Box 26
Interagency 1968 Task Force on
Civil Rights (Ramsey Clark, Chairman)

TF Memo

JCo

ADMINISTRATIVELY CONFIDENTIAL

October 7, 1968

EYES ONLY

MEMORANDUM FOR

Honorable Ramsey Clark
The Attorney General

In connection with the program on Civil Rights which you are developing, we would like to have your report reflect clearly your judgment about relative priority among the proposals.

First, in order to obtain explicit judgment on program priorities, your report should set forth the estimated cost of each individual program proposal which you make, and the total cost of all proposals. In addition, inasmuch as budget constraints may well be severe, you should also develop an alternative set of proposals at lower levels which would constitute the minimum which you would consider acceptable even though it would not do all that you recommend. The enclosed tabular format should be followed in providing this information. It should cover each program proposal -- whether it would require new program legislation, authorization for a change in the budgetary level of an existing program, or simply an increase in appropriations. Note that this format also requires that the proposals be ranked as to priority.

Second, with respect to proposals involving only a change in budgetary levels from 1969 (including those requiring legislation to change the authorization level) a second table should be provided:

1. Comparing the cost of your recommended level for each program with the amount the agency administering the program has included in its budget request to the Bureau of the Budget for 1970 within the overall planning figure given to the agency by the Bureau of the Budget.

2. Stating, in any instance where your recommendation exceeds the agency's budget request, the agency's judgment as to whether the excess amount has a higher priority than any of the other items included in the agency's budget request.

Third, to enable us to consider the merits of your proposals more fully you are also requested to submit highlight program specifications for each proposal. The specifications should provide key facts on each of the points in the enclosed outline. If the recommendation involves an increase or a modification in an ongoing program, the specifications should focus on explaining the nature and the merits of the add-on or the change in relation to the coverage and the performance of the current program.

Please submit this information as part of your report. If you need further information about the pricing or the nature of the program specifications, please call Fred S. Hoffman at the Bureau of the Budget (code 103, ext. 3680).

Joseph A. Califano, Jr.
Special Assistant to the President

Attachments

JAC:JCG:caw

JCC

ADMINISTRATIVELY CONFIDENTIAL

September 4, 1968

EYES ONLY

MEMORANDUM FOR

Honorable Ramsey Clark
The Attorney General

It would be helpful if you would submit to us by October 7, 1968, a detailed outline of new initiatives which might be proposed in the Budget, Economic, and State of the Union Messages in the field of Civil Rights. The outline should cover actions which might be taken both now and in the future to deal with the various problems in this area. Consideration should be given to items such as:

- Enforcement power for EEOC
- State jury reform
- Strengthening of Fair Housing enforcement
- Strengthening of the Civil Rights Act of 1964, particularly with respect to employment.

It should be understood that these are merely ideas resulting from our discussions and that no decisions have been made with respect to any of them. Furthermore, you are encouraged to add any other proposal which you feel is worthy of consideration.

The outline should contain the following information:

1. A short statement of the legislative or administrative proposal.
2. A detailed statement of the problem giving rise to the proposal.
3. A statement of related on-going programs, including costs, the people whom the programs reach, and the inadequacies of the present programs.

4. A discussion of the proposal, with emphasis upon the pros and cons and the costs and benefits of implementation. (Of great importance here is a detailed statement of the arguments and factual material which can be advanced in support of the proposal.)

5. A statement of the alternative proposals which were considered and the reasons for rejection thereof.

In addition, it would be helpful if you would prepare a summary of the report (not to exceed 10 pages) which contains the following information for each major administrative or legislative proposal:

-- Salient features of the proposal.

-- Brief statement of benefits of implementation.

-- Brief statement of costs of implementation.

Ten copies of the report should be submitted to me and five copies to the Director of the Bureau of the Budget.

Joseph A. Califano, Jr.
Special Assistant to the President

JAC:JCG:caw

TF Report

COPY # 9

DEPARTMENT OF JUSTICE

Proposed Initiatives for Inclusion in the
State of the Union, Budget, and
Economic Messages, 1969

CIVIL RIGHTS

SUMMARY

SUMMARY OF PROPOSALS:

CIVIL RIGHTS

The following is a summary of items relating to civil rights that the Department of Justice recommends be considered for inclusion in the President's State of the Union, Budget and Economic Messages.

1. Increased Appropriations for the Civil Rights Division and the Community Relations Service.

The Proposal. In order to enforce more effectively existing laws, the Department of Justice urges that its resource commitment be expanded substantially in the areas of equal employment, fair housing, and desegregated schooling. The Department also urges that its resource commitment to the community relations assistance program be expanded in order that the Community Relations Service may more effectively discharge its responsibilities. The additional resources needed in fiscal 1970 are estimated at an additional 100 positions (67 attorneys; 33 clericals) for employment, housing and education enforcement by the Civil Rights Division, and an additional 163 positions for the Community Relations Service.

Principal Benefits. At present, in the employment, housing and education fields, there are 72 geographic areas

where the overall population is over 100,000 and the negro population exceeds 10%. There is a need for the Civil Rights Division to be active in each of these areas. Due to limitations imposed by the present level of appropriations, however, there are no Department resources committed to investigations or suits in the field of employment in 32 of the 72 areas; in 54 of these areas, there are no employment suits pending. In the public education field, the Department has been able to investigate fewer than half of the complaints it receives. The number of school districts in which there is a need to file desegregation suits is steadily increasing. In the field of housing, Title VIII of the Civil Rights Act of 1968 will shortly give the Civil Rights Division responsibility for enforcing nondiscriminatory housing practices with regard to some 60 million units of housing throughout the country. The additional resources requested will enable the Civil Rights Division to expand its employment investigation operations into each of the 72 target areas that have significant employment discrimination problems, intensify its efforts in the school desegregation field, and discharge effectively its new responsibilities in the field of open housing.

The additional resources called for in the field of community relations assistance will enable the Community

Relations Service to increase its coverage of cities from 35 cities at present to 65 cities by 1972.

Costs. The cost of the increased resources commitment needed by the Civil Rights Division in the employment, housing and education fields is approximately $1.3 million per annum. The cost of the increased resources needed by the Community Relations Service is approximately $2.6 million per annum.

2. Enforcement Power for the Equal Employment Opportunity Commission.

The Proposal. Title VII of the Civil Rights Act of 1964 should be amended, first, to confer upon the EEOC the authority to issue "cease and desist" orders directing the discontinuance of discriminatory employment practices, and second, to authorize the Attorney General to institute injunctive suits against State or local governments that engage in discriminatory employment practices. This item is basically a resubmission of Title III of the Administration's Omnibus Civil Rights Bills of 1966 and 1967.

Principal Benefits. The EEOC, responsible for the administration of Title VII of the Civil Rights Act of 1964, at present seeks to eliminate discriminatory employment practices by utilizing informal methods of

conciliation and persuasion. Because it has no enforcement power comparable to the enforcement powers of other administrative agencies, EEOC's efforts to conciliate are often unsuccessful. By giving EEOC effective enforcement power, we should be able to realize much more rapid progress in eliminating discriminatory employment practices throughout the nation.

Racial discrimination in the employment practices of State and local governments is a continuing problem. Title VII of the Civil Rights Act of 1964 does not cover employment by governmental agencies, although it is clear that the Fourteenth Amendment prohibits discriminatory practices by such agencies. Existing remedies, such as suits by private individuals, have not significantly reduced the dimensions of the problem. By giving the Attorney General authority to sue for injunctive relief against States or units of local government that are in violation of the law, it is hoped that employment discrimination in this area can be substantially eliminated.

Costs. Estimates of the cost of giving EEOC cease and desist authority vary between $1.2 million per year and $10.9 million per year. Giving the Attorney General authority to bring pattern or practice suits against State and local governments in the employment area should entail an additional annual cost of approximately $72,000.

3. State Court Jury Selection.

The Proposal. The Department proposes a statute that would prohibit discrimination, on the ground of race, color, religion, sex, national origin or economic status, in the selection of grand and petit juries in State courts. To enforce the prohibition, the Attorney General would be authorized to initiate civil actions for appropriate relief against State jury officials who engage in discriminatory selection practices. Such actions could be initiated, however, only after State officials are given an opportunity voluntarily to eliminate selection procedures that are discriminatory in the judgment of the Attorney General. This proposal is substantially identical to Title II of the Omnibus Civil Rights Bills of 1966 and 1967.

Principal Benefits. Notwithstanding the fact that discrimination in the selection of State court juries has long been established as unconstitutional, such discrimination has continued. Existing remedies -- primarily challenges by criminal defendants and class actions by private individuals -- have not provided a solution to the problem. Giving the Attorney General authority to proceed against State jury officials, however, is likely to accelerate greatly the elimination of discrimination in the selection of jurors in State courts.

This in turn should lift the substantial burdens that are now put upon the courts and law enforcement agencies that must retry defendants whose first convictions have been upset because of deficiencies in the jury selection process. Moreover, the elimination of government-sanctioned discrimination in the selection of State juries should foster a respect for our legal institutions in general.

Costs. The additional personnel that should be added to the Civil Rights Division to enforce effectively this proposal will entail an additional annual expenditure of approximately $72,000.

4. Access to Law School.

The Proposal. A program of federal financial assistance directed toward increasing the number of members of disadvantaged groups -- particularly members of racial minorities -- who enroll in and graduate from law school. Under the proposal, federal funds would be made available to (1) create or expand special law school programs to benefit students from disadvantaged backgrounds who have received inadequate undergraduate preparation for law school; (2) establish special programs at colleges and universities designed to better prepare prospective law

students for law school; and (3) assist law school students from disadvantaged backgrounds by providing grants or loans to cover the cost of law school or the cost of special tutoring either in or in preparation for law school.

Principal Benefits. Very few members of minority groups -- and in particular, very few negroes -- can be counted among the nation's legal profession. This program is designed to cure this deficiency. By producing greater numbers of lawyers from minority groups, the program should provide such groups with leaders who understand the potential of the legal process for resolving social grievances and the importance of resorting to established legal channels for the attainment of legitimate aspirations. The program should also produce a number of highly qualified lawyers who are particularly suited for rendering legal services to minority and disadvantaged groups.

Costs. Tentative estimates are that the proposal would require the expenditure of approximately $7 million per year.

APPROPRIATIONS

Civil Rights and Community Relations

Employment, Housing, Education and related Community Relations Assistance are paramount program expansion areas for the federal government in the field of Civil Rights and Community Relations. The Department has a basic resource commitment with modest resource increases in the fields of interference with civil rights, voting, Title VI (federally assisted programs), and public accommodations and facilities. The outstanding problems in these areas are such that we cannot afford to do less. Hence, there are no resources which reasonably can be diverted to the expansion areas listed above.

Employment, housing, and education are considered together because the problems and the programs to deal with the problems of each are interrelated. Improvement in any one area is likely to contribute to improvements in the others. Set-backs in any one area are likely to contribute to set-backs in the others.

Our program targets are areas where the population is over 100,000 and over 10 percent Negro: 72 geographic areas. Of these, 41 areas are included in the group of cities responsible for the top 60 percent total value added by manufacturers in the United States. Generally speaking,

these are the areas in which great numbers of minority-group members reside, or to which they are moving. They are seeking jobs and housing and must rely on the educational opportunities and facilities available to them.

Due to resource limitations, there are no Department resources committed to investigations or suits in the field of employment in 32 of the 72 areas. In 54 of these areas there are no suits pending. Our target groups included a great variety of employers (employing as few as 25 employees), unions (having as few as 25 members), and employment agencies.

In the field of housing, Title VIII of the Civil Rights Act of 1968 applies to the 69 million dwelling units in the United States as follows:

January 1, 1969 - 40-45 million units

January 1, 1970 - all units except single family homes (60 million units covered is a conservative estimate).

Our target groups include a multitude of institutions which finance, rent, or sell dwellings.

In the field of public education, the Department is attempting to complement the responsibilities of HEW. We seek to establish legal principles on a host of plans and practices operating or proposed in school districts throughout the country. Indicative of the problem is that

there are 96 school districts which had funds terminated by HEW between 1966 and 1968. There are an additional 99 school districts now in HEW proceedings. Of the latter group, we expect some 50 percent will have funds terminated. Since the Department expanded its activities into the North, we have received 37 complaints from cities. With present resources, we have been able to investigate only 18 of those complaints. Of the 18, six have received notice letters and four are the subject of suits.

In the field of community relations assistance, even with a proposed 65 percent increase in funding in FY 70, we expect to service only 35 cities. In only three of these cities, the Community Relations Service will have a two-man team per city. Fourteen cities will have one man each. Eighteen cities will have the assistance of a one-half man-year per city. Our present estimates of increased service in FY 1971-1974, at a funding increase of 32 percent, 28 percent, 16 percent, and 9 percent respectively, will enable us to increase our service cities to 50, 65, 75, and 80 over those four years.

The table on the following page reflects actual and requested resource levels for the Civil Rights Division and Community Relations Service from FY 1968 - FY 1970.

	FY 68 Actual		FY 69 Request		FY 69 App. Adj.		FY 70 Estimated	
	$	Positions	$	Positions	$	Positions	$	Positions
Civil Rights Division	2,645	216	3,397(+752)	245(+29)	3,276(-121)	219(-26)	4,335(+1059)	312(+93)
Community Relations Service	2,000	130	2,808(+808)	176(+46)	2,363(-445)	138(-38)	3,811(+1448)	230(+92)
TOTAL	4,645	346	6,205(+1560)	421(+75)	5,639(-566)	357(-64)	8,146(+2507)	542(+185)

In FY 69, the Department filed a supplemental request for 55 positions for the Civil Rights Division. Twenty of the thirty attorney positions requested were intended for the housing program. This request was denied. In FY 70, we propose a Division increase of twenty-six attorneys for housing including the twenty attorneys already requested.

The Department can effectively use an additional 100 positions for the Civil Rights Division for employment, housing and education. This would provide 67 attorneys and 33 clericals. They would be allocated among the 72 geographical areas and would be responsible for implementing the employment, housing and education programs in each geographical area covered.

The cost of this increase is approximately $1.3 million.

The Department can effectively use an additional 163 positions for the Community Relations Service to increase its city coverage from 35 cities to 65 cities (present FY 1972 target). This increase would cost approximately $2.6 million dollars.

EQUAL EMPLOYMENT

ENFORCEMENT POWER FOR THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

(Civil Rights - Item II)

1. Statement of the Proposal.

Amend Title VII of the Civil Rights Act of 1964 to:

First, confer upon the Equal Employment Opportunity Commission authority to issue "cease-and-desist" orders directing the discontinuance of discriminatory employment practices.

Title III of the Administration's Omnibus Civil Rights bill (S. 1026, 90th Cong.) provided for this authority. S. 1308 (Clark & Javits) was identical to Title III. A clean bill (S. 3465), reported 13-2 by the Senate Labor and Public Welfare Committee after hearings on S. 1308, was not considered by the Senate.

The proposal would authorize the Equal Employment Opportunity Commission to issue cease-and-desist orders and to petition

for their enforcement in a United States court of appeals.

The Equal Employment Opportunity Commission would have the authority to hold administrative hearings for the purpose of taking evidence as to whether an unlawful employment practice had been committed. These hearings would be conducted by trial examiners in conformity with the requirements of the Administrative Procedure Act, codified in 5 U.S.C. 551, et seq.

Second, authorize the Attorney General to institute an injunctive suit against a State or local government if he determines it has engaged in a pattern or practice of discriminatory employment.

Specifically, the proposal would amend Title VII in the following important respects:

-- After the filing of the charge of discrimination, EEOC could, on the basis of a preliminary investigation, determine that prompt judicial action is necessary in order

to preserve its power to grant effective relief. In that event, the Attorney General could bring an action in the district court for preliminary and temporary relief pending EEOC's final disposition of the charge.

-- If EEOC dismisses the charge, the person aggrieved could bring an action in the United States district court to review the no-reasonable cause determination of EEOC. The court could sustain EEOC, direct it to find reasonable cause or direct it to investigate further.

-- If EEOC fails, within 180 days, either to dismiss his charge, issue a compliant, or enter into a conciliation agreement satisfactory to the complainant, the complainant would be authorized to bring a private suit. This provision, which is different from last year's bill, is discussed more fully below.

-- Under Title VII, EEOC engaged in conciliation efforts after it has found reasonable cause. The proposal would prohibit EEOC from entering into any conciliation agreement which was not acceptable to the person aggrieved.

-- If the conciliation fails, EEOC would conduct an administrative hearing, and if it found that the respondent has engaged in unlawful practices, it could issue an order requiring it to end the unlawful conduct and to take such affirmative action as would effectuate the policies of the Title.

-- If the respondent did not voluntarily comply with EEOC's order, it could petition an appropriate court of appeals for enforcement of its order. Any party aggrieved by an EEOC order, including the person filing the charge where EEOC dismisses his charge

in whole or in part, would have the right to petition the court of appeals for review of the order.

-- In addition to changes in the authority and procedures set forth above, the proposal would amend section 707 of Title VII by authorizing the Attorney General to bring suit in a Federal district court when he finds a pattern or practice of discrimination, on the grounds of race, color, religion, sex or national origin in the employment practices of a State or political subdivision.

The bill, like S. 3465, also contains a number of technical changes in EEOC procedures, modifying and clarifying the existing statute in a number of respects.

2. Statement of the Problem Giving Rise to the Proposal.

A. Cease-and-Desist Authority for EEOC. The need for EEOC to have authority to issue cease-and-desist orders is set forth in Senate Report 1111, accompanying S. 3465 (pgs. 3-5). It may be summarized as follows:

-- Despite the progress which has occurred since the implementation of Title VII began, Negro and other minority groups continue to be denied equal employment opportunity.

-- The experience of EEOC, the agency responsible for the administration of Title VII, shows that it has been severely hampered by its lack of enforcement power. Even if EEOC determines that a complaint is meritorious, it can do no more than seek to eliminate that practice by means of informal methods of conference, conciliation and persuasion. Largely because it has no power to issue binding orders, EEOC's efforts to conciliate are often unsuccessful.

-- If EEOC is unable to achieve successful conciliation, the only available remedy for a person complaining of the violation is time-consuming private litigation which would be an additional burden on the already overburdened Federal courts. While the Attorney General has authority to bring an action where patterns or practices of discrimination exist, the resources of the

Department of Justice are limited and it has been and will continue to be difficult to reach many areas of discriminatory employment practices through "pattern or practice" litigation.

-- Comparable power to issue judicially enforceable cease-and-desist orders is now exercised by most Federal agencies, including the NLRB, the Federal Trade Commission and the Federal Power Commission, as well as the vast majority of State antidiscrimination agencies.

B. State and Local Government Employment. Racial discrimination in the employment practices of state and local governments is a continuing problem. Such discrimination takes a variety of forms. Some agencies discriminate in their hiring practices, either excluding Negroes altogether or accepting them only for low-level jobs. In other instances, Negro employees (e.g., social workers) are permitted to serve only members of their race. Another aspect is denial of equal opportunity for promotion to supervisory positions.

One indication of the existence of discriminatory practices is furnished by employment statistics. For example, information obtained from the Alabama State Department of Pensions and Securities indicates that, as of April 1, 1968, the Department had some 1618 employees, 24 or 1.5 percent of whom were Negroes. Five of the 24 were part-time employees. Perhaps more startling is the fact that of approximately 1000 clerical employees in six Alabama agencies, only 2 were Negro. According to the 1960 census, Negroes accounted for 30 percent of the population of Alabama.

Similarly, we are advised that as of September 1, 1968, every Negro employee in the Mississippi Highway Department is in a menial position. Although 32 out of 34 custodial workers in the state's employment services are Negro, none of the 168 clerical employees are Negro. We note that according to the 1960 census, 42.3% of Mississippi's population was nonwhite.

Nor are statistics of this kind limited to the Deep South. Similar statistics, strongly suggesting discriminatory recruiting and hiring practices, exist with

respect to municipalities as well as States in different sections of the country. See, e.g., President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Police (1967), p. 168.

While employment discrimination by a State or local government clearly violates Fourteenth Amendment rights, the Federal Government has no effective means of enforcing those rights. Individuals who are subjected to such discrimination have the right to seek relief in the federal courts. However, an individual whose application is rejected may not realize that he is the victim of discrimination; he may not be able to obtain sufficient information to establish that discrimination took place. Moreoever, a lawsuit charging employment discrimination on the part of a State or local agency is likely to involve more time and money than he can invest. Besides, the act of discrimination against him is not likely to be an isolated case but is more likely to be part of a pattern when committed by State or local governments. Such a pattern of discrimination could be better attacked in suits by the Attorney General.

At present, the Federal Government lacks authority to seek redress against such infractions of the Fourteenth Amendment. Title VII of the Civil Rights Act of 1964, which deals with equal employment opportunity, excludes from its coverage States and political subdivisions. See §701(b), 42 U.S.C. 2000e(b). While many State and local programs are covered by Title VI of the 1964 Civil Rights Act, which requires nondiscrimination in federally assisted programs, this title is, in general, not applicable to employment practices. See §604, 42 U.S.C. 2000d-3. The statutes requiring a merit system on the part of State agencies which administer certain federal grant-in-aid programs (see, e.g., 42 U.S.C. 302(a)(5)) afford some basis for federal action against employment discrimination of State agencies, but cover only a small fraction of State and local positions. Thus, while we repeatedly receive complaints of discriminatory practices by State and local government agencies, we are usually not in a position to take action.

3. Related On-going Programs.

A special Task Force is considering the merits of transferring, by Executive Order, the functions of the Secretary of Labor under E.O. 11246, currently discharged by

the Office of Federal Contract Compliance (OFCC) of the Department of Labor, to the Chairman of EEOC, except that the power to make decisions on the record for the debarment from Government contracts would be made by the full Commission. If the transfer took place, EEOC would have authority to cut off Government business from contractors and subcontractors who fail to comply with the nondiscrimination requirements of the Executive Order.

Even if the proposed transfer takes place, we should seek cease-and-desist legislation. Several considerations lead to this conclusion. In the first place, the sanction of debarment is applicable only to Government contractors and subcontractors and contractors and subcontractors on Federally-assisted construction projects. While we do not have precise statistics, it is probable that there are a significant number of employers with 25 or more employees who are not Government contractors or subcontractors. Legislation giving EEOC authority to issue case-and-desist orders would give EEOC a sanction against these employers, which it would not have under the proposed Executive Order.

Moreover, OFCC's authority under E.O. 11246 covers employers only; it does not cover unions, apprenticeship programs or employment service agencies which are expressly covered by Title VII and against which EEOC could issue cease-and-desist orders. (In fiscal 1968, EEOC acted on 9,339 charges involving employers, 1,535 involving unions, 159 involving employment agencies and 69 involving apprenticeship and training programs.) Because the loss of Government business would adversely affect not only the contractor but also his employees, the threat of debarment in some cases might cause the union representing these employees and the apprenticeship program in which the union participates to come into compliance. We have found this to be the case particilarly in industrial situations where the bargaining agreement does not provide that the union will be the employer's sources of employees. The Executive Order sanctions have been largely ineffective with construction unions, however, and EEOC would be in a far stronger position if it had authority to issue cease-and-desist orders directly against unions and apprenticeship programs. Private employment service

agencies are not covered by OFCC's authority; and while the Department of Labor under Title VI could cut off its financial support of a State employment service agency which engages in discrimination, this sanction is an extreme one, and has not been invoked.

Further, the Office of Federal Contract Compliance in the past has invoked the threat of debarment only in serious cases involving patterns or practices of discrimination. If EEOC continued to follow this practice, there would be no effective sanction in cases involving individual acts of discrimination or limited numbers of persons. In such cases, EEOC would presumably rely on the present provisions of Title VII and seek voluntary compliance; and the person aggrieved could bring a private suit. With cease-and-desist authority, EEOC could issue orders, violation of which would be punishable by contempt of court, in all types of cases, even in those cases involving single acts of discrimination. Cease-and-desist orders have in fact been used by other agencies such as NLRB in all types of cases, not only in those involving patterns of unlawful behavior.

4. Pros and Cons of the Proposal; Costs Involved.

A. Advantages. The principal benefits and advantages to be derived from the proposal have been discussed in the preceding sections. In addition, however, it is important to request cease-and-desist authority for EEOC because the Administration has twice before asked for such legislation, and a change of position might be interpreted as being due to a lack of confidence in the Commission. This would be particularly unfortunate at a time (should the proposed Executive Order be issued) when EEOC was beginning its enforcement of the contract compliance program.

B. Disadvantages. There is always the danger that if the proposed Executive Order transfers the contract compliance program from the Department of Labor to EEOC, opponents of civil rights legislation would attack EEOC by attacking the contract compliance program at the congressional hearings and debates. While this might lead to some unfortunate publicity for the Commission, we think these attacks can be answered and that, on balance, this danger is not so serious as to warrant abandonment of this most important piece of legislation.

C. Pros and Cons of Particular Issues: The Private Suit Remedy. One major change in our proposal from last year's bill relates to the private suit remedy. We recommend that this year's bill include provisions which would permit a person aggrieved to bring in certain circumstances a private action in a federal district court to vindicate his rights under Title VII. A brief history of the private suit remedy proposal will clarify this issue.

Under Title VII, an aggrieved individual could bring a private action if within 30 days (or, in the discretion of the Commission, 60 days) after the charge is filed EEOC was unable to obtain voluntary compliance. S. 1308, the original Administration bill of the 90th Congress, would have given cease-and-desist authority to EEOC and also retained the private suit remedy. Under S. 1308, the private party could bring a private suit if 180 days after the filing of a charge EEOC has "for any reason whatsoever failed or declined to issue a complaint or has terminated proceedings (including charges with respect to which the Commission has secured voluntary compliance satisfactory to it)." A private

action could also be brought if EEOC ends a proceeding by means of an agreement to which the aggrieved has not consented.

The Senate Labor Committee deleted the private suit remedy from S. 1308. In its place, it added a section giving private parties the right to obtain review in the district court of no-reasonable cause findings by EEOC and a section requiring the consent of the person aggrieved to conciliation and settlement agreements. It also made the person aggrieved a party to EEOC proceedings and required that EEOC act upon charges within 120 days (this was later changed in full Committee to 120 days "so far as practicable"). The bill in this form was reported to the Senate.

We believe that the private suit remedy should be restored to the legislation. Even if EEOC had cease-and-desist authority, there would still be reason to authorize private suits to remedy violations of Title VII. In our experience private suits in the Federal courts are often an effective means to advance civil rights. The provision for a private suit remedy would also protect the party aggrieved in the event that EEOC was unwilling or unable to act on his charges of discrimination.

We propose, therefore, that the person aggrieved be permitted to bring a court action if EEOC fails, within a specified period -- probably 180 days -- either to dismiss his charge, issue a complaint, or enter into a conciliation agreement (which, under our proposal, would have to be acceptable to him). These provisions would provide for a private suit remedy more limited than that included originally in S. 1308, for S. 1308 would also have authorized a suit if EEOC dismisses the charge or enters into a conciliation agreement unsatisfactory to the person aggrieved.

We are not recommending that the S. 1308 provisions on private suits be retained for several reasons. In the first place, the broader private remedy would undoubtedly be strongly opposed, particularly by labor groups. In addition, there is no serious need for the private suit in the two situations in which it is provided for in S. 1308. Under our proposal, a private party could appeal dismissal of his charge to a district court. While this appeal is not the equivalent of a private suit, since the court could only remand the case to EEOC and would not have authority to issue an order

on the merits it does protect the person aggrieved if his charge was arbitrarily dismissed by EEOC. In addition, our proposal would require the consent of the person aggrieved to any conciliation agreement; this provision would protect him almost as much as the provisions in S. 1308 permitting him to bring a private suit if EEOC entered into a conciliation agreement without his consent.

Finally, if we adopted the private remedy in S. 1308, it would be necessary that our proposal differ from S. 3465 in several additional respects, i.e., the provision relating to conciliation agreements and to appeals to the district court of the dismissal by EEOC of charges. We feel that the closer we stay to the committee bill the better the chances for favorable action by the Congress.

We further recommend that the legislation provide that if a private suit is brought, EEOC would be divested of jurisdiction over the matter. This provision did not appear in S. 1308, but our discussions this year with employers and unions revealed that they would object to being subjected to simultaneous proceedings before EEOC and a district court.

D. Pros and Cons of Particular Issues: Attorney General Suits Against State and Local Governments. The other major change in our proposal from last year's bill would grant the Attorney General broad authority to seek injunctive relief against discriminatory employment practices by State and local governments. This proposal is like one advanced by Senator Javits last year which was narrowly defeated in committee 8 to 6. The need for such authority has been shown above.

Such suits would be based on a pattern or practice of discrimination and would involve more than the interests of the immediate victims. For example, the effects of employment discrimination by a state agency go beyond the applicants and employees who are denied equal opportunity. All residents pay taxes which go toward the salaries of such employees, and racial discrimination by government agencies is likely to alienate minority groups toward the governmental agency which is supposed to be serving all. Indeed, such discrimination is likely to impair the ability of the agency to perform its services in a fair, and effective manner.

Of course, prime responsibility for eliminating discriminatory practices belongs to the State or local agency itself. However, the fact that discrimination exists indicates that such agencies are unaware of the problem or are unwilling to take corrective action. The proposed statute should be effective in two ways -- first, the requirement that notice of alleged discrimination be given to appropriate State or local officials should mean that, at least in some cases, the improper employment practices will be eliminated voluntarily. Where no voluntary solution is possible, the Attorney General will be able to seek judicial relief.

E. Pros and Cons: Other Issues. S. 3465 contains provisions which would override EEOC's Guideline of February 25, 1968, declaring that some differentiation between men and women in pensions and retirement plans were unlawful under Title VII. We believe that it would be inappropriate for this Department or the EEOC to sponsor this provision which would override a decision of EEOC, and we recommend that it not be included in our proposal.

We recommend that the provisions directing the President to conduct a study on duplication in federal agencies responsible for the enforcement of equal employment opportunity statutes and orders be deleted from the bill. If the proposed Order relating to the transfer of OFCC to the Chairman of EEOC is promulgated, it would, of course, be unnecessary. In any event, we think it inappropriate for the Administration to ask for legislation which would direct it to conduct an investigation of its own operations.

E. Cost. The Task Force on Civil Rights in November 1966 estimated that its proposal to give EEOC cease-and-desist authority would cost an additional $1.2 million a year. We have been advised by EEOC that it estimates it will need an additional 595 persons and $10.9 million per year to discharge cease-and-desist authority. The Department feels that this estimate may be on the high side.

The proposal to give the Attorney General authority to bring pattern or practice suits against State and local governments should not involve any considerable additional

cost. At the maximum, four additional attorneys and four clerical personnel would be needed for the Civil Rights Division. This would entail an additional annual cost of approximately $72,000.

5. Alternatives Rejected.

Under the Present provisions of Title VII and those proposed under S. 3465, the General Counsel of EEOC is appointed by its Chairman and reports to the Commission.

An alternative would be to provide that EEOC have a separate and independent general counsel, to be appointed by the President, who would have the authority to investigate, conciliate and prosecute cases. Members of the Commission would have the authority to make the administrative decision in each case brought by the general counsel. This organizational structure would be similar to that of the National Labor Relations Board. Some of the opposition in the Senate to last year's bill was based on the argument that, under the bill, EEOC would act both as prosecutor and judge, thus denying the respondent due process. We do not regard such arguments as valid. While an organizational structure similar to that of the NLRB might be acceptable and should involve

little, if any, additional cost, we see no need to depart from the provisions of S. 3465 in this regard.

An alternative to our proposal to amend section 707 to permit the Attorney General to sue State and local governments for employment discrimination would be a separate statute authorizing Attorney General suits whenever there was a pattern or practice of deprivation of any Fourteenth Amendment right based upon race, color or national origin. This proposal was part of the 1966 Civil Rights bill as passed by the House of Representatives and is similar to a proposal made by Attorney General Rogers some years ago. Experience over the last decade has indicated that the Senate is unwilling to accept such blanket authority to sue for the Attorney General, and the Department of Justice itself feels that such a proposal would have a broader coverage than the Department is prepared to show it needs in order to discharge its responsibilities in the civil rights area.

Another alternative would be to amend the Title VII definition of "employer" to include State and local governments. There would be strong opposition, however, to

subjecting State and local governments to the investigative, conciliation and enforcement authority of the Equal Employment Opportunity Commission. While such an amendment of the definition of "employer" would also make State and local governments subject to private suits under section 706, this would have little practical significance, since a private individual already has the right, under the Fourteenth Amendment, to sue governmental agencies with respect to employment discrimination.

Cost is not a relevant factor in the consideration of the last two alternatives.

STATE JURIES

STATE COURT JURY SELECTION

(Civil Rights - Item III)

1. Statement of the Proposal.

The Department of Justice proposes a statute that would prohibit discrimination, on the ground of race, color, religion, sex, national origin or economic status, in the selection of grand and petit juries in state courts. This proposal is identical to Title II of the civil rights bill proposed by the Administration in 1967, H.R. 5700 and S. 1026 (90th Cong., 1st Sess.), which in turn was essentially the same as Title II of the bill proposed in 1966, H.R. 14765 and S. 3296 (89th Cong., 2nd Sess.). To enforce the prohibition, the Attorney General would be authorized to initiate civil actions against jury officials who engage in discriminatory selection practices. This authorization meets the need for more effective remedies against discrimination in state court jury selection.

The proposed statute would specify the types of relief that the federal district court could grant in the event it finds discrimination took place. Among the types of

relief specified are injunctions covering the future conduct of state jury selection officials, suspension of subjective qualifications for jury service, and the appointment of masters to perform the duties of jury officials.

Another important feature of the proposed statute is the requirement that, when a state jury selection system is challenged by the United States or by a private party (in federal or state court), the jury officials must submit a detailed description of selection procedures. If the court determines that there is probable cause to believe that prohibited discrimination took place and that records maintained by the state are not sufficient to permit a determination whether such discrimination occurred, then the burden of proving that there was no discrimination is placed upon the jury officials.

Another provision would require jury officials in a jurisdiction with a nonwhite population of 10 percent or more to maintain records on the race of persons considered for jury service and persons removed from jury panels by peremptory challenges.

The purpose of the provision requiring jury officials to furnish information on selection procedures, and of the provision on record-keeping, is to facilitate proof of discrimination. Jury selection procedures vary greatly, and the problems of proof can be considerable. See, e.g., Billingsley v. Clayton, 359 F.2d 13 (C.A. 5), cert. denied, 385 U.S. 841 (1966). The proposed statute places the burden of coming forward with the evidence upon jury officials -- the persons who are in a position to know how the selection system is operating. The record-keeping requirement will help to make it possible to determine whether racial discrimination has been practiced in the selection procedures of a particular jurisdiction.

Prior to bringing a suit under the proposed statute, the Attorney General would be required to notify appropriate officials of the alleged discrimination and certify that they have had a reasonable opportunity to rectify the alleged conditions. Jury officials will thus be given an opportunity voluntarily to eliminate discriminatory aspects of their selection procedures. Only if they fail or refuse to do so would the Attorney General be authorized to seek judicial relief.

2. Statement of the Problem Giving Rise to the Proposal.

The unconstitutionality of discrimination in the selection of state court juries has long been clear. Nonetheless, especially in the southern states, the practice of racial discrimination in jury selection has continued. The persistence of such discrimination is illustrated by the number and outcome of reported cases involving alleged jury discrimination on the part of state officials. See generally, Hearings on the Proposed Civil Rights Act of 1967 before the Subcommittee on Constitutional Rights of the Senate Judiciary Committee, 90th Cong., 1st Sess., pp. 91-96 (1967). The Supreme Court of the United States alone has written decisions in approximately three dozen cases concerning such jury discrimination, and in most instances has found the claim of discrimination to have been valid.

In connection with habeas corpus proceedings brought by convicted defendants, the lower federal courts are frequently faced with challenges to state court jury selection practices, and often convictions must be upset because of discriminatory selection procedures. See, e.g., Labat v. Bennett, 365 F.2d

698 (C.A. 5, 1966), cert denied, 386 U.S. 991 (1967); Goins v. Allgood, 391 F.2d 692 (C.A. 5, 1968).

The prevalence of jury discrimination is also illustrated by cases reaching state appellate courts. For example, since 1965, the Supreme Court of Mississippi has, in some seven cases, reversed convictions because of exclusion of Negroes from jury panels. See Foudren v. State, 199 So.2nd 625 (1967); Williams v. State, 210 So.2d 780, 785 (1968) and cases there cited.

The great majority of the state jury discrimination cases, in federal or state courts, result from the challenge of a criminal defendant. When a conviction is reversed because of improper selection procedures, the jury officials involved may discard the particular practices found to be unlawful. There is no certainty, however, that the officials will undertake a thorough reform of their selection system, or that the modified system will be applied in a nondiscriminatory manner. This is illustrated with special force by the case of Whitus v. Georgia, 385 U.S. 545 (1967), where the Supreme Court reversed a second conviction because of racial discrimination in the jury selection process. The

first trial of the defendant had led to a conviction that had been set aside by another federal court for essentially the same reason -- i.e., discriminatory selection practices.

Experience has demonstrated that the judicial remedy of reversing a conviction is not likely to result in the establishment and implementation of a nondiscriminatory jury selection system in the future. The Department of Justice feels that the only long-range satisfactory solution is to authorize the issuance of federal court injunctions requiring that positive and specific steps be taken to end discrimination. Such an injunction would expressly cover future conduct on the part of state jury selection officials, and provide the basis for ensuring that jury officials will not merely resort to more subtle forms of discrimination. Cf. Pullum v. Greene, 396 F.2d 251 (C.A. 5, 1968). The proposed statute would, for the first time, enable the Attorney General to obtain this more satisfactory type of relief.

3. Related On-going Programs.

At the present time, the Attorney General lacks authority to commence civil actions for injunctive or other

relief against discriminatory practices in the selection of state court juries.

Private individuals may initiate class actions seeking injunctive relief against state jury practices that discriminate against members of the class. A number of such suits -- class actions on the part of Negro citizens -- have been brought, and the Attorney General, acting under Title IX of the Civil Rights Act of 1964,[1/] has intervened in support of the complainants. See, e.g., Pullum v. Greene, supra; White v. Crook, 251 F. Supp. 401 (M.D. Ala., 1966); Mitchell v. Johnson, 250 F. Supp. 117 (M.D. Ala., 1966). Still, under the present statutory framework, such litigation can be instituted only if private individuals are willing and able to do so. Consequently, private litigation, even when assisted by the Attorney General's intervention, has not proved to be an adequate solution to the problem.

1/ Title IX of the Civil Rights Act of 1964 (§ 902, 42 U.S.C. 2000h-2) authorizes intervention by the Attorney General in actions seeking relief from denial on account of race, color, religion or national origin, of equal protection of the laws.

Jury officials who exclude citizens from jury service on account of such citizens' race are subject to criminal penalties under 18 U.S.C. 243. This statute, however, has not been the basis for reform of improper selection systems.

4. Pros and Cons of the Proposal; Costs Involved.

There are a number of strong arguments in favor of the proposal:

(a) Aside from the fact that jury challenges by individual defendants have not been an effective means of achieving systematic reform, such challenges have created a substantial burden for courts and law enforcement agencies. The retrial of a defendant whose first conviction has been upset may take place years after the original trial and, because of such factors as the absence of witnesses, the likelihood of (again) securing a conviction may be reduced substantially. Thus, the establishment of a more effective remedy to prevent state jury discrimination will strengthen law enforcement.

(b) Every effort must be made to eliminate discrimination that has the imprimatur of official approval, for government-sanctioned discrimination erodes the respect of citizens for the legal institutions under which we must live. Moreover,

discrimination that appears to be officially sanctioned has a deleterious "fallout" effect upon behavior in the private sector. Both of these unfortunate consequences of state jury discrimination should be eliminated if the proposed statute is enacted.

(c) Fundamental constitutional rights are involved, and the federal government must do all within its power to ensure that federally guaranteed rights are not curtailed by state officials acting in violation of the law of the land.

(d) The Administration has twice before sought such legislation as part of its program. The clearly demonstrated need that occasioned the first request for such legislation persists. Failing to resubmit the proposal because of the two earlier failures to secure passage will encourage the opponents of civil rights legislation to be even more obstructionist than they have been in the past.

The one substantial drawback to submitting this proposal is that, from a realistic standpoint, there is little likelihood that the measure will be enacted in the foreseeable future, absent a change of circumstances. There is powerful opposition to the proposal, especially in the Senate. On the other hand, chances of enactment do not appear any more remote than the chances of enacting an open housing bill appeared at this time last year.

The Civil Rights Division of the Justice Department estimates that the proposed statute can be enforced effectively by the addition to its staff of 4 attorneys and 4 clerical employees. The cost for such additional personnel would be approximately $72,000 per year.

5. Alternatives Rejected.

Instead of a bill which contains detailed provisions on relief, and which requires the production of jury selection information and detailed record-keeping, the proposed statute could merely (1) prohibit discrimination in state court jury selection, and (2) grant the Attorney General authority to seek injunctive relief against the prohibited discrimination.

Inclusion of the features detailing possible relief and requiring the production of information and record keeping has accounted for some of the Congressional opposition to the legislation.2/ Thus, the more limited bill might have a greater chance of enactment.

The more limited alternative was rejected because the record keeping requirement, the production of information feature, and the specification of obtainable relief are all significant and should be dealt with in the legislation. The absence of racial statistics, for example, makes it difficult to ascertain whether discrimination has taken place, and complicates the task of proving discrimination in a judicial proceeding. We believe that the Administration should continue to seek legislation that will facilitate obtaining appropriate relief. The more limited alternative complicates the task of obtaining relief.

2/ The civil rights bill proposed in 1966 (H.R. 14765), including the title on state juries, was passed by the House of Representatives in August 1966. However, the bill was not brought to a vote in the Senate.

In 1967, the state jury legislation was the subject of hearings in the Senate, but that legislation was not reported in either House.

LAW SCHOOLS

ACCESS TO LAW SCHOOL

(Civil Rights -- Item IV)

1. Statement of the Proposal.

The Department of Justice tentatively recommends enactment of a program of federal financial assistance directed toward increasing the number of members of disadvantaged groups -- particularly members of racial minorities -- who enroll in and graduate from law school. A final recommendation will await the completion of a Departmental task force study, which should be completed within the next 4 or 6 weeks.

Under the tentative proposal, federal funds would be expended in the following three ways. First, grants would be made available to law schools for the creation or expansion of programs (such as special classes or tutoring) to benefit students from disadvantaged backgrounds where necessary to compensate for inadequate undergraduate educations. Second, funds would be made available to colleges and universities for special programs designed to better prepare prospective law students for the challenges that they will meet at law school. Third, members of disadvantaged groups would be recipients of tuition grants and/or loans to cover the costs of law school, or the costs of special education or tutoring

necessary to enable the recipient to meet the requirements for admission to law school.

Administration of the proposed statute tentatively would be the responsibility of the Commissioner of Education. The Commissioner would be required to consult with the Attorney General and the Office of Equal Opportunity in developing policies and guidelines to carry out the statute and ensure accomplishment of the purposes of the program. The Commissioner would also be charged with coordinating this program with other forms of pertinent Federal assistance -- e.g., work study, loans, and Special Services for Disadvantaged Students.

The Commissioner would be empowered to establish criteria under which loans made to individuals could be forgiven by the Federal government. For example, a law graduate who had been the beneficiary of a tuition loan might be able to reduce or eliminate his indebtedness by donating a certain percentage of time to the solution of the legal problems of other disadvantaged persons or groups.

It is not contemplated that the program would necessarily involve any reduction of law school standards; rather, wherever possible, efforts would be concentrated on

developing the potential of natively intelligent and capable individuals of disadvantaged backgrounds who have not acquired the requisite skills for successfully entering and completing law school.

In screening applicants for the program, it is contemplated that consideration will be given to the leadership qualities of the applicant and his desire to improve his own status and the status of others of his own race or economic level.

2. Statement of the Problem Giving Rise to the Proposal.

The primary goal of this proposal is to encourage persons from disadvantaged minority groups who have qualities of leadership and native intelligence to enter the legal profession. Few persons from such groups are currently in or planning to enter the legal profession. As a consequence, these minority groups do not have significant numbers of persons who are trained in the profession that is skilled in the resolution of disputes, both public and private, by resort to the techniques and institutions that our society has established for the peaceful settlement of differences.

This has two unfortunate consequences. The first is that members of minority groups tend not to appreciate -- or if they do appreciate, tend not to utilize -- the resourcefulness of the law as a tool for satisfactorily settling public and private differences or effecting social change. Second, minority groups characteristically do not have a significant number of persons who have a highly trained appreciation of the rule of law, and who consequently can assume a leadership role in their communities by stressing the need for effecting change through orderly processes rather than by illegal or disruptive techniques.

Although not limited to Negroes, the underlying problem can be illustrated by the proportion of Negroes who are lawyers or are attending law school.

While Negroes constitute more than ten percent of the population of the United States, they account for only slightly more than one percent of the nation's attorneys. Furthermore, a great majority of the Negro lawyers are located in northern cities. It has been estimated that, in the South and Southwest where some 13 million Negroes live, there are fewer than 340 Negro lawyers.

Negro representation in law school is also disproportionately low. According to a recent report of a committee of the Association of American Law Schools, "the current output of Negro law graduates is . . . hardly more than miniscule." Association of American Law Schools, 1967 Proceedings, p. 160. The report states that American law schools are currently graduating, each year, fewer than 200 Negroes, as contrasted with 10,000 White graduates. Although statistics are not available with respect to other minorities and other disadvantaged groups, it is reasonable to assume that they too are inadequately represented in law schools and in the legal profession.

3. Related On-going Programs.

There are several programs -- either federally or privately sponsored -- in the area.

In 1968, the Council on Legal Education Opportunity (CLEO) was formed through the efforts of the American Bar Association, the National Bar Association, the Association of American Law Schools, and the Law School Admission Test Council. CLEO seeks, both through operation of pre-law training sessions during the summer and through scholarship

assistance, to make attendance at law school possible for members of three minority groups -- Negroes, Indians and Spanish-speaking persons. CLEO has received financial support from the Office of Economic Opportunity and funds for scholarship use from a private foundation.

However, the statutory basis for the OEO grant, 42 U.S.C. 2825 (Supp. III, 1965-67), is limited to pilot or demonstration programs. Neither OEO nor any other federal agency has authority, at the present time, to provide financial assistance, on a comprehensive and continuing basis, to programs aimed at bringing disadvantaged persons into the legal profession.

Some law schools are making special efforts to attract students who belong to minority groups. Such efforts and the work of CLEO are helpful, but the fact remains that the extent of existing programs is not commensurate with the scope or the seriousness of the problem.

There are two programs of federal loans or federally insured loans that may be utilized by law students -- the National Defense Student Loan Program, 20 U.S.C. 421, and the

Guaranteed Loan Program, 20 U.S.C. 1071 (Supp. III, 1965-67). Neither of these programs fulfills the basic purpose of the proposed new program. First, both programs in some measure -- but in particular the National Defense Student Loan Program -- are designed primarily for students with superior academic backgrounds. Second, these two programs are not directed toward members of disadvantaged minorities. The instant proposal is intended to benefit students with ordinary or even less than ordinary academic records -- that is, persons who have the native ability to obtain a legal education, but who will require special academic assistance to qualify for and take advantage of law school. Third, many students from disadvantaged backgrounds may be very reluctant to incur substantial debts in order to obtain their professional education. In such cases, the two loan programs mentioned above would be of little value, and either outright grants or loans accompanied by a forgiveness feature would be necessary.

Another Federal program which would be coordinated with the proposed program is the "Special Services for Disadvantaged Students", set up under the Higher Education

Amendments Act of 1968 (82 Stat. 1018). This program offers remedial and other special services for students with academic potential who, by reason of deprived educational, economic, or cultural background or physical handicap, are in need of such services to continue or resume their secondary or postsecondary education. This program, still in its pilot stage, is directed toward rectifying deficiencies in the educational process at the secondary and college levels. While this may prove of some benefit, the program is not aimed at preparing promising students specifically for careers in law, nor does it provide assistance beyond the undergraduate level.

Another relevant federal program is the so-called work study program. See 42 U.S.C. 2751 (Supp. III, 1965-67). As is true with respect to loans, work study might enable some disadvantaged persons to attend law school. Still, the nature and scope of work study prevents it from being a satisfactory solution to the problems of disadvantaged students. Many of the students the proposal is intended to reach would find the law school curriculum so

difficult that they will not be able to combine law school and employment.

4. Pros and Cons of the Proposal; Costs Involved.

The proposal is intended to produce the following desirable results:

(a) By producing greater numbers of individuals from minority groups who are trained in the legal profession, the program should provide such groups with community leaders who understand the potential of the legal process for resolving community grievances, and the importance of resorting to established legal channels for the attainment of legitimate aspirations;

(b) By producing a greater number of highly qualified lawyers who are especially suited for dealing with the problems of minority and disadvantaged groups, it would increase the availability and quality of legal services for disadvantaged groups;

(c) It will demonstrate to minority groups that the rule of law and legal institutions is not simply a technique employed by the establishment for the perpetration of the status quo; this will have the salutary effect of fostering respect for legal institutions.

The disadvantages of this program include the following:

(a) The proposal may be viewed on Capitol Hill and by certain elements of the public as just another handout or grant program. The chance of this is all the greater because the positive benefits to be derived from the program will be realized over an extended period of time, and will not be readily identifiable in the short run.

(b) The proposal may be subject to criticism on the grounds that it is not desirable to single out a special group -- disadvantaged minorities -- for special assistance.

(c) It will be argued that there are other professions (doctors, dentists, etc.) that

could benefit from a similar program of special educational assistance, and that to single out the legal profession is not justifiable. In some measure, of course, this is true, for other professions could use help. This argument neglects, however, the unique benefits to be derived from increasing the number of minority group lawyers.

(d) Active federal participation in this program may discourage private groups or foundations from continuing their present limited interest in making law school education available to under-privileged persons.

Tentative estimates are that this proposal would require the expenditure of approximately 7 million dollars per year. Approximately one half of this amount would be used to establish special educational programs either prior to or during law school for disadvantaged persons. The other half would be used to establish scholarships for such persons.

With this amount of resource commitment, it is estimated that it will be possible to double the number of Negroes completing law school (so that the number of Negroes graduating would reach 400 per year), and make corresponding increases among other disadvantaged groups, within a five year period.

5. Alternatives Rejected.

An alternative would be to increase funds available to the Office of Economic Opportunity for the purpose of instituting a small number of demonstration projects. Additional experience concerning methods, costs and effectiveness could thereby be obtained before a large scale program is undertaken. The estimated cost of a trial program is $1 million per year, for a period of three to five years.

In our view, however, it would be preferable not to defer establishment of a nationwide, comprehensive program. Law schools desiring to create special programs for disadvantaged students can profit from the experience of the Council on Legal Education Opportunity and of the

schools that are already attempting to attract such students. These beginning efforts have already, in a sense, provided the benefits to be derived from a demonstration project. Also of value is the work which has been done by the Minority Group Project of the Association of American Law Schools.

The underlying problem -- the inadequate representation of Negroes and other minorities in law schools -- has been recognized and been the subject of study for several years. The need and value of properly preparing and attracting greater numbers of lawyers from disadvantaged minorities has been established. A demonstration project - in itself of questionable benefit - would serve primarily to postpone the taking of meaningful action to deal with the problem.

Followup

BOB
Analysis

B.P. FORM NO. 34

MR. GAITHER

UNITED STATES GOVERNMENT

Memorandum

Executive Office of the President
Bureau of the Budget

TO : The Director

DATE: Nov. 14, 1968

FROM : General Government Management Division (Rensch)

SUBJECT: Justice Department's proposed Presidential initiatives in the field of Civil Rights

In accordance with the criteria contained in your memorandum of October 16, 1968, following is a Division review of the Justice Department proposals on civil rights.

Budgetary proposals.

1. Civil Rights Division - In order to enforce more effectively existing civil rights laws in the areas of equal employment, fair housing, and desegregated schooling, the Department proposes substantial increases in resources. To illustrate the need, the Department points out that in 32 of 72 geographical areas where overall population exceeds 100,000 and the Negro population exceeds 10%, there are no Department resources committed to investigation or suits in the field of employment; in 54 of these areas, there are no employment suits pending. While the number of school districts in which there is a need to file desegregation suits steadily increases, the Department has been able to investigate fewer than half of the complaints it receives in the public education field. Title VIII of the 1968 Civil Rights Act will shortly give the Civil Rights Division responsibility for enforcing non-discriminatory housing practices which will apply to some 60 million units of housing throughout the country. The additional resources would enable the Civil Rights Division to expand its employment investigation operations into each of the 72 target areas mentioned above, intensify its efforts in the school desegregation field, discharge effectively its new responsibilities in fair housing.

The Department proposes 100 additional positions (67 attorneys, 33 clericals) and estimates costs at about $1.3 M per annum.

The Division recognizes the need for increased litigative resources in the civil rights area and for this reason, with the exception of an item for ADP services costs ($100 K), left intact the Department's 1970 request for the Civil Rights Division in our recommendation to you. You concurred with the Division recommendation: Request--$4,335 K (+ $1,082 K); Recommendation--$4,235 (+$4,235 K (+ $982 K). Adoption of the Department's proposals would appear to require an increase of about $1.3 M to the FY 1970 recommendation and would cost about $1.3 M in 1972. The Division believes that the Civil Rights Division could, with some encouragement from BOB, use effective

the proposed level of resources. You may recall our Spring preview proposal to double the Division's funding level. You may also recall that at the Department's hearings on October 9, 1968, Deputy Attorney General Warren Christopher indicated in his remarks that civil rights was the Department's top program priority. Absent the budgetary constraint of the 1970 BA target, Division would recommend favorable action on the proposal.

2. Community Relations Service - The Department proposes an additional 163 positions in FY 1970 for the Community Relations Service. The cost of the additional resources would be about $2.6 M per year and would enable the CRS to increase its coverage of cities from 35 at present to 65 cities in 1972. The Department's proposal would service the same number of cities (35) in FY 1970 as would be serviced by the BA level in its budget request which (except for deletion of an ADP item) is the amount the Division recommended and you approved (Request -- $3,811 K: Recommended -- $3,799 K). However, the Department indicates in its proposal that in only 3 of the 35 cities CRS would have two-man teams per city. Fourteen cities would have one man each. Eighteen cities would have the assistance of one-half man-year per city. The proposal completely contradicts the Department's 1970 budget request which indicated that the increase was for the purpose of assigning two people to each of the 35 cities presently being serviced.

The next "desirable" step is obviously a reexamination of the CRS 1970 budget with the Department to determine whether it or this proposal is in error.

3. Increased Access of Minority Group Members to Law School - The Department tentatively recommends enactment of a program of Federal financial assistance directed toward increasing the number of members of disadvantaged groups who enroll in and graduate from law school. A final recommendation awaits the completion of a Departmental task force study expected within the next 4 to 6 weeks. Grants would be made available to law schools for creating or expanding programs to benefit disadvantaged students where necessary to compensate for inadequate undergraduate educations. Funds would be provided to colleges and universities for special programs designed to prepare more adequately prospective students for law school. Members of disadvantaged groups would be recipients of tuition grants or loans to cover the costs of law school, or the costs of special education necessary to enable the recipient to meet the requirements for admission to law school. The Department tentatively estimates that the proposal would cost $7 M per year.

HRP Division disagrees with the Department as to the coverage of existing Federal programs for higher educational assistance, and thus the need for the program the Department proposes. Without going into the details of the areas of disagreement, the Division (GGM) believes that the proposal is premature in view of the uncompleted task force study. No meaningful recommendation on the proposal can be made until after we have had an opportunity to review, with HRP Division staff, the Department's task force study.

Legislative proposals

1. To amend the nondiscrimination-in-employment section of the Civil Rights Act of 1964 - The Department proposed amending Title VII of the 1964 Civil Rights Act, first, to confer upon the EEOC the authority to issue "cease and desist" orders in discriminatory employment practices, and second, to authorize the Attorney General to institute injunctive suits against State or local governments that engage in discriminatory employment practices. Estimates of the cost of giving EEOC cease and desist authority vary between $1.2 M per year (Task Force on Civil Rights, November 1966) and $10.9 M per year (EEOC). HRP Division believes the EEOC estimate is closer but would place the cost somewhat below the $10.9 M figure. The Department of Justice estimates at about $72 K per year, the cost of giving the Attorney General authority to bring pattern or practice suits against State and local governments in employment discrimination.

The proposals are basically the same as those contained in Title III of the Administration's Omnibus Civil Rights bills of 1966 and 1967. EEOC's efforts to conciliate are often unsuccessful because it lacks enforcement power such as the cease and desist authority would provide. Existing remedies in cases of employment discrimination by State and local governments (such as suits by private individuals under the Fourteenth Amendment) have not significantly reduced the dimensions of the problem. Title VII of the 1964 Civil Rights Act does not cover employment by governmental agencies. For these reasons the Division believes that such legislation is necessary and should be transmitted to the Congress. However, we favor a private suit remedy broader than the Department's proposal would provide. Under the Department's proposal, the person aggrieved could bring court action if the EEOC fails within a specified period of time, either to dismiss his charge, issue a complaint, or enter into a conciliation agreement. We would recommend that the aggrieved also be permitted to bring a court action if EEOC entered into a conciliation agreement which he found unsatisfactory. Additionally, our discussions with HRP Division staff reveal that the Department's proposal regarding EEOC has not been adequately coordinated with that agency. We would press for fuller coordination as the proposal is developed.

2. To prohibit discrimination in the selection of State court juries - The Department proposes a statute that would prohibit discrimination, on the ground of race, color, religion, sex, national origin, or economic status, in the selection of grand and petit juries in state courts. The Attorney General would be authorized to initiate civil actions against jury officials who engage in discriminatory selection practices. The Civil Rights Division estimates that the proposed statute can be enforced effectively by an additional 8 positions (4 attorneys) at a cost of about $72 K per year.

The proposal is identical to Title II of the Civil Rights bill proposed by the Administration in 1967 (H.R. 5700 and S. 1026), which in turn was essentially the same as Title II of the bill proposed in 1966 (H.R. 14765 and S. 3296).

The Division favors this legislation and would recommend another attempt to achieve its enactment.

Regular agency legislative programs proposals - The Department has included in its regular legislative program for the 1st Session of the 91st Congress, a proposal to extend the authority of the EEOC to enforce its findings and conclusions when discrimination in employment is practical and provide for a private suit remedy.

Pricing of Proposals by Task Force on Civil Rights

(Fiscal years; in ~~xxxxxx~~ thousands of dollars)

Staff Member: L. N. Rensch Jr.
Ext: 3942
Date: November 14, 1968

Descriptive title of legislative or budget proposal	Administering agency	Action required *	1969 Base		Proposed Task Force add-on over 1969 base				1970 Budget add-on over 1969 base				Comments
					1970		1972		Agency request		BOB recommendation		
			BA	BO	BA	BO	BA	BO	BA	BO	BA	BO	
Increased appropriations for the Civil Rights Division and the Community Relations Service.....	Justice	C	5,594	5,485	6,452	6,375	6,452	6,375	2,552	2,470	2,440	2,320	
Increased access of minority members to law school.....	HEW	A(?)	0	0	7,000	5,000	7,000	7,000	-	-	-	-	
EEOC cease and desist authority	EEOC	A	0	0	1,200-10,900	1,200-10,900	1,200-10,900	1,200-10,900	?	?	?	?	
Attorney General authority to institute pattern and practice suits against State and local governments	Justice	A	0	0	72	71	72	72	-	-	-	-	
Prohibiting discrimination in the selection of State court juries	Justice	A	0	0	72	71	72	72	-	-	-	-	