proceedings of a conference on

EQUAL EMPLOYMENT OPPORTUNITY

presented by the

INSTITUTE OF INDUSTRIAL RELATIONS

BUREAU OF PUBLIC ADMINISTRATION

UNIVERSITY EXTENSION

UNIVERSITY OF CALIFORNIA, BERKELEY

in cooperation with

SAN FRANCISCO COMMISSION ON EQUAL EMPLOYMENT OPPORTUNITY

FEDERATED EMPLOYERS OF SAN FRANCISCO

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E M P L O Y M E N T
O P P O R T U N I T Y

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JUDGE J. C. GOODELL

Chairman, San Francisco Commission
on Equal Employment Opportunity

THE SAN FRANCISCO ORDINANCE

It is a great pleasure for me, as spokesman of your San Francisco Commission on Equal Employment Opportunity, to express our appreciation to the two gentlemen who have made a trip all the way across the continent to be with us today as our principal speakers, and also to express the thanks of the Commission for the very fine attendance we have here this morning. We on the Commission are indeed happy to find that so many people in the community have such an interest in the subject of equal employment opportunity.

As Mr. Ross, our conference chairman, has already indicated, because our Commission has been in office only four months, we will not be in a position to shed much light on this subject. We have been fairly busy to date, but in four months we have not accumulated any great volume of experience to pass on to you men and women who are interested in this very important subject. And so my small contribution to this program will be to attempt to give you as briefly as I can the salient provisions of the San Francisco Ordinance and also say a few words with respect to the experience that we've had up to date.

In the first place, you are probably aware that there was an attempt in 1957 to get an FEP law adopted by the California Legislature. It did all right in the assembly but didn't get through the Senate. And so the City and County of San Francisco found itself in the position that if it wanted to do anything along this line it had to paddle its own canoe and that is exactly what it did. But in doing so, the canoe had to go upstream against the current. There was quite a controversy before the Board of Supervisors as to whether or not San Francisco needed a FEP ordinance. The final passage of the ordinance tells its own story. Once it was determined and found by the Supervisors, that an ordinance was needed, the discussion was ended. There's no need of debating the merits of the principle of fair employment procedure with respect to color, race, creed and religion, and those are the purposes and the only purposes to which this ordinance is addressed. It is already established by the finding of the Supervisors that an ordinance was needed in San Francisco to achieve this goal of equal employment opportunity.

Since we've been in office, we've had several inquiries from other communities in the State and as you may know the city of Bakersfield, following San Francisco by about a month, adopted an ordinance

similar to our own. Whether discussions and negotiations had been under way before our ordinance was adopted I'm not informed. But at any rate, the city of Bakersfield at the lower end of the San Joaquin Valley now has such an ordinance. There have been inquiries from the Southern part of the State with respect to this matter. And one of the newspapers, only a week or ten days ago, carried an item that the matter is being discussed now in Los Angeles. The City of Richmond across the Bay has had an ordinance for some time but it's not comparable with ours. Their ordinance, I understand, relates only to their own city employees and civil service officers. So we are quite accurate in making the statement that this city of ours is the first one in California to have adopted a FEP Ordinance.

And now as fast I can do it, I will give you all a sketch of this new San Francisco ordinance. The ordinance is divided up into thirteen sections. It's a very well drawn ordinance. A number of people collaborated in its draftsmanship and it was drawn as a result of considerable controversy and debate over a period of several months before the Supervisors. There were forty-seven people who took part in these discussions while the ordinance was before the Supervisors. That was a goodly number. So you will see that the ordinance didn't just swim in, it went in with plenty of debate on both sides. The result was that both sides did as both sides should in such a matter, both made certain concessions and there was certain yielding, and there were certain features that had originally been proposed for the ordinance which were not finally written into it. Mainly, those provisions eliminated involved enforcement or punitive measures.

The first section of the ordinance deals with findings. That simply means that it contains the declaration by the Supervisors that a FEP Ordinance is needed in San Francisco. Of course, they indicated in the statement of findings that we find discrimination in San Francisco, as elsewhere. So they didn't indicate that our own great city was unique in this respect.

Section two is a declaration of policy. Quoting from the ordinance,

> "It is hereby declared that every inhabitant of this City and County has the right to equal employment opportunity without being subjected to discrimination because of race, religion, color, ancestry, national origin or place of birth."

Note that the last one is double shotted, national origin or place of birth. Whenever we talk about discrimination, we are referring to those six elements mentioned in Section 2 of the ordinance.

Section three is concerned with the scope of the ordinance.

> "This ordinance applies to employment practices within the territorial limits of this City and County and to the hiring of persons elsewhere on work to be performed within

the City and County where such hiring outside of the City and County is for the purpose of evading the provisions and requirements of this Ordinance."

Among lawyers, that last phrase is known as an extra-territorial provision. But it only applies when there is an attempt to evade the provisions of the ordinance; for instance, by somebody going over to Oakland or down to Redwood City and making a contract with respect to employment that is in substance and essence to be performed entirely in San Francisco. But that would be one of the exceptions rather than the rule. The jurisdiction of this Commission of this City and County is confined to the territorial limits of the City and County, and, of course, that's easy to understand because the Supervisors would have no jurisdiction out of it, except for the one provision of evasion.

Section four includes definitions of several terms used in the ordinance. We won't cover all the definitions, but it is important for us to note those dealing with the three different groups that are included in the ordinance. Groups affected by the ordinance are employers, employment agencies, and labor unions. The term "employers" refers to any partnership, individual, corporation, or any other business organization employing at least five persons. Any business with a payroll of less than five would not come within the purview or the terms of the ordinance. Also included in the term "employers" are the City and County of San Francisco. In other words, the City is treated as any other employer, and every department of the City must observe all provisions of this ordinance.

The ordinance does not cover, does not pretend to cover, religious corporations, religious organizations or social organizations, not organized for profit. And it doesn't cover domestic employment.

Section five describes unlawful employment practices, but excepts situations where the practices are based upon applicable security regulations established by the United States, by the City and County of San Francisco, or by the State of California. The various practices that are prohibited are: For any employer to refuse to hire any individual or to otherwise discriminate against any individual with respect to hiring, tenure, compensation, promotions, discharge or any other terms, conditions or benefits of employment because of race, color, religion, ancestry, national origin or place of birth. Note that this declaration dealing with employment deals carefully and in well chosen language with promotion, once employed, with advancement in that employment. This covers the situation in which a person would be hired but kept at the hiring level because of race or other discriminatory factors. And this section would also, of course, bear upon increasing his compensation. This section also prohibits discharge on discriminatory grounds. Employment, advancement or promotion, and dismissal are all covered in this section of the ordinance.

According to the ordinance it is also an unlawful employment practice for employers, employment agencies or labor unions to use application forms for employment or membership, which contain questions regarding race, color, religion, ancestry or national origin. In other words, questions such as, "What is your religion? Where were you born? What are your antecedents?" It is important to realize that this section applies to labor organizations and to employment agencies as well as to employers.

Section six provides for the machinery which administers and enforces the ordinance. It establishes a Commission of seven members, (I'm happy to say all are present today) appointed by the Mayor and giving staggered terms of office to assure continuity of personnel on the Commission. This section also provides for a staff consisting of an Executive Secretary and "such other staff, services and facilities which may be required by the Commission." In that connection, I might digress for a moment and say that we have paddled along for the first four months with just two members of the staff, the Executive Secretary whom you've met this morning and a stenographic secretary.

Now I come to a very important part of the ordinance and that is the subject of hearing and investigations and negotiations. I refer to what might be called the secrecy provision. We all know that in most legal enactments and in the administration of most laws, there must be public hearings. Court proceedings, of course, have to be open hearings and the hearings before practically every board or bureau of administration in every state, must be open, public hearings. This ordinance provides practically the contrary. And I'm going to read you a provision which shows you that the members of the Commission are under a very strict duty to keep within their own breasts the proceedings and the work done by the Commission. Here's a provision providing that the Commissioners themselves can be fired on the basis of malfeasance in office if they disclose what goes on in Commission investigations. Now, how can there be any complaint that the hearings are not public? The obvious intent of a provision such as this is to safeguard the people who may be involved, from publicity which may in certain cases be very harmful to them. Cases which are not proved, cases where complaints are filed and are not sustained by substantial proof, if given publicity when they are filed or in the initial stages of investigation could result in very serious and unnecessary harm to the employer, labor union or employment agency involved. I needn't enlarge upon that. And so this provision is an exceptional one in such things as ordinances and statutes, but there is nobody who can complain, because the purpose of the provision is to protect, not harrass, the people who happen to be concerned with an investigation before this Commission.

The ordinance states very clearly that

> "It shall constitute malfeasance in office for any Commissioner to divulge or reveal to any person, except to the parties to the proceedings, members of the Commission and its staff or the City Attorney, under and pursuant to Section 9 hereof,

any evidence or information obtained in any proceedings pursuant to Section 8(a) hereof."

A very clear statement. And it goes on to provide also that any member of the staff who divulges any such information could be discharged from his or her position.

Section seven lists the powers and duties of the Commission. I think it is important for you to hear them in detail from the ordinance itself.

"The Commission on Equal Employment Opportunity shall: (a) Formulate plans of education to promote fair employment practices by persons subject to this ordinance. (b) Make technical studies and prepare and disseminate educational material relating to discrimination and ways and means of eliminating it. (c) Confer, cooperate with, and furnish technical assistance to persons subject to this ordinance in formulating educational programs for elimination of discrimination. (d) Receive, investigate and seek to adjust all complaints of discrimination as herein provided. (e) Make specific and detailed recommendations to the interested parties as to the method of eliminating discrimination. (f) Render to the Mayor from time to time, or upon request, but not less than annually, a report of its activities. (g) Make and publish reports of case histories of conciliation settlements made under this ordinance which in its judgment will effectuate the purposes of this ordinance. Reports of case histories of conciliation settlements shall not, unless the consent of the parties is first obtained, include names or other facts which might clearly identify the parties; but it shall be mandatory to publish representative case histories from time to time for the guidance and education of the public. (h) Initiate complaints as provided in Section 8(a) hereof. (i) Refer unsettled complaints to the City Attorney as provided in Section 9 hereof."

Those are the powers and duties of the Commission, concisely stated and very clearly stated. I think they are self-explanatory.

Section eight outlines the procedure for adjustment and settlement of complaints. The procedure is simple and involves no red-tape or technicality. And, incidentally, it doesn't provide for people being represented by attorney and the Commission doesn't recommend that; I mean isn't anxious to have defendants represented by attorneys, but on the other hand, it's been our policy up to date and I think it will continue to be, that if a person against whom a complaint is filed wants to have an attorney present, it should not be denied him. That's a general procedure of due process. There has been a case or two where they have asked to have their attorney come in and he comes in, but in all cases to date, always with a representative of the business organization itself or whoever is complained against. In nine cases out of ten the representative will be somebody on the staff or the organization complained against.

The whole tenor of this ordinance is that the Commission shall act more as a medium for conciliation, negotiation, and mediation, rather than as a court. The Commission is not given by this ordinance any punitive or enforcement powers in its own hands. And so without reading the language of the ordinance, its intent is that when a complaint is made, it shall be investigated first by one Commissioner. Whether or not the Commission decides to get the parties together in the same room is within his discretion. All the ordinance says is that a Commissioner shall make the investigation. If the Commissioner who is responsible for the investigation determines in his own mind that there is probable cause for the complaint, he can try to get the complainant and the one complained against to come to some agreement with the Commissioner's help. He may try to reconcile the parties by getting assurances from the one complained against that the practice will be stopped. But if that's not possible; if the Commissioner assigned to the investigation can't single-handedly accomplish that, then it has to go to a panel of the Commission as a whole or at least four out of the seven, and they make a further stab at getting the parties together. In other words, they try to keep the matter from dying on the vine or from being summarily put into the City Attorney's office under the enforcement provisions of the ordinance. There is an attempt to build fairness into the procedure itself. There is no danger that there will be a one-man decision that the parties can't agree with. If an impasse is reached at the first stage it does not go on appeal to another stage, but is referred to get the collective judgment of at least a quorum of the Commission. And it goes to that quorum for the purpose of their keeping the case alive and out of the courts as long as there is any hope for a voluntary adjustment.

If no satisfactory settlement is reached at this second stage before the quorum or the Commission as a whole, then it is the duty of the Commission to certify the matter to the City Attorney. From then on, there's no guarantee that there will be anything secret about it. The City Attorney has not less than 20 days nor more than 40 days within which to act; within which to bring a proceeding in court.

To review this briefly, the first Commissioner who makes the investigation has the power under this ordinance to suggest to the parties his idea of what might be done in order to adjust the matter and settle the complaint. The Commission as a whole, or the quorum, to whom it might go in the second stage has the same powers. Part of their job is to suggest, if they can, a feasible method of reaching agreement between the parties, to try their hardest to get the matter settled without enforcement or punishment. Litigation is the last resort. If we must go to the last resort then it is the duty of the Commission to certify the matter to the City Attorney. Certification means that the Commission would very carefully prepare a finding of fact similar to that used in court proceedings, but perhaps not quite as strictly drawn. The finding of fact would state exactly what we found in our investigation, and that so and so has violated the ordinance in the following respects. This would be made as a cold, accurate, statement without any attempt to argue the case on its merits. As I have said, the City Attorney then has

not more than 40 days within which to start a court proceeding. And this, for the first time brings the case into the open. I dwell on that for a moment because in our judgment the teeth of the ordinance are in this provision. The ordinance provides a minimum pecuniary penalty assessed against the person who is finally found by the court to have violated the ordinance. And the ordinance contains a provision for a jury trial on a certain limited issue. For the most part cases are to be tried by a judge, but the parties are entitled to a jury on the question of the extent of the penalty. But the teeth of the ordinance (and anybody reading it can see this) lie in the possibility that the case will be referred to the City Attorney, and the City Attorney is bound by the ordinance to bring the suit. Of course, there is the possibility that the person complained against might have to pay certain penalties, but the most important feature, in my opinion, is the eventual possibility of publicity; its getting out in the open that the person complained against is defying a law of the City and County in which his business operates. It's not particularly good publicity and it is in the threat of this publicity that, in my judgment, the teeth of the ordinance exist.

There is another enforcement provision concerning repeated offenders. Repeated offenders refers to anyone against whom two or more adverse court decisions have been rendered within a specified period. In such cases a court may render a judgment to the effect that there have been repeated violations and then it becomes the duty of the Commission to certify that to the Mayor of the City and County and it's the Mayor's duty to circulate every department of the City to prohibit the City from entering into any contracts whatever with the person who has been convicted of repeated violations.

Now, how does this machinery actually work? That's a practical question. The ordinance provides that the person who claims to have been discriminated against, within the meaning of the ordinance, can file a complaint. It must be sworn to. Sometimes it is, initially, even more informal than that. A person who claims he has been discriminated against will come to the office of the Commission in the City Hall. And he will relate his case to the Executive Secretary. Possibly the Executive Secretary will call in the Chairman. If it appears from the oral statement of what's happened that he has been fired for some reason that does not involve the kind of racial or religious discrimination that the ordinance is designed to cover, a frank statement is made to the man or woman who is complaining, that although he might have a grievance against the employer, or the union, he does not have a complaint that the Commission could handle. Our jurisdiction is limited to preventing, curing and settling grievances that arise only out of types of discrimination specified in the ordinance. We then reason with the person and try to convince him that his case, if filed, wouldn't get to first base. On the other hand, if he does appear to have a good complaint, or even if he doesn't (if he can't be convinced) he has a perfect right to file a complaint. He is furnished with a copy of a form for a complaint. It is very simple, it includes necessary names and addresses and calls for a simple statement by him

in his own language of the grievance. If he completes this form, swears to it, and files it with us, the Commission will immediately have copies made of it. One copy is sent immediately to the one complained against, along with a copy of the ordinance, and he is asked to nominate somebody in his establishment to represent the organization complained about. From that point on I've already fairly thoroughly described the procedure so I won't cover it again.

That concludes my brief sketch of the ordinance. I know you also wanted to know something with respect to what's going on in our own Commission since its appointment. This will be very short because our time in office has been very short; only four months. We've had about 11 or at the most 12 cases filed in that time. This is not a very excessive load. Several of them have been disposed of already and one or two others are nearing completion. The other eight or so are being processed at the present time and are all in the first investigation stage, in the hands of individual Commissioners. Because I don't want to lose my job, I can't tell you any details of any of the cases. And I know that the rest of the Commissioners are as careful as I am. But at any rate I can say that we've had these cases arising out of the ordinance and that we haven't had any blood or thunder or any acrimonious arguments. Both sides, as I understand it from the other Commissioners, have gone about it as reasonably as the Commission itself approaches the problem.

The Commissioners are feeling their way. This is a very new program. We have no California precedents to follow. We're sort of blazing our own trail and we're going one step at a time. Every member of the Commission is conscious of the importance of the job and is giving to it careful and judicial, cool, deliberate, attention without emotion, and from my observation, from the experience of 26 years as a judge, I think it is a very judicial Commission.

GEORGE SCHERMER

Executive Director
Committee on Human Relations
Philadelphia

THE PHILADELPHIA EXPERIENCE IN DEVELOPING FAIR EMPLOYMENT PRACTICES

I think an outlander is always quite hesitant to come to another town and tell it how to run its business. One ought to be around for some time to understand what the problems are and what's being done already. I often find that the communities where I go to talk are really doing an excellent job on their own and it is only a kind of spirit of self-criticism and a wanting to do better that causes them to look for somebody from somewhere else to tell them more.

I often think of a story that I heard a number of years ago about this matter of checking somebody else for information to see whether you are yourself in the groove. This story pertains to a fairly small town, small enough so that practically everybody recognized all of the other citizens, at least in appearance, but just big enough so that not everybody knew everybody's name. And in this town there was a shopkeeper; he had a watch and clock repair service; he had a big clock in the window of his store and he didn't sleep very well in the morning so he always got to his store way ahead of opening time to dust off the merchandise and clear his books. He became aware, after a time, that a man, dressed neatly in overalls carrying a lunch pail regularly every morning very early came by his shop while the door was still locked, looked up into the window, checked his watch and went on. They began to wave at each other through the window and they became waving friends without ever having shaken hands, without ever having spoken to each other, and without ever knowing each other's name.

This went on for several years until one day at a community meeting the shopkeeper met this chap, this time dressed up with a necktie and so forth. It was a civic meeting and the shopkeeper put out his hand and said, "Well, how do you do. I'm very anxious to know your name. We've been such good waving friends all these years. Who are you and what do you do? And where are you bound every morning as you come by and look into my window." "Well," said the chap, "I'm sort of the general caretaker down here at the mill. I have to fire up every morning, get steam up, and then at noon I blow the whistle. I'm so anxious to blow that whistle right on time that I check your clock every morning to make sure that I'm going

to blow that whistle at 12 o'clock." Whereupon the shopkeeper said, "Well, good heavens, I've been setting my clock by your whistle all these years."

Now we check with San Francisco and San Francisco checks with us and that way we know we're both keeping good time.

Judge Goodell has already commented a bit about the history of the Philadelphia Ordinance and work there. By way of introduction, I'll round that out a little bit. The city of Philadelphia adopted a fair employment practice ordinance in 1948, establishing a commission then called the Fair Employment Practices Commission to administer that ordinance. The basic purpose and basic provisions of the ordinance are not much different from what you have in the San Francisco ordinance. Our ordinance is rather more simply drawn and doesn't have as many safeguards against misaction or improper action by the Commission. It is very broad. I guess if our Commission chose to be dictatorial or arbitrary, we certainly could under our ordinance. But the general spirit of Philadelphia and the presence of all of those Philadelphia lawyers has kept us on the straight and narrow path in that respect.

In 1950, we went through the process of drafting a completely new home rule charter. This was overwhelmingly adopted in 1951 and went into effect in 1952. Every Philadelphian still feels very special about the fact that Philadelphia has had a reform government for these last six years.

One of the provisions of that new charter was to include right there within the charter some very definite prohibitions against discrimination within the operations of the city government, and to establish a Commission on Human Relations with broad and general responsibilities. This new Commission had the responsibility of administering all statutes and ordinances which prohibit discrimination because of race, religion or national origin, including the Fair Employment Practices Ordinance. The Commission, according to the provisions in the Charter, is also to conduct extensive investigations of practices of discrimination, to promote educational programs to assure equality of opportunity, and to conduct educational programs to promote good will, understanding and cooperation among persons of all races, religions and national origins. This idea that this broad function was an important responsibility of the city of Philadelphia has caught on to the extent that a very generous budget has been given to our Commission. (Don't quote me to my City Council in Philadelphia. They aren't supposed to know that they're being very generous, but compared with other communities the Council is quite generous). Our Commission has a working staff of about 25 people, and our functions extend into the areas of housing, housing discrimination, community relations at the neighborhood level, training programs for the police and all other city departments concerned with human relations, a rather broad and general program that I won't go into at the present time. Perhaps only a third of

our function at the present time is related to that of fair employment practices. I think it is something of a tribute to both the idea of fair employment practice legislation and the manner in which that first commission administered that law, that there should be such general subscription on the part of the public to the idea and to the extension of the powers of such an agency. Many of those on the drafting commission for the city charter were prominent citizens, outstanding lawyers and businessmen, some of the biggest names in business and in industry. And that drafting commission was unanimous in writing into the charter the provision for this very much more powerful Human Relations Commission with its much broader scope and operation.

Now I thought I might start our discussion this morning by examining some of the purposes which a government is seeking to achieve. What are the policies and the objectives that it has in mind when it sets out to administer a fair employment practice law? At this point the decision to have such legislation and such a commission has been made and we're not entering into any argument as to whether or not there should be such a law. But after this decision has been made and the commission established, the commission ought to constantly say to itself, "Now what are we trying to do here? What were the purposes in the minds of the drafters and the city fathers, the city authorities when they adopted this law? Is it to punish; is it merely to "get" somebody for a violation? Is the psychology of commission members to be that of policemen, and I'm not trying to malign policemen generally, but I mean the kind of policemen who are hoping that they can find somebody violating the law so that they can put him in jail? Is that the basic objective of a fair employment practices commission?"

Certainly this doesn't represent the purpose in the minds of the Philadelphia Commission. And as far as I know and I have some familiarity with all of the agencies that administer this type of law around the country, I think that this is not the kind of motivation behind any fair employment or anti-discrimination commission.

In Philadelphia, the primary motivation among those who fought for the FEP in the first place was the desire for justice, a concern about the injustice resulting from discrimination, the presence of limitations of opportunity because of race, religion, or national origin. But there also crept into the argument over and over again a kind of a further justification, a justification which went beyond justice and was concerned with the general public welfare. This justification goes something like this: Our society is an economic society. Our values, our spiritual concern, our standards of success or failure, our concepts of morality are shaped, defined, and translated in economic terms. A man is a good citizen if he is economically productive, if he is honest in economic terms. You know if you malign a man a little bit, if you say he's intellectually dishonest or spiritually dishonest, you have't according to our values, really hurt him much. If you don't want

to commit libel, you quickly say, "Oh, I think he's money honest." It's very "bad" to be economically dishonest. We tend to excuse it if we're a little bit dishonest in some of the other areas. Our concept of morality seems to be sharpest with respect to economics. A man is a good citizen if he is generous; if he gives money to social causes; if he has possessions and takes good care of those possessions and uses them to the economic benefit of others. A man is a poor citizen if he does not have a job; if he does not possess a skill or own a business; if he does not support his family at a decent level; if he does not contribute to the general welfare by paying taxes or contributing to the community fund or paying his dues to a labor union or a trade association.

So we would recognize that it is harmful to our society to harbor failure. We cannot afford to carry able-bodied people on our welfare roll or heal the sick at public expense in public hospitals. This does not mean that we should not have hospitals that care for people on the basis of some form of public support, but we expect everybody who is able-bodied to contribute to the maintenance of those institutions. We cannot afford the expense and the luxury of slums. And we cannot afford to rebuild our slums unless the majority of people who live in those slums can pay the economic cost of a decent house. We could not proceed with our urban renewal program in all of our cities if the many thousands of families who live in dilapidated housing are going to have to be re-housed at public expense. Again I'm not speaking against publicly financed housing for those families who because of physical or other reasons cannot pay the cost. But we can't afford to have able-bodied persons receiving subsidized housing. We need to make it possible for them to earn the price of a decent house so we won't have any slums any more. We can't afford poverty, and dependence and low morale or lack of training and skill. We can't afford economic and hiring practices which demoralize, which fail to supply incentives for training and productive effort. We've agreed a long time ago in this country that to force labor is to enslave and degrade and deprive a man of his soul. And the denial of incentive to train for a skill or to put forth effort for self-improvement and advancement is equally demoralizing and degrading. The welfare of the general public requires a set of rules which apply to every individual regardless of color, ancestry or religion. Society should grant equal opportunity, equal incentive and thus be able to demand of each person equal responsibility to be a productive and constructive citizen according to his ability.

Thus it is a purpose of the FEP law not only to declare the doors of opportunity to be open, but to cause the public, the whole public, to know that they're open, and to provide the incentives that will cause those who used to be barred from passing through those doors to pass through those doors. And achieving this is not something that happens overnight with the passage of a law, though that helps a lot. The bars that once handicapped segments of our population also to some extent served as props to uphold one's self-esteem. The existence of discrimination was for some people a convenient

crutch to explain away one's failure to be in the race. So the mere adoption of a law without expert and effective administration will not overnight remove either the bars or the props. Several years of good administration and of good educational program promotion are ahead for this city, as it has of all other cities and states, before those last scars of discrimination have been removed.

It is in terms of these objectives that the Philadelphia Commission has shaped its policy. Our objectives are to gain compliance with the spirit and the purpose of the law; to sell the idea of equal employment opportunity; to make this idea a movement to which the whole public can subscribe; the employer, the employee, the labor organization, the general public, the people who traditionally had been the victims of discrimination. The idea of punishment, of dictatorial imposition of the law, of demonstrating success by convicting somebody has been eschewed by our Commission. By the same token every effort was made to avoid softness and vagueness in the administration of the law. Here was to be a process, said the Commission in Philadelphia, of clearly defining a set of rules, of appointing itself a kind of umpire to see to it that everybody understood the rules and complied with them. But the Commission also wished to make it a game in which everybody would feel that it was a fair set of rules by which all ought to be governed.

My own background and training and my own philosophy have always made me very interested and concerned with the processes by which we make a democracy work. And I (and, in fact, all on the Philadeophia Commission) have always tended to reject the idea that we can make people behave through the imposition of authority. Instead we believe that through the process of interpretation, explanation, conference, and communication, we get people, at least the larger majority of the people, excluding those who have special emotional difficulties about working with their fellow human beings, to subscribe to an idea. Now this is not just a soft concept of goodwill, of brotherhood, and of preaching and talking about brotherhood. You don't have a good clean-cut game of baseball without a clearly defined set of rules and adherence and determination on the part of all players that they will adhere to that set of rules. The people in the grandstand expect that set of rules to be complied with. Of course, they all reserve the right to throw a pop bottle occasionally at the umpire even when they know he's calling them straight. The game of baseball wouldn't last very long if we didn't have the understanding that the umpire called them straight. And that's the way our rules ought to operate in the field of economic opportunity.

Now I'd like to describe some of the processes and techniques by which our Commission has approached its job. The Commission operates on the assumption that most of the public believes in fair play and will play according to the rules if they understand them. The Commission has a high respect for the employers of the city of Philadelphia, a great respect for their sense of fair play and their

desire to abide by the law. So a decision was made at the very beginning that the employers ought to be thoroughly informed that the law existed, about the purposes and intent of the law, and given a simple set of regulations or guides by which they could know whether or not they were in compliance with the law. Secondly, it was felt that the individual employer would be strengthened or weakened in his adherence to the law by the extent to which his own employees understood the law. The employees needed to understand that what their employer was attempting to do in complying with the rules was something that he did not decide by an individual capricious decision, but that these rules flowed from a law of the whole society and that the employer, as a law abiding individual, was attempting to stay within the law. It was felt that labor organizations ought to know the rules and to be informed. It was felt that the general public ought to know and to understand.

Because of these views, during the first two years of the administration of the fair employment law in Philadelphia a great deal of effort was made to inform. This information was given, of course, in many ways. The Philadelphia Commission employed from the outset a specialist in publicity, a writer who could prepare good informational material, press releases, who could promote good radio discussion programs, and write good pamphlets. Every effort was made to get those pamphlets out to the public. In our efforts we found the Chamber of Commerce was cooperative, even though it had not endorsed the act when it was under consideration, nor shown any great enthusiasm about getting such a law. But the moment that law was adopted the Chamber considered it a part of its responsibility to see to it that its membership was informed about the ordinance. This was not viewed by the Chamber as a service to the Commission but as a service to its own membership, a recognition of the need for its membership to know about the law and what was expected of them under it. Trade associations were also very cooperative. Labor unions, the central labor councils were outstanding in their support, both the AFL and CIO, and most of the individual unions. But there were some exceptions to that I'll have to admit, just as I'll have to admit that there were some employers who were not cooperative. And, of course, general information went to the public as a whole. The schools were asked to cooperate. And since it's very hard for small agencies to cover every channel of communication, the high schools were made the special target of the informational process so far as the schools were concerned.

The term "education" appears several times in our law and in the city charter. We find that the word education has a magic meaning to a great many people. A lot of people are a little bit dubious and afraid of something which says you must. They much prefer the idea of the "you ought to or let's do it together" kind of approach. And so even today when we come up before our city council in Philadelphia for our budget, the council will ask us what we are doing in education.

But I have never quite liked the implications of this magic word "education." Perhaps this is because I didn't particularly enjoy school when I was a youngster. I've always had the feeling that the word "education" meant that there was a teacher at the front of the room; that it implied a one-way process. We on the Commission of Human Relations have not liked the concept that we were going "to tell the community." We could inform the community about the law and the rules and what the law meant, but then we felt a great deal more was required. And that was to learn the "know-how" of making this work, of putting the spirit of the law into effect. And in this connection we felt that the world "communication" was a much better term than "education" because it suggested that we were going to mutually educate ourselves. Considerable effort was made to promote conferences, and discussion programs, where there could be an exchange of information within the group rather than the mere process of the agency telling the individual employer out in the community what he was expected to do. And, of course, one doesn't have to be in human relations very long to learn that he's not God, that he is not all knowing and all wise, and that it's something of a presumption for the person who sits inthe human relations office to tell the employer how to do the job. But it is perfectly proper, it seems to me, for the agency to serve in the role of finding out from employers how they're doing, to discover what experiences they've had, finding out the things that work and the things that don't work And then, it is both appropriate and desirable for the Commission to set up the machinery to provide the avenues through which that information can be channeled and exchanged. This can be done through conferences or through the writing of some good case histories and circulating them among other employers and labor organizations.

Now, I'll admit that we seemto go through cycles on this educational program. The Commission gave a great deal of emphasis to the process of communication and education the first couple of years. Then it set its mind to some of the enforcement procedures. We found that our educational efforts had accomplished a high degree of compliance but then there were some employers who weren't moved by this approach. Because of this there had to be a much more intensive process of receiving and investigating complaints and of securing compliance through the conciliation procedure. But then after that period we got back to a greater use of education again. Five years after the original adoption of the law, we had the good fortune to have a commissioner appointed who was very much committed to the idea of more adequate understanding. He was himself an industrialist, a rather wealthy man. He undertook to call a series of luncheon conferences and he always picked up the tab, for which we were, of course, very appreciative. The city government does not particularly like to buy luncheons for people. To these luncheons the commissioner would personally invite some 50 to 100 fellow industrialists and they were there as his guests. We would discuss for two hours how well the law was working and explain some of our needs, our failures, and our successes. And out of these discussions grew a realization of something that I think you might find valuable

here. Very often the head of a corporation, the president of a large business, himself understands what the law is and expects to comply with it but he has made no overt effort to assure that all of the management people down the line under him have that same understanding. This realization has lead us to develop a project which is still more or less experimental, but which we think is going to be successful. This project is the presentation of training programs for what we call middle-management, those people who are not presidents, and vice presidents, but who are personnel directors and superintendents, foremen and sometimes interviewers in the personnel office. And again, we see these programs as a process of communication, an exchange of information on how to make our policy work, rather than dictation from above.

I think I've stressed enough the importance of communication and interpretation, and because time is getting short I'll move on to a brief consideration of procedures. Our procedures are similar to those Judge Goodell indicated would be the pattern here in San Francisco. Those who believe they are discriminated against are invited to file complaints with the Commission on Human Relations. Our commission has the power to initiate its own complaints and may receive complaints from organizations representing individuals as well as from the individual complainant. There is always immediate notification to the respondent that a complaint has been received, including a statement of assurance that no decision is to be made until both sides are thoroughly reviewed. An investigator who is employed by the commission, who has been carefully trained in advance, calls upon the respondent. Usually the respondent is an employer, but a small percentage of our cases are against labor unions, and occasionally against an employee of a firm. The investigation is made by this paid investigator, a member of our staff. This investigator does not make a determination. It is true that for some years the investigator did in effect make the determination, but this has been changed by our commission and now our investigator writes a report of his investigation. This report is reviewed by his supervisor and then the investigator and the supervisor make recommendations to the commission. If the recommendation is one of dismissal, we dismiss the complaint. Approximately three-fourths of the complaints result in a finding that no discrimination has been established. In the discussion period perhaps I can elaborate on the reasons for that high ratio. And incidentally, the commission invariably accepts a recommendation for dismissal.

The other possible recommendation is one of "probable cause." If probable cause is found the respondent is then invited to appear before a panel of the commission. The panel does not consist of the whole commission but is normally three commissioners. However, if we can't get three there, we will hear the case at this stage with one commissioner present. This hearing is informal, nonpublic; there is no sworn testimony. But the hearing does have some degree of formality. The investigator for the commission presents his report. The respondent then has an opportunity to reply. The commission hears the case in two parts. The first part is for the

purpose of determining whether or not there is discrimination. If there is a finding of discrimination, the second part of the hearing is then concerned with determining the remedy that shall be required in order to properly adjust the case. There's just enough formality in this situation so that it has some dignity, and judicial tone, but for the most part good will and informality prevail.

If this conciliatory approach is not effective, then the Commission has the power to issue an order and later to go to court. But the commission may not issue an order without first conducting a formal public hearing. Interestingly enough, the Philadelphia Commission in its nine years of operation has never yet reached the point of a public hearing. Every single complaint has been adjusted through our conciliation process. This doesn't mean that we haven't had some difficulties. There have been not infrequent occasions in which a respondent did not wish to comply with the recommendation of the commission as informally suggested in the conciliation plan, and in some cases even refused to do so. At this point the commission notified the respondent that there would be a public hearing scheduled. After such notice the respondent has asked for a second opportunity to be heard and a satisfactory adjustment has been worked out. I don't want to give you the idea that we are either very soft or overly tough. I dare say that any respondent that has ever been before the Commission on Human Relations in Philadelphia thinks that we're a pretty fair and a reasonable outfit. However, they also recognize that we can't be kidded too easily.

Perhaps I should say something about general results. We wish we could afford a good research project which would measure quantitatively the extent to which the ordinance has produced results in Philadelphia. But the extent to which the avenues of employment opportunity have broadened out are so complex and varied that I don't think we can afford that kind of research. All we can do is to take note by observation that there is an immense number of firms today which seem to be in compliance with the fair employment law, with the whole spirit of the fair employment law. We have visual evidence of it. We think the nature of the complaints that we have received to date indicate that pretty generally the well qualified minority group person gets the job. In other words, where there is no question in the employer's mind about the applicant's qualifications, he gets the job. Today we receive very few complaints from clearly qualified people.

On the other hand, we have evidence to show that the minority group "ordinary Joe" in completition with a non-minority "ordinary Joe" still gets discriminated against. This is in the area where the determination of qualifications is pretty difficult because a lot of people aren't overly qualified for anything. Let me illustrate with the pattern of employment of youth. By and large high school graduates aren't qualified yet to do very many jobs. They are employed by those who expect to train them and develop their potentialities. If a high school age youngster is refused a job it's pretty hard to say he was qualified. Our research would indicate

that if we take pairs of graduates from a high school where Negro and white youngsters are well represented with comparable scholastic achievement, that the Negro youngster looks for a job about three times as long as the white youngster and that he's turned down more often. Here I think is where this process of trying to get a spirit of compliance is more important than merely enforcing compliance. I doubt if we'll resolve that particular kind of problem by bringing cases and prosecuting them, as well as we would by using the complaints as a way of getting to the employer and talking about the issue in general. We must try to sell the employer the idea that he ought to look for the potentialities within a Negro or other minority group youngster in the same way that he looks for potentiality in the white youngster.

I'm awfully sensitive about my time, it's 12 o'clock already. But I've only made the introduction to my talk. There's a great deal more to be said. For instance there's much to be understood about the other side of this coin. One of the things we found in a little research project is that minority youth tend to have different patterns of seeking work than do non-minority youth. In this project it was found that there was a tendency on the part of the minority youth to go to those places to get a job where traditionally Negroes had obtained jobs. It was known that the city government of Philadelphia had a clear-cut non-discrimination policy. Because of this we found that most Negro youths went to the City Hall personnel office first, because they had received from their parents and associates the assurance that the City Hall was a place where you could get a fair deal. On the other hand, public employment has a bit of a stigma attached to it, even if, as in Philadelphia, the city has a good employment program and personnel policy. Because of this slight stigma the white youngster tends to go elsewhere first to seek a job. This situation isn't good; it isn't good at all. One of the things that is needed in order to get real compliance, a really good pattern of equality of opportunity, is for private employers to make it clear through statements of policy and through assurances that he will hire according to merit, that they won't screen out the average and just hire the most clearly qualified, the super Negro or the super Puerto Rican. They should have an established policy and make it widely known that they will give exactly the same break to every youngster. If we're to cultivate a sense of loyalty from all Americans toward American democracy and American free enterprise we must cultivate in all our youth the faith and confidence that a rule of fair play really does prevail. Because it is now 12 o'clock , this is probably a good time for me to end my introduction, and try to illustrate some of the general remarks I've made with case histories.

A few illustrative cases come to mind. For instance, there was the public utility in Philadelphia that had integrated minority personnel into its total job structure prior to the ordinance. But this integration policy did not extend to appliance sales. It had a department for the sale of appliances using that particular kind of fuel or energy. (You'll notice how carefully I avoid identifying

a respondent even though we are not prohibited by law from naming them. We have made it our policy to avoid naming any respondent.) In this instance that I'm referring to a Negro applied in response to an ad for a job as salesman of appliances. This particular sales program was a door-to-door basis. The Negro applicant was refused a job and filed a complaint with our Commission. An investigation was conducted. In the course of investigation the firm was very frank in saying that it could not employ a Negro for this job. The firm called our attention to all the other jobs in which it was employing minority personnel, and went on to insist that the Commission could not charge the firm with discrimination because it was, with this exception, doing a good job of integration. The firm claimed that it could not employ a Negro in appliance sales because there wouldn't be enough of a market in the Negro community to enable this person to make a living and they said, he couldn't sell to white people. After nearly two months of negotiation, the Commission was at the point of ordering the company to hire the complainant as a salesman when the company volunteered to give the applicant a try. The firm made the very interesting admission that it had hired many white salesmen who had proven to be failures, and said that if this man wanted to risk failure, they'd let him. Within one year the complainant turned in the highest sales record of any salesman in that firm. And half of his sales were made to white people. His record was so good that there was a danger that the firm would violate the law by discriminating in favor of other Negro salesmen. The company did not go quite that far but it did guide its recruiting program so that they obtained some additional Negro salesmen who also made excellent sales records. At one time that company was very angry and upset about the Commission and its actions. Yet, today it is outspoken in saying that this law has not worked to its disadvantage.

Other cases are handled more quickly. One, I recall, involved a city contract. We have a provision in the city charter prohibiting discrimination in any city contract. In this case a trucking concern had the contract with the city to deliver voting machines. The machines are held in central storage and distributed just before each election. A man who was a member of the Teamsters Union (in this instance I can't very well refrain from identifying the respondent, but I doubt that the union would object because it is quite proud of its subsequent record on this) complained that the dispatcher at the union headquarters was assigning only white drivers to this particular job. There were some interesting aspects of this situation. The union had both white and Negro members. There was nothing to indicate that it had ever discriminated against Negroes in admitting them to membership. The dispatcher against whom discrimination was charged happened to be a Negro. It was found that he assigned white drivers only to this particular job simply because it was his understanding that that's what the employer wanted. When we checked with the company representatives, they said they didn't care, that they had never had a policy one way or another, but they did admit that they had never had Negro drivers up to that time. All of this information resulted from one

personal visit and a telephone call to the employer. Of course, it was necessary to act fast because the contract to deliver voting machines had to be performed in the course of one or two days. Within two hours of the filing of that complaint the practice of both the union and the company had been changed. In this case our hand was somewhat strengthened because we were dealing with a city contract. If necessary we could have asked the city to rescind its contract, but I don't know what that would have done to the election. Here was an immediate adjustment to the satisfaction of all parties. The action later came before a meeting of that local, and was confirmed. The union local took satisfaction in adopting a rule that members were to be dispatched on a first come, first serve basis, without respect to race.

These are only two of the numerous case histories that I could tell you about, but they do serve to illustrate how much can be accomplished through discussion and conciliation, through attempts to arrive at better communication and a more complete understanding of the situation.

ELMER A. CARTER

Commissioner
New York State Commission
Against Discrimination

TWELVE YEARS OF FEP UNDER LAW

So happy is my memory of my last visit to San Francisco that I view this occasion to participate in this Conference on Equal Employment Opportunity as a rare privilege. This feeling derives from recollection of the sheer magnificence of your city, its challenging hills, its inspiring views, the extent to which its rugged physical character has been transformed by the genius and imagination of engineers and architects and builders expressing in brick and stone and steel the yearnings and the dreams of its citizenry. If you think I flatter you, you are mistaken. But there is something that resides even more vividly in the recesses of my memory than the physical charm of San Francisco; and that is my impression of the people whom I met, not formally but casually, in shop and store, on the street, in restaurants, even on the train before I arrived in the city and on the ferry then coming from Oakland.

I saw neither in their faces nor did I sense in their attitudes any color or racial antipathy. In my presence they were not ill at ease. Their conversation, necessarily brief, betrayed no condescension, no thinly veiled contempt. On the contrary, there was a friendly approach, a kindly glance and eager concern that I should enjoy my stay and like San Francisco. "Be sure and have cocktails on Top of the Mark," were the parting words of a fellow traveler (fellow traveler not in the sense that it is sometimes used), and "See a sunset and sunrise over the Golden Gate," urged a gracious lady who had proferred me magazines in what had become a tiresome journey.

I left San Francisco in a gay frame of mind. I had lived in and seen many cities, North and South. I think now, from the perspective of after years, that there was a prayer in my heart as I left this city, a sentiment which was: San Francisco -- beautiful, friendly, cosmopolitan city, I hope you never change, unless it is for the better.

I must confess in later years, I became annoyed. Just annoyed when somebody even hinted to me that there were problems of racial antipathy, problems of racial discrimination, problems of maladjustment which might mar the serenity of human relations in this lovely place.

Out of my experience I had learned that there is constant change in human relationships -- not always for the better. For cities and states, like individuals are apt to be called upon to test the strength of their faith under changing circumstance. New migration, new industrial competition may alter attitudes. But the philosophy of government, the religious tenets which we so easily have taken for granted now are being put to the iron test, because of changing sociological and economic conditions in our cities, in our country and in the world. The persistence of discrimination on the basis of race, or color, or national origin is in fact a repudiation of the American ethic of equality of opportunity. And this repudiation historically has been the cause of our greatest tragedy as a nation and now constitutes our greatest weakness. Unless we understand this, then the recital of the experience of New York State and other states and cities in the effort to eliminate and prevent discrimination in employment, or in public accommodations, in housing because of the biological accident of color or the historical accident of religion or nationality, will have little meaning.

I ought to say at the outset again that I come here with some degree of trepidation. I have a feeling that there is nothing about the New York Law which cannot be improved upon. My recital of the New York experience is not a comparative recital; it is given only as an aid in gaining some insight into some of the problems we face and the methods which we work with.

This is, of course, as you know, a tremendously important subject now. We are not only under the spotlight of our constituencies; it so happens we are under the spotlight of the world. The treatment in America of minority groups reaches into the far corners of the world. And I might say to you that this treatment in another sphere has created an incident that has traveled faster and further than even Sputnik. Little Rock has gone faster than 1800 miles an hour and it has been heard of by more people than have heard of Sputnik. And so you who are here are engaged in something more than the attempt of a solution of a problem that concerns California or New York or the United States. The problem which you are concerned with has to do with the fate of democracy in the whole world.

The passage of the first state law against discrimination, the New York State Law Against Discrimination, followed the wartime experience which revealed the importance of industrial manpower in the titanic production effort required for total war. It was this realization, not altruism, that persuaded President Roosevelt to issue the famous executive order which created the Fair Employment Practice Commission designed to free the American defense effort from the hampering restrictions of racial discrimination. Actually we learned there were no real shortage of manpower. America's industrial plant had suffered as a result of a long historic discrimination which excluded Negroes from shop and factory and denied them opportunity to acquire skills. Because of this America

was deprived of a tremendous industrial potential which if utilized would have been able to send our defense industry soaring and thus relieve our anxieties and our fears.

It was in this atmosphere following the close of World War II that the law, a bi-partisan measure, was enacted by the New York legislature in 1945. I shall not regale you with the arguments for and against its passage, for you are, doubtless, as familiar with them as I am.

It is sufficient for me to say that since the passage of the law in 1945 creating the New York State Commission Against Discrimination in Employment, the legislature of the State of New York has extended the jurisdiction of the New York Commission to comprehend discrimination in places of public accommodation, beauty parlors, barber shops, pool rooms, hotels, restaurants, retail stores, etc., and in 1954 extended the jurisdiction of the Commission to comprehend discrimination in public housing. And in 1956 extended the jurisdiction of the Commission to cover discrimination in publicly assisted housing which was defined as including FHA housing and insured mortgages or guaranteed mortgages under VA assistance. I give you these illustrations to indicate that the legislature in New York as the legislature in Philadelphia and in Pennsylvania has approved the methods of the administration of the New York law against discrimination. And I venture to say that most of the people in the state of New York have approved the method of administration.

The dire and forbidding prophecies of the consequences of the enactment of the New York law have not been realized. New York has not witnessed any hegira of industries because of the law. The law has not provoked racial strife in shop, factory, banking or financial institution, engineering firm or public utility on the introduction of hitherto excluded Negro personnel. The freely predicted resentment of white employees if it existed, and I doubt seriously that it ever exists to the extent that has been depicted, has never found expression in these 12 years in any significant manner in the State of New York. On the contrary, the record of acceptance in the great banking institutions, insurance companies, public utilities has been little less than inspiring. New York Commissioners are not inhibited in naming firms, so you won't think I'm violating the New York tradition if I mention a few names. I have just received reports from several of New York's great banking institutions. The Chase Manhattan National Bank, for example, estimates a total of 300 Negro employees in various occupational categories, including, unit tellers, IBM operators, bookkeepers, clerk-typists, stenograhers, etc. Now this doesn't seem very dramatic except that in 1947 I tried to explain to one of the vice presidents of Chase that I didn't believe that anyone would object to an intelligent, efficient, competent young colored girl or man handing a person clean money for old or dirty money, or cashing a check or doing a hundred things that a bank teller is supposed to do because the teller happened to be colored.

He called me about three years ago and said, "We have a colored girl

in the 34th Street branch. She's been there for eight months as a teller and the management states that she has created goodwill and is bringing customers into the bank. You all know that 34th Street is not in a Negro area in the City of New York. Now I give you this illustration only because it represents the character of resistance.

We have in New York a communications industry council which is composed of representatives of the Western Union, RCA Communications, Inc., the American Cable and Radio Corporation, and the New York Telephone Company. And from this communications council there has come a recent report that in the Western Union they have a hundred Negro teletype operators, they have 7 or 8 assistant managers (only one in a Negro area), they have Negro clerks throughout the Western Union operations in the City of New York. This picture is also true of the American Cable and Radio Corporation and this is true of the New York Telephone Company. There are, in the latter company, probably over one thousand colored girls who are not only operators but have been promoted to positions of a supervisory nature and have been hired as business representatives and have been integrated to a great extent, this without shock has happened since 1945.

The picture is not so impressive upstate in the white-collar categories, but it presents considerable change since 1945 particularly on the industrial and scientific level where Negro engineers, physicists, chemists are moving steadily into the great new developments that are taking place there. I think it was at the instance of the New York Commission that the General Electric Company and several other companies added Howard University School of Engineering to the list of schools from which they would recruit personnel. Now I don't say that the Commission and the law did this alone. The tremendous industrial expansion, the tight labor market served to reduce the strength of resistance to integration. And of great importance in creating a favorable climate for the successful administration of the law has been the great educational programs of private, social, and civic agencies whose efforts to secure passage of the law have been followed by ceaseless activity to make it effective.

Under the New York law, a person who feels aggrieved by an unlawful employment practice, refusal to hire, refusal to upgrade, or refusal to be admitted to a labor union may file a complaint. And when he files a complaint, the chairman of the Commission of five designates a commissioner to make an investigation. The investigation is very thorough. If it's a refusal to hire, the investigation includes consideration of the specifications for the job, the qualifications of the person who was employed, the time of his employment, etc. And then if the investigating commissioner finds probable cause to credit the allegation of the complaint the investigating commissioner attempts to eliminate the unlawful employment practice by conference, conciliation, and persuasion. If the investigating commissioner fails, he immediately notes the

case for a public hearing. At the public hearing the investigating commissioner may not participate. The case is tried de novo.

I should say that these are magic words -- conciliation and persuasion. For in the 12 years of the Commission's existence there have been 4620 verified complaints, and probable cause to credit the allegations to these complaints has been found by the investigating commissioner in 1030 cases. But in the history of the Commission there have been but 5 cases that have gone to public hearings. One case involving public accommodation, one case involving housing, I think two cases involving employment agencies, and one case involving labor unions. A sixth case was just recently scheduled for a hearing but has not come up yet.

As Mr. Schermer said this morning the terms of conciliation are not so harmless as to provide easy evasion of the law. In New York they have ranged from the order to employ complainant or re-instate him if discharged or to admit to a labor union to which he was refused admission to the payment of $4,000 as compensation for loss of earnings due to discrimination.

In the case involving $4,000 compensation a great steamship company had employed a Negro who had been dismissed from his employment by the captain after 13 days at sea. And the captain of the ship claimed that he was incompetent. The captain said the complainant, a second mate, couldn't fix his position by sun, moon or stars, nor could he fix his position by dead reckoning. He was completely incompetent as a second mate and a navigator. As a matter of fact, the captain asserted, everybody had to take his (complainants's) place on the bridge during the whole journey. It so happened that I had been assigned the complaint and I am not a navigator. I didn't know whether or not the complainant was a good navigator. And this is the type of investigation that a commissioner is sometimes called upon to undertake. So I sent for the former Executive Officer of the United States Merchant Marine Academy in New London and asked him if he could tell whether a person was a good navigator if he only saw him on land. He said that he might if the man had made voyages. The Executive Officer said that he would want to examine the rough log and the smooth log of the voyages that is registered with the Coast Guard and would want to talk with the discharged mate for two hours. So he talked with the mate for two hours and the Coast Guard made available to the Commission the logs of the voyage. Afterwards the Executive Officer came to me and said, "Commissioner Carter, I have been a master at sea for twenty-seven years, and if I go to sea again I'd just as soon take this complainant as my navigator and second mate." So I found probable cause to credit the allegation of the complaint, and asked the respondent to rehire him. The respondent claimed that it was not hiring anybody, but was in fact laying off employees. Under the terms of our conciliation, I asked the company to compensate the discharged mate for loss of earnings because of discrimination. The company refused , so the Commission declared that the case would go to a public hearing. On the date of the scheduled hearing, the

respondent's counsel came to the Commission and said that the company did not wish to go to a hearing, that in fact it was in favor of the law. The company through counsel asserted that it was not responsible for the acts of its captain actually and even though legally this might be so, it had no desire to test the law in a hearing and thus agreed to pay the $4,000. Now this is an illustration of one of the types of conciliation that the Commission sometimes develops.

But in most of our cases there has been willing compliance with the terms of conciliation. Where compliance is grudging it may often be traced to fears -- fears of consumer resistance, fears of employee reprisal, fears of union retaliation. Fears are best allayed by example of their groundlessness. Fears may be overcome. The accumulated experience of the Commissions against discrimination, city or state, throughout the years provide literal demonstration of the hollowness of these fears. Is there consumer resistance to Negro salesgirls? The sales slips shout an emphatic NO. Thousands of Negroes working with white employees on every level of employment throughout the nation may be cited to allay the fears of employee resistance.

But fears still persist and it is part of the task of the Commission to dissipate these fears which are factors in the perpetuation of discrimination in employment. Every contact with a respondent is educational in a measure but a continuous educational program progressively expanding to reach teachers -- vocational guidance counsellors in the public and parochial schools, business organizations, and trade associations, is carried on by the educational division of the Commission, utilizing all the media of modern communication, the radio, the telephone, the brochure, pamphlet, conferences of employers -- and segments of organized labor, and civic groups. The end of this effort is not merely to create an atmosphere of passive acceptance of the law but to generate positive forces to end discrimination.

You can file laws as high as the Woolworth Building, but the New York State Commission does not have police power to police 300,000 employers. The only method that can be made effective is to persuade the employer, the employing group and the labor group as George Schermer said so vividly this morning, to become literally "arms of the commission."

An example of this type of cooperation occurred in a small but important industrial city in New York State -- Binghampton. A group of employers took a quarter page advertisement in each of the two daily papers, addressed to the youth of the community which said in essence: acquire an education, stay in school as long as you can and regardless of your race or creed or color we will give you an opportunity to work and to advance on the job. Other employers were invited to participate by signing a pledge. In a few weeks the employers of 90 per cent of the employable population of this community had signed the pledge. The statement then was submitted

to the vocational guidance teachers in the public schools with whom conferences were held, so that they would not be inclined to dissuade Negro children from pursuing certain courses because it was felt they could find no employment in the jobs of their choice. Parallel conferences were held with leaders of the Negro community. This program has had, I think, a tremendous inspirational effect on the minority youth in that small community.

Another instance may be cited. The Communications Council, composed of the great leaders in communications -- the New York Telephone Company, the Western Union Telegraph Company, the American Cable and Radio Corporation, the Radio Corporation of America, sponsored the printing of upwards of 30,000 brochures which carry photographs of integrated training and employment up to the supervisory level in the plants of these companies.

In New York, we find that employment is linked very closely with housing. I'm going to give you only one illustration of this and that illustration is from the very highest level. The IBM company moved 20 of its engineers engaged in a very secret, secret, hush, hush classified job to its plant in Syracuse from Poughkeepsie, New York. Four of the twenty engineers were Negroes. And when they got to Syracuse adequate housing was found for all of the white engineers but no housing except in the Negro district could be found for the four colored engineers. That housing was way below the scale of living which they were accustomed to and certainly was much lower than their cultural attainment warranted. The manager of the IBM in Syracuse became very distraught about this. Finally he said to the four colored engineers, I'll transfer any of you men to our plant in California. I think you can get adequate housing there. Three of them accepted. One decided to try it out in Syracuse and as a matter of fact he stayed. But when our Commission representative asked IBM whether it would continue to recruit Negro engineers in the state of New York under such circumstances, considerable reluctance was expressed because of the lack of adequate housing. And now the IBM and the Commission and a number of other industrial employment groups in New York are attempting to solve that phase of the problem of discrimination too.

But, of course, problems vary from place to place and a law must be devised to conform to the conditions in the place concerned. Neither in spirit nor in fact, would I want to try to superimpose the pattern of New York on this state or this city. In New York we have great foreign populations, which do not exist in all other parts of the U.S. I was once talking before representatives of a Senate Committee in a certain state and the Chairman of that Committee said, "Mr. Carter, do you mean to say that under your law an employer may not ask a person whether he goes to church regularly?" And I said, "Yes, under our law it's against the law to ask a person the question, do you attend church regularly." But the Chairman did not understand this prohibition because in the community in which he was reared, religious differences were not sharply defined and semantically the word "church" and "house of

worship" for him had the same meaning, but not so in the City of New York or in the State of New York.

New York has had a fair employment practice law for 12 years, but there are large areas of employment which still retain the aspects of discrimination. In railroad transporation, particularly in the operating divisions, with the tradition of Negro exclusion in the constitutions of the great Brotherhoods, there has been little change save in one of the nati n's great railroads which hired Negro brakemen for the first time in 1953. The Pennsylvania. It is in this context that the Negroes were admitted to lodges of the Brotherhood of Railway Trainmen for the first time in its history. I believe there are upward of a 100 Negroes in this job category now on the Pennsylvania.

On the whole, the enactment of the laws in the various states has resulted in considerable progress in prying open further the closed doors of labor unions. And this progress has been due in no small degree to what I deem enlightened leadership of not a few labor organizations. Some have embarked upon elaborate programs of education of the membership to lessen resistance to the admission of Negroes.

It is in the opportunity, or rather in the lack of opportunity for apprenticeship training, that presents the most disturbing picture in the effort to secure equality of employment opportunity. The method of selecting of apprentices usually from those already employed on the job, has effectively deprived Negroes of requisite training for advancement above the primary stage in modern industry. For as a rule, Negroes were not in the work force from which apprentices are chosen.

All of the Commissions have sought to break this bottleneck. At present the Research Division of the New York Commission is engaged in a study of apprenticeship training in an effort to ascertain all of the facts in order to formulate a program designed to remedy this situation. Unless apprenticeship training is lifted above considerations of race and creed and color, then equality of employment opportunity will never be attained.

It would appear from the items which now fill the pages of our papers that our country can ill afford to neglect the training of any individual who has the capacity and the will to learn. So-called manpower shortage largely the consequence of discrimination on the basis of color, threatened our defense in World War II, and now the logic of events which I need not enumerate makes it imperative that such a danger shall never again be permitted to arise. Of all the forms which racial prejudice or religious bigotry or national antipathy may take, discrimination in employment is the most contemptible. It is not feasible in a nation which is itself the creation in large part of those whose migrant ancestors -- Italian, Irish, Slavic, Bulgarian, Pole and Jew -- German and Scandinavian, were driven by the identical urge and

haunted by the same dreams which inspire the migrant Negro or Porto Rican or Mexican of the present day.

Working with the law against discrimination is very inspiring, and to meet here with you at this early stage in the history of your anti-discrimination ordinance is a very great privilege. The New York law has received progressive support from the great labor unions, from the organizations of manufacturers and employers. What the Commission attempts to do is to build a bridge between pronouncement and performance. There is plenty of pronouncement of non-discrimination, what we're trying to do is to get performance. And I know you're going to experience a great success here in San Francisco because California is a very progressive state.

In many parts of America we are making progress but not fast enough. We are being called upon to make a choice. Our alternatives are clear. Either we march with those bright-eyed Negro children through troops on their way to school or we march with those whose contorted faces split by hate and venom tried to keep them from carrying out the edict of the United States Supreme Court. According to Mr. Dulles, Secretary of State of the United States, and to his predecessor, Mr. Acheson, which group we choose to walk with is of world-shaking importance.

REMOVING THE BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITY

comments by

William Becker
Labor Committee to Combat Intolerance

I think most people in San Francisco know that the trade union movement -- the organized labor movement -- has for many years been all-out in support of fair employment practices legislation nationally, on a state-wide basis, and locally. This is not an accident; it stems directly from the trade union movement's basic commitment to the American creed of democracy. On the other hand, such legislation can not be considered the end of all problems in this field. It is only one of the benchmarks used for determining progress in the field. The passage of an ordinance, such as the San Francisco Ordinance, helps to implement a general policy of fair employment practice, a policy already stated by organized labor in official resolutions, actions of conventions, and other formal procedures. But the stated policy is not enough; implementation, such as the San Francisco Ordinance, must be provided if the policy is to be carried out.

There is no doubt that opposition exists to such a policy. That opposition comes from many different sources. It may come from employers, from customers, or from other employees in the industry. The existence of FEP legislation is very helpful in meeting such opposition. Individuals dealing with this problem have difficulty in knowing how to meet irrational arguments. An FEP law makes it possible for them to say, very simply, "This is the law," which is often more persuasive than meeting emotional reactions with logic.

Since the enactment of the ordinance here in San Francisco, a union group has asked how to proceed under the law and requested information on experience in other places. Such groups have received the advice that they should take a firm position on the side of the law. Past experience suggests that this position will eliminate problems. This situation reminds me of the story of the young bride who was complaining to a friend that her husband came home drunk every night. They hadn't been married very long. The friend said,

"Well, if you knew this why did you marry him?" And the bride said, "Well, I didn't know he drank so much until he came home sober one night."

We have many people who don't know quite how pleasant it is to live in an atmosphere free of the fears and prejudice until they experience unprejudiced life. It's only through such experience that the real values of a society free of prejudice become apparent.

I'd like to make just two other points. First, we have never paid sufficiently careful attention to the area of counseling minority group children. I'm happy to report that one of the FEPC commissioners in this city met with all of the high school counselors on this very problem in October. To be effective in this extremely important area one must have contact with the minority group community and with their families. I have found it almost universal that children of minority families were not counseled to take the courses in high school needed to prepare them for the better jobs. This lack of appropriate counseling becomes even more important in attempts to secure upgrading than it is in securing initial employment. In a truly democratic society no one, regardless of his race, religion, national origin, should be hindered in his efforts to advance because he has not been urged to take necessary background subjects, such as mathematics and science. A related consideration is that we should avoid developing a pattern of manpower utilization which concentrates all people of one group in one kind of job and all people of another group in a different kind of job. Very specifically, we do not want to and should not be concentrating our Negro population in those jobs which are at the bottom of the economic ladder in each industry. The same range of skills is present in the minority groups as in other groups, and these minority groups should have access to the various levels of economic opportunity. But such access is difficult if many of the people involved do not even have training adequate to qualify them for the apprenticeship standards. This is a problem which is becoming more acute, because apprenticeship standards are being increased year by year by the industry and labor committees. Adequate high school counseling will help, but we must all work to convince the minority youth that it is worth his while to take the necessary but sometimes difficult high school courses which will enable him to advance in his skill. He will be convinced only if there <u>are</u> expanding opportunities for employment at higher grades in the near future.

As a final point, I would like to stress that the AFL-CIO has within itself a policy and growing action program on fair employment practices; I refer to the civil rights departments of the AFL-CIO. A union in Cleveland had refused the application of a Negro. When the case was brought to the International Union by the AFL-CIO, the International directed the local union to admit the Negro applicant if he had the proper qualifications. Refusal to admit in such a case would result in revocation of the local's charter.

The local reversed its position, did not exclude Negroes from the examination and subsequently admitted two Negro applicants who had passed the examination. Unfortunately, the man who had originally appealed didn't qualify on the test, but his appeal did open doors for others who were qualified.

With this kind of apparatus in the labor movement, and with the adoption of a city FEP ordinance, we have taken great steps toward widening employment opportunities. To get the most benefit from these moves, and to progress further, we need the support of all our community institutions. Minority families and those counseling minority youth must know about the increasing opportunities and how to assist these young people in preparing adequately for these opportunities.

REMOVING THE BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITY

comments by

Clifford P. Froehlich
Professor of Education
University of California, Berkeley
Past President, American Personnel and Guidance Association

Three speakers so far in this conference have mentioned the school counselor as playing a key role in fair employment practices. I feel my job today is one of trying to give you the thinking of guidance workers on this problem. This is not a new problem for us. It is one in which we have a long history. The American Personnel Guidance Association is one of the first national associations in this country to demand integration at our national conventions and it refused to hold them in any city which would not accept all our delegates without any discrimination, even if it meant changing the convention city. We have cooperated closely with the President's Committee on Government Contracts. And last February we were joint hosts with the President's Committee for a National Conference on Youth-Training Incentives.

Some of us grew up in families where our mothers and fathers and aunts and uncles and cousins and all the rest of our relatives and acquaintances helped to acquaint us with the world of work; they told us about their jobs; they told us about their training for those jobs. The clubs that we joined, the associations, the churches, professional and social groups to which members of our families and neighbors belong not only contributed values and information which we needed to choose our training and our careers, but through these same sources we obtained contacts for the positions of employment. We were accustomed to an atmosphere in which our opportunities for careers were circumscribed only by our own limitations.

Contrast this situation with that of a minority group youngster, for example, the Negro child with a lower economic social background. He grows up in a family and neighborhood where there is a long history of discrimination of one type or another. The very knowledge and information which is day-to-day living for members of majority groups are unknown quantities to him. Perhaps even more important the minority youngster grows up in an atmosphere in which

generations of limited career opportunities have depressed personal incentives.

Educations and careers are determinedby life experience and what one makes of them. This is not quite as simple as it sounds. Life experience contributes most fully to a youngster's career planning if three conditions are present: one, the opportunity to know him; two, to be motivated to achieve; and three, to learn about various careers and the openings in the job market.

For many--in some sections of the country, perhaps most minority youth--the help that they will receive in understanding themselves and in developing towards careers more appropriate to their abilities can only come through the skills and understanding of well-qualified counselors.

We in the guidance movement, in working with minority persons, try not to let our thinking be dominated by the old idea of obstacles to their development. Rather we think in terms of encouraging them, encouraging them to develop their full potentialities. I think we guidance workers have some very specific contributions to make to the development of minority youth. One, is through the skills of our profession we are able to identify talent among minority youth. An individual needs to know where his abilities lie before he can realize his full potential. This is not a problem for minority members alone, but it is often an accentuated problem in minority groups. It has been pointed out that there is no reason to assume that minority members possess less ability than others, but in a deprived environment such potentialities as the intelligence of the manager or the professional person, the skill of a technician or the gift of an artist go undiscovered. Through the normal work of a counselor, through testing procedure, interviewing and through cooperation with teachers in the schools, the counselor is in an unusual position to identify talent early enough, and I stress early enough, in the school years to make possible its nurture through our educational processes.

The second condition needed, and mentioned earlier is to motivate and to stimulate minority group members to train for and to achieve their potentialities. Here again this isn't confined to minority youths alone, but the problems of motivation and stimulation are particularly pronounced with these persons. The problems are different both in kind and intensity. The Negro youth, and others like him, is a product of many generations of such limited career opportunity that frequently his personal development has been depressed rather than enhanced. In an expanded economic environment there must be a conscious effort at the early school level to develop a feeling within the individuals that will inspire them to continue to progress. For the psychology of motivation we know that persistent stimulation with lasting effects does not occur usually as a result of one single contact with one other person. On the other hand, such stimulation will not occur unless there is one person who is responsible to help understand and to encourage individuals.

This person in many schools may well be the counselor. Others may help of course—parents and the other teachers, school staff members, the janitors, bus drivers, agency workers in the community, and many others. All these persons must be committed to a single idea, that idea being that they are to stimulate individuals to train to the full level of their potentialities.

My point of view, and I believe my colleagues in counseling would support me, is that San Francisco's Commission on Equal Employment Opportunity can never be truly effective until there is equality of preparation for employment. I will give you one example. From 1940 to 1950 the median level of schooling for both whites and non-whites rose. We can be encouraged about this. But let me point out that the difference between white and non-white was approximately the same in 1950 as it had been in 1940. If the career opportunities continue to develop for minority youth it is apparent that the educational level for them will have to rise. Without motivation of these individuals we can scarcely expect this to happen. Training and incentive are closely tied together.

The third unique role of counseling of minority youth is in planning for careers and helping them progress through the educational experiences required for the career. Again, although not different fundamentally from the process required for all youths, there are significant differences. Let me mention these. You will recall the necessity of adequate occupational information for students who are planning their careers. For minority youths this information must introduce reality. From a positive viewpoint, reality need not be a psychological defeat through recognizing obstacles but rather an understanding of obstacles, how they operate both openly and subtlely, and more important what a person can do about them. The other aspect of this reality is an understanding of the expanding career opportunities. In planning for his future career the minority youth must be able to see expanded opportunities caused not only by our expanding economy, but also by the increasing opportunities for minority youths. Those of us who are counselors have for many years pledged ourselves to the task of trying to provide equality of training, equality of motivation, and equality of employment. But if we as counselors are to function efficiently in this area, we will need information. We will need to know what an employer expects from his employees. Whether he really will hire and upgrade without regard to race and color or creed or national origin. Whether he will fully comply with both the law and the spirit of anti-discrimination ordinances. We as counselors must have assurances, for example, when urging a Chinese youth to take courses in school which will equip him as a mechanic or a draftsman or any other skilled craftsman that his training will guarantee him the right of non-discriminatory hiring and advancements if he meets other qualifications. We must also know the types of jobs which industry expects to open within the next few years. The rapidly changing job scene necessitates advanced career information to facilitate the counselor's work with minority youth. It's of little point to know that an occupation

is open today when for years the occupation has been closed. And counselors not knowing of the possibility of its being reopened have counseled as though it were a closed occupation. We must have advanced notice. We must have assurances from labor and from management that in their apprenticeship and on-the-job training programs, all qualified applicants will be given equal opportunity for employment.

Let me close by reaffirming the point of view of the American Personnel Guidance Association, this organization which is a spokesman for counselors in schools and colleges and community organizations who are helping the youth plan their lives and make decisions about vocations. The Association believes: one, that every individual has the right to choose the career suited to his interest, potentialities, limitations, and to pursue that career; two, that every vocation should be available to any one who meets the qualifications for the work itself; and finally, that every individual should have assistance available to him to help him appraise himself, to plan his career, and to discover his opportunities for equal employment.

REMOVING THE BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITY

comments by

Edward Howden
Executive Director
Council for Civic Unity
of San Francisco

A few years -- perhaps even a few weeks -- ago, probably most of the nonminority participants in a conference such as this would have come to it largely on the assumption that it was essentially a humanitarian endeavor, a worthy "do-good" discussion, possibly even an affair that might yield something tangible under the heading "good business." But while each of these perspectives on our meeting is a true one, it is today clear that an almost desperate urgency infuses our subject, an urgency as to the security and even the very survival of the nation! Not even at the onset of major war have we as a people been so shocked into awareness of our weakness and our vulnerability as we have been by the sudden, indisputable fact that Soviet Russia, through concentration of scientific and industrial effort, has forged ahead of us in the technology of war and, therefore, in the capacity to cripple or destroy us. There is some argument as to why, almost overnight, we find ourselves militarily a second-rate power, but there is no discernible disagreement whatever across the country on the proposition that we must expand the ranks of technical and scientific personnel, both in the short run and the long run, and that we must now achieve and maintain the fullest conceivable manpower utilization, both in quality and numbers.

Only yesterday the problem of training, upgrading, and fully employing the nation's manpower resources was of concern only to the specialists in government, industry, and the universities, to management in certain strategic sectors of the economy, and to a handful of workers in public and private agencies striving to promote equal job opportunity. Today, with the beep of Soviet sputniks heard 'round the world and our own failures in this department known to all, manpower is a household word. Finding and developing the men and women and youth who can fill the nation's crying need for more skilled workers and technical and scientific personnel is now universally recognized as a matter of overriding

importance. So we meet not only, nor even primarily, as a group of humanitarians seeking to solve problems besetting less fortunate members of our society, nor only as businessmen shopping for means of living with a new law, but as citizens of the USA who are deeply interested in moving fast enough to save our collective skins and those of our children and grandchildren in a world more fantastically perilous than most of us were willing to imagine even as World War II ushered in the atomic age.

None of this is new to a single person in this room or to any other thinking American. Surely no one here has failed to grasp the clear and urgent connection between orbiting satellites, ICBM's, and the theme of today's conference. We are not likely to disagree over the desirability of equal employment opportunity. But let us proceed also from the premise that now as never before merit hiring and nondiscriminatory upgrading and giving all youth -- utterly without regard to color or creed -- incentives to train are no longer options which we may choose but imperatives which we ignore at the risk of survival itself.

Since our topic this afternoon is "removing the barriers to equal employment opportunity," it may be asked why I have given three and a half minutes to setting the scene in terms of the trouble we're in as a nation. I have done so, first, because I believe we are in trouble, and secondly, because I am convinced that what counts most of all in removing those old racial and religious barriers to merit hiring and upgrading is a serious, high-level decision to do so. Without that decision by top management there will be no real policy of equal opportunity or nondiscrimination. Given that decision, however -- and, of course, I mean a real one, not a token, lip-service pronouncement -- the rest follows with relative ease.

So my suggestion as to what is involved today in breaching the color barriers to employment consists of two quite simple, almost axiomatic propositions:

1. That we can no longer afford not to set as our national standard complete manpower utilization -- a standard against which any consideration of race or religion or ancestry as a factor bearing on the fitness of an individual to train or work or advance is ridiculously and dangerously irrelevant.

2. That once top management really decides to have merit employment all the way down the line, the new policy can be implemented by competent staff with reasonable speed and with few or no tough problems.

Does anyone at this late date seriously doubt either of these two statements? Surely today personnel directors in particular and informed management generally are aware that satisfactory introduction and implementation of nondiscriminatory hiring and upgrading policy entail no seriously disturbing or insurmountable difficulties.

To the contrary, the great bulk of recorded experience -- most of which dates from the World War II period -- shows that the typical fears and anxieties of employers about initiating such a policy are almost wholly groundless and that the policy is, in fact, beneficial in many unexpected ways. Indeed, at no point in the lengthy debate last spring in San Francisco over the fair employment ordinance then pending was there any contention by management spokesmen to the effect that merit hiring as such was unworkable; they emphatically and repeatedly asserted both its desirability and feasibility, and endeavored to document actual progress toward its wider observance. The issue was not whether fair employment is sound and practicable policy, but solely whether an ordinance and a commission were needed to promote such policy.

In any event, the literature is replete with success stories of racial integration on the job -- stories from great firms, and smaller ones too, in the East, the Midwest, the West, and even the South. And on the public record in San Francisco there is ample employer recognition -- at least at the association level -- that equal opportunity is good and workable policy. Yet in spite of all this fine, general agreement we are assembled this afternoon to talk about the remaining barriers to equal job opportunity. The point, of course, is that these excellent pronouncements of principle, however, sincere, do not automatically translate themselves into working practice. Not everyone among employers is convinced; some have not yet turned their attention to the available experience; some are not yet informed as to the tested techniques for launching a new merit policy; some have taken a few, token steps in that direction but have not yet established company-wide policy; many have failed to hand down any policy at all, leaving the matter entirely to departmental chiefs and other supervisory personnel; and some -- only a few, I trust -- seem to regard the general policy statements of their associations as so much window-dressing and to be privately determined to ignore or resist the trend toward nonrestrictive employment.

The human relations aspects of management are not about to be taken over by automation, but I would like to suggest one possibly useful analogy. As I understand it, you have to feed data or instructions into one of these electronic brains in order to get work and results from it. Similarly, on our subject today, are not many employers in the situation in which they have assented generally to the principle of merit employment yet have failed to feed this information or any instructions pertaining to it into the machinery of their respective organizations? They have not yet given the word -- or have not given it in a fashion communicating clearly to everyone in the organization -- that they mean business. It should come as no surprise that our record so far -- speaking here primarily of San Francisco -- is a spotty one with regard to hiring of individuals strictly on ability rather than partly on race or religion.

Let me back up these observations for San Francisco proper by giving you some of the findings of a study of employment practices in which the Council for Civic Unity has been engaged for some time and which is to be published shortly after the first of the year as Part I of A Civil Rights Inventory of San Francisco, by Irving Babow, Ph.D., and Edward Howden. This study was carried out primarily through detailed interviews of authorized executive spokesmen for 100 major firms in this city, managers of more than half of the general purpose private employment agencies, various local placement personnel of the State Department of Employment, about 30 trade union people, and several other sources. The data were gathered mainly over a period of about seven months ending in May of last year. That period, you will note, preceded the introduction and eventual enactment of the city's fair employment ordinance.

Probably most useful for today's purposes are the findings of our interviews of the 100 major San Francisco private employers. These included 48 of the 51 firms listed by the Chamber of Commerce as having 500 or more employees -- 94 per cent of all such firms -- and 50 companies (about one-sixth of the total) with from 100 to 499 employees. These 100 employers reported a total of about 88,000 employees, which is approximately one-quarter of the entire private industry work force in the city. The persons interviewed were executives in the upper levels of management or others specifically authorized to speak for their firms. For several reasons, including the fact that this portion of the study relies on what management itself claimed or admitted as to its practices, the bias here, if any, is in the direction of understatement of the character and extent of restrictive practices.

Our main findings and conclusions relating to the barriers to equal job opportunity include the following:

1. Almost three-quarters of the 100 San Francisco employers professed to have a definite policy or indicated a practice of merit employment, while a somewhat surprising one-quarter made no such claim. Yet of the 74 firms claiming a merit policy, only 12 endeavored to enunciate some sort of statement, and it was clear that in most of these 12 firms the policy had not been formalized or reduced to writing. Conversely, 88 per cent of the 100 employers lacked a definite, written merit employment policy, thus failing to utilize what the President's Committee on Government Contracts, for one, regards as an important factory in "establishing Equal Job Opportunity. . ."

Only 9 employer respondents met the more crucial test as to whether they had some form of explicit communication or implementation of the merit policy throughout the firm; and among these there was little indication of any clear, continuing program of implementation. Conversely, 91 per cent either made no claim of nonrestrictive policy or gave no indication of implementation.

2. Among the 100 employers we found negligible evidence of communication of their claimed fair employment policies to applicants through employment agencies, school counselors, newspaper advertisements, trade unions, or other labor sources. It appears that minority group job applicants, like others, tend to seek work where they think they will be favorably received and to stay away from firms, placement agencies, or unions which -- rightly or wrongly -- are believed to discriminate. This being so, the employer -- or agency or union -- which has not always followed a merit policy, but now wishes to offer equal job opportunity to all, faces a need to communicate his new policy to labor sources which can serve him on this score. He must help to take down the barrier and make sure that word of the new policy reaches some sources of minority applicants.

3. There is a wide gap between the merit hiring policy professed by the executives interviewed and their firms' actual practices. Thirty-five, or almost half, of the 74 employers laying claim to nonrestrictive policies made various statements which in effect contradicted or qualified these claimed policies. These statements came mainly in the form of reasons advanced for not hiring nonwhites in certain capacities.

Let us look briefly at these reasons given for not hiring. The factors cited varied in the degree to which they were controllable or subject to influence by management, or based on assumptions not actually tested on the job. Absence of job applications by nonwhites, mentioned by 40 respondents, and lack of skills or experience, advanced by 37, might appear to be factors wholly beyond the control of management. Yet we have seen that both are subject to some employer influence -- that recruitment techniques and other factors may have considerable effect on whether minority group applicants present themselves, and that for many jobs and industries the development of skills and the stimulus to secure training are open to substantial influence by management. For the most part, however, it seems that the San Francisco employers covered in this study had not undertaken to encourage an inflow of qualified nonwhite trainees or applicants. We do not suggest that this lack of action necessarily reflects a conscious desire to exclude the persons affected, or that it is to be equated with acts of discriminatory rejection of qualified individual applicants. But it does appear that management generally has not made a serious effort to broaden the private industry work force to include nonwhites in a wide range of jobs.

Undoubtedly many nonwhites (as well as others) lack sufficient skills or training for certain job classifications. But there appears to be failure on the part of employers who have manpower needs (a) to make known to vocational counselors and recruitment channels their willingness to drop previous restrictions, (b) to give nonwhites the opportunity of initial entry into the firm, which -- as with other workers -- leads to on-the-job training and skill development. With their parents often limited to lower

level jobs and counselors advising them that the course of realism is to fit into those categories which have been traditionally open to them, it is understandable if minority group youth frequently lack incentive to prepare for the more skilled jobs. At the same time, we should note that in San Francisco nonwhites have not yet been hired generally even in certain job categories which require few or no special qualifications, or for which companies conduct their own training -- e.g., sales clerk, cashier, or service station attendant. Lack of skill or training is not the obstacle in these instances, nor is it, for example, in the large number of firms which report no Negroes even in unskilled or service capacities.

Among other reasons most frequently offered for not employing nonwhites in one or more categories were: expectation of customer objections (35 employers); fear of employee objections (33); social, physical, or mental characteristics attributed by the employer to all members of the minority group (31); and autonomy or veto power over hiring bested in department heads or other supervisors, some of whom used racial criteria (22).

Specific responses were also secured concerning nonemployment of Negroes according to job category. These included, with regard to clerical capacities, 26 employers who gave expected employee objection as a reason for not hiring, 18 who cited departmental autonomy in hiring, 10 who mentioned attributed social characteristics, and 9 who anticipated customer objection. For sales jobs, 30 stated Negroes were not employed because of assumed customer objections, 9 referred to decentralized hiring authority, and 8 feared adverse employee reaction.

Few, if any, of these reasons offered by employers for not hiring could be shown in the present context to have such weight or reality as to prevent a determined and intelligent employer from successfully introducing a merit policy. Experience in employment integration over the past 15 years amply supports the general proposition that most of the stated "reasons" tend to be rationalizations for restrictive practices which are unnecessarily perpetuated because of false assumptions concerning the results of merit hiring, fears based on those assumptions, prejudice, inertia, or other such factors.

4. Stemming, apparently, from the assumption of adverse customer reaction to nonwhites is a pattern of widespread exclusion of such workers from public contact jobs, except the most menial. Although some well known San Francisco companies had employed nonwhites in retail sales and other publicly visible capacities for several years with apparent customer acceptance, little evidence was found in the course of our interviews to suggest that this experience had led to a general relaxation of racial restrictions in public contact jobs. These restrictions continued to weigh heavily in many types and levels of occupation from unskilled and semiskilled to technical and professional, including jobs such as service

station attendant, waiter, hotel and bank "front" personnel, grocery clerk, wholesale delivery salesman, home service technician, clerical worker in public view, and retail sales person.

We shall not undertake to evaluate the assumption of adverse customer reaction which is the stated reason for most of this type of hiring restriction. You heard Commissioner Carter's references to the absence of problems of this nature in New York City.

But it should be noted (a) that this reason is based, in most instances, on speculation or assumption rather than direct experience; (b) that the employers interviewed offered little or no evidence which would tend to counter the avowedly satisfactory experience of those firms which do include Negroes and Orientals among their public-serving personnel; (c) that in other regions and communities, not all of which are commonly regarded as "liberal" or "tolerant" in race relations, nonwhite workers traditionally hold many of these public contact jobs; and (d) that this widely held and unflattering appraisal of the San Francisco "public" conflicts sharply with the prevailing view -- often expressed by employers, among others -- that ours is an especially enlightened city with respect to "tolerance" and human rights.

5. Also somewhat at variance with this belief in our community enlightenment is the fact that almost one-third of the employer respondents based some of their rejection of nonwhite job-seekers on stereotyped conceptions of the physical, mental, or social traits of an entire group rather than on evaluation of the performance qualifications of individuals as such. San Francisco employers are not alone in this habit; both Bay Area and nationwide labor recruitment and manpower studies indicate much use by employers of subjective and stereotyped criteria rather than objective determinations of the performance ability of individuals. Prevailing San Francisco practice in this respect may be no better nor worse than that of other areas, but our data do not appear to support the familiar claim that employers here are well ahead in merit employment.

An interesting contrast emerged between these various anxieties and stereotypes entertained by employers in relation to the prospect of hiring minority group persons and the employers' own testimony as to their satisfaction with such employees on the basis of their actual experience. Of the 74 firms reporting merit policy or practice, 63 answered a question concerning difficulties encountered under that policy; of these, 62 rated such difficulties none or negligible, 1 said there were some problems which were surmountable, and none indicated serious unfavorable results. (These conclusions are supported by other data obtained in three management and guidance conferences in which we participated during the study.) Curiously, some of the most enthusiastic statements of favorable experience with minority group workers came from respondents who otherwise revealed that they did not actually follow a consistent merit policy.

6. The employers' reports on their labor recruitment sources and channels held significant implications as to the power of management to encourage or discourage an inflow of designated types of applicants. The two channels used by most firms and ranked by most among their three chief employee sources were private placement agencies and direct hiring; these two sources are entirely or highly subject to the employers' preferences. The State Department of Employment was a close third in the number of firms listing it as a source, and ranked high in importance; the Department does not impose discriminatory referrals upon employers. Conversely, labor unions -- the only source with the power and inclination in some industries to restrict job referrals on racial grounds -- were fifth as to number of firms utilizing them and were ranked by the third largest number of employers as among their three most important recruitment sources. Newspaper advertisements were fourth as to the number of respondents mentioning them, and ranked of high importance to the fifth largest number.

This information on labor sources strongly suggests that, with the exception of certain situations in which a discriminatory union may have exercised dominance over placement functions, the employers' control or influence over main recruitment channels was sufficient so that those who wished to do so could initiate and implement a policy of equal job opportunity. It may be well also to consider these recruitment data against certain of the reasons given by the management spokesmen for not hiring nonwhites -- especially the statement that they "don't apply."

7. Many personnel directors would apparently prefer to administer a more scientific, wholly nonrestrictive employment policy, but have either failed to press for it or been unable to convince their superiors that such a policy should apply equally in all departments. Decentralized hiring authority within firms, coupled with lack of company-wide merit policy, remains a substantial source of restrictive practice.

8. Many firms which did employ some nonwhites limited them to relatively low-paid jobs, to certain categories only, or to units (as in some retail chain stores) with heavy clientele among nonwhite groups, or restricted the total number in the company or department to a token number or to some predetermined quota. Underemployment of nonwhites -- i.e., mainly in jobs below their individual qualifications -- was often a more serious problem than unemployment. The minority group worker often faced a job ceiling, and was obliged to adjust his aspirations to rule out thought of significant upgrading. Many employers still assumed uncritically that they should not place a nonwhite supervisor over nonminority workers.

9. Of the minority groups studied, Negroes were the most disadvantaged in the labor force, Latin Americans and Orientals were less so, and Jews least so. Although Oriental members of the labor force had achieved significant acceptance -- especially in

clerical, technical, and professional capacities, in many of which personnel shortages had continued chronic since World War II -- it appeared that in many other categories and in matters of upgrading their status was not greatly different from that of other nonwhites.

To sum up:

Although major San Francisco employers preponderantly lay claim to having a definite policy of employment on merit, this asserted policy is in most cases lacking in formulation, authoritative communication within the firm, or other implementation; it may be disregarded by department heads or other supervisors in many instances; it tends to be observed in some job categories but not in others; and it is rarely made clear to recruitment sources. It is possible that in some cases the employer spokesman gave a response in this connection which he considered either acceptable to the interviewer or a desirable statement of principle to which he felt his company should subscribe. Such responses may be significant in terms of the standard to which the executive recognizes his firm should aspire, but can hardly be interpreted as having the status of effective, operational policy on a level with other policies governing the company. One may ask whether any other important "policy" in large firms is accorded such casual, nonimplemented, "silent" treatment -- whether, indeed, such a point of inarticulation had been reached as to render the term "policy" almost meaningless as used by a number of these employers with reference to hiring and upgrading of minority-group persons.

So, despite hopeful and important beginnings toward full-fledged merit employment practice in some firms, and despite many claims of merit policy, the larger local employers have indicated through their authorized spokesmen that inequality of job opportunity because of race, creed, or ancestry -- especially because of race -- is still common in private industry in San Francisco.

Yet inertia, habit, and tradition, coupled with weak policy and the familiar employer fears about consequences of merit employment, appear to comprise more important determinants of discriminatory job practice than active prejudice. The employers surveyed did not seem, by and large, to exhibit deep, stubborn resistance to work force integration -- at the same time that few gave evidence of affirmative desire or action to administer such a policy. They seemed generally rather passive on this score, a little fearful of trying a new policy, and uninclined to adopt such in the absence of compelling new incentives.

These are the barriers -- the main ones -- in the minds of the San Francisco employer spokesmen with whom we talked in this pre-FEPC study. A similar account came from the majority of the placement people whom we interviewed -- people who reflect quite accurately the desires and concerns of their management clients without whom they would not be in business. It would seem fair to say that some

of the stated obstacles are not wholly without substance, although, for the most part, management holds considerable power to overcome them -- to encourage a flow of minority applicants and to take steps which will develop incentives for training among minority youth.

Other barriers revealed are surprisingly lacking in substance -- the old, familiar fears and stereotypes which have been discarded long since by the leadership of those firms here and elsewhere which have moved ahead on this matter of integrated employment. Concerning these, we can only suggest again that the anxious or doubting manager check the amply recorded experience around the country and in San Francisco; that he might wish also to consult the Urban League or the Commission on Equal Employment Opportunity or the Council for Civic Unity; and that he give merit employment a truly serious try, according it the full status and thoroughgoing implementation which he would give any other important policy within his organization.

It will be worth remembering, too, that now the law in San Francisco stands as an aid to the forward-looking employer. If customer or employee or department head should object to a new policy -- and this will be rare -- you may now add to the various good answers available to you this quite simple one: "It's the law."

A moment ago I said that the employers we had interviewed seemed generally fearful of or uninterested in adopting a meaningful new merit policy in the absence of compelling new incentives. May I close with a reminder of four such incentives which I hope you will agree are worthy and compelling:

First, that nondiscriminatory employment is demonstrably sound business policy.

Second, that we are proud to consider our beautiful city the one which "knows how," the cosmopolitan gem of the nation's western frontier. Our topic today and your presence indicates that we have certain unfinished business touching both aspects of that familiar reputation.

Third, that our city's equal employment opportunity law is a good one, and the new commission charged with its administration holds fine promise for developing a lively and constructive program of informing the public and promoting the purposes of the ordinance. The law deserves compliance and its administrators our utmost cooperation.

Finally -- as I suggested in the opening section of this presentation -- the nation's very security, the safeguarding of our free society, is such an overriding consideration today that it is unthinkable that we should permit the race or religion of any man or women or youth to impede for one moment the fullest possible development and utilization of that person's capacities. Sputnik has jolted us into realization that the hour is indeed late. We can no longer afford -- we dare not tolerate -- the stupidities of racism in training and employment, much less in any other phase of our common life in America.

REMOVING THE BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITY

comments by

G. Luther Weibel
Personnel Director
Macy's, San Francisco

Macy's, as a representative of the Retailers' Council stores is somewhat typical of the stores in general. Since we purchased O'Connor Moffatt & Co. in 1945, we have had voluntary integration of all the minority groups. The passage of a FEP law did not change our employment procedures, except for one thing. We took "place of birth" off our application blank.

I have no statistics on any minority group because we have never coded them as such. There is no way to check past performance because of this fact and any statement on general behavior of any group results largely from impressions, hearsay and opinions expressed by our employees and management in general.

Our industry is a tough and competitive one and only the efficient and forward looking companies succeed. Our business is one of people and its survival depends wholly upon its employees. Efficient personnel from the top down will make us successful. Inefficient personnel will doom us to failure. As we all know, the past two decades have been difficult for personnel employment people because of the extreme shortage of available, skilled personnel in the labor market. It is no secret that the minority groups have had a greater percentage of skilled people seeking employment than the general labor market. Therefore, we at Macy's felt it was good business to avail ourselves of this talent. We were somewhat selfish in this because we knew that if we selected well, our success could be secured. It just makes good common sense that we employ people on the basis of ability and not on race, color or creed.

Also, it is just plain good human relations for our working force to know that promotions and opportunities for development are based on merit and ability rather than on physical appearance or ethnic background.

Macy's was the first major store in the city, we believe, to upgrade non-whites to better jobs. We were eminently successful in this move, because we upgraded "the right kind of person" (at least that's what our supervisors tell me). But, as a member of the Personnel Department, I must say that this was no accident. We tried to hire "the right kind of person" in the first place. If this is done, then it's easy to promote an employee and get approval from all concerned, including the supervisor and the rank and file employees . . . what we call staff employees in our industry.

Yes, employees accepted these promotions when the individual was qualified for the new job. We've had a few ask us "how many are we going to get in this department." We ask them why they asked that and usually they feel foolish and say "oh, it's o.k."

Life blood of our industry is our customers. If we had adverse reaction from the great mass of them, it would be a major problem. But, we have never had a known complaint because of non-whites being placed in our store. We have Negroes in our apparel section and in other departments where intimate contact exists between customer and employee.

Supervisors like our so-called minority employees. They find them regularly at work doing their assigned duties efficiently. We have found that minority employees appreciate a good job and work hard at keeping it. After all, the success of any supervisor depends upon the efficiency of the employees within the department.

Macy's has a policy of promoting from within the organization whenever possible. Qualifications count when promotions are made. I am informed that practically every Negro female employee has been promoted. Nothing succeeds like success. Here, where we've had a program that has proven itself, the community knows about it and talks about it. As a result we get good, qualified applicants. It gies us a plus over our more short sighted competitors.

Of course, we haven't been free from the problem of rumors. We have had them and we still get them. As we get them, we clean them up. We're expeditious on solving them. Periodically, we have the "knife rumor." We check on it, refute it, then tell the ones responsible for the rumor of their error and the net result is we've helped all parties to a better adjustment. As one who has lived in the South, I was interested to know that the "disease rumor" has never arisen in our store.

Speaking of store facilities, we have had no problem with our easting or toilet facilities. We just don't have problems because we integrated from the start. We have had no complaints from our employees about integration of these facilities. We eat together, have common quiet rooms and play together at our various store functions. At our picnics and dances, there are no problems.

We like to sell our personnel program so that employees in all job classifications benefit. When we have a drawing, we make sure our non-selling employees participate just as do our selling employees. Often, winners come from one of the minority groups. We publicize all the winners equally. Recently we had a Negro "salesclerk of the month." She had to be good to win and she was -- she was the best in the store for an entire month.

The slip of the tongue can create problems. As we all know, this is an area of acute sensitivity. Occasionally a supervisor will say "I'll send my colored girl . . ." When this occurs, we counsel with the supervisor. As we progress in our integration such occurrences are becoming increasingly less.

Since the passage of the law, there is a tendency on disciplinary problems to be more lenient with minority groups than others. We discipline with some slight fear because we don't want to become a "cause Celebre." Nevertheless, where we have "stinkers" regardless of group, we'll discipline them and in some few instances discharge them for good cause.

We have Personnel Reviews. We rate on the basis of job knowledge, cooperative attitude, and general efficiency. When a good rating occurs, it is possible that the employee may warrant a promotion. Here we have a problem, at any one time there are only a few promotional openings. Usually there are more candidates for the job than we can use. When one or more of the promotional employees is a member of a minority group and he or she fails in getting the promotion, that person's sensitivity may lead to a conclusion of prejudice. It is our hope that experience will convince them that management is selecting the best candidate on the overall rating -- not on race, color, creed or national origin.

Minority groups are gregarious with their own and less so with others. This creates problems when we promote such employees. Despite new position and responsibility, there is a tendency to remain one of the group and be a little too close to the supervised. Naturally, we want cooperation, but we feel that a supervisor should be above the day-to-day bickering and intra-departmental differences that exist. Because it is the supervisor who may have to resolve these problems, he should not be pre-positioned.

At the present time there are available applicants in the labor market. As unemployment increases -- and there are experts that feel it may double -- it is reasonable to assume that our placement problems will be greater. The employees last hired will be the first laid off and many of these will be from minority groups. This may create some problems that will require the best in our efforts to assure each applicant a fair unbiased appraisal. The good ones will get jobs, the marginal ones will find it more difficult.

At Macy's, we do a selling job at all times on this integration problem. We don't want our executives to forget our basic policy.

Periodically we discuss the matter with our Personnel Advisory Committee, which is composed of all our store personnel executives and key operating executives. Then, to make sure we are living up to all our personnel policies, we audit each of our stores. When individual problems arise, we discuss them with our various store executives. We try to leave nothing to chance. At all times we are in the process of selling our personnel policies.

Do we have minority problems? Yes, we do. Usually they are minor, but occasionally we hire a "wise guy." He wants to test our policy, whether its our hiring policy or our promotion policy. He may demand proof of our statements. We take time to explain, and our record on this policy helps us give a persuasive explanation.

Once in a great while we have employees who prefer not to work with minority employees. Here again we counsel them. If they object too strenuously, we give them the choice of working within our policy or leaving the company.

Rarely, but occasionally, we have a supervisor who objects to working with a certain employee because of his or her own backgrounds or past experience. We don't give this supervisor much sympathy. We ask him to join the team on our basis, or seek work elsewhere where he will be happier. It is seldom we have any employee leave our employ as a result of this suggestion.

Once in a blue moon we have a vendor who says "no" to a minority employee demonstrating or selling his wares. We inform him that this is our decision and he may sell his goods to us and accept our personnel policies or he may sell them elsewhere. It's an unusual vendor in this day and age who refuses to sell his product. He needs every dollar's worth of business, and is usually willing to accept our policy if we are willing to stand firm on it.

It's difficult to measure the results of our policy. Sometimes we get a known cash return on our policy. Only recently we integrated a minority group in our store and it attracted such attention within the government that it is now buying thousands of dollars worth of goods from us.

Although we have no statistics on minority groups, it is our belief that our minority group turnover is less than with others, because of greater job appreciation by the minority employees.

In addition to these evidences of good results, we also get many letters commending us on our policy. There is no doubt in my mind that our policy of integration of minority groups has had positive value for the company.