report of Education Opportunities. The Commissioner shall within two years conduct a survey and make a report to the President and Congress concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion or national origin in public educational institutions at all levels.	
§403	Technical Assistance. The Commissioner is authorized, upon the application of a school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption and implementation of plans for the desegregation of public schools.	

	Civil Rights Act of 1964	New York Law	Reference
Title IV	Desegregation of Public Education (cont'd)		
§404	Training Institutes. The Commissioner is authorized to arrange for the operation of training institutes designed to improve the ability of elementary and secondary school personnel to deal effectively with desegregation problems.		
§405	Grants. (a) Upon the application of school board, the Commissioner is authorized to to make grants to pay, in whole or in part, the cost of--(1) inservice training in dealing with problems incident to desegregation, and (2) employing specialists to advise in problems incident to desegregation. (b) In determining whether to make a grant, and the amount thereof, the Commissioner shall consider certain relevant factors.	The State Commissioner of Education is authorized to make additional apportionments to school districts to encourage programs to identify and encourage potential abilities among pupils from culturally deprived groups or from low socio-economic backgrounds.	Education Law §3602-a(15)
§407	Suits by the Attorney General		
	(a) Whenever the Attorney General receives a complaint in writing...(1) signed by a parent to the effect that his children are being deprived by a school board of the equal protection of the laws or (2) signed by an individual or his parent to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, or national origin, and the Attorney General believes the complaint is meritorious and certifies that the signer(s) are unable to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially	"No person shall be refused admission into or be excluded from any public school in the State of New York on account of race, creed, color or national origin." Prohibits discrimination in admissions by post secondary educational institutions, public and private, except as to sectarian schools. Prohibits denial of the use of facilities because of race, color or religion by non-sectarian, tax-exempt	Education Law §3201 Education Law §313 LAD §296.4

Civil Rights Act of 1964	New York Law	Reference
§407 Suits by the Attorney General (cont'd)		
further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint and certifying that he is satisfied that the school board or college authority has had a reasonable time to adjust the alleged conditions, to institute a civil action for appropriate relief in an appropriate district court.	educational institutions.	
Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve racial balance in any school by requiring the transportation of students from one school to another, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead such additional parties defendant as are necessary to the granting of effective relief.		
(b) The Attorney General may deem a person unable to initiate and maintain appropriate legal proceedings within subsection (a) when such persons are unable either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such persons, their families, or their property.		
(c) "Parent" includes any person standing "in loco parentis." A "complaint" as used in this section is a writing or document within §1001, Title 18, United States Code. (See Discussion of §304, supra.)		
§408 The United States is liable for costs.		

Civil Rights Act of 1964	New York Law	Reference
§409 Saves the individual's right to institute a private action against discrimination in public education.		
§410 Nothing in this title prohibits classification and assignment for reasons other than race, color, religion, or national origin.		

Civil Rights Act of 1964			
Title V	Commission on Civil Rights	New York Law	Reference
§501 [42 U.S.C. §1975a]	§102 of the 1957 Civil Rights Act is amended to read as follows: (a) At least 30 days prior to a hearing the Commission must publish in the Federal Register notice of the date, place and subject of the hearing. (b) A copy of the Commission's rules shall be served with subpoenas and also made available to any witness before the Commission. (c) Persons compelled to appear have the right to be accompanied, advised and examined by counsel who can make objections. (d) The Chairman or Acting Chairman may punish breaches of order and decorum by censure and exclusion from the hearings. (e) The Commission shall receive evidence tending to defame, degrade or incriminate any person in executive session and afford the defamed, degraded or incriminated person an opportunity to appear and be heard in executive session, with a reasonable number of additional witnesses requested by him, before deciding to use such evidence. If the Commission determines to release or use such evidence in such manner as to reveal publicly the identity of the person, prior to such public release or use the evidence shall be given at a public session and the Commission shall give the person an opportunity to appear as a voluntary witness or to file a sworn statement and to submit brief and pertinent statements of others. The Commission shall receive and dispose of requests from such persons to subpoena additional witnesses. (f) Requests to subpoena additional witnesses received and disposed of by Commission.		

Civil Rights Act of 1964			
Title V	Commission on Civil Rights (cont'd)	New York Law	Reference
	(g) Evidence or testimony or summary thereof taken in executive session may be released or used in public sessions only with consent of the Commission. Penalty for violation, fine not more than $1,000 or up to one year imprisonment.		
	(h) Submission of witnesses sworn statements in the record at the discretion of the Commission.		
	(i) Persons entitled, upon paying costs, to transcript copies of their data or evidence, and the public to public sessions.		
	(k) Attendance of witness required only within 50 miles of the place he is found, resides, is domiciled, transacts business, or has appointed an agent for service, or within the State of such place.		
	(l) The Commission shall publish in the Federal Register (1) descriptions of its organization including the places and methods whereby the public can secure information and make requests; (2) statements of how its functions are channeled; and (3) adopted rules. No person is subject to rules, organization or procedure not so published.		
§504 [42 U.S.C. §1975c (a)]	(a) Duties of the Commission (1) Investigate written sworn allegations that citizens are being deprived of the right to vote and have that vote counted because of color, race, religion or national origin; (2) study and collect information concerning legal developments constituting a denial of equal protection of the laws because of race, color, religion or national origin or in the administration of justice; (3) appraise federal laws and policies;	The N.Y. Commission for Human Rights has the power to investigate and study the problems of discrimination in human relations, formulate programs, engage in conciliation efforts and issue reports.	LAD §295.8 295.9 295.10

Civil Rights Act of 1964 Title V	Commission on Civil Rights	New York Law	Reference
	Duties of the Commission (cont'd) (4) serve as a clearing house for information in respect to denials of equal protection of the laws because of race, color, religion or national origin; (5) investigate written, sworn allegations that citizens are unlawfullly accorded or denied the right to vote and have their votes properly counted in any Presidential or Congressional election as a result of any pattern or practice of fraud or discrimination; (6) Nothing in this or any other act shall be construed to authorize the investigation of any fraternal organization, private club, religious organization or college fraternity or sorority.	The N.Y. Commission for Human Rights may "issue such publications and such results of investigations and research as...will tend to promote goodwill and minimize or eliminate discrimination."	LAD §295.9
[42 U.S.C. §1975c (b)]	(b) The Commission shall submit interim reports and a final report not later than January 31, 1968.	The N.Y. Commission for Human Rights makes an annual report	LAD §295.10
§506 [42 U.S.C. §1975d (f)]	(f) The Commission or an authorized subcommittee of two or more members, at least one from each political party, may hold hearings and act.		
[42 U.S.C. §1975d (g)]	(g) In case of contumacy or refusal to obey a subpoena the appropriate district court, upon application of the Attorney General, can issue an order to appear and answer, and punish failure to obey that order as a contempt		
§507 [42 U.S.C. §1975d (i)]	The Commission has the power to make rules and regulations necessary to carry out the purposes of the Act.	The N.Y.Commission for Human Rights has the power to make "suitable rules and regulations to carry out the provisions of this article."	LAD §295.5

	Civil Rights Act of 1964	New York Law	Reference
Title VI	Federally Assisted Programs		
§601	"No person 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."	Prohibits discrimination in publicly-assisted housing.	LAD §296.3 Civil Rights Law Art. 2A Private Housing Finance Law §602
		Prohibits discrimination in non-sectarian tax-exempt educational institutions.	LAD §296.4
		[Prohibits discriminatory denial to physicians of permission to practice in an institution.]	Social Welfare Law §24
§602	Federal agencies empowered to extend assistance can, with the approval of the President, issue rules, regulations or orders to effectuate §601, which must be consistent with the objectives of the statute authorizing assistance. Upon an express finding, after opportunity for a hearing, of a failure to comply with any requirement imposed under this section, assistance may be terminated or denied, but only after giving notice and determining that voluntary compliance can't be secured. A report must be filed with the Congressional committees having jurisdiction, 30 days before the termination or denial of assistance becomes effective.		
§603	Any action taken pursuant to §602 is subject to judicial review.		
§604	This title does not authorize any action with respect to employment practices except where a primary objective of the Federal assistance is to provide employment.	Contracts entered into by the State or a municipality involving public buildings, public works, or the manufacture or sale of	Labor Law §220-e

	Civil Rights Act of 1964	New York Law	Reference
Title VI	Federally Assisted Programs (cont'd)	equipment or supplies must include a provision against employment discrimination by the contractor and subcontractors.	
§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."		

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§701	Definitions		
	(a) "Person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.	"Person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.	LAD §292.1
	(b) "Employer" means a person, or his agent, engaged in an industry affecting commerce who has 25 employees for each working day in each of twenty calendar weeks in the current or preceding calendar year. During the first year after July 2, 1965 the term excludes persons having fewer than 100 employees, during the second year persons having fewer than 75 employees, during the third year persons having fewer than 50 employees. The term does not include the United States, a corporation wholly owned by it, an Indian tribe, a State or political subdivision thereof and a bona fide private membership club (other than a labor organization) exempt from taxation under §501(c) of the I.R.C. of 1954. The President shall utilize his existing authority to insure equal employment opportunity for federal employees.	Excludes employers with less than 6 employees and clubs exclusively social.	LAD §292.5
	(c) "Employment agency" means any person or his agent, regularly undertaking with or without compensation to procure employees or opportunities to work for an employer, including the U.S. Employment Service and the system of State and local employment services receiving Federal assistance, but no other agency of the U.S. or of a State or political subdivision of a State.	"Employment agency" includes any person undertaking to procure employees or opportunities to work.	LAD §292.2

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§701	Definitions (cont'd)		
	(d) "Labor organization" means a labor organization or its agent, engaged in an industry affecting commerce, and includes any organization of any kind, any agency, employee representation committee, group, association or plan, in which employees participate and which exists for the purpose in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board or joint council so engaged which is subordinate to a national or international labor organization.	"Labor organization" includes any organization which is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment.	LAD §292.3
	(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if either (1) it maintains or operates a hiring hall or office, or (2) the number of its members (for composite organizations the aggregate of members of the member organizations) is 100 during the first year after July 2, 1965, 75 during the second year, 50 during the third year, and 25 thereafter; and such labor organization is either: (1) the certified representative of employees under the National Labor Relations Act or the Railway Labor Act, (2) although not certified, acts as the representative of employees in an industry affecting commerce, (3) has chartered an organization within (1) or (2), (4) has been chartered by such an organization, or (5) is a joint board or conference etc. including such an organization.		

	Civil Rights Act of 1964	New York Law	Reference
\Title VII	Equal Employment Opportunity		
§701	Definitions (cont'd)		
	(f) "Employee" means an individual employed by an employer.	"Employee" does not include any individual employed by his parents, spouse or child or in the domestic service of another.	LAD §292.6
	(g) "Commerce" means trade, traffic, commerce, transportation or communication among the several states, or between a state and any place outside thereof; or within the District of Columbia, or a U.S. possession; or between points in the same state but through a point outside thereof.		
	(h) "Industry affecting commerce" means any activity, business or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959.	[There is no requirement that an employer, employment agency or labor organization must affect commerce. The LAD is based on the police power.]	LAD §292.2, 3, 5
	(i) "State" includes a State of the U.S., the District of Columbia, Puerto Rico, the Virgin Island, American Samoa, Guam, Wake Island, the Canal Zone and Outer Continental Shelf lands.		
§702	Exemptions. Title VII does not apply to the employment of aliens outside U.S. territory, or to a religious organization or educational institution with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the religious organization's religious activities	"Employer" does not include fraternal, charitable, educational or religious associations and corporrations not organized for private profit. [Employer does include public educa-	LAD §292.5 [14NY 2d 198 (1964)]

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§702	Exemptions (cont'd)		
	or the educational institution's educational activities.	tional associations and corporations.]	
§703	Unlawful Employment Practices		
	Title VII applies to discrimination based on race, color, religion, sex, or national origin. (Does not apply to age discrimination.)	Applies to Discrimination based on age, race, creed, color or national origin.	LAD §296.1
		Applies to age 40 to 65 discrimination except in apprentice training	LAD §296.3-a LAD §296.1-a
	Makes sex discrimination an "unlawful employment practice" subject to entire enforcement procedure.	The opportunity to obtain employment without sex discrimination is a civil right. (No enforcement provision in the LAD.)	LAD §291
	When based on race, color, religion, sex or national origin: (a) It is an "unlawful employment practice" for an employer (1) to fail or refuse to hire, discharge or otherwise discriminate against any individual in the compensation, terms, conditions or privileges of employment; (2) to limit, segregate or classify employees in any way which would deprive any individual of employment opportunities or otherwise adversely affect his employee status.	When based on age, race, creed, color or national origin: It is an "unlawful discriminatory practice" (a) for an employer to refuse to hire or employ or to bar or discharge from employment or discriminate against an individual in the compensation, terms, conditions or privileges of employment.	LAD §296.1(a)
	(b) It is an "unlawful employment practice" for an employment agency to fail or refuse to refer, to classify or refer discriminaterily or otherwise discriminate against any individual.	It is an "unlawful discriminatory practice" for an employer or employment agency to make, print or circulate any statement, advertisement, publication, inquiry or use an application form, which expresses a limitation, specification or dis-	LAD §296.1(e)

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§703	Unlawful Employment Practices (cont'd)		
		crimination or an intent to make any such limitation, specification or discrimination.	
	(c) It is an "unlawful employment practice" for a labor organization (1) to exclude or expel from membership or otherwise discriminate against any individual; (2) discriminatorily to limit, segregate, or classify its membership, or fail or refuse to refer any individual for employment; (3) to cause or attempt to cause an employer to discriminate in violation of this section.	It is an "unlawful discriminatory practice" for a labor organization to exclude or expel any individual from membership or to discriminate in any way against a member, an employer or an individual employed by an employer.	LAD §296.1(b)
		Applies to the aiding, abetting, inciting or coercing by <u>any person</u> of any of the acts forbidden by the LAD.	LAD §296.6
	(d) Applies to admission to, or employment in, any program of apprenticeship or other training or retraining including on-the-job training.	Applies to apprentice training programs	LAD §296.1-a
	(e)(1) Exception for bona fide occupational qualifications only as to different treatment because of religion, sex, or national origin. (The exception for bona fide occupational qualifications may not be applied to race or color.)	Exception for bona fide occupational qualifications as to statements, inquiries, advertisements, publications and application forms. The bona fide occupational qualification exception may be applied to discrimination based on age, race, creed, color or national origin.	LAD §296.1(c)

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§703	Unlawful Employment Practices (cont'd)		
	(2) Exception of all employees of educational institutions which, in whole or in substantial part, are owned, supported, controlled, or managed by a particular religion, religious corporation, association or society, or if its curriculum is directed toward the propagation of a particular religion.	"Employer" does not include [private] educational or religious associations not organized for private profit.	LAD §292.5
	(f) Exception for actions taken against members of the Communist Party or of any other organization required to register as Communist-action or Communist-front.		
	(g) Exception for actions taken against individuals due to a failure to fulfill requirements imposed under any security programs in the interest of national security.		
	(h) Exception for bona fide seniority or merit systems and systems which measure earnings by quantity or quality of production, and differences based on the location of employees. Exception for wage differentials allowed by §6(d) of the Fair Labor Standards Act of 1938. [29 U.S.C. 206(d)]		
	(i) Exception for any business or enterprise on or near an Indian reservation with respect to any publicly announced practice of giving preferential treatment to Indians living on or near a reservation.		
	(j) Nothing contained in Title VII shall be interpreted to require the granting of preferential treatment to any individual or group on account of an imbalance which may exist with respect to the total		

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§703	Unlawful Employment Practices (cont'd)		
	number of persons of any race, color, religion, sex, or national origin in a particular relationship, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, state, or other area, or in the available work force.		
§704	Other Unlawful Employment Practices		
	(a) Forbids reprisal because an individual has opposed unlawful employment practices or made a charge, testified, assisted or participated in an investigation, proceeding or hearing.	Forbids reprisal because a person has opposed unlawful discriminatory practices or filed a complaint, testified or assisted in any proceeding.	LAD §296.1(d) §296.7
	(b) Advertisements with discriminatory specifications are unlawful.	Advertisements with discriminatory specifications are unlawful.	LAD §296.1(c)
§705	Equal Employment Opportunity Commission Five Commissioners (no more than three of whom shall be members of the same political party) appointed by the President with the consent of the Senate	State Commission for Human Rights Seven Commissioners appointed by the Governor with the consent of the State Senate	LAD §293
	for five year overlapping terms	for five year overlapping terms	
	The President shall designate one member to serve as Chairman and one member to serve as Vice-Chairman.	The Governor shall designate a member as Chairman and may also designate a member to serve as Vice Chairman.	LAD §293
	The Chairman shall be responsible on behalf of the Commission for administrative operations, and shall appoint officers, agents, attorneys and employees.	The Chairman is the chief executive officer. The Commission shall appoint attorneys, clerks, other employees and agents.	LAD §293.a LAD §295.3

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§705	Commission (cont'd)		
	(b) A vacancy shall not impair the right of the remaining members to exercise all the powers of the Commission and three members shall constitute a quorum.	A vacancy shall not impair the right of the remaining members to exercise all the powers of the Commission and three members shall constitute a quorum.	LAD §293
	(d) The Commission shall report to Congress and the President at the close of each fiscal year.	The Commission shall report to the Governor and the Legislature each year.	LAD §295.10
	(g) The Commission shall have power:	The Commission shall have the following functions, powers and duties:	LAD §295
	(1) to cooperate with and utilize the service of state and local, public and private agencies.	to obtain upon request and utilize the services of all governmental departments and agencies.	LAD §295.4
	(2) to pay witness fees.	to subpoena witnesses.	LAD §295.7
	(3) to furnish technical assistance to persons subject to Title VII.	to furnish technical assistance to agencies and councils engaged in fostering goodwill among the people of the state.	LAD §295.8
	(4) to assist by conciliation an employer or union where employees refuse to cooperate with the law.	An employer whose employees refuse to cooperate with the LAD may file a verified complaint.	LAD §297.1
	(5) to make technical studies and make the results thereof available to the public.	to issue publications and the results of investigations and research.	LAD §295.9
	(6) to refer matters to the Attorney General with recommendations for intervention in a civil action by an aggrieved person, or for the institution of a civil	The Commission can request the Attorney General to Prosecute or defend any civil action necessary	Executive Law §63.9

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§705	Commission (cont'd)		
	action under §707, and to advise, consult and assist the Attorney General on such matters.	for effective enforcement of the laws of this state against discrimination.	
	(i) The Commission shall cooperate with other departments and agencies in the performance of its educational and promotional activities.	The Commission shall obtain upon request and utilize the services of all governmental departments and agencies.	LAD §295.4
	(j) The Hatch Act, restricting political activity, applies to Commission employees.		
§706	Prevention of Unlawful Employment Practices		
	(a) An aggrieved person may make a charge in writing under oath, or a member of the Commission may file a written charge (based upon reasonable cause to believe a violation has occurred) alleging than an employer, employment agency or labor organization has engaged in an unlawful employment practice. The Commission shall investigate the charge. The charge shall not be made public by the Commission.	An aggrieved person, the Attorney General or the Industrial Commissioner may file a signed verified complaint in writing alleging that a person, employer, labor organization or employment agency has committed an unlawful discriminatory practice. One of the Commissioners designated by the Chairman shall investigate the complaint.	LAD §297.1
	If the Commission determines after investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said as part of such endeavors may be made public by the	If the Investigating Commissioner determines after investigation that probable cause exists for crediting the allegations of the complaint, he shall endeavor to eliminate the unlawful discriminatory practice by conference, conciliа-	LAD §297.2

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§706	Prevention of Unlawful Employment Practices (cont'd)		
	Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. An officer or employee who makes information public in violation of this subsection is guilty of a misdemeanor and may be fined up to $1,000 or imprisoned for up to one year.	tion and persuasion. The Commission and its staff shall not disclose what has transpired in the course of such endeavors. (No criminal penalty attaches and the prohibition against disclosure does not extend to the complaint and investigation.)	
	(b) If the practice occurs in a state or subdivision which has a state or local law prohibiting it and authorizing an authority to grant or seek relief or institute criminal proceedings, then no charge may be filed by an aggrieved person until 60 days after a written, signed statement of the facts has been filed by registered mail with the appropriate state or local authority.	No requirement of notice or deference to local agencies and proceedings.	LAD §297
	(c) If a member of the Commission files a charge alleging that an unlawful practice has occurred in a state or subdivision thereof which has a state or local law prohibiting it and authorizing an authority to grant or seek relief or institute criminal proceedings, the Commission shall, before taking any action, notify the appropriate state or local officials and, upon request, afford them a reasonable time not less than 60 days (unless less is requested) to act to remedy the practice.	[The Commissioners do not have the power to file complaints.]	LAD §297

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§706	Prevention of Unlawful Employment Practices (cont'd)		
	(d) A charge must be filed within 90 days after the alleged practice has occurred. If the notification procedure of §706(b) is followed, the charge must be filed within 210 days of the practice or 30 days after termination of state or local proceedings, whichever is earlier. The Commission must file a copy of an aggrieved person's charge with the state or local authority.	90 day limitation on filing complaints except that the Attorney General and the Industrial Commissioner have 6 months.	LAD §297.3
	(e) The Commission has 30 days within which to secure voluntary compliance and may extend for up to an additional 30 days upon a determination that further efforts to secure voluntary compliance are warranted. (The Commission has no enforcement jurisdiction.) If the Commission is unable to secure voluntary compliance it shall so notify the complainant who then has 30 days within which to bring a civil action against the respondent named in the charge. If the charge was filed by a member of the Commission, then any person whom it alleges was aggrieved can sue. Upon application by the complainant and in such circumstances as it deems just, the court may appoint an attorney for complainant and authorize the commencement of the action without the payment of costs, fees or security. The court may, in its discretion, permit the Attorney General to intervene upon timely application, if he certifies that the case is of general public importance. Upon request, the court may, in its discretion, stay proceedings for not more than 60 days pending the termination of state or local proceedings or of the Commission's efforts to secure voluntary compliance.	If conciliation fails, the Commission holds a hearing and, if discrimination is found, issues an order to eliminate it and grant affirmative relief. The Commission may obtain a court order for the enforcement of its order. If an individual institutes any action based on a grievance without resorting to the Commission, he may not thereafter file a complaint based on the same grievance.	LAD §297.2 LAD §298 LAD §300

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§706	Prevention of Unlawful Employment Practices (cont'd)		
	(f) The U.S. District Courts have jurisdiction of Title VII actions which may be brought in any judicial district in the state where the practice was committed, or in the judicial district in which employment records are maintained or in which the plaintiff would have worked, but if the respondent is not found within any such district, then within the district in which respondent has his principal office.	Judicial review or enforcement proceedings shall be brought in the Supreme Court in any county wherein the practice occurred or wherein any person required to cease and desist from such practice or take affirmative action, resides or transacts business.	LAD §298
	(g) If the court finds that respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin respondent from engaging in the practice and order such affirmative action as may be appropriate, including reinstatement or hiring with or without back pay (payable by the employer, employment agency or labor organization responsible for the practice). Amounts earnable with reasonable diligence shall operate to reduce allowable back pay.	If upon all the evi- at the hearing the Commission finds that respondent has engaged in any unlawful discriminatory practice defined in the LAD, it shall issue an order requiring respondent to cease and desist from such unlawful discriminatory practice and to take affirmative action, including (but not limited to) hiring, reinstatment or upgrading of employees, with or without back pay, restoration to membership in any labor organization, admission to or participation in any guidance, apprenticeship training or retraining program, and including a requirement for report of the manner of compliance	LAD § 297.2

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§706	Prevention of Unlawful Employment Practices (cont'd)		
	(i) If an employer, employment agency or labor organization fails to comply with a court order issued in a civil action under §706(e), the Commission may commence compliance proceedings.	The Commission may commence contempt proceedings to compel compliance with the court order enforcing the Commission's order.	CPLR §5104
	(k) In any action or proceeding under Title VII the court may allow the prevailing party other than the Commission or the U.S., a reasonable attorney's fee as part of the costs, and the Commission and the U.S. shall be liable for costs the same as a private person.	In a difficult or extraordinary case where a defense has been interposed, the court has the discretion to award a sum not exceeding 5% of the sum recovered or claimed, or of the value of the subject matter involved, and not exceeding $3,000.	CPLR §8303.a
§707	Suits by Attorney General		
	(a) Whenever the Attorney General has reasonable cause to believe that any person or group is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate U.S. District Court by filing a complaint (1) signed by him, (2) setting forth facts pertaining to the pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining or other order, as he deems necessary to insure the full enjoyment of rights under Title VII.	The Attorney General may make a complaint before the Commission.	LAD §297.1

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§707	Suits by Attorney General (cont'd)		
	(b) The U.S. District Courts have jurisdiction and the Attorney General may request a three judge court from which an appeal will lie directly to the U.S. Supreme Court. The case shall be heard at the earliest practicable date and shall be expedited in every way.	Proceedings to enforce Commission orders shall be determinged as expeditiously as possible with lawful precedence.	LAD §298
§708	Effect on State Laws		
	Nothing in Title VII shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future state or local law, other than any such law which purports to require or permit the doing of any act constituting an unlawful employment practice.	Nothing contained in the LAD shall be deemed to repeal any of the provisions of the civil rights law or any other law of the state relating to discrimination because of race, creed, color or national origin.	LAD §300
§709	Investigations, Inspections, Records, State Agencies. (a) The Commission may copy relevant evidence. (b) The Commission can cooperate with state and local agencies administering fair employment practice laws, can utilize their services and employees, and can reimburse them with funds specifically appropriate for that purpose. The Commission can enter agreements with such state or local agencies to refrain from processing charges in specific cases, under which no person may bring a civil action under §706 and to relieve persons of record keeping requirements under §709. The Commission shall rescind any such agreement whenever it determines that it no longer serves the interest of effective enforcement.		

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§ 709	Investigations, Inspections, Records, State Agencies (cont'd)		
	(c) Except as provided in §709(d), the Commission shall, by regulation or order, after public hearing, prescribe record keeping requirements for employers, employment agencies, labor organizations and for those controlling apprenticeship or other training programs. Relief from undue hardship caused by any requirement may be obtained by either applying to the Commission for an exemption or bringing a civil action.	In apprenticeship programs registered with the Industrial Commissioner complete records (including copies of written exams taken, documents submitted, and summaries of interviews including interviewers' judgments) of the selection process shall be maintained by the sponsors for two years, or the life of the applicant list, whichever is greater, and shall be made available to the Industrial Commissioner upon request.	Dep't. of Labor, Div. of Manpower. Apprentice Training Regs. 12 NYCRR 600.4(d)*
	(d) The record keeping requirements of §709(c) do not apply as to matters occurring in any state or subdivision thereof which has a fair employment practice law, except insofar as the requirement is necessary because of differences in coverage or methods of enforcement. The record keeping requirements do not apply to government contractors and subcontractors who are required to file reports relating to employment practices by Executive Order.		
	(e) It shall be unlawful for any officer or employee of the Commission to make public any information obtained by the Commission under this section, prior to the institution of any proceeding. A violation is a misdemeanor punishable by a fine up to $1,000 or imprisonment of up to one year.		* The reference is to the State of N.Y. "Official Compilation of Codes, Rules and Regulations."
§ 710	Investigatory Powers		
	(a) For the purpose of any investigation of a charge filed under §706, the Commission has the authority to examine witnesses under oath and require the production of documentary evidence.	The Commission has the power to examine witnesses under oath and require the production for examination of books and papers.	LAD §295.7

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity		
§710	Investigatory Powers (cont'd)		
	(b) If the respondent fails or refuses to comply with the Commissions demand to examine or copy evidence, or if any person fails or refuses to comply with §709(c) or (d), or if any person fails or refuses to give testimony under oath, the U.S. District Court for the district in which such person is found, resides or transacts business may, upon the Commission's application, require him to comply. The attendance of a witness may not be required outside the state where he is found, resides or transacts business and the production of evidence may not be required outside the state where it is kept.		
	(c) Within 20 days after a service of the Commission's demand for the production of evidence or for permission to examine or copy evidence, the person served may file a petition for an order modifying or setting aside the demand. No objection which is not raised by such a petition may be urged in defense to the Commission's proceeding to enforce its demand, unless the Commission commenced its proceeding within 20 days of the service of its demand, or unless the court determines that the defendant could not reasonably have been aware of the availability of the objection.	A request to withdraw or modify a Commission subpoena must first be made to the person who issued it and a motion to quash, fix conditions or modify may thereafter be made in the supreme court.	CPLR § 2304
	(d) In any proceeding brought by the Commission under (b), except as provided in (c), the defendant may petition the court for an order modifying or setting aside the Commission's demand.		

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity (cont'd)		
§711	Notices to be Posted (a) Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places where notices are customarily posted, a notice to be prepared or approved by the Commission setting forth pertinent provisions of Title VII and information concerning the filing of a complaint.	SCHR General Regulation No. 1 promulgated by the Commission requires employers, employment agencies, labor organizations, and labor-management committees to post and maintain the Commission's notices indicating the substantive provisions of the LAD and where complaints may be filed, in conspicuous, easily accessible and well-lighted places.	9 NYCRR 466.1* *The reference is to the Official Compilation of Codes, Rules and Regulations of the State of New York
	(b) A wilful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.		
§712	Preserves Federal, State, local and territorial veterans' preferences.		
§713	(a) Authorizes the issuance of procedural regulations in conformity with the Administrative Procedure Act. (b) Good faith reliance upon a written interpretation or opinion of the Commission or upon instructions issued by the Commission regarding the filing of information, is a defense to an action or proceeding based upon an alleged unlawful employment practice.	The Commission may issue rules and regulations.	LAD §295.5

	Civil Rights Act of 1964	New York Law	Reference
Title VII	Equal Employment Opportunity (cont'd)		
§714	The provisions of §111, Title 18 U.S. Code apply to the officers, agents and employees of the Commission. (Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with them in the performance of their official duties shall be fined not more than $5,000 or imprisoned not more than three years, or both.)	Any person who wilfully resists, prevents, impedes or interferes with the Commission or any of its members or representatives, or who wilfully violates an order of the Commission, shall be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to $500, or both.	LAD §299
§715	The Secretary of Labor shall make a study of discrimination in employment because of age and its consequences on the economy and affected individuals. The Secretary of Labor shall report to Congress not later than June 30, 1965, and include his recommendations for legislation in the report.	Age discrimination against persons between 40 and 65 is unlawful in employment.	LAD §296.3-a
§716	(a) Title VII shall become effective one year after the date of its enactment. (i.e. on July 2, 1965) (b) Notwithstanding subsection (a), sections 701-702, 705, and 708-716 shall become effective immediately. (i.e. July 2, 1964) (c) The President shall convene one or more conferences to enable the leaders of affected groups to become familiar with the rights afforded and obligations imposed, and to make plans for the fair and effective administration of Title VII.		

	Civil Rights Act of 1964	New York Law	Reference
Title VIII	Registration & Voting Statistics		
§801	The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics by race, color and national origin in such geographic areas as may be recommended by the Commission on Civil Rights.		

	Civil Rights Act of 1964	New York Law	Reference
Title IX	Intervention and Procedure After Removal in Civil Rights Cases		
§901 [28 U.S.C. §1447(d)]	An order remanding a case to the state court from which it was removed pursuant to §1443 of Title 28 U.S. Code is reviewable by appeal or otherwise. [§1443 provides for removal by the defendant from a state court to a U.S. district court of actions (1) against a person who is denied or cannot enforce in the State courts a right under any law providing for the equal civil rights of citizens or all persons, (2) for any act under color of authority derived from any law providing for equal rights, or for refusing to do an act inconsistent with such law.]		
§902	Whenever an action has been commenced in any court of the U.S. seeking relief from the denial of equal protection of the laws under the 14th amendment on account of race, color, religion, or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if he certifies that the case is of general public importance. In such action the U.S. shall be entitled to the same relief as if it had instituted the action.		

	Civil Rights Act of 1964	New York Law	Reference
Title X	Establishment of Community Relations Service		
§1001	Establishes as part of the Department of Commerce a Community Relations Service headed by a Director appointed by the President with the advice and consent of the Senate for a 4 year term.		
§1002	It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color or national origin which impair the rights of persons under the laws or which may affect interstate commerce. The Service may offer its services in such cases whenever, in its judgment, peaceful relations among the citizens of a community are threatened, either upon its own motion or upon request of an appropriate official or other interested person.		
§ 1003	(a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate state or local, public or private agencies. (b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee shall engage in investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the	The Commission may obtain and utilize the services of all governmental agencies.	LAD §295.4

	Civil Rights Act of 1964	New York Law	Reference
Title X	Establishment of Community Relations Service (cont'd)		
	Service. An officer or employee who makes information public in violation of this subsection shall be guilty of a misdemeanor punishable by a fine of up to $1000 or imprisonment not more than one year.		
§1004	The Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service.		

	Civil Rights Act of 1964	New York Law	Reference
Title XI	Miscellaneous		
§1101	In any proceeding for criminal contempt arising under Title II, III, IV, V, VI, or VII of this Act, the accused upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1000 or imprisoned for more than six months. The act constituting the criminal contempt must have been intentional. This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior of any officer of the court in respect to its processes. Nothing herein shall be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.	Where the alleged contempt (civil or criminal) arises out of an injunction in any case involving or growing out of a labor dispute no punishment may be meted out except after a jury trial. (Except for contempts committed in the presence of the court.)	Judiciary Law § 753-a
§1102	Double jeopardy--an acquittal or conviction of a specific crime bars a proceeding for criminal contempt arising under this Act, which is based upon the same act or omission, and visa versa.		
§1103	Saving clause, of Attorney General's existing authority to intervene in any proceeding.		
§1104	Nothing contained in this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any 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		

	Civil Rights Act of 1964	New York Law	Reference
Title XI	Miscellaneous (cont'd)		
	State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.		
§1105	Authorizes appropriations.		
§1106	Separability clause.		

TABLE OF DISTRIBUTION

The sections of the Civil Rights Act of 1964 (Public Law 88-352) have been distributed among the Titles of the United States Code, mainly as sections of Title 42 Public Health and Welfare, as follows:

Civil Rights Act of 1964		U.S. Code	
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I	101	42	1971
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V	501	42	1975a
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	1106	42	2000h-6

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March 29, 1965

Dear Clint:

Just a brief follow-up note to your reply to my letter concerning the appointment of Negroes to our service academies. I do not want to be misunderstood on this point. It would not be proper or desirable to appoint a Negro to a service academy solely on the basis of race. He must, of course, be fully qualified in relation to the other applicants from his state.

My letter attempted to point out that many qualified Negroes are not now considering the service academies in their future plans because of fears of discrimination and unequal opportunity. The Department of Defense is trying to indicate that military careers are worthy of consideration by qualified Negroes and that they should consider the service academies in their future plans.

It was my thought that certain Senators could help spread the word in their respective states. I hope this clarifies my position on this matter.

Best wishes.

Sincerely,

Hubert H. Humphrey

Honorable Clinton P. Anderson
United States Senate
Washington, D. C.

United States Senate

COMMITTEE ON
AERONAUTICAL AND SPACE SCIENCES

March 23, 1965

The Vice President

United States Senate

Dear Mr. Vice President:

I have your letter of March 17 suggesting that we nominate more Negroes to the Service Academies. I appreciate your interest in this matter, but I do want to say to you very frankly that I try to appoint the best qualified people who apply for admission without regard for race, creed or color. I appointed General Pat Hurley's son, and the General ran against me for the Senate in 1948. I not only have not had a Negro whom I recognized as the best qualified person, but to the best of my belief and memory, I have not had a single Negro applicant.

New Mexico is a state which has a very low percentage of Negroes to its white population. We have a very large minority group of Spanish-Americans. I try hard to make sure I make appointments among the Spanish-Americans, and that is about all I can do for the minority group unless there was a Negro boy who stood out as a candidate. That simply has not yet happened. I do not believe it proper to nominate a Negro simply because he is a Negro but only because he is the best qualified man for the post.

Sincerely yours,

Clinton P. Anderson

CPA/dc

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