CONSTRUCTING AFFIRMATIVE ACTION: FEDERAL CONTRACT COMPLIANCE AND THE BUILDING CONSTRUCTION TRADES, 1956-1973

by

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ABSTRACT

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Advisor: Clarence Taylor

Constructing Affirmative Action treats the design and implementation of the Philadelphia Plan for Affirmative Action in the Building trades as a watershed moment in the origins of affirmative action. In the 1950s, the skilled building construction trade unions were notoriously segregated throughout the United States, with the vast majority of Black members confined to the less skilled "trowel" trades, and the coveted slots in the skilled trades largely passing from white father or uncle to white son or nephew.

The Eisenhower and Kennedy administrations, through Vice Presidents Nixon and Johnson, attempted to force federal contractors to actively seek minority job applicants. With increased federal spending on construction, the vice presidents pushed the bureaucracy to enforce a non-discrimination clause in federal contracts, and were themselves pushed by outside actors and events. At first, the goal was tokenism: breaking the uniformity of whites in the skilled jobs. But civil rights leaders pushed for more. With riots breaking out at construction sites, Presidents Kennedy and Johnson successfully pushed Congress to pass the Civil Rights Act of 1964, establishing the principle of fair employment.

The locus of activity now moved from elected officials to the bureaucrats themselves, sometimes acting beyond the intent of elected and appointed leaders. Empowered by the 1964 Act and executive orders, the Office of Federal Contract Compliance designed affirmative action programs tailored to individual cities. Through trial and error, federal officials ultimately developed the Cleveland and Philadelphia Operational Plans in 1967.

By challenging the established order, the Philadelphia Plan came under fire in Congress as a violation of the 1964 Civil Rights Act. The Johnson administration, on its way out of office during 1968, did not fight for the Plan, but the incoming Nixon administration latched on to a revised version of the Philadelphia Plan and defended it against enemies in Congress and in court. *Constructing Affirmative Action* then examines the prolonged implementation of the Philadelphia Plan, its mandatory spin-offs and its voluntary knockoffs, and how the administration, Big Labor, and the civil rights leadership worked to pursue fair employment in the skilled building trades in the 1970s and beyond.

For Lana.

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LIST OF ABBREVIATIONS

Abbreviations found in the text

AFL: American Federation of Labor
AFL-CIO: American Federation of Labor-Congress of Industrial Organizations
BAT: Bureau of Apprenticeship and Training
BART: Bay Area Rapid Transit
BCTD: Building Construction Trades Department, American Federation of Labor-Congress of Industrial Organizations
BSCP: Brotherhood of Sleeping-Car Porters
CCRB: Cleveland Community Relations Board
CHR: Philadelphia Commission on Human Relations
CIO: Congress of Industrial Organizations
CIU: Congress of Independent Unions
CORE: Congress of Racial Equality
CRC: United States Civil Rights Commission
DOD: Department of Defense
EEOC: Equal Employment Opportunities Commission
FAA: Federal Aviation Administration
FEB: Federal Executive Board
FCCCS: Federal Contract Construction Compliance Subcommittee of the Critical Urban Problems Committee, Philadelphia Federal Executive Board
FEPC: Fair Employment Practices Commission
FHWA: Federal Highway Administration
GAO: General Accounting Office
GSA: General Services Administration
JAC: Joint Apprenticeship Committee
JOBART: Job Opportunities—Bay Area Rapid Transit
HEW: Department of Health, Education, and Welfare
HHFA: Federal Housing and Home Finance Agency
HUD: Department of Housing and Urban Development
IBEW: International Brotherhood of Electrical Workers
MAP: National Urban League Manpower Advancement Program
MCA: Mechanical Contractors' Association
NAACP: National Association for the Advancement of Colored People
NASA: National Aeronautics and Space Administration
NLRB: National Labor Relations Board
NTULC: Negro Trade Union Leadership Council
NUL: National Urban League
OFCC: Office of Federal Contract Compliance
OIC: Opportunities Industrialization Center
OJT: On-the-Job Training
OPP: Operational Plan for Philadelphia
PCEEO: President's Committee on Equal Employment Opportunity

PCEO: President's Council on Equal Opportunity
PCGC: President's Committee on Government Contracts
PCGCC: President's Committee on Government Contract Compliance
PCGEP: President's Committee on Government Employment Policy
RPP: Revised Philadelphia Plan
TULC: Negro Trade Union Leadership Council
WDL: Workers Defense League
WPA: Works Progress Administration

Abbreviations found in the notes

Citations for archival sources often include series or record group, box, and folder information. When this is the case, the collection name will be followed by the series or record group number, box name or number, and then the folder name or number in italics. For example,

(NUL I A52 *Trade Union Advisory Council, 1958*) reads:
"Records of the NUL, Manuscripts Division, Library of Congress, Washington, D.C., Series I, Box A52, 'Trade Union Advisory Council, 1958' folder."

(Meany RG1-038 95 *8*) reads:
"Records of the AFL-CIO, George Meany Archives, National Labor College, Silver Spring, MD, Records Group 1-038, Box 95, folder number 8."

BART: Bay Area Rapid Transit
BLS: Bureau of Labor Statistics
CRDEO: Correspondence Relating to Drafting of Executive Order
DOL 1968: Collection of the Office of the Secretary, Chronological File, 1968, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
DOL 1969: Collection of the Office of the Secretary, Chronological File, 1969, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
DOL OFCC ADC: Collection of OFCC Assistant Director for Construction Vincent Macaluso, Papers of the Office of Federal Contract Compliance, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
DOL Schultz: Collection of Secretary George P. Schultz, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
DOL Secretary Hodgson: Collection of Secretary James D. Hodgson, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
DOL Undersecretary Hodgson: Collection of Undersecretary James D. Hodgson, Records of the Department of Labor, National Archives and Records Administration, College Park, MD

DOL Wirtz: Collection of Secretary W. Willard Wirtz, Records of the Department of Labor, National Archives and Records Administration, College Park, MD
FCCCS: Federal Contract Construction Compliance Subcommittee of the Critical Urban Problems Committee, Philadelphia Federal Executive Board
FEB: Federal Executive Board
FEPC: Fair Employment Practices Commission
IRD: National Urban League Industrial Relations Department
JOBART: Job Opportunities—Bay Area Rapid Transit
JFK: John Fitzgerald Kennedy
LBJ (non-citation): Lyndon Baines Johnson
LBJ Aides McPherson: Collection of White House Aide Harry C. McPherson, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ Aides Sparks: Collection of White House Aide Will R. Sparks, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ Aides White: Collection of White House Aide Lee C. White, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ VP CR: Civil Rights File, Vice Presidential Papers, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ VP Reedy: Collection of Vice Presidential Aide George E. Reedy, Vice Presidential Papers, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ VP SF: Subject File, Vice Presidential Papers, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
LBJ WHCF: White House Central Files, Records of President Lyndon Baines Johnson, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX
Meany: Records of the American Federation of Labor-Congress of Industrial Organizations, George Meany Archives, National Labor College, Silver Spring, MD.
NAACP: Records of the National Association for the Advancement of Colored People, Manuscripts Division, Library of Congress, Washington, D.C.
NAM: National Association of Manufacturers
Nixon Colson: Collection of White House Aide Charles Colson, Records of President Richard M. Nixon, National Archives and Records Administration, College Park, MD
Nixon DOL: Collection of the Department of Labor, Records of President Richard M. Nixon, National Archives and Records Administration, College Park, MD
Nixon Garment: Collection of White House Aide Leonard Garment, Records of President Richard M. Nixon, National Archives and Records Administration, College Park, MD
Nixon Patterson: Collection of White House Aide Bradley Patterson, Records of President Richard M. Nixon, National Archives and Records Administration, College Park, MD

NUL (citation): Records of the National Urban League, Manuscripts Division, Library of Congress, Washington, D.C.
NUL (non-citation): National Urban League
PCEEO: President's Committee on Equal Employment Opportunity
RG: Records Group
UPFP: Union Programs for Fair Practices
USCM: United States Conference of Mayors

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INTRODUCTION

In April 1969, at a luncheon in Philadelphia sponsored by the Jewish Labor Committee and the Negro Trade Union Leadership Council, AFL-CIO Legislative Director Andrew J. Biemiller stated that the embattled "labor-liberal-civil rights coalition must be maintained and strengthened because its job isn't done." Biemiller's worry—that a rift was developing in the coalition over the issue of affirmative action—was well founded. The building construction trades' notorious exclusion of most blacks from all but the meanest jobs did not jibe with the umbrella organization's official attitude of equal opportunity. The previous autumn had seen the election of Richard Nixon to the presidency, and whereas President Johnson's Secretary of Labor, Willard Wirtz, had played an active role in maintaining the rights-labor coalition by promoting programs that aided union leaders in their drive to integrate, Nixon's Secretary of Labor, George Schultz, had little faith in union efforts at ending segregation at construction sites.

Shortly thereafter, President Nixon announced that he fully supported the Philadelphia Plan, an affirmative action program which required federal construction contractors to hire and train minority workers in several of the construction trades in Philadelphia. This decision went against the wishes of the union leadership as well as a large section of the United States Congress and especially the General Accounting Office (GAO), Congress' taxpayer watchdog. But it had the political purpose of dividing two groups that had coalesced against the administration: civil rights and organized labor.

The civil rights movement was often viewed by whites, especially after the term was coined by conservatives, as being committed to "color-blind" objectives in

education, employment, and suffrage.[1] The reality was more complicated. Older, established organizations like the National Association for the Advancement of Colored People (NAACP) and the National Urban League (NUL) advocated legislation and worked through the courts and with business leaders to achieve equal opportunity; newer organizations like the Congress of Racial Equality (CORE), the Southern Christian Leadership Conference (SCLC), and the Student Non-Violent Coordinating Committee (SNCC) pursued the same goals through non-violent direct action, including marches, sit-ins, and boycotts. They seemed focused on obtaining what was often referred to as a "level playing field"—basic citizenship rights for African-Americans—and in addition to working to integrate public spaces and achieve voting rights these organizations also attacked job discrimination and recognized that "color-consciousness" would be needed to overcome it. After all, "color-blindness" would not erase the inequalities that resulted from the history of discrimination, and as the sixties wore on, and the nation's urban unemployed erupted into violence, the need to achieve real equality of employment opportunity had never seemed so pressing.

Between 1965, when President Johnson defined affirmative action as a valid federal goal, and 1972, when president Nixon named one of affirmative action's chief antagonists to head the Department of Labor, government officials addressed racial economic inequality in earnest. No longer would it be sufficient merely to eliminate racial discrimination on paper or in rhetoric; no longer would token integration suffice. Employers and union officials would have to actively promote the training, hiring, and retention of non-white applicants, and show results to prove it.

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[1] On how conservatives subsequently re-defined the pre-1965 objectives of the civil rights movement to undercut arguments favoring affirmative action, see Nancy MacLean, Freedom Is Not Enough: The Opening of the American Workplace (NY: Russell Sage Foundation, 2006).

Since all Americans were entitled to attend school up to the twelfth grade, the Brown decision (that segregation in public schools was inherently unequal) could be heralded as an important advance by all but the most racist southerners. And the Civil Rights Acts of 1957 and 1965 won the support of most northern whites because they confirmed the constitutional right of all adult citizens to participate in the election of their leaders. Blacks in the north had been legally voting for decades; southern black votes did not pose a threat to northern interests, or even, for that matter, the political interests of southern whites living outside the black belt.

Affirmative action, by contrast, pertained to the allocation—or re-allocation—of limited resources—a seat in congress, a place in an elite college, a skilled union job—to remedy past and present discrimination. By attempting to give members of historically disadvantaged groups a better chance at obtaining these more limited resources, affirmative action had the potential to alienate the large segments of white society which had viewed school desegregation and voting rights from a neutral or even positive standpoint. Thus, affirmative action was—and continues to be—controversial.

Recent scholarship has begun to shed the notion of affirmative action as strictly a top-down public policy issue, showing that grassroots movements pursuing desegregation and voting rights had simultaneously opposed continuation of racist hiring policies and advocated active public policies to alleviate historical inequities. And yet the Philadelphia Plan was, first and foremost, a public policy, implemented in a top-down manner by the Department of Labor. This dissertation discusses the degree to which the Philadelphia Plan in particular, and affirmative action in general, were the product of a third level of

civil rights advocacy: that of the mid-level federal bureaucrat. Further, I will explore what this says about the origins of affirmative action, and what this tells us about the era.

During the late 1960s and 1970s, historians tended to view the Civil Rights movement as primarily a political struggle. The focus was on the leaders of the movement and their interactions with politicians. These included the works of such historians as Carl M. Brauer, August Meier, Elliot Rudwick, Robert Frederick Burk, and Harris Wofford.[2] During the 1980s, this top-down emphasis gave way to studies that favored an increased emphasis on the people at the grassroots level who made the movement—and their individual motivations and choices. The copious work of David Garrow provides but one important example.[3]

Additionally, as if to mimic the move of Martin Luther King, Jr., to Chicago in the mid-1960s, a new emphasis arose regarding the nexus between civil rights and employment. Scholars like Robert Korstad and Nelson Lichtenstein turned to the evolving role of labor activists (including communists) in the movement.[4]

The first historian to look at the Philadelphia Plan for affirmative action at any length was Hugh Davis Graham, who addressed the policy in dedicated sections of two chapters of his 1990 book The Civil Rights Era: Origins and Development of National Policy, 1960-1972. Graham's discussion reflected the top-down approach, which saw affirmative action as a public policy initiative, an approach which had by then been largely scuttled by civil rights historians. Graham saw the city-based plans which

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[2] Steven F. Lawson, "Freedom Then, Freedom Now: The Historiography of the Civil Rights Movement," *American Historical Review* Vol. 96, No. 2 (April, 1991), pp. 456-457, n.2.

[3] See, for instance, David J. Garrow (Ed.), We Shall Overcome: The Civil Rights Movement in the United States in the 1950s and 1960s (Brooklyn, NY: Carlson Publishing, 1989). Lawson, in "Freedom Then, Freedom Now," provides a list of the other fifteen volumes in the series.

[4] Robert Korstad and Nelson Lichtenstein, "Opportunities Found and Lost: Labor, Radicals, and the Early Civil Rights Movement," *Journal of American History* Vol. 75 (December, 1988), pp. 786-811.

preceded the Philadelphia Plan as the response of Willard Wirtz' Labor Department to the social unrest taking place in the northern cities during the mid-1960s. The Revised Philadelphia Plan was treated largely as the civil rights element of Nixonian electoral strategy, a method whereby the labor-rights coalition, which had posed an immense challenge to Nixon's election prospects in 1968, could be split. Graham's discussion of Nixon's civil rights agenda was part of a developing trend in civil rights and presidential historiography to at least partially rehabilitate the Watergate president. As vice president during the Eisenhower administration, Graham pointed out, Nixon had set the standard for the vice presidential role as the administration's *de facto* chief civil rights official, a standard which continued with Vice Presidents Johnson and Humphrey. As president, Nixon inherited the government's official commitment to pursuing and enforcing civil rights legislation.[5]

Following Graham, scholars such as Larry J. Hood, Joan Hoff, and Dean J. Kotlowski took another look at the Nixon legacy, often finding that attention to civil rights was one redeeming aspect of the administration. Hood wrote his 1993 article on the Philadelphia Plan to remind his post-Reagan/Bush readership that Republicans had played an historical role in furthering the civil rights agenda in an era when Republicans seemed to have all but abandoned civil rights. Hoff's Nixon Reconsidered (1994) went further, looking beyond the collective dismissal of the Nixon administration over the Watergate conspiracy to the entirety of Nixon's presidency; and finally, Kotlowski's Nixon's Civil Rights (2001) took a more detailed look at that particular aspect of an

[5] Hugh Davis Graham, The Civil Rights Era: Origins and Development of National Policy, 1960-1972 (NY: Oxford University Press, 1990).

otherwise-troubling presidency.[6] Certainly the most controversial, at least for out purposes, was Hoff's statement that "not until the Nixon administration did 'affirmative action' begin to become coterminous with 'civil rights.'"[7] This dissertation will show that the development of the Philadelphia Plan, the core of Nixon's civil rights program, was in fact a Johnson-administration initiative and was used by Nixon primarily for political purposes having little to do with civil rights.

The 1990s saw the social programs of the Great Society under renewed attack as a Republican-dominated congress sought to undo what it viewed as the excesses of the welfare state created during the 1960s. Scholars like John David Skrentny and Daryl Michael Scott wrote on social policy and race during these years to shed light on social programs designed to serve the inner city and examine the persistence of racism and the legacies of segregation.[8] In 1997 Paul D. Moreno's From Direct Action to Affirmative Action traced the roots of affirmative action to the New Deal, noting that the work of Roosevelt's Interior Secretary Harold Ickes and his capable deputy, Robert Weaver, set the stage for an affirmative action interpretation, three decades later, of the Civil Rights Act of 1964.[9] Discussions of affirmative action remained almost exclusively in the realm of public policy, following the top-down paradigm even as other civil rights historians

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[6] Larry J. Hood, "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government," *Presidential Studies Quarterly* Vol. 23 (Winter, 1993), pp. 145-167; Joan Hoff, Nixon Reconsidered (NY: Basic Books, 1994); and Dean J. Kotlowski, Nixon's Civil Rights: Politics, Principle, and Policy (Cambridge: Harvard University Press, 2001).

[7] Hoff, Nixon Reconsidered, pp. 90-91.

[8] John David Skrentny, The Ironies of Affirmative Action: Politics, Culture, and Justice in America (Chicago: University of Chicago Press, 1996); Daryl Michael Scott, Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996 (Chapel Hill: University of North Carolina, 1997).

[9] Paul D. Moreno, From Direct Action to Affirmative Action: Fair Employment Law and Policy in America, 1933-1972 (Baton Rouge: Louisiana State University Press, 1997), pp. 56-63.

continued to move away from work on leaders like King and further towards a grassroots modality.

An exception can be found in the work of Clarence Taylor, who showed how grassroots opposition and civil disobedience developed over racial union hiring policies in the construction of the Downstate Medical Center in Brooklyn, New York.[10] And Taylor's work fit in with a developing interest in the civil rights movement in the North, as exemplified in recent years by Martha Biondi, Robert Self, and Matthew Countryman.[11]

As affirmative action came increasingly under attack in the years following welfare reform, a Republican-dominated congress being joined by a Republican White House in 2001, scholars have sought to combat the conservative contention that the policy is a form of "reverse racism." They have done so by reminding readers, again, of the important role Republican policy-makers played in the origins of affirmative action and also to explain how affirmative action sought not to create a new favoritism for "protected groups" but rather to eliminate existing favoritism for whites. Judith Stein looked at the Philadelphia Plan briefly in her 1999 book Running Steel, Running America, seeing it through the prism of the Nixon administration's anti-union outlook, and concluding that the program was a failure; Thomas J. Sugrue looked at the origins of the Philadelphia Plan in a 2004 article on racism in the building trades during the postwar era. Most recently, Kevin L. Yuill devoted a chapter of his 2006 book Richard Nixon and

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[10] Clarence Taylor, The Black Churches of Brooklyn (NY: Columbia University Press, 1994).
[11] Martha Biondi, To Stand and Fight: The Struggle for Civil Rights in Postwar New York City (Cambridge, MA: Harvard University Press, 2003); Robert Self, American Babylon: Race and the Struggle for Postwar Oakland (Princeton, NJ: Princeton University Press, 2003); and Matthew J. Countryman, Up South: Civil Rights and Black Power in Philadelphia (Philadelphia: University of Pennsylvania Press, 2006).

the Rise of Affirmative Action to the Philadelphia Plan, describing Nixon in practically gushing terms as an almost heroic advocate of equal employment opportunity. And Nancy MacLean, who couples the rise of conservatism with opposition to the civil rights movement starting in 1955, joins the grassroots camp on the origins of affirmative action in Freedom Is Not Enough: The Opening of the American Workplace. In linking a failure of direct action in the early 1960s to the successes of court battles in the 1970s, however, she glosses over what I see as the most important part of the story: the government action of the late 1960s.[12]

The present work finds that while grassroots organizations pushed elected and appointed government officials to develop policies favorable to integration, it was the mid-level federal bureaucrat who implemented (and altered) these policies in such a way as to make them effective. For this theory of the role of the bureaucracy, I draw on a literature going back to Max Weber, who at the turn of the twentieth century envisioned a top-down, rigidly controlled bureaucratic form. Later scholars found that bureaucrats have a large degree of autonomy and independence from elected and appointed officials. In the 1940s and 1950s, J. Donald Kingsley and Seymour Martin Lipset found that bureaucrats are not impartial, and act based on the values of their class—usually the educated middle class. Kingsley advocated "representative bureaucracy"—the notion that bureaucrats should represent a cross-section of their constituency. Lipset took the concept further, arguing

[12] Judith Stein, Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism (Chapel Hill, NC: University of North Carolina Press, 1998); Thomas J. Sugrue, "Affirmative Action from Below: Civil Rights, the Building Trades, and the Politics of Racial Equality in the Urban North, 1945-1969," *The Journal of American History* Vol. 91, No. 1 (June, 2004); Kevin L. Yuill, Richard Nixon and the Rise of Affirmative Action (Lanham, MD: Rowman and Littlefield, 2006); and MacLean, Freedom Is Not Enough.

that bureaucrats representative of the class, race, or sex of their constituents would only be "passively" representative," while bureaucrats representative of the ideological tenor of their constituency would be actively so.[13]

During the 1960s and 1970s, sociologists continued to develop the theory of representative bureaucracy in opposition to Weber's notion of bureaucrats as being mere cogs in a machine. In 1968, Frederick C. Mosher argued that ideological representation trumped race representation, finding that many bureaucrats have sufficient impartiality to serve a racial constituency without actually being *of* that constituency. In 1974, Samuel Krislov argued that a truly representative bureaucracy can best "sell" the policies they implement—that is, they can relate the policy to their constituents in a way that officials—generally members of one or another elite group—cannot.[14] In 1976, Kenneth Meier and Lloyd Nigro identified representative bureaucracy as consisting of four variables: "social origins, socialization experiences, attitudes, and behavior."[15] The next year, David Rosenbloom and Jeannette Featherstonhaugh analyzed "agency socialization"—the degree to which membership in a bureaucracy changes the culture of the bureaucrat—and found that it did not trump community socialization for race. That is, the average African American bureaucrat will retain the sensibilities of the African

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[13] Max Weber, Essays in Sociology, translated and edited by H.H. Gerth and C. Wright Mills (NY: Oxford University Press, 1958); J. Donald Kingsley, Representative Bureaucracy: An Interpretation of the British Civil Service (Yellow Springs, OH: Antioch Press, 1944); and Seymour Martin Lipset, Bureaucracy and Social Change (Berkeley: University of California Press, 1950).

[14] Frederick C. Mosher, Democracy and the Public Service (NY: Oxford University Press, 1968) and Samuel Krislov, Representative Bureaucracy (Englewood Cliffs, NJ: Prentice-Hall, 1974).

[15] Kenneth John Meier and Lloyd G. Nigro, "Representative Bureaucracy and Policy Preferences: A Study in the Attitudes of Federal Executives," *Public Administration Review*, July/August 1976. The quotation is from Julie Dolan and David H. Rosenbloom, Eds., Representative Bureaucracy: Classic Readings and Continuing Controversies (Armonk, NY: M.E. Sharpe, 2003), p. 78.

American community even after a thirty-year career in a majority-white federal agency. Mary Hale and Frances Branch later corroborated these findings for sex.[16]

Within this theoretical framework of bureaucracy discussed above, several scholars have looked at the question of applicability to social policy. in other words, while sociologists like Weber, Kingsley, and Mosher looked at what bureaucrats *are*, political scientists looked at what bureaucrats actually *do*, synthesizing the theoretical arguments to make broader statements on the importance of the bureaucracy to the implementation of policy. In the late 1960s, H. George Frederickson first recommended that social equity—actions designed to achieve equality—be considered a "third pillar" of public policy.[17] "[I]n running the government the administrator's job was to be efficient (getting the most service possible for available dollars) or economical (providing an agreed-upon level of services for the fewest possible dollars. …[S]ocial equity [should hold] the same status as economy and efficiency as values or principles to which public administration should adhere."[18] In other words, officials and bureaucrats should use public policy—including federal contracts—to achieve civil rights. Contracts should be let not only to benefit citizens in their capacity as taxpayers, but also to benefit them as members of a community that will be improved by social equity.

This "third pillar" would rely on the creativity and adaptability of bureaucrats who, unlike elected and appointed officials, would not be subject to voter disapproval

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[16] David H. Rosenbloom and Jeannette Featherstonhaugh, "Passive and Active Representation in the Federal Civil Service: A Comparison of Blacks and Whites," *Social Science Quarterly*, March 1977; Mary M. Hale and M. Frances Branch, "Policy Preferences on Workplace Reform," in Mary E. Guy, Ed., Women and Men in the States (Armonk, M.E. Sharpe, 1992).

[17] H. George Frederickson, New Public Administration (University, Alabama: University of Alabama Press, 1980).

[18] Frederickson, "Public Administration and Social Equity," *Public Administration Review* Vol. 50, No. 2 (March-April 1990), pp. 228-237 (the quotation is from p. 228).

every election cycle, and who could therefore adapt politically-generated policy to equitable ends. Alfred Blumrosen demonstrated this in 1970 when he reported on the work of the staff of the Equal Employment Opportunity Commission, which took their work far beyond the Congressional mandate.[19]

Taking the bureaucracy even further from Weber's absolute control theory, Dennis Riley found in 1987 that elected and appointed officials had lost all semblance of control of the federal bureaucracy.[20] But Cornell Hooton, following the earlier work of Alan Altshuler, argued incisively that control of bureaucracy was even more complicated *de jure*: bureaucrats were responsible not only to officials of the executive branch but to members of relevant Congressional committees as well.[21]

The present work jibes with the theories of these scholars. Following Mosher, I demonstrate that Great Society liberals were effective bureaucrats, regardless of their own race. Following Krislov, I show how the successes of the most effective of these occurred to a great extent because connections to their constituencies helped them "sell" the policies. Overall, this work supports the "Third Pillar" thesis of Frederickson, showing how a committed bureaucracy can positively effect social equity.

One function of an introduction is to state upfront what the work is *not*. As such, this dissertation is not a history of the civil rights movement, but of a civil rights issue during the period of time generally referred to by historians as the civil rights era. Second, this is

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[19] Alfred Blumrosen, "Administrative Creativity: The First Year of the Equal Opportunity Commission," *George Washington Law Review*, Vol. 38, No. 4 (May 1970), pp. 695-751.
[20] Dennis D. Riley, Controlling the Federal Bureaucracy (Philadelphia: Temple University Press, 1987).
[21] Alan Altshuler, "Rationality and Influence in Public Service," *Public Administration Review* Vol. 25, No. 3 (September 1965) and Cornell G. Hooton, Executive Governance: Presidential Administrations and Policy Change in the Federal Bureaucracy (Armonk, NY: M.E. Sharpe, 1997).

not a dissertation about the American South. During the period under discussion, 1956-1973, the civil rights movement in the South was focused on ending *de jure* segregation—legal segregation. This work focuses on a civil rights problem arising in the context of a society which had ostensibly left such segregation behind—the North and the West. Third, this is not a history of de-industrialization, although much of the action occurs in the context of de-industrialization; nor is this a history of the urban crisis, although the long, hot summers of the mid-1960s would influence the decisions made by the key figures under discussion. Finally, this does not pretend to be a political history of the era, although it touches on matters political and draws conclusions on some aspects of the political.

This dissertation treats the two iterations of the Philadelphia Plan as the collective watershed moment in the origins of affirmative action. Beginning with an examination of the history of inequality in the building construction trades, Chapters One and Two show how the Eisenhower and Kennedy administrations, through Vice Presidents Nixon and Johnson, attempted to force federal contractors to actively—affirmatively—seek minority job applicants. The vice presidents were pushing the federal bureaucracy to enforce a non-discrimination clause in the contracts, and were themselves being pushed by actors and events external to the federal government altogether. At first, the best that proponents of fair employment practices could hope for was tokenism: breaking the uniformity of whites in the skilled jobs. But northern civil rights leaders soon began to push for more proportional representation. With riots breaking out at construction sites, Presidents Kennedy and Johnson successfully pushed Congress to pass the Civil Rights Act of 1964, establishing the principle of fair employment.

The locus of activity now moved from leaders pushing the bureaucracy to the bureaucrats themselves, in some instance acting beyond the intent of elected and appointed leaders. Empowered by the act of Congress and powerful executive orders, the Office of Federal Contract Compliance spent the bulk of the Johnson administration attempting to implement affirmative action programs tailored to the particular circumstances of individual cities. In Chapter Three we see how, through trial and error, federal officials worked in several test cities before developing the Cleveland and Philadelphia Operational Plans in 1967. We look at the way these plans worked on the ground, in what areas they succeeded in effecting fair employment and in what areas they did not.

Chapter Four shows how the Philadelphia Plan—and by extension affirmative action—came under fire from elements in Congress as "reverse racism," ostensibly a violation of the 1964 Civil Rights Act. The Johnson administration, on its way out of office during 1968, did not fight for these programs, but the incoming Nixon administration latched on to a revised version to take on the mantle of civil rights leadership and punish the unions for political opposition. The White House defended the Plan against enemies in Congress and in court. In Chapter Five, we look at the prolonged implementation of the Philadelphia Plan, its mandatory spin-offs and its voluntary knockoffs, and examine how the administration, Big Labor, and the civil rights leadership worked to pursue fair employment in the skilled building trades in the 1970s and beyond.

"Who the hell appointed you as the guardian of all the Negro members in America?"
—AFL-CIO President George Meany, responding to A. Philip Randolph's request that discriminatory unions be suspended from the federation, September 24, 1959

"The Meany record over the past half-dozen years has been one of consistent, strong leadership in the struggle to eliminate racial discrimination in the labor movement."
—Lester B. Granger, Executive Director, National Urban League, October 2, 1959

"I am informed that full scale hiring by the electrical contractor on the Southwest Project will begin [in] October. I would like to impress upon you the urgency for taking affirmative action in this matter (the Local 26 impasse) at the earliest possible date."
—Vice President Richard M. Nixon, writing to the president of the International Brotherhood of Electrical Workers, September 29, 1958

CHAPTER ONE
Fighting Bureaucratic Inertia: 1956-1960

Thomas Bailey was a skilled brick mason living in Beacon, New York, a sleepy little town in the Hudson Valley between Peekskill and Poughkeepsie. In June 1958, when he applied for membership in the Bricklayers, Masons, and Plasterers Local #44, he was told by the union's business agent, Andrew Gallante, that he could only become a member of the union if he was actively working in the trade. Unfortunately for Bailey, whenever he applied for work—at job sites like the new Mattawan State Hospital—he was repeatedly told by construction foremen that he could not be employed without union membership. Not that there was a shortage of jobs in Dutchess County; there were in fact "a number of jobs that had been started but where work had been discontinued…due to the shortage of skilled craftsmen in the area." Yet Thomas Bailey still could not secure steady employment.[22]

Why couldn't Bailey get a job or join the union? Perhaps it was because he happened to be African-American. Observers from the National Urban League (NUL) had noted "the absence of Negro craftsmen on the job" at construction sites in Dutchess County. Although one local contractor, Mr. Eugene Ninnie, had hired Bailey "from time to time" and found him to be "well qualified," he could never employ Bailey for long: "[t]he Union…had forced stoppages because the Negro masons were on the job," and "had refused [the contractor's] request to admit Negro masons into membership."[23]

As a result of pressure from civil rights organizations, the New York State Commission Against Discrimination, and the International Office of the Bricklayers Union, Bailey was finally made a member of the Local through an unusual procedure: he received a visit from a representative of the International, who told Bailey to "consider

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[22] J. Carlton Yeldell to Julius Thomas, August 8, 1958 (Papers of the National Urban League [NUL], Series I, Box A52, *Trade Union Advisory Council, 1958*, Manuscripts Division, Library of Congress).
[23] *Ibid.*

himself a member of the Union" and sent him to a union job starting the next day, Monday, July 28, 1958. Bailey reported for work as requested, but he was immediately "subjected to the most vicious kind of pressure during the entire week," and "had been the victim of the worse kind of intimidation." He strongly considered "throwing in the sponge," but instead stuck it out, and on Saturday, August 1, he attended his first union meeting, paid his initiation fee and membership dues, "and was promised his membership book within two weeks." As the NUL's J. Carlton Yeldell put it,

> This part of the fight has been won [but this] office has received similar complaints from Negro building craftsmen facing the same problem of securing work…the experience in Dutchess County, N.Y. suggests a pattern of union utilization which is discriminatory against Negro workers in violation of the State Law Against Discrimination. These practices should be thoroughly studied and analyzed. If corrective action is indicated, this matter should be called to the attention of all New York agencies concerned.[24]

Thomas Bailey's problems were symptomatic of a much larger pattern of racial exclusion in the craft unions, especially (and most visibly) in the building trades. These obstacles were not statutory: by 1958, all unions affiliated with the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) were officially egalitarian, accepting workers into membership without regard to race, creed, or color. Nor were they the result of racist leadership, as the delegates to annual AFL-CIO conventions consistently affirmed their commitment to the ideal of merit employment and union membership. For the most part, labor leaders blamed these problems on entrenched practices and attitudes at the level of the rank-and-file, which created an inertia that organizations like the NUL found themselves fighting—one worker, one local, and one city at a time.

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[24] *Ibid.*

At the level of public policy, the administration of President Dwight Eisenhower had its own solution to these problems: the non-discrimination clause in government contracts. Since the Great Depression, the federally-funded sector of the economy had grown exponentially, aided by wartime (and Cold War) production. For Eisenhower and Vice President Richard Nixon, discrimination was largely a propaganda issue: the Soviets pointed to it as evidence of American degradation when trying to convert newly-independent developing nations—especially in Africa—to Marxism. Building on similar attempts by the administrations of Franklin Roosevelt and Harry Truman, Eisenhower issued an executive order prohibiting discrimination in federal contracts and establishing the President's Committee on Government Contracts (PCGC) to enforce it. But like the union leadership, which had difficulty implementing its egalitarian policy among the rank-and-file membership, the Eisenhower administration often found itself largely stymied by the bureaucratic inertia of the federal civil service.

Two other constituencies played a role in this struggle: management (i.e. federal contractors) and the federal legislature. For the most part, management saw equality of opportunity as a business policy—rather than a human rights—issue. Most businessmen looked forward to the profits that would come when all potential workers were fully utilized, but at the same time, many feared the internal white backlash—usually in the form of strikes—that often followed initial integration of a firm.[25] The federal legislature, meanwhile, through a Southern-dominated Senate and liberal use of the filibuster, did not contribute to the effort during the 1950s (notwithstanding the importance of the 1957 Voting Rights Act), but would play a more important role in the 1960s.

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[25] See, for instance, Elmo Roper, "Discrimination in Industry: Extravagant Injustice," *Industrial and Labor Relations Review*, July 1952; and J.J. Morrow, "American Negroes—A Wasted Resource," *Harvard Business Review*, January 1957.

A union umbrella organization too weak to enforce its own anti-discrimination ideals; a moderate presidential administration unwilling to take on the federal bureaucracy; and a civil rights leadership fighting token battles. Taken separately, these three constituencies seemed unable to effect the necessary changes to achieve real equality of opportunity in employment. Working in tandem they would make a difference.

Background: African-Americans and Organized Labor, 1860-1955

Racial discrimination in the trade unions, especially in building construction, dated back to nearly a century of segregation and exclusion. During the colonial era, many African captives arriving in what would become the United States possessed a variety of skills useful in pursuits other than farming, and the most intrepid (and lucky, if such a term is appropriate within a discussion of slavery) were given additional training by their white owners. A generation of scholarship has demonstrated that slaves under the plantation system were skilled in such varied fields as ironwork, salt mining—and building construction. Slaves built Monticello, the stately home of Thomas Jefferson outside Charlottesville, Virginia, and slaves were employed in the construction of Southern cities as well as New York City during the Revolutionary era. As the nation grew, Southern slave artisans' skills were nurtured and protected by slaveowners who earned profits from their slaves' toil and maintained control over any potential competition from non-elite whites. [26] In the antebellum North, freedmen and their descendants engaged in various

[26] See, for instance, Charles B. Dew, Ironmaker to the Confederacy: Joseph R. Anderson and the Tredegar Iron Works (New Haven: Yale, 1966) and Bond of Iron: Master and Slave at Buffalo Forge (NY: Norton, 1994); Claudia Dale Goldin, Urban Slavery in the Antebellum South, 1820-1860: A Quantitative History (Chicago: University of Chicago, 1976); Ronald L. Lewis, Coal, Iron, and Slaves: Industrial Slavery in

entrepreneurial pursuits, parlaying an acquired skill in at least one case, in Philadelphia, into an extremely profitable sail-making business.[27]

With the coming of Southern emancipation in 1865 and an influx of immigrants, especially in the North, skilled and aspiring whites increasingly sought to marginalize skilled Blacks throughout the country through violence as well as other forms of coercion. Emancipation set skilled freedmen out to shift for themselves and removed the planters' incentive to protect their employment. As immigrants continued to flood the country in the late nineteenth century, skilled whites sought to decrease the general availability of skilled labor to maintain wage levels. White immigrants pushed their way into (and in some cases created outright) the nascent labor unions, and the unions in turn gained control over the training mechanisms, thereby pushing freedmen and their descendants almost completely out of skilled labor. [28] Although the leadership of one early union umbrella organization, the Knights of Labor, was racially egalitarian (and in fact anti-immigrant), their influence declined after the Haymarket Riot of 1886. The larger Federation of Organized Trades and Labor Unions (which, renamed the American Federation of Labor—AFL—in the same year as Haymarket, survives today as the AFL-CIO) rigorously excluded Blacks from most unions while maintaining an officially egalitarian policy. Local autonomy was cherished, while the umbrella organization functioned mainly as a national lobbying group. Black workers who did attempt to

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Maryland and Virginia (Westport, CT: Greenwood, 1979); Robert S. Starobin, Industrial Slavery in the Old South (NY: Oxford, 1970); John E. Stealey III, The Antebellum Kanawha Salt Business and Western Markets (Lexington: University Press of Kentucky, 1993); Richard C.Wade, Slavery in the Cities: The South, 1820-1860 (NY: Oxford, 1964); and Gavin Wright, "Did Slavery Retard the Growth of Cities and Industry?" in David, *et al*, Reckoning with Slavery: A Critical Study of the Quantitative History of American Negro Slavery (NY: Oxford, 1976).

[27] Julie Winch, A Gentleman of Color: The Life of James Forten (NY: Oxford, 2002).

[28] See, for instance, Bruce Laurie, Artisans into Workers: Labor in Nineteenth-Century America (NY: Noonday Press, 1989); and David R. Roediger, The Wages of Whiteness: Race and the Making of the American Working Class (London: Verso, 1991).

organize were shunted into lower-paid trades or into segregated "auxiliary" locals as a condition of affiliation; exclusively white unions like the Boilermakers and Iron Shipbuilders Union, on the other hand, were chartered in 1896 after having paid the lip service of ratifying a non-discriminatory constitution. Some Blacks continued to acquire skills, in all industries, but these became an ever-shrinking minority. In building construction, Blacks were organized into the less skilled "trowel trades" and those who acquired the more specialized skills, even the new ones, like electrical work, found virtually all commercial employment closed to them. For the most part such Blacks trained and were employed on individual residential construction, often by other Blacks.[29]

After the First World War, large numbers of African-Americans came North in search of relief from the *overtly* Jim Crow practices of the South in a movement called the First Great Migration. Where they didn't encounter *covert* Jim Crow practices in the North, they were welcomed by big business as strikebreakers, especially during the Great Strike of 1919. But when the strikes ended, Black workers were routinely dismissed, their usefulness exhausted. With the coming of the Great Depression, more and more Blacks sought the protection afforded by unions. A new and more militant umbrella organization, the Congress of Industrial Organizations (CIO), arose in counterpoint to the AFL, and truly welcomed Black and integrated unions. The CIO, with its early connections to the Communist Party of the United States of America, quickly assumed

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[29] Herman D. Bloch, "Craft Unions and the Negro in Historical Perspective," *Journal of Negro History* Vol. 43, No. 1 (January, 1958); and A. Philip Randolph, *Address to the Trade Union Leadership Council*, February 7, 1959 (Papers of the National Association for the Advancement of Colored People [NAACP], Series III, Box A30, *Randolph* folder, Manuscripts Division, Library of Congress) and *Address to the 1959 NAACP Annual Convention*, July 15, 1959 (NAACP III A10 *Speeches*).

the more militant mantle of the old Knights of Labor as well as their racial egalitarianism.[30]

With the outbreak of a new world war in Europe, the federal government geared up for major production, at first to supply unofficial allies and later, after Pearl Harbor, for national defense. This was a major cause of the Second Great Migration, wherein some 400,000 African-Americans left the rural South for cities throughout the nation between 1940 and 1945.[31] Like the rural whites they accompanied, they came in search of jobs in wartime industries or for military service. Unfortunately, jobs in the new trades required for wartime production remained largely closed to them. As National Association for the Advancement of Colored People (NAACP) Board member Alfred Baker Lewis put it, "unemployment even among whites had been sufficiently severe so that there were enough of them to fill the new jobs."[32] As the wartime potential for government spending made the New Deal seem small by comparison, the president of the Brotherhood of Sleeping-Car Porters, A. Philip Randolph, saw federally-financed employment as a useful lever for change, and felt that the eve of war was an opportune moment to demand governmental action. Randolph called for a massive March on Washington to demand jobs, to take place in the early summer of 1941. As Lewis tells us,

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[30] See Randolph, *Ibid*, and *Address to the 1956 Annual NAACP Convention*, June 27, 1956 (NAACP III A3 *Speeches*). For more on the differences in attitude towards racial equal opportunity between the AFL and CIO, see Nancy MacLean, Freedom Is Not Enough: The Opening of the American Workplace (NY: Russell Sage Foundation, 2006), p. 40.

[31] In Motion: The African-American Migration Experience, http://www.inmotionaame.org/migrations/topic.cfm?migration=9&topic=2, accessed September 23, 2007.

[32] Alfred Baker Lewis, *Progress—At Very Deliberate Speed*, 1962 n.d. (Thelma McDaniel Civil Rights Collection, IIC *5*, item #27, p.8, Historical Society of Pennsylvania).

> President Roosevelt did not know how many might come. He accordingly called the leaders hastily to a conference at the White House. He turned on all his charm and insisted in his talk with them that they (Negroes as a group) had "friends in Washington." Mr. Randolph is reported to have pounded the table and said it was not friends but jobs they wanted.[33]

The threat of such a massive show of civil disobedience had its effect. On June 25, 1941, the president issued Executive Order No. 8802, prohibiting race discrimination in defense industries and other federal contract work and establishing the Fair Employment Practice Commission (FEPC), which was empowered to investigate and report on violations of the order.[34] Randolph agreed to cancel the march.

Asa Philip Randolph (1889-1979) was born the son of an African Methodist Episcopal Minister in Florida and educated at the City College of New York, where he initially studied acting but soon gravitated toward politics and economics. Shortly after graduating from City, Randolph co-founded an employment agency in Harlem and began attempting to organize black workers, also founding *The Messenger*, a radical Harlem magazine, in 1915. During World War One, Randolph became a polished street-corner orator as he assailed the policies of the Wilson administration from atop his soapbox, at one point even being arrested for treason when he tried to convince black men to avoid military service.[35]

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[33] *Ibid*.

[34] James D. Wolfinger, From Roosevelt Coalition to Republican Majority: Race, Jobs, and Housing in Philadelphia, 1932-1955 (Evanston, IL: Unpublished Doctoral Dissertation, Northwestern University, 2003). For the text of the Executive Order, see http://www.conservativeusa.org/eo/1941/eo8802.htm, accessed September 23, 2007.

[35] See, for instance, Jervis Anderson, A. Philip Randolph: A Biographical Portrait (NY: Harcourt Brace Jovanovich, 1973); Clarence Taylor, "Sticking to the Ship: Manhood, Fraternity, and the Religious World View of A. Philip Randolph," in Black Religious Intellectuals: The Fight for Equality from Jim Crow to the Twenty-First Century (NY: Routledge, 2002); Transcript, A. Philip Randolph Oral History Interview I, 10/29/69, by Thomas H. Baker, Electronic Copy, LBJ Library; and Paul Delaney, "A. Philip Randolph is Dead; Pioneer in Rights and Labor," *The New York Times*, May 17, 1979. The treason case was ultimately dismissed.

Randolph's wartime and postwar public activities attracted the attention of several employees of the Pullman Company, which provided sleeping-car rail service. The sleeping-car porters were almost exclusively Black and had traditionally been hostile to union organizing as the unions had excluded blacks while companies like Pullman had often proved reliable employers. But in 1925, the Brotherhood of Sleeping-car Porters (BSCP) was founded, and the small membership asked Randolph to be their president. Randolph had never been employed as a sleeping-car porter himself, although he had worked as a building porter in college. (He later recalled that he had written on the wall, at one job, "Randolph swept here.") At first, the union made little headway, but after ten years they were accepted into affiliation as the first black-majority union in the AFL, and in 1937 Pullman finally signed a collective bargaining agreement with the BSCP. By 1941, with his leadership in the March on Washington Movement, Randolph was clearly the unofficial leader of black labor in the United States.[36]

The numbers of African Americans seeking jobs in the nation's cities continued to swell during the postwar period, with nearly 4.5 million migrants leaving the rural south between 1945 and 1970.[37] But at the end of the war, the Southern-dominated Congress pulled the FEPC's funding.[38] Several Northern states responded by establishing state versions of the FEPC, and by 1959 there were seventeen such agencies nationwide.[39] And since the federal FEPC had been stripped of its funding, President Truman tried another tack. In 1946, Truman signed Executive Order No. 9808, establishing the President's Committee on Civil Rights, which issued a report the following year, "To Secure These

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[36] *Ibid.*
[37] *Op. Cit.* n.31.
[38] See Wolfinger, "From Roosevelt Coalition to Republican Majority."
[39] NAACP Press Release, April 16, 1959 (NAACP III A183, *States*).

Rights." Among the committee's recommendations was Congressional legislation "or Executive Order [machinery] to review the expenditures of all government funds, for compliance with the policy of nondiscrimination."[40] And so, with no such legislation forthcoming, on December 3, 1951, President Truman signed Executive Order No. 10308, mandating that all federal contracts contain a non-discrimination clause and establishing the President's Committee on Government Contract Compliance (PCGCC) to enforce it. The PCGCC consisted of the heads of the main contracting agencies (including the defense procurement agencies and the General Services Administration) and six presidential appointees, in contrast to Roosevelt's four-member FEPC. Funding for the Committee's operations came from the represented federal agencies.[41] The first presidential appointees included President George Meany of the AFL, a representative of the CIO, a newspaper editor from Kansas City, a captain of industry, and a lawyer from Richmond, Virginia.[42] Northern editorial opinion lauded Truman's move.[43] In June 1952, however, after six months of operation, the committee had failed to act against any government contractor and had not even hired an Executive Director.[44]

Under Eisenhower, the PCGCC became the President's Committee on Government Contracts (PCGC), notably dropping "compliance." In keeping with the context of fighting for "hearts and minds" in developing nations during the Cold War, the president named his publicly-vociferous anti-communist vice president, Richard Nixon,

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[40] http://www.trumanlibrary.org/civilrights/srights4.htm#170, accessed September 23, 2007.
[41] Executive Order #10308 and White House Press Release, December 3, 1951 (NUL I D15 *President's Committee on Government Contract Compliance [PCGCC]*).
[42] "Truman Appoints 6 To Anti-Bias Board," *New York Herald-Tribune*, January 11, 1952 (NUL I D15 *PCGCC*).
[43] "Fair Employment Practices," Editorial, *New York Herald Tribune*, December 5, 1951 (NUL I D15 *PCGCC*).
[44] *Statement of Clarence Mitchell, Director of the Washington Bureau, NAACP, Before the President's Committee on Government Contract Compliance*, June 9, 1952 (NUL I D15 *PCGCC*).

as chairman. Nixon's role in the administration was, like so many vice presidents before him, largely ornamental; he had little real power and was used mainly as a sort of ambassador-at-large. As PCGC chairman, he would reprise that role as the administration's unofficial ambassador to the African-American community.

In April 1955, the PCGC held a conference on the enforcement of the fair employment practices clause in government contracts.[45] Later that year, based on studies by the Urban League and the Committee, Vice President Nixon stated that the hiring of Blacks was not a problem; rather, the difficulty was in getting employers to exercise equal opportunity in promotions.[46] It was largely true that equal employment opportunity in blue-collar hiring had been achieved in government contracts. The Vice President had overlooked three major exceptions, however: petroleum, railroad work, and—most notably for our purposes—construction.[47]

Exploring the Boundaries:
Civil Rights Organizations and the Government Contracts Committee

In 1956 the NUL surveyed local building trade unions' hiring practices.[48] Most cities reported difficulty in integrating the skilled trade unions, although in May, thanks to the protests of the NAACP and complaints submitted to the PCGC and the AFL-CIO civil

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[45] "Nixon Calls Conference on Job Bias; States and Cities to Send Officials," *New York Herald Tribune*, April 20, 1955; and Thomas to Lester Granger, April 21, 1955 (NUL I A62 *Industrial Relations Department [IRD], Memos and Reports, 1955, January-April*).
[46] "Nixon Cites Bias in Job Promotion, *The New York Times*, October 26, 1955.
[47] See, for instance, James F. Mitchell to Cleveland Urban League, January 21, 1956 (NUL I E31 *M*), and Herbert Hill to Henry Lee Moon, July 22, 1958 (NAACP III A190 *PCGC 1*).
[48] NUL Department of Industrial Relations Report, May, 1956 (Papers of the AFL-CIO [Meany], RG1-038, Box 95, folder *8*, George Meany Archives).

rights committee, a Black electrician was admitted to membership in the Chicago International Brotherhood of Electrical Workers (IBEW).[49]

The NUL and NAACP were two organizations committed to securing civil rights in two different ways. Both were founded in the same era (1909-10) by a bi-racial contingent of New Yorkers committed to fighting lynching and ending Jim Crow. The NAACP conducted legal campaigns to overturn laws dealing mainly with education, voting, and public accommodations, mainly in the South, while the NUL worked with industry leaders to integrate offices, factories, and other places of work, mainly in the North. It was the NAACP that brought the series of lawsuits that ultimately resulted in the overturning of *Plessy v. Ferguson* by the Supreme Court in 1954, ending legal segregation in public schools. The NUL, on the other hand, conducted surveys and advocated on behalf of black workers for employment integration. In short, the NAACP was primarily a civil rights advocacy organization focused on ending Southern *de jure* segregation while the NUL was primarily a job placement organization aimed at ending Northern *de facto* segregation. In labor matters, the NAACP tended to side with the AFL and the CIO against management, since the Big Labor organizations at least paid lip service to the ideals of equal employment opportunity. The NUL, whose contacts with management often led directly to job referrals for constituents, was more ambivalent toward unions.[50]

By the 1950s, both organizations were run primarily by members of the black middle class, often intellectuals or academics. Their tactics, whether litigious or

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[49] NAACP Press Release, May 31, 1956 (NAACP III A178 *B Miscellaneous 1*).
[50] MacLean, in Freedom is Not Enough, concurs, with the caveat that in 1958 the NAACP largely ceded the strategic role of coordination with Big Labor to Randolph's new Negro American Labor Conference (p. 42).

persuasive, reflected a privileging of bourgeois-style achievement irrelevant to many (if not most) African Americans whose priorities tended to be immediate (as in wages and buying power) rather than abstract (as in percentages of skilled blacks with skilled jobs in each community). The NAACP had garnered a reputation as a louder, tougher fighter for civil rights while the NUL appeared more quiet, conservative, and willing to compromise. Often the NAACP battled school boards, white citizens' councils, or county voting registrars to force integration, while the NUL quietly went about the tedious process of securing jobs with individual firms or membership in union locals. Nonetheless, both organizations made important contributions to the movement to integrate federally-funded construction sites and the unions that supplied the labor.

In August 1957, President Eisenhower signed into law the first civil rights bill passed by Congress in the twentieth century—the Voting Rights Act. He also federalized the Arkansas National Guard to protect nine Black youngsters attempting to integrate Little Rock High School.[51] While the national NAACP concerned itself primarily with passage of the 1957 civil rights bill and concerns in the South, the NUL undertook a new study of hiring conditions in the building trades, concluding unreservedly that the skilled trades were excluding Blacks at all levels throughout the nation:

> [I]n some unions and in some occupations the Negro worker has faced many restrictions not only because of race but also because of the general policies affecting workers in some crafts. The Building Trades Unions seem to have more restrictive practices than others.[52]

Still, throughout 1957, the PCGC plugged onward, addressing about 60 per cent of the discrimination complaints that came in. Nixon and Labor Secretary James P.

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[51] Among them was Ernest Green, who by the mid-1960s was running a training program for potential black building construction apprentices for the Workers Defense League in New York City.
[52] NUL Report, February 13, 1957 (NUL I Q1 *Negroes and the Building Trades Unions, 1957*).

Mitchell praised the committee's work as successful. On the other hand, the leaders of the NUL and NAACP called the PCGC largely ineffective.[53] This difference of opinion was the result of the method the committee used to handle complaints. The PCGC functioned mainly as a conduit, without any powers of its own. When it received a complaint, it would first determine which government agency was supervising the contract in question. It would then forward the complaint to the agency, which would eventually forward it down to the responsible contracting officer. The contracting officer—who had a larger stake in getting the contract completed than in ensuring compliance with the non-discrimination clause—would investigate and report back to his supervisor, and on up to the agency head, and thereby back to the PCGC. As a result of this laborious process, disposition of individual cases typically took anywhere from five months to two years.[54] By this standard, Nixon and Mitchell could laud the Committee's work as effective, in that it was functioning as an active conduit and clearing its caseload at a steady rate. By the same token, it is easy to understand the frustration felt by the civil rights community.

Exclusion and segregation were not the only causes of low Black attainment levels in areas like the building trades; the notion that Blacks should not enter such fields was endemic in the nation's educational institutions, leading to the decision by most Black youngsters to avoid even attempting to train as electricians, steamfitters, plumbers, and the like. Unlike whites, most Black youngsters couldn't look to fathers or uncles in

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[53] Mitchell and Granger, *Addresses to the National Youth Training Incentives Conference*, February 4, 1957 (NUL I G7 *PCGC, Reports and Miscellaneous Material*); NAACP Press Release, May 2, 1957 (NAACP III A239 *Nixon*); and Granger to Urban League local branches, September 26, 1957 (NUL III 462 *3*).

[54] In Theodore Kheel, *Report to Vice President Johnson on the Structure and Operations of the President's Committee on Equal Employment Opportunity*, June 1962, n.d. (NUL II A48 *PCEEO, 1962, 2*, concluded in NUL II A42 *PCEEO, 1964, 1*), the author compared the procedures under Nixon's chairmanship of the committee and Vice President Johnson's of the equivalent committee during the Kennedy administration. More on Johnson's chairmanship in Chapter Two.

skilled jobs as role models, and so it fell to local high school guidance counselors to encourage them to aspire to their full potential. However, many guidance counselors stereotyped Black youths as incapable.[55] Some were simply unaware of the expanding job opportunities now available thanks to equal employment policies. Still more steered promising youths into fields where they felt discrimination would be less of a bar. As a result, the pool of skilled Black construction workers and those in training remained small.[56]

In 1958, NAACP labor secretary Herbert Hill, having conducted a number of studies on discrimination in the building trades, noted that the PCGC had failed to take action against a single government contractor. The committee had received several hundred complaints, from individuals and organizations like the NAACP, of discrimination in hiring on federally-funded jobs as well as discrimination in union membership and official apprenticeship programs run by unions with exclusive hiring privileges with government contractors. While most of the complaints had been resolved informally (i.e. contractors, after being visited by a member of the committee, would agree to hire the complainant or engage in some other satisfactory behavior, like increase the number of Black trainees), many were still pending due to union recalcitrance and employers' fears of a strike by white workers.[57] Additionally, with new, more militant

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[55] One famous example of this process was Malcolm X, whose talents are now obvious in retrospect. His autobiography also recounts the experiences of several acquaintances whose immense talents were squandered in lives of crime, such as a Harlem bookmaker whose skills with "the numbers," X felt, might have otherwise qualified him for advanced training as a mathematician. X, Malcolm, The Autobiography of Malcolm X, As Told to Alex Haley (NY: Grove Press, 1965).

[56] Ann Taneyhill, "What's Ahead for Negro youth?" *The Pilot*, Winter, 1957 (NUL I E30 *Taneyhill*); Mitchell, David Sarnoff, Boris Shishkin, Clifford Froehlich, and Granger, *Addresses to the National Youth Training Incentives Conference*, February 4, 1957 (NUL I G7 *PCGC, Reports and Miscellaneous Material*).

[57] NAACP Resolution, July 8, 1958 (NAACP III A7 *Resolutions*) and Hill to Moon, July 22, 1958 (NAACP III A190 *PCGC 1*).

civil rights organizations being formed as the movement against segregation in the South gained steam, many members of the NAACP felt their organization needed to become more active in response to the accelerating pace of demands for racial equality.[58] Hill concluded that the time for studies had ended and resolved to push the PCGC to take concrete action.[59]

Born in 1924 in Brooklyn, New York, Hill graduated from New York University in 1945 and took a Master's Degree at the New School for Social Research under the guidance of noted political theorist Hannah Arendt. A committed member of the Socialist Worker's Party during his college years, the Jewish Hill saw the involvement of the United States in fighting fascist anti-Semitism as flawed by the nation's continued relegation of African-Americans (and still, at that time, Jews) to second-class status. While at The New School, Hill became involved with the NAACP as a volunteer in the organization's local campaign integrating New York City's recreational facilities. Shortly after graduation he was hired as a full-time organizer and in 1951 became director of the NAACP's labor department. Over the years, Hill developed a close working relationship with the head of the organization, Roy Wilkins. On issues pertaining to the AFL-CIO and other labor matters, Hill "played the outspoken heavy, while…Wilkins maintained a more soft-spoken, congenial public posture, although he protected Mr. Hill from the attacks of labor leaders."[60]

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[58] Paul Jacobs, "The Negro Worker Asserts His Rights: A New Militancy Troubles an Old Alliance," *The Reporter*, July 23, 1959. Most notable among these new organizations were the Congress of Racial Equality (CORE), founded in 1942 and headed by James Farmer, and the Southern Christian Leadership Coalition (SCLC), founded in 1957 and headed by the Reverend Dr. Martin Luther King, Jr.
[59] Hill, *op. cit.* n. 47.
[60] Steven Greenhouse, "Herbert Hill, a Voice Against Discrimination, Dies at 80," *The New York Times*, August 21, 2004.

On April 15, 1958, at the request of Wilkins, the PCGC met with Hill. The NAACP Labor Secretary took the opportunity to remind the members of the committee that a number of complaints of unequal hiring and upgrading (promotions and training for promotions), submitted by the NAACP over a year earlier, had not reached disposition. These included one complaint against the U.S. Industrial Chemical Company of Ohio and American Banner Lines, Inc., of New York. Hill pointed out that the Committee had yet to revoke a single government contract, and he asked that they publicly make a status report on all pending cases over a year old. The Committee agreed and promised a summary by late May. In the interim, the Vice Chairman, Labor Secretary Mitchell, asked Hill to send him a comprehensive list of unions with discriminatory practices.[61]

On May 13, 1958, Hill sent Mitchell the list, including national and international labor unions that excluded Blacks, either by statute (i.e. in their constitutions) or in practice. In particular, Hill stated that the International Brotherhood of Electrical Workers (IBEW), which "has recently admitted Negroes into some hitherto lily-white unions," still excluded Blacks "in the North as well as in the South" or placed them in "Jim Crow 'auxiliary' locals."[62] Auxiliary locals, like segregated public schools, were informally (but forcefully) kept in second-class status. Hill also listed unions which confined Blacks to segregated locals, including many in the building trades, and added that

[61] NAACP Press Release, April 24, 1958 (NAACP III A190 *PCGC 1*).
[62] Hill to Mitchell, May 13, 1958 (NAACP III A177 *Labor, AFL-CIO, 1956-58*).

> a clause requiring union membership as a condition of employment is to be found in virtually all collective bargaining agreements in the building and construction trades industry. Because unions perform certain managerial functions in the construction industry the refusal to admit into membership because of color completely denies qualified Negroes the right to work in their chosen trades.[63]

In one example, in "Terre Haute, Indiana, Negro mechanics have been systematically denied admission into building trades unions and therefore have been denied the right to secure employment in those job classifications where AFL-CIO affiliates hold exclusive bargaining rights."[64] Another example was in

> "Cleveland, Ohio, [where] Negroes were admitted into Local 38 of the [IBEW] only after a three-year struggle. This local union defied an order of the Cleveland Community Relations Board, which administers that community's fair employment practices statute, to admit qualified Negro workers. Finally, the national leadership of the AFL-CIO did intervene but for a period of three years and more, skilled Negro mechanics were denied the right to work on all major construction installations in the Cleveland area. These included huge construction projects erected with federal government funds...."[65]

In short, Hill contended that the unions were using the right to supply labor in collective bargaining agreements to keep Blacks off the job, and that when the job was federally-funded, the government had a responsibility to take action.

That July, the PCGC released a newsletter touting its programs and congratulating Major General Cornelius E. Ryan, the Executive Vice Chair, for his hard work. A veteran of both world wars and former commander of the 101st Airborne Division, the retired general now lent his considerable *gravitas* to the PCGC. General Ryan paid visits to a number of C.E.O.s of important federal contractors, including ALCOA, General Electric, and Bethlehem Steel (but notably *not* U.S. Industrial or American Banner, the contractors Hill had cited to the committee; the newsletter gave no explanation for their absence from

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[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*

the list). The newsletter included a column on a new Equal Job Opportunity stamp, and touted the distribution of 35,000 "[c]ar cards for buses, subways, and trolleys."[66] No actual compliance cases were mentioned.

This focus on "puff pieces" by the public relations arm of the PCGC did not go unnoticed by the NAACP. At its annual convention in Cleveland, Ohio, that month, a resolution reflected a different picture of the committee's activities:

> Regretfully we note the lack of vigorous enforcement and broad application of the intent and purpose contained in Presidential Executive Order 10479, issued on August 13, 1953, establishing the [PCGC] to enforce the anti-discrimination clause found in all U.S. government contracts. Not a single contract has been cancelled by this committee, although canceling contracts is their only means of enforcement. [67]

The resolution went on to state that

> The American economy is primarily interstate and, therefore, responsibility for eliminating discriminatory practices must fall on the federal government...we strongly condemn the lack of meaningful enforcement and the extremely limited application of the intent of the Executive Order by the President's Committee. [68]

The NAACP was not simply trying to excoriate the Eisenhower administration for failing to integrate federal jobsites. In fact, the organization—as well as the NUL—viewed the administration as generally friendly towards the cause of civil rights. Rather, the NAACP hoped that such a stern, public expression of "regret" would push the administration to act with more vigor to enforce its own policies at the level of the civil service. In short, the NAACP understood that the fault lay with the entrenched federal bureaucracy, but felt that the administration—nominally in charge of the bureaucracy—could have worked harder to tackle bureaucratic inertia.

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[66] PCGC Newsletter, July, 1958 (NUL I A41 *PCGC*). Car cards are the rectangular advertisements familiar to riders of modern mass-transit systems.
[67] NAACP Resolution, July 8, 1958 (NAACP III A7 *Resolutions*).
[68] *Ibid*.

Later that month, Herbert Hill asked the PCGC to cancel the federal contracts with U.S. Industrial and American Banner, as well as two Southern oil companies, for failure to comply with the non-discrimination clause of their federal contracts. The complaints against these companies included two of the pending cases over a year old that Hill had cited in his statement to the Committee in April.[69] The PCGC never cancelled the contracts, and the NAACP convention resolutions of 1959 and 1960 would include similar "regretful" language about the PCGC's "hard work."[70]

The First Rift: The NAACP and the AFL-CIO

On December 5, 1955, the AFL-CIO was formed when the older AFL merged with the newer representative organization of mainly unskilled factory workers, the CIO. The merger created a single major umbrella labor organization with which national and international unions could affiliate. The umbrella organization would serve mainly as a national lobbying organization for workers' rights and a referee for conflicts between affiliated local unions. The national AFL-CIO had several departments that focused on major industries and other areas of concern, such as the Building Construction Trades Department (BCTD) and the Civil Rights Department, and supported local area councils, which dealt with labor issues for individual cities, states, and regions.

One important function of the AFL-CIO during the first decade after the merger was reconciling the differences between unions from its two former parts. With a few major exceptions, the old AFL unions tended to be less tolerant of integration, while the newer CIO unions, which had formed (or split off, like the United Mine Workers) during

[69] Hill to Moon, July 22, 1958 (NAACP III A190 *PCGC 1*).
[70] NAACP Resolution, July, 1959 (NAACP III A10 *Resolutions*) and NAACP Resolution, June, 1960 (NAACP III A11 *Resolutions*).

the political radicalism of the 1930s, tended to be more accepting of integration, a political calculus which had helped lead to their rise by swelling their ranks with black as well as white workers.[71]

Most of the building construction trades had been organized under—and remained with—the AFL, and consisted of highly-skilled, well trained—and usually better-paid—workers. Most blacks working in unionized building construction were members of the less exclusive Laborers' or Carpenters' unions, requiring less skill, fewer years of training, and ultimately leading to jobs with less pay.[72]

Given the high visibility of public construction projects, the building trades became a focal point for civil rights leaders looking for symbolic as well as substantive victories against discrimination, especially as urban renewal swelled the number of federally-funded construction projects. In other words, young blacks were constantly being reminded of their second-class status every time they passed one of the many construction sites in their cities and saw only white faces under hard hats, and that needed to change. Under the new umbrella organization's constitution, the AFL-CIO committed itself to equality of opportunity in apprenticeship and training, union membership, and job referrals.[73] Whether it could make good on that promise was another question entirely.

The role of unions in the exclusion of blacks from the skilled construction trades came into sharp relief during the summer of 1956 in Cleveland, Ohio. The Cleveland

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[71] MacLean, Freedom is Not Enough, p. 40.
[72] See, for example, Yeldell to Granger, January 1, 1957 (NUL I G7 *PCGC Correspondence*); "Job Bias Bill Woos Ave's OK," *New York Age*, March 23, 1957; and NAACP Press Release, October 16, 1957 (NAACP III A178 *Apprenticeship Training, General*).
[73] NUL Board of Trustees to George Meany and Walter Reuther, December 1955 (NUL I A41 *President's Committee on Fair Government Contracts, 1955*) and Dean Chamberlin to Meany, December 14, 1955 (NUL I A23 *IRD, Correspondence Concerning, 1948-56*).

Community Relations Board (CCRB) submitted a complaint to the PCGC that the IBEW Local was not referring any Blacks to work on the federally-subsidized construction of public schools (indeed, as a "lily-white" Local, the union had no African-American members to refer). The PCGC appeared "to accept a sort of responsibility" for the matter by agreeing to pressure the contractors to pressure, in turn, the local to admit Blacks (or at least to allow the contractor to hire non-union or non-local Blacks) to meet the terms of the nondiscrimination clause in the contract. But when the NAACP complained publicly in October of the committee's apparent inactivity, the PCGC Executive Director stated that the committee had no jurisdiction over unions because unions didn't sign federal contracts. This prompted the CCRB to ask the PCGC for a clarification, reminding the PCGC's Executive Director that "an argument could be advanced that union contracts, particularly the type found in the skilled building trades, are in effect and substance a subcontract admissible as such under the provisions of the presidential executive order."[74]

The desired result of this wrangling—the employment of one or more qualified Black electricians on the Cleveland school construction project—was never achieved; the electrical work on the new schools, some in neighborhoods without any white residents, was completed exclusively by white electricians.

And yet in other cities there was cause for hope. On October 16, 1957, in a banner legal ruling on an NAACP lawsuit, the Chicago Ironworkers' Local #1 apprenticeship

[74] Hill to Milton Webster, June 12, 1956 (NAACP III A177 *Labor, AFL-CIO, 1956-58*); Jacob Seidenberg to Wilkins, and Hill to Wilkins, October 31, 1956; Wilkins to Seidenberg, November 2, 1956; Frank Baldau to Seidenberg, November 15, 1956; and Wilkins to Baldau, November 27, 1956 (NAACP III A190 *PCGC 1*).

program was ordered to admit three Black youths who had twice been denied admission.[75]

And so in the fall of 1958, after spending the better part of the year applying pressure to the PCGC, Herbert Hill turned his attention to the AFL-CIO in an attempt to get it to enforce the non-discrimination aspects of its own constitution. In October, he asked the AFL-CIO's Civil Rights Department to "[i]mmediately 'initiate a direct frontal attack' against the many affiliated unions which are violating AFL-CIO civil rights policy," including "Local 120 and Local 55 of the Plumbers and Pipefitters Union in Cleveland…as well as...the Carpenters' Union in East St. Louis, Illinois, and elsewhere." He also asked that action be taken against segregated locals.[76] Hill followed up in December, sending affidavits of bias in securing union membership, including one pertaining to the Laborers' Union in East St. Louis: a Black worker named William Gamble had attempted to use a traveling permit obtained from Local #110 in St. Louis to enter Local #100 in East St. Louis and was rebuffed. Hill said that Blacks were being excluded from building trades unions in both cities, and included affidavits against IBEW Local #309, St. Louis; Local #90 of the Plasterers and Cement Masons in St. Louis; and Local #630 of the Plumbers and Pipefitters in East St. Louis. He warned that if these complaints were not positively resolved, the local NAACP branches would be forced to initiate legal action in order to best represent the interests of their members.[77] The next week, NAACP Executive Secretary Roy Wilkins sent Hill's affidavits to George Meany, president of the AFL-CIO, reminding him that the NAACP had worked with the AFL-CIO diligently on the union leadership's anti-discrimination program and on non-race-

[75] NAACP Press Release, October 16, 1957 (NAACP III A178 *Apprenticeship Training, General*).
[76] Hill to Shishkin, October 16, 1958 (NAACP III A177 *Labor, AFL-CIO, 1956-58*).
[77] Hill to Shishkin, December 4, 1958 (NAACP III A177 *Labor, AFL-CIO, 1956-58*).

related matters like fighting right-to-work laws. He stated forcefully that action must now be taken against discriminatory locals.[78] This correspondence was then leaked to the press.[79]

AFL-CIO President George Meany (1894-1980) was literally born into union leadership as the son of a leader in the New York City Plumber's Union. Meany dropped out of school at age sixteen to become a plumber's helper, and by age twenty-nine he was Secretary-Treasurer of the New York Building Trades Council. By 1934, at forty, Meany was New York State AFL president, where he became an effective lobbyist during the administration of Governor Herbert H. Lehman. During the summer of 1935, Meany was thrust into the national spotlight for the first time as he battled with the Works Progress Administration (WPA), an arm of President Roosevelt's Depression-era New Deal. The WPA proposed to pay construction workers less than the prevailing union rates. Threatening a strike, Meany honed his skills in two styles for which he would later achieve national renown: he and the WPA administrator "exchanged epithets by day and dinner-table chat by night." By the end of the summer, with the White House becoming concerned about the progress of the talks, the WPA yielded. Not for the last time, Meany had won a major concession from a federal agency.[80]

Meany's successes as head of the New York State AFL led to his election in 1939 as Secretary-Treasurer of the national AFL, second only to AFL President William

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[78] Roy Wilkins to Meany, December 19, 1958 (NAACP III A177 *Labor, AFL-CIO, 1956-58*).
[79] A.H. Raskin, "NAACP Accuses Labor of Bias Lag; Action on Discrimination Doesn't Match Words, Association Charges," *The New York Times*, January 5, 1959. The source of the leak remains unknown.
[80] See, for instance, Archie Robinson, George Meany and His Times, (NY: Simon and Schuster, 1981); Jerry Flint, "George Meany is Dead; Pioneer in Labor was 85," *New York Times*, January 11, 1980; *AFL-CIO.Org*, http://www.aflcio.org/aboutus/history/history/meany.cfmand, accessed September 23, 2007; and *Answers.Com*, http://www.answers.com/topic/george-meany, accessed September 23, 2007. The quotation is from Flint.

Green. Rabidly anti-communist even during the Second World War, Meany used his growing power to keep the federation out of a worldwide labor umbrella that welcomed Soviet labor unions, unlike the other major U.S. labor organization, the CIO (which had fewer objections to communist ideology).[81]

Congressional passage of the Taft-Hartley Act in 1947, which amended many of the more pro-labor statutes of the earlier Wagner Act, occurred despite growing union influence in Washington. Increasingly, President Green's leadership of the AFL was seen as lacking, especially by such outspoken critics as John L. Lewis of the United Mine Workers (CIO). Meany, on the other hand, supported Green, and saw the continuing split between the older AFL unions and the newer CIO unions as the main weakness of Big Labor. When Lewis waffled on taking a non-communist loyalty oath, Meany used his own anti-communist history to strengthen Green's administration (and AFL ascendancy) until Green's death in 1952. At that point, Meany assumed the presidency and committed the organization to arranging a merger with the CIO, which would take three years. Although it was clear that Meany would lead the new combined organization based on the relative size of the two organizations and the ascendancy of anti-communist ideology at the time, another leader, United Auto Workers' (CIO) President Walter Reuther, seemed a strong contender. Nevertheless, at the founding convention of the AFL-CIO in 1955, Meany was unanimously elected the new organization's first president.[82]

The AFL-CIO—and the AFL before it—had long seen the NAACP as a staunch ally. But now, unhappy with their negative portrayal in the press, the federation's Civil Rights Committee met on January 29, 1959, to discuss "how to handle the NAACP."

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[81] *Ibid.*
[82] *Ibid.*

When two committee members suggested the committee try to push recalcitrant locals to admit Blacks or to integrate segregated locals, the chairman rejected such proposals out of hand, apparently feeling that it was more important to pacify Wilkins and marginalize Hill so that there would be no additional press leaks on the subject.[83] The two sympathetic committee members advised Hill on the proceedings, who then recommended to Wilkins that the NAACP respond by publicly pushing the AFL-CIO for concrete action to "[p]revent exclusion practices…[e]liminate all segregated locals…call upon all local affiliates" to refuse "to ratify collective bargaining agreements with separate racial seniority lines," and "establish a functional liaison with all state and municipal fair employment practices commissions."[84]

Shortly thereafter, Wilkins moved to quell rumors (started, according to Hill, by the AFL-CIO Civil Rights Committee—in an attempt to marginalize Hill) that he—Wilkins—had disowned the memo he had sent Meany in December with the list of Hill's affidavits. Wilkins confided to A. Philip Randolph that he was dismayed that so many union leaders seemed more concerned with getting past the scandal caused by the press leak than with taking concrete steps to end union discrimination. Wilkins acknowledged the organizational limitations of the AFL-CIO, which had no direct authority over its affiliates, but he felt that strong action on the part of the umbrella organization to cajole and threaten unions who were breaking the law and their own constitutions would be extremely useful in the battle to secure union rights for Black workers in all crafts.[85]

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[83] Hill to Wilkins, February 2, 1959 (NAACP III A177 *Labor, AFL-CIO, 1959*).
[84] *Ibid.* MacLean, in Freedom Is Not Enough, agrees with Hill's assessment of the AFL-CIO Civil Rights Committee under Boris Shishkin, who "spent much of his time defending craft unions from blacks' complaints and criticizing civil rights leaders" (p. 41).
[85] Wilkins to A. Philip Randolph, February 6, 1959 (NAACP III A177 *Labor, AFL-CIO, 1959*). See also Jacobs, "The Negro Worker Asserts His Rights."

With the rift between the AFL-CIO and NAACP leadership now public, A. Philip Randolph employed his considerable stature among Black workers to support the NAACP from within Big Labor. In a speech before the Trade Union Leadership Council on February 7, 1959, Randolph pointed to progress in integrating the IBEW in New York and Chicago but stated that this progress still needed to be made widespread. He also looked with pride to the election of a Black plumber as union local "business agent although Negroes represent less than ten percent of the membership." Randolph praised "the firm action of President George Meany in setting a deadline to compliance with the AFL-CIO anti-discrimination policy by a union guilty of racial discrimination," and made "reference to a specific complaint by a Negro electrical worker of discrimination...by an electrical workers' local union in Cleveland." He stated that "racial discrimination is practiced by building trades unions in practically every community of the country," and reiterated that "[s]ince union membership is generally a condition of employment, the refusal to permit Negroes...to become members...denies qualified Negroes the right to work at their chosen trades."[86]

On March 18, 1959, Wilkins and Hill met with Meany and Randolph to discuss the December memo and possible actions to be taken by the AFL-CIO. Meany assured the NAACP leaders of his "continuing determination to strive for the elimination of discrimination in the…trade union movement." Meany and Wilkins agreed that the solutions should be system-wide rather than directed at individual local unions.[87] Hill would wait four months before pressing the matter further, but in July, when the delegates to the 1959 NAACP convention unanimously approved the content of Wilkins'

[86] Randolph, *Address to the Trade Union Leadership Council*, February 7, 1959 (NAACP III A30, *Randolph*).
[87] NAACP Press Release, March 20, 1959 (NAACP III A177 *Labor, AFL-CIO, 1959*).

December memo to Meany (which listed Hill's affidavits), Hill asked the director of the AFL-CIO Civil Rights Department for a progress report.[88] There is no record of a reply.

The decades-old alliance between the NAACP and Big Labor may have outlived its usefulness, as outside forces seemed set to pull the two organizations apart. The civil rights movement was gaining steam, requiring that older organizations like the NAACP take a more vigorous tack to keep up with the pace of change, while the white union rank-and-file seemed ever-eager to protect their existing and hard-won advantages, including those based on skin color and family connections.[89]

These developing tensions took a dramatic turn at the annual AFL-CIO convention in San Francisco. On September 24, 1959, A. Philip Randolph, addressing the convention, asked for the suspension of two discriminatory unions in the railroad industry, and rejection of a petition for reinstatement of a third, until these unions ended their discriminatory practices. He stated that racial discrimination was just as negative an influence on organized labor as were racketeering and communism, infractions for which unions had been expelled in the recent past.[90]

Meany could have given Randolph a measured and logical reply. After all, there were fundamental differences between racially discriminatory unions and those engaged in racketeering or sympathetic with communism. While he may or may not have seen these infractions as equally evil (he was, after all, an ardent anti-communist greatly concerned with the perception held by many that unions were corrupt), racketeering and communism were infractions engaged in by the leaders of a few unions, whereas racial

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[88] Hill to Shishkin, July 23, 1959 (NAACP III A177 *Labor, AFL-CIO, 1959*).
[89] "NAACP and Labor: Frost Upon a Friendship," Editorial, *Detroit Free Press*, September 19, 1959.
[90] George Meany, *Address at the 1959 National Urban League Equal Opportunity Day Dinner*, November 17, 1959 (NUL I E31 *M*); Robinson, George Meany, pp. 123-40.

exclusion was largely practiced at the level of the rank-and file membership of many unions. The expulsion of the few corrupt or communist unions had resulted—in almost every case—with the election of new, less corrupt, non-communist leaders, leading to reinstatement. But to expel the many unions with *de facto* racial policies would have resulted in a decimation of the AFL-CIO affiliates, and probably little change in their behavior. Better, Meany thought, to keep them in the federation where they could continue to engage in a dialogue that might eventually have a positive result.[91]

Instead, exasperated that Randolph hadn't first brought these issues before him in the smaller venue of the organization's Executive Council, Meany blurted out "who the hell appointed you as the guardian of all the Negro members in America?" The AFL-CIO president was immediately excoriated in the Black press, while African-American leaders, from the Reverend Dr. Martin Luther King, Jr., to the only Black United States Congressman, Adam Clayton Powell, Jr., publicly reaffirmed their confidence in Randolph as the unofficial "dean" of the civil rights movement.[92]

The flap over Meany's unexpected outburst put the NUL in a particular bind, for the organization had just recently named Meany as one of two 1959 recipients of their annual Equal Opportunity Day awards. Every year, at the NUL's annual Equal Opportunity Day dinner, the organization presented one award to a labor leader (and another to a business leader) for working to further the cause of equal employment

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[91] *Ibid*.

[92] Hill to Moon, September 24, 1959 (NAACP III A177 *Labor, AFL-CIO, 1959*); Yeldell to Granger, September 24, 1959 (NUL I A63 *IRD, Memos and Reports, 1959, July-December*); "Union Racism Hit: Randolph Attacks Bias Policies of AFL-CIO," and "Unions Are No Different," Editorial, *The New York Age*, September 26, 1959; Chuck Stone, "Negroes Tell Meany: You're Wrong; Unanimous Censure Of His Temper," and "A Stone's Throw: We All Appointed Randolph, George; Who Appointed You To Speak For Bigots?" Column, *The New York Age*, October 3, 1959; Alfred Duckett, "Mr. Meany's Outburst," and M. Harris, "Apology Wanted," Letters to the Editor, *The New York Age*, October 3, 1959; and NAACP Board of Trustees Resolution, October 13, 1959 (NAACP III A30 *Randolph*).

opportunity in their respective spheres. Meany had been chosen as the 1959 labor recipient because he had indeed worked hard, since the 1955 AFL-CIO merger, to promote equal opportunity through union constitutions and proposed federal and state legislation. Most notably, Meany had been at the forefront of organized labor's support of the 1957 Voting Rights Act—the first civil rights law since Reconstruction—which formed a federal Civil Rights Commission with the power to investigate and recommend actions pertaining to unequal treatment under the Fourteenth Amendment to the U.S. Constitution. What's more, and perhaps most critically for the NUL leadership, Meany had already accepted his invitation, and the dinner was scheduled for November 17, 1959. Now the Urban League risked, on the one hand, offending a large segment of the Black community if it proceeded to give Meany the award; on the other, the staid organization could hardly make the social *faux pas* of withdrawing a formal invitation already accepted, thereby personally offending the most powerful man in the labor movement and an advocate for union integration—his outburst notwithstanding. After several meetings between NUL Executive Director Lester Granger, Randolph, and Meany, and despite the disagreement of two Urban League board members (who naturally pointed out that offending Meany was only equal to Meany's having offended Randolph), the organization decided to give Meany the honor after all. The austere Randolph had hardly been as offended as the Black press, and Meany's record as an advocate of civil rights was overwhelmingly positive and outweighed this one intemperate, heat-of-the-moment outburst.[93]

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[93] Granger, "Manhattan and Beyond," column, October 2, 1959, and Granger to NUL Board of Trustees, October 7, 1959 (NUL III 462 *Granger 4*); Chuck Stone, "Who Gave In—Meany, Randolph Or League? Tempers Calm After Labor Czar Flies In;" "Mr. Meany and the Urban League," Editorial; and Anna Arnold Hedgeman, "One Woman's Opinion: Trade Unions and Negroes," column, *The New York Age*,

At the dinner, Meany devoted fully half of the body of his speech to the issue of racist locals, explaining that he had not intended to insult Randolph. He noted that the delegates to the AFL-CIO convention had unanimously affirmed that the recalcitrant unions should integrate, but he felt that the best way to get them to do so was through pressure from the AFL-CIO leadership, not a deadline or expulsion, as Randolph would have it. He reiterated that his anger in September was over the fact that Randolph had brought the Black Longshoremen's complaints directly to the organization's convention, rather than follow the established procedure of initial discussion in the AFL-CIO's Executive Council.[94]

Even as ties between the AFL-CIO and the formerly ambivalent NUL were strengthened with Meany's speech at the Equal Opportunity Day Dinner, the already-strained relationship between Big Labor and the once-loyal NAACP took another hit. Frustrated by the continuing behavior of racially exclusionist unions, still unchecked by either the AFL-CIO or the PCGC, Herbert Hill publicly—in a speech in Minneapolis in April, 1960—called for the de-certification of building construction unions that violated the law by operating what were effectively closed shops prohibiting employment of Blacks. Under the Taft-Hartley Act of 1947, the National Labor Relations Board (NLRB) was responsible for certifying (and de-certifying) union locals as bargaining agents for workers in any given plant or jobsite. One of the main tenets of Taft-Hartley was the end of the so-called "closed shop," in which unions could require that all workers at a given plant or jobsite be union members. The NLRB had the power to de-certify unions for

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October 10, 1959; Brotherhood of Sleeping-Car Porters Press Release, October 10, 1959 (Meany RG1-035 95 *8*); NUL Press Release, October 11, 1959 (Meany RG1-035 95 *8)*; and Theodore Kheel to Granger, October 13, 1959 (NUL I A9 *President, Correspondence with, 1959*).

[94] George Meany, *Address at the 1959 National Urban League Equal Opportunity Day Dinner*, November 17, 1959 (NUL I E31 *M*).

maintaining closed shops, and many construction unions operated such shops through their hiring halls, which were basically union offices to which contractors ceded the responsibilities of staffing. Given the seasonal and temporal nature of construction work, it made more sense for contractors to, in effect, contract out their hiring to the unions rather than maintain a permanent skilled labor force of their own. [95]

The irony of Hill's call for NLRB de-certification was apparent to all who had been watching the development of the rift between the two organizations. The NAACP had opposed the open-shop clause of Taft-Hartley, and had helped organized labor in its ongoing fight against state "right-to-work" laws, which prohibited unions from requiring all employees of a particular company to join the union, even when a majority of employees were willing. Still, Hill was careful to point out that the NAACP opposed the use of the closed shop only when it was employed to exclude Blacks. [96]

At the annual NAACP convention that June, A. Philip Randolph supported Hill's request, arguing that the open shop, while generally a noxious anti-labor tool, was necessary when unions excluded Blacks from employment.[97] But in a presidential election year, when the alliance between the NAACP and the AFL-CIO would have been especially important in advocating together for the inclusion of strong civil rights and labor rights planks in the platforms of both major political parties, the developing rift between the two organizations seemed ominous.

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[95] "NLRB Action Against Union Racism Asked," *Minneapolis Morning Tribune*, April 27, 1960.
[96] "Attacking One's Friends," Editorial, *The Twin City Observer*, May 5, 1960.
[97] A. Philip Randolph, *Address to the 1960 Annual NAACP Convention*, June 24, 1960 (NAACP III A12 *Speeches*).

Getting a "Chap on the Payroll":
Washington's Southwest Redevelopment Project and IBEW Local #26

The President's Committee on Government Contracts (PCGC), under President Eisenhower's Executive Order #10479, had the authority to investigate claims of discrimination in federal government contracts. All such contracts included an anti-discrimination clause, and if the PCGC found that a contractor or subcontractor had violated the clause, they could recommend that the contracting federal agency (or the White House, if the agency refused) revoke the contract or even debar a contractor from receiving future contracts. Where union discrimination fit in with all this was apparently a tricky question. Were unions who signed collective bargaining agreements with federal contractors in effect subcontractors, and therefore subject to the investigation and penalties of the PCGC? Or were they "third parties" over whom the PCGC had no jurisdiction? And, if subject to PCGC sanction, what exactly would the penalties be?

In the wake of the 1957 Voting Rights Act, several unions issued resolutions on civil rights. A typical resolution—such as the one adopted by the California Labor Fellowship—stated, in part:

> WHEREAS, Prejudice of any kind cannot be tolerated by freedom-loving Americans; therefore, be it
> RESOLVED, That we commend the Congress of the United States for passing the first civil rights bill in 82 years, and be it further
> RESOLVED, That we support the passage of further necessary national legislation to provide equality of opportunity for all…and be it further

> RESOLVED, That we urge our members to act with good will in their hearts and understanding in their minds, to work in their unions, their communities, and in the nation for the elimination of injustice and for a society free of race hate and fear.[98]

The membership of the IBEW, on the other hand, issued a rather nondescript and frankly blasé resolution on civil rights that year. It seemed forced, the absolute least they might have agreed to under the pressure they were apparently receiving from the umbrella organization:

> RESOLVED, That the IBEW go on record as being in support of full civil rights for all Americans and be it further
> RESOLVED, that it be the enduring goal of our brotherhood to assure to all workers their full share in the benefits of union organization without regard to race, creed, color, or national origin.[99]

Weak as this resolution was, it was largely ignored by the membership of IBEW Local #26 of Washington, D.C.

On January 19, 1959, a PCGC newsletter announced that the PCGC has "[c]alled for immediate action by the organized building trades unions to bring success to its two-year efforts to see that Negro craftsmen are not barred from construction work on Washington's Southwest Redevelopment Project, known as Area B."[100] Area B was a project supervised by the General Services Administration (GSA), the agency responsible for overseeing, among other things, the construction and maintenance of the federal government's physical plant in the nation's capital. Notably, the PCGC was not "ordering" the unions to admit Blacks or allow them to work, only "[calling] for immediate action." The newsletter included a two-year chronology of the situation which quoted Vice President Nixon: "I would like to impress upon you the urgency for taking

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[98] California Labor Fellowship Resolution, December, 1958 (NAACP III A64 *General, 2*).
[99] IBEW Resolution, October 1958 (NAACP III A64 *General 2*).
[100] PCGC Newsletter, January 19, 1959 (NUL I D16 *PCGC, 1956-60*).

affirmative action in this matter…at the earliest possible date."[101] Since the PCGC had formerly claimed no jurisdiction over discrimination by unions, this constituted a sea change in the committee's activities. Despite the relative weakness of the language used by the committee, the NAACP leadership announced that it was extremely pleased.[102]

Still, nine months later, no progress had been made on integrating the jobsite, while much progress had been made on the construction project.[103] In November the contractor, McCloskey & Co. of Philadelphia, offered to bring in Black ironworkers from outside the District to make up for the fact that the Ironworkers' Local—which the contractor was obligated to use by a collective bargaining agreement—had only two Black members. Still hoping that the project could employ local Blacks (and demonstrating the truth of the adage that "the perfect is the enemy of the good"), Nixon "rejected the proposal as evading the issue."[104] AFL-CIO President Meany, seeing the Local #26 situation as garnering particularly bad press for organized labor as a whole and personally miffed that the Local had rebuffed all of his own attempts to get them to integrate to fulfill their obligations as an AFL-CIO affiliate, "said he would personally recruit [Black] electricians for the Washington jobs and see that the union permitted them to work."[105] The matter was particularly embarrassing for Meany, as the federation had recently constructed its own headquarters in Washington without employing a single Black electrician.[106]

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[101] *Ibid.*
[102] NAACP Newsletter, January 22, 1959 (NAACP III A190 *PCGC 2*).
[103] Luther F. Jackson, "Urban League Hears of District's Problems With Job Discrimination," *Washington Post*, September 9, 1959.
[104] "Negro Job Dispute Brings Plea to U.S.," *The New York Times*, November 26, 1959.
[105] Thomas to Granger, April 19, 1960 (NUL I A63 *IRD, Memos and Reports, 1960, January-April*).
[106] Jacob Schlitt to Yeldell, March 16, 1960 (NUL II D27 *AFL-CIO, 1960-63*).

On April 28, 1960, NUL Executive Director Lester Granger wrote Nixon recommending that the PCGC ask the president to debar McCloskey on the grounds that the Washington Urban League had referred five qualified Black electricians, but that McCloskey had refused to hire them, and that the GSA had refused to take action by pulling the contract.[107] Nixon's reply noted that the PCGC had referred the matter to the GSA on April 20. The vice president went on to say that "I can assure you that the investigation now under way by the GSA will result either in the employment of qualified Negro electrical workers on current government building projects in the District of Columbia or appropriate action against the contractors involved for failure to comply with the terms of their contracts with the government." Nixon pointed with pride to the "recent first referrals of Negro rodmen on construction projects in Washington," stating that "[t]his achievement was an excellent example of what can be accomplished when champions of equal job opportunity join hands in fighting racial discrimination."[108] But on May 19, 1960, two GSA panels unanimously concluded that the five Black electricians referred by the Washington Urban League were unqualified for the type of electrical work required by the project.[109]

Immediately the NAACP, entering the Local #26 fray for the first time, claimed that the findings were a direct result of the exclusion of Blacks from the Local's apprenticeship program. Pointedly, Roy Wilkins demanded by telegram that Meany now make good on his threat to bring in non-union Black electricians:

> ALLEGED LACK OF QUALIFIED NEGROES IS DIRECT RESULT OF UNION DISCRIMINATORY PRACTICES. WE NOTE THAT YOU PREVIOUSLY SET OCTOBER 31, 1956 AS AN ABSOLUTE DEADLINE

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[107] Granger to Richard Nixon, April 28, 1960 (NUL I A23 *IRD, Correspondence Concerning, 1957-60*).
[108] Nixon to Granger, May 2, 1960 (NUL I A23 *IRD, Correspondence Concerning, 1957-60*).
[109] Jean White, "5 Negroes Unqualified For Jobs, Panels Rule," *Washington Post*, May 19, 1960.

> FOR AN END TO NEGRO EXCLUSION ON FEDERAL CONSTRUCTION PROJECTS IN THE NATION'S CAPITAL. THIS SPRING YOU PUBLICLY PLEDGED TO RECRUIT QUALIFIED NEGRO ELECTRICIANS WHO WERE NOT UNION MEMBERS. WE BELIEVE IT IS ESSENTIAL THAT YOU NOW CARRY OUT YOUR PLEDGE. FURTHER DELAY IN THIS MATTER WHICH HAS ALREADY BEEN DELAYED FOR TOO MANY YEARS WILL BE INTERPRETED BY NEGRO COMMUNITY AS ADDITIONAL EVIDENCE OF THE INABILITY OF ORGANIZED LABOR TO ELIMINATE EVEN THE MOST OBVIOUS INSTANCES OF RACISM WITHIN ITS OWN RANKS.[110]

But Lester Granger of the NUL saw something even more insidious at work, calling the GSA panel finding a farce. The Executive Director of the NUL was not exactly quick to condemn a federal agency: during World War Two, Granger had worked with defense contractors and employees as a special assistant to the Secretary of the Navy, receiving high praise from President Truman.[111] In short, when Granger criticized the GSA, he was taken seriously. Granger noted that the panelists merely compared the Black worker's written statements of their qualifications with the contractor's list of required skills (which the NUL claimed were, in any event, unnecessarily high) and found the referrals unqualified without conducting any interviews with them. Granger now called on the GSA to cancel the McCloskey contract and again recommended, if the GSA proved unwilling, that the PCGC ask the White House to do so. For his part, Meany concurred with Granger, calling the GSA panel review a "whitewash." Meany went on to say that the five Black electricians were in fact fully qualified (pointing out that one had eighteen years' experience), and agreed that the contractor should be debarred.[112]

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[110] NAACP Press Release, May 20, 1960 (NAACP III A190 *Labor, President's Committee on Equal Employment Opportunity [PCEEO]*).
[111] Thomas A. Johnson, "Lester B. Granger, 79, is Dead; Led the National Urban League," *The New York Times*, January 10, 1976; NUL.Org, http://www.nul.org/history.html, accessed September 23, 2007.
[112] Meany to Wilkins, May 27, 1960 (NAACP III A177 *Labor, AFL-CIO, 1960*).

The PCGC, agreeing with Granger and Meany that something was amiss with the GSA panels' findings, requested that the GSA panelists evaluate the white electricians already working on the job site for a comparison with the "unqualified" Blacks.[113] It remains uncertain exactly who was unqualified—the Black workers referred by the Urban League or the panelists evaluating them on behalf of the GSA. In any event, the referred workers were not hired by the contractor and were not admitted into the union. Meanwhile, work continued and the Area B project approached completion without a single Black electrician.

Expressing his own frustration with McCloskey, and in an attempt to break the impasse, the PCGC Executive Vice Chairman asked Granger to refer qualified Black electricians from outside the District of Columbia owing to "some question of the sufficiency of qualified Negro construction electricians in the District."[114] Since the contractor's previous offer to bring in Black iron workers from Philadelphia had been rebuffed, this request shows that by this point—May, 1960—the PCGC had little faith in the contractor's claims of innocence in the matter. Nonetheless, pointing out that Meany agreed with him that the original five Black electricians were qualified, Granger refused.[115]

Throughout the summer of 1960, the NUL and AFL-CIO continued to put pressure on the PCGC and the committee, in turn, pressured the GSA. Finally, in September, with construction nearly complete, and the contractor apparently more than

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[113] NUL Press Release, May 21, 1960 (NUL I A169 *Miscellaneous Speeches, 1957-1960, Granger*); "Let's Skip the Politics," Editorial, *Washington Evening Star*, May 21, 1960.
[114] Irving Ferman to Granger, May 27, 1960 (NUL I A9 *Board of Trustees, Members, Correspondence with, 1960*).
[115] Granger to John A. Roosevelt, June 2, 1960 (NUL I A9 *Board of Trustees, Members, Correspondence with, 1960*).

willing to finish construction without hiring any Black electricians at all, the GSA gave McCloskey an ultimatum: hire a Black electrician or lose the contract.[116] It took another month, but on October 20, 1960, after nearly four years of advocacy and negotiations, a Black "electrician named James Holland [was] employed by the subcontractor for the…construction project in Washington…the chap went on the payroll Wednesday and is expected to report to work today (Thursday)." Thanks to government pressure, McCloskey had been compelled to negotiate with IBEW Local #26. The union, in turn, did not want McCloskey to lose the contract or bring in non-union labor, and knew that it couldn't depend on support from the international office or the AFL-CIO in the event of a strike. The "chap," Holland, had been a member of Detroit IBEW Local #58 and as such was given a referral card—but was not granted membership in Local #26.[117]

The struggle for equal employment opportunity in the building construction trades during the 1950s was typified by a largely ambivalent PCGC, under the leadership of Richard Nixon, who saw the role of the committee as mainly that of fighting communist propaganda that depicted a United States with inherent racial inequality, and an AFL-CIO civil rights agenda, under the leadership of George Meany, that sought to ruffle the fewest rank-and-file feathers while doing the minimum necessary to appease the national civil rights organizations. These organizations, the NAACP and NUL, were forced to fight hard—one city, one job, and one local at a time—to achieve only token victories. Finally, at the risk of undermining hard-won personal relationships with powerful

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[116] Granger to Franklin Floete, September 16, 1960 (NUL I A23 *IRD, Correspondence Concerning, 1957-60*).
[117] Thomas to Granger, October 20, 1960 (NUL I A64 *IRD, Memos and Reports, 1960, May-December*); *Washington Post and Washington Times-Herald*, October 21, 1960, as described in NUL employment clippings (NUL I N90).

government and labor leaders, and in the midst of major attention-grabbing headlines elsewhere (in voting rights and school desegregation), the NAACP mounted a vigorous campaign to get the PCGC and AFL-CIO to live up to the ideals of their charters—to actively work to integrate jobs and locals. This pressure forced the PCGC, AFL-CIO, and NUL to work together in the case of Washington's Area B federal construction site, which led the GSA to issue a powerful ultimatum to the contractor, the first of its kind. The result, then, was much more than just the token hiring of "a chap on the payroll;" it was the realization that, working together, Big Labor, civil rights organizations, and elected and appointed officials could successfully pressure the heretofore intransigent federal bureaucracy to take real, and one might even say affirmative, action.

At the start of 1961, civil rights leaders could look back at two decades of progress, especially in voting rights and public accomodation. And yet such progress had largely skipped over employment, especially in the building construction trades. Tellingly, the AFL-CIO leadership still saw employment discrimination as a public image—rather than human rights—issue, while Washington still saw civil rights in general as a good job for an otherwise ornamental vice president. In January 1961, Richard Nixon handed over leadership of the contracts committee to Lyndon Baines Johnson. But as a new decade dawned, with the first president "born in this century," the possibility—and the expectation—of real progress loomed large. The "ornamental" vice president would ascend to the White House as a result of a national tragedy, bringing leadership in Civil Rights directly into the Oval Office. And other outside events would serve to change the way Washington—and the nation—saw the role of the federal government in securing equal treatment for all.

"The time has come for freedom rides in Pennsylvania."
—Herbert Hill, NAACP Labor Secretary, May 23, 1963

"It is perhaps unkind to refer to the 'Plans for Progress' as a hoax, but it is going to be very difficult to bargain with employers in the future in the event they fail 'to progress.'"
—Richard C. Wells, Washington Urban League Director of Job Development, December 20, 1961

"Go Picket the labor unions, not me."
—Philadelphia Mayor James H.J. Tate, April 14, 1963

We face a moral crisis as a country and a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk."
—President John F. Kennedy, June 11, 1963

CHAPTER TWO
Becoming the Urban Crisis: 1961-1964

The policeman's blackjack hit Stanford's head. Not once, but twice. Another officer struck Daniels, also in the head. The two young men fell to the street, stunned. Both were arrested. Daniels, who had been taking pictures, saw his camera confiscated. As he later recounted,

> I was shooting pictures of the line, when all of a sudden these construction workers rushed up and tried to crash through. The police came from everywhere. I never saw so many of them in my life. I saw one of them pull out a blackjack and hit Stanford twice on the head. I was still taking pictures when I felt a blow on the top of my head where some cop had hit me. Then some more officers rushed up and snatched my camera. They claimed I had tried to hit the officers with it. That is ridiculous. Why would I use an expensive camera as a weapon?[118]

The year was 1963, Maxwell C. Stanford and Stanley Daniels were African-American, and the police officers were white. But this didn't happen in Birmingham, Alabama. The two had gone to the demonstration at a Philadelphia school construction site at 31st Street and Susquehanna Avenue to record what the local branch of the NAACP had intended as a peaceful—if militant—protest against discrimination by local construction unions.[119] The school, as with so many other City-funded construction projects, was being built without any skilled Black construction workers, thanks to local union control of the hiring process. What Blacks were employed at the site were found exclusively in the unskilled "trowel trades," i.e. bricklayers, hod carriers, basic carpenters, and common laborers. Stanford was the 21-year old son of "one of the nation's top amateur Negro golfers," and Daniels, 22, was a recent graduate of the University of Pennsylvania and a social worker.[120] Like so many of the civil rights

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[118] Art Peters, "Camera Taken, Clubbed Says Social Worker," *Philadelphia Tribune*, May 28, 1963.
[119] "Militant" in the civil rights sense means aggressively active, or combative, as opposed to the conventional definition "engaged in warfare." Merriam-Webster's Online Dictionary, http://www.merriam-webster.com/dictionary/militant, accessed May 25, 2008.
[120] Peters, "Camera Taken," May 28, 1963.

workers in the South, Stanford and Daniels were the sons of Black America's small middle class.

The protest at the school site was the brainchild of the Philadelphia NAACP's fiery President Cecil B. Moore. Earlier that month, Moore had watched as the local branch of the Congress of Racial Equality (CORE) had successfully pushed Philadelphia Mayor James Tate to suspend construction on a City office building by staging a sit-in outside the mayor's home and later in his offices at City Hall. Moore knew that many in the city's Black community saw the NAACP as a conservative, inside-the-system organization with little interest in militant protest, and he worried that with the civil rights movement taking a more militant turn, newer organizations like CORE would attract the scores of unaffiliated youths searching for a direction in which to channel their pent-up frustrations. In the wake of suspension of construction at the office building site, Moore announced that May 24, 1963, would be the deadline for the Board of Education, the contractors, and the unions to hire skilled Black construction workers at the 31st and Susquehanna site or he would organize picketing. The City made no move, and the protest began on May 24 as scheduled.[121]

The picketers—at first only a few dozen—intended to march peacefully, but by late afternoon they numbered in the hundreds—including several local Black celebrities—and had physically blocked all entrances to the site, making it impossible for

[121] Malcolm Poindexter, "NAACP Leads 300 Pickets at 2 Schools," *Philadelphia Bulletin*, May 24, 1963; Art Peters, "LaBrum Admits Group's Power to Bar Building Bias," *Philadelphia Tribune*, May 25, 1963.

construction workers and equipment to enter. Large groups of workers attempted to push through, resulting in brief, scattered melees. Then the police took action.[122]

Picketing and violence continued at the Philadelphia school construction site for three days until the contractors agreed to hire skilled workers without regard to race. Two Black electricians, a Black plumber, and a Black steamfitter were hired to work at the site, with the consent of the Philadelphia AFL-CIO Building Construction Trades Council and the local electricians' and plumbers' unions; the Steamfitters' Local, however, withdrew from the council in protest. Herbert Hill called the Philadelphia protests "the beginning of a nationwide campaign against discrimination in unions…the young Negroes with their magnificent courage will take care of the South. But...the time has come for freedom rides in Pennsylvania."[123] Unemployed Blacks and their sympathizers would sit idly by no longer; the first long, hot summer had begun.

In its first two years in office, the Kennedy administration had proven to be more style than substance on civil rights, despite numerous promises made to Black Americans during the election of 1960. The violence in Philadelphia helped push the president, in the summer of 1963, to prioritize a civil rights agenda. The African American community and their white liberal sympathizers would no longer be content for the White House to shunt responsibility for civil rights to the office of the vice president; equal employment opportunity and other civil rights were now truly national issues. They required the national solution of direct presidential involvement, as their proponents made clear in a peaceful march on Washington. But just as President Kennedy began to take seriously his

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[122] Fred L. Bonaparte, "'Average Joes' Star in Demonstrations;" Mark Bricklin, "Tempers Flare; Girl Picket Hit, Dragged by Mob;" and Lou Potter, "Commissioner Apologizes to Irate Crowd," *Philadelphia Tribune*, May 28, 1963.
[123] John F. Morrison, "Protests Here Only the Start, NAACP Warns," *Philadelphia Bulletin*, May 30, 1963; "All Night Talks Reach Pact," *Philadelphia Bulletin*, May 31, 1963.

responsibilities to some of his politically and economically weakest citizens, he was struck down by an assassin's bullet, throwing into question the future of federal involvement in equal employment opportunity.

The Building Construction Trades and Federal Contracts

Industrial construction in the United States during the 1960s involved nineteen separate jobs, and the vast majority of unionized workers at these jobs were organized into local branches (locals) of nineteen international and national unions, eighteen of which were affiliated with the AFL-CIO, which served them through its Building Construction Trades Department (BCTD).[124] Like the parent AFL-CIO, the BCTD had local councils throughout the country that coordinated the affairs of the building trades for their cities and regions. In addition, some locals, such as the mostly-Black independent plumbers of St. Louis, were affiliated with the Congress of Independent Unions (CIU), an integrated consortium of local unions (not to be confused with the CIO). Finally, some local unions around the country remained unaffiliated with larger organizations altogether.[125]

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[124] The nineteenth, the International Brotherhood of Teamsters, was expelled from the AFL-CIO for corruption in 1957. The Teamsters—or truck drivers—were involved in all phases of building construction, delivering and removing materials as necessary.

[125] The eighteen BCTD-affiliated international and national unions were the Asbestos Workers, Boilermakers, Bricklayers and Cement Masons, Carpenters, International Brotherhood of Electrical Workers, Elevator Constructors, Operating Engineers, Granite Cutters, Laborers, Iron Workers, Lathers, Painters, Plasterers, Plumbers and Pipefitters, Roofers, Sheet Metal Workers, Marble Workers, Stone Cutters, and Granite Cutters. Because different locals had affiliated at different times, some having organized on their own and others having been organized directly by the parent international or national union, the names of the actual locals varied. One example was the Laborers union, which in many localities was called the Hod Carriers. Some cities had separate locals for plumbers and pipefitters. The Philadelphia Steamfitters were a local of the International Boilermakers' Union. Another common local union was the Tile Setters union, which affiliated with the Roofers. See, for instance, Joel Seldin, "NAACP Drive on Job Rights in the Unions," *New York Herald-Tribune*, October 17, 1962; United States Conference of Mayors (USCM), *Changing Employment Practices in the Construction Industry*, November 3, 1965 (NAACP III A178 *1965*); and Ted Schafers, "Opening of Arch in Jeopardy: Dispute Stops Riverfront Visitor Center Project Work," *St. Louis Globe-Democrat*, January 12, 1966.

Building construction work generally included the construction of an edifice—the beams, walls, and roof of a building—as well as more detailed interior work, like plumbing, electricity, and painting. Workers from different crafts often worked together in overlapping schedules, with cement workers, ironworkers, and operating engineers, for instance, doing their respective jobs together on edifice construction of the higher floors, plumbers and electricians working on middle floors, and painters and plasterers working on the lower floors.[126]

Because of the outdoor nature of the initial stages of construction work, construction projects in northern cities did not usually begin during the winter, but often continued into the winter as the projects moved into the interior phases. As a result, construction employment was largely cyclical, with edifice workers generally finding more employment during the warmer months and interior workers generally finding more employment during the fall and winter. Construction workers either accepted temporary unemployment as a regular, annual condition or found other work during the off-season. But because so many workers faced unemployment regularly, the unions tended to focus their activities on limiting the number of available workers in their crafts as a means of ensuring as many employment opportunities for their members as possible.[127]

Many construction contractors and subcontractors for government and other industrial projects had exclusive hiring agreements with their local unions, despite the illegality of such practices under the National Labor Relations Act. These agreements

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[126] USCM, *Changing Employment Practices*.
[127] *Ibid*. See also, for instance, Vincent G. Macaluso to Edward C. Sylvester, November 4, 1965 (Records of the Department of Labor [DOL], Office of Federal Contract Compliance [OFCC], Assistant Director for Construction [ADC] Box 26, *Correspondence, 1965-1966* folder, National Archives and Records Administration, College Park, MD); Bennett O. Stalvey, Jr., to Macaluso, August 9, 1966 (DOL OFCC ADC 3, *Philadelphia—Correspondence*).

were often referred to as "hiring hall agreements," and the union workers available for jobs as "benched workers," suggesting a picture of unemployed construction workers assembled at their union halls, patiently seated on benches, perhaps reading newspapers. The reality was more complicated (and much more reasonable from the perspective of the workers). Hiring halls existed, but they were usually simply the offices of the local unions, where only the business manager and perhaps a clerical staff member or two spent their days. The "benched" workers would usually wait at home for referrals, only visiting the union hall to conduct membership-related business or engage in fellowship activities: many union halls had recreational facilities like pool tables. Contractors justified these exclusive agreements because the unions guaranteed that their referred workers were adequately and uniformly trained in the particular craft; because workers could be obtained through hiring halls quickly and conveniently, often with as little as a phone call; and because the contractors were often former union journeymen themselves, who knew the locals' practices and many of the individual workers.[128]

So as to limit the pool of available workers, skilled unions kept membership to the minimum necessary to meet their exclusive hiring agreements. In order to accomplish this, they carefully controlled entry to their crafts by granting journeyman status to the fewest applicants possible. A journeyman in these trades was a trained, qualified craftsman, certified by the union to perform the tasks associated with the trade. To attain journeyman status, the prospective union member usually needed to obtain sponsorship by current members of the local (the number varied), and evidence of training. Such training might have been obtained in the military, at a vocational school, or through the

[128] "Jim Crow's Sweetheart Contract," *Greater Philadelphia Magazine*, February 1963; USCM, *Changing Employment Practices*; and Howard G. Foster, "Nonapprentice Sources of Training in Construction," *Monthly Labor Review*, February, 1970.

union's own apprenticeship program. Although technically governed by Joint Apprenticeship Committees (JACs) comprised of both union members and contractors, youths who met basic aptitude criteria—usually a high school diploma or equivalent and successful completion of written and oral examinations peculiar to the craft—typically were not admitted into apprenticeship programs unless they could demonstrate that they would be admitted to the union as journeymen upon completion of the training. As a result of this rigorous gate-keeping, crafts like the plumbers, electricians, and sheet metal workers in particular limited their membership to relatives (especially sons) and friends of existing members. And since the existing members were nearly all white, new members were almost always white as well.[129]

Federal government and other large industrial construction projects typically began with a bidding process to hire a general contractor. Prospective general contractors—companies with sufficient staff, resources, and experience in the field—would assess the contracting agency's (or industrial firm's) description of the project, usually as defined by an architect (or team of architects); determine the overall cost of the project and their ability to complete it within the given time frame; add a reasonable profit; and submit a detailed bid. Generally speaking, the lowest-bidding contractor capable of completing the project according to the listed terms would receive the contract.[130]

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[129] *Ibid.* Readers familiar with the apprentice-journeyman-master system of the medieval guilds will wonder who the "master craftsmen" were in this system; the contractors and foremen filled such roles *de facto*.

[130] See, for instance, USCM, *Changing Employment Practices*; Macaluso to Sylvester, November 4, 1965 (OFCC ADC26, *Correspondence, 1965-1966*); Stalvey to Macaluso, August 9, 1966 (DOL OFCC ADC 3, *Philadelphia—Correspondence*); and Marc Linder, Wars of Attrition: Vietnam, the Business Roundtable, and the Decline of Construction Unions (Iowa City: Fanpìhuà Press, 2000).

General contractors might engage in some of the construction activities themselves, but usually they hired, often through a similar bidding process, several subcontractors to work on individual aspects of the project (and subject to the same provisions as found in the general contract, including the non-discrimination hiring clause in the case of federal contracts). For instance, plumbing companies would be hired as subcontractors to assemble and install the plumbing, and electrical companies would be hired as subcontractors to install the electrical wiring, lighting, and outlets. Each of these subcontractors generally had hiring agreements with particular local unions in their field, and would request a number of journeymen and apprentices as referrals for the job.[131]

In sum, heavy construction functioned as an incredibly detailed and complicated operation. Local unions referred apprentices and journeymen to individual subcontractors, who worked on individual aspects of construction. Several subcontractors worked under the oversight of a general contractor, responsible for overall construction of the project. Depending on the amount of federal construction projects being completed in any given city, several general contractors might be under the oversight of individual local representatives of federal contracting agencies, such as the General Services Administration (GSA) or the Department of Defense (DOD). Somehow these contracting officers were expected to ensure that the provisions of the contracts were enforced, including the non-discrimination clause. As we have seen, enforcement of this clause was often neglected based on an overriding need to finish a project, and the Truman and Eisenhower administrations had established committees (the PCGCC and PCGC, respectively) in an attempt to enforce it. In 1961, the Kennedy administration would take

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[131] *Ibid.*

another look at the problem. The result was the President's Committee on Equal Employment Opportunity.

The President's Committee on Equal Employment Opportunity

In 1961 the nation saw the advent of a new presidential administration, elected on a platform that included, among other things, a strong commitment to further the cause of civil rights and equal employment opportunity. President-elect John F. Kennedy assured the leaders of the major civil rights organizations that not only was he opposed to the spending of federal dollars on anything which promoted discrimination or segregation, but that he felt that he should use federal dollars affirmatively to wipe out discrimination and segregation where they existed. Meanwhile, with nonwhite (primarily African American) unemployment twice as high (and in some age groups three times as high) as that of whites, Vice President-elect Johnson's staff set to work on crafting a stronger federal contract compliance regimen, which became a recommendation for a new presidential executive order dealing with equal opportunity in federal contract employment. These recommendations ultimately asked that President Kennedy strengthen the power and authority of the contract compliance committee—the President's Committee on Government Contracts (PCGC).[132]

On March 6, 1961, President Kennedy issued Executive Order No. 10925, combining the PCGC with its adjacent PCGEP (President's Committee on Government

[132] DOL Bureau of Labor Statistics (BLS) Report, April, 1961 (NUL II A53 *Washington Activities, Department of Labor*); Joseph Alton Jenkins to Lyndon Baines Johnson (LBJ), January 2, 1961 (Records of President Lyndon Baines Johnson [LBJ], Vice Presidential Papers [VP], Civil Rights file [CR], Box 8, *Correspondence Relating to Drafting of Executive Order* [*CRDEO*] folder, Lyndon Baines Johnson Presidential Library and Museum, Austin, TX); Gerald W. Siegel to LBJ, January 3, 1961 (LBJ VP CR 8 *CRDEO*).

Employment Policy, which handled complaints of discrimination in federal government employment) into a single new committee, the President's Committee on Equal Employment Opportunity (PCEEO), under the leadership of Vice President Johnson. The differences between the PCEEO's contract compliance functions and those of the old PCGC included a "good faith" clause, which stated that contractors who demonstrated a "good faith" attempt to integrate would be deemed to be in compliance. The order specifically mentioned labor unions and authorized the new PCEEO to attempt to "cause any labor union…to cooperate with, and to comply in the implementation of, the purposes of this order" and to hold hearings to that effect. It gave the committee investigatory powers of its own rather than expecting it to rely on the contracting agencies' investigations, encouraged it to promote equal opportunity programs in apprenticeship and training, and gave it explicit contract revocation and contractor debarment powers. No longer would the committee have to rely on the actions of the contracting agency or the White House to censure a contactor. Contractors would now be required to submit progress reports and open their books to the committee, but this requirement could be waived if the committee awarded the contractor a "certificate of merit." As with the old PCGC, the vice president would serve as chairman and the Secretary of Labor as vice chair, and the membership would consist of the heads of the contracting agencies and a number of citizens appointed by the president.[133]

Vice President Johnson moved quickly to ensure that the new committee appeared to outdo the old PCGC without adding significantly to his own portfolio. While Johnson clearly wanted to appear to be working actively to further civil rights (and probably—at

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[133] John F. Kennedy (JFK), Executive Order No. 10925 (NUL II A3 *B, 1961*).

least to some extent—honestly wanted to alleviate the conditions of African Americans), he also maintained a politician's concern with appearance. In short, he wanted to appear to have a vigorous committee that met often, but didn't actually want to attend all that many meetings. An assistant recommended that the PCEEO establish sub-committees that would meet monthly so that the full committee would only have to meet quarterly. The Nixon committee had met monthly, and the subcommittees would be a device whereby Johnson's new committee could meet less frequently yet appear to be doing more work.[134]

Still, formation of the new PCEEO received qualified praise from the mainstream civil rights community. The NAACP called it "a major step forward to end racial discrimination in this country," and stated that LBJ had "an unparalleled opportunity to set a historic pace in this phase of the march toward fair treatment for all Americans."[135] The Washington branch of the NUL, which served as the *de facto* D.C. office for the national organization, lauded the Executive Order and urged the committee to strive for universal merit employment rather than a token Black worker or two, as with the old PCGC.[136]

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[134] George E. Reedy to LBJ, February 28, 1961 (LBJ VP CR 8 *CRDEO*). Dennis C. Dickerson, in Militant Mediator: Whitney M. Young, Jr. (Lexington: University Press of Kentucky, 1998), presents Johnson as more interested than Kennedy in civil rights, and frustrated that his subordinate status prevented his pursuit of a more active civil rights agenda. Dickerson glosses over *Plans for Progress* (see below), noting that the program served to cement Young's relationship with the vice president but failing to see it the way most at the NUL saw it—as propaganda (pp. 245-246). Hugh Davis Graham, in The Civil Rights Era: Origins and Development of National Policy (NY: Oxford University Press, 1990), depicts Johnson as "oddly free of the racial prejudice that was the hallmark of his native region" (p. 43) but concerned that the Office of the Vice President had insufficient authority to successfully manage the PCEEO chairmanship (pp. 38-39) and more interested in exploring his limited legislative authority. Doris Kearns, meanwhile, mentions the PCEEO only briefly in her teleological chapter on Johnson's vice presidency (Lyndon Johnson and the American Dream [NY: Harper & Row, 1976], p. 162).

[135] NAACP Press Release, March 10, 1961 (NAACP III A175 *Kennedy Miscellany 2*).

[136] "Tucker Lauds U.S. Move on Job Bias," *Washington Post*, March 17, 1961.

President Kennedy had promised a strong, comprehensive legislative program for civil rights during the campaign, but as president, he realized that he would need support from the powerful Southern Democratic senators in order to accomplish the other aspects of his agenda. One way he strove to maintain that support had been his choice of Lyndon Johnson as his running mate. Kennedy worried that he couldn't be too aggressive on civil rights, and for most of his administration he failed to adequately address the issue. Meanwhile, Republicans such as Senator Everett Dirksen stepped in to fill the breach, pressing some of Eisenhower's old civil rights bills and causing liberal northern Democrats to fear losing their Congressional seats in 1962 thanks to administration inactivity. The liberal Democrats in Congress would press ahead with civil rights legislation, with or without administration approval; meanwhile, the President would, like his predecessor, vest his civil rights agenda in his vice president.[137]

Johnson, knowing full well the political ramifications of vigorous activity, led the PCEEO accordingly, in a two-pronged "attack" on discrimination in employment. First, the PCEEO would concern itself with improvements in apprenticeship opportunities (education being an old paternalistic concern of Johnson's, dating back to his days as a teacher of poor Mexican-Americans in Cotulla, Texas). He named AFL-CIO President George Meany—now a member of the PCEEO—chairman of the subcommittee on Skill Improvement, Training, and Apprenticeship. Second, employment discrimination would be generally addressed by voluntary agreements with big federal contractors called *Plans for Progress*, starting with the Lockheed-Marietta plant near Atlanta, Georgia. Otherwise, it was business as usual; most of the PCGC's staff was retained, and by the end of

[137] For more on Kennedy, Johnson, and the PCEEO, see Graham and Kearns, *op. cit.* n. 134.

October a PCEEO newsletter reported that the committee had received 443 complaints of discrimination in contract work. Of these, 322 were under investigation; 50 had been withdrawn or dismissed (either for "no cause" or "no jurisdiction"); and 71 had been "adjusted"—successfully conciliated by staff lawyers for the committee.[138] Like the Nixon committee, Johnson's PCEEO took refuge behind big numbers that ultimately represented few jobs.

Over the course of the summer of 1961, several building trades unions agreed to include non-discrimination clauses in their apprenticeship guidelines, and on August 8, 1961, the Meany subcommittee commended management and labor organizations for implementing equal opportunity provisions in apprenticeship.[139] The IBEW and the Bricklayers Union, along with their parallel contractor associations, "have adopted strong anti-discrimination provisions in their apprenticeship standards," and "first steps towards launching a Plan for Progress program among unions have been taken."[140]

On October 6, 1961, the PCEEO Executive Director called Lockheed's implementation of its *Plan for Progress* a success, and stated that "after 20 years of failure," the government would now be vigorously enforcing equality of opportunity in government contracts. A press release stated "within the next month several more of the 50 largest defense contractors are expected to sign Plans for Progress."[141]

Johnson put Georgia lawyer and PCEEO member Robert Troutman, Jr., in charge of *Plans for Progress*. On November 1, Troutman recommended *Plans for Progress* be

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[138] PCEEO Press Release, October 31, 1961 (Meany RG1-038 78 *12*).
[139] PCEEO Press Release, August 8, 1961 (Meany RG1-038 78 *9*).
[140] PCEEO Press Release, October 31, 1961.
[141] John G. Field to LBJ, October 6, 1961 (LBJ VP Subject File [SF] 85 *PCEEO, July-December, 2*); "Kennedy Aide Warns on Job Discrimination," *Chicago Sun-Times*, October 12, 1961; and PCEEO Press Release, October 31, 1961.

signed by the nation's 100 largest employers who were not defense contractors. Interestingly, what Troutman was proposing was an expansion of PFP beyond the scope of the PCEEO, that is, beyond federal contract employment.[142] The committee would have no method of enforcing these agreements, but as a public relations ploy, they would do just fine.

By the end of 1961, however, the lid was off the teapot, as the normally reserved Urban League criticized the voluntary nature of *Plans for Progress*. Stating that *Plans for Progress* agreements basically explained how the contractors have already been in compliance—and continued to be in compliance—with the law, the Washington Urban League pointed out that

> the agreements or joint statements lifts [sic] only certain items [of Executive Order No. 10925] which contractors are obliged to do, and leaves out others of equal importance. It is entirely possible that a contractor may consider that his "Plan for Progress," which was executed in the White House, at least by implication, superseded his responsibilities under [the order].[143]

Indeed, the last section of Executive Order No. 10925 allowed the Committee to grant "Certificates of Merit" to some contractors, and thereby waive their reporting requirements, and it was this very loophole that *Plans for Progress* exploited. The UL statement continued,

> none of the "Plans for Progress" contain compliance procedures or any of the even limited safeguards provided by Executive Order 10925...it is perhaps unkind to refer to the "Plans for Progress" as a hoax, but it is surely not far from it...it is going to be very difficult to bargain with these employers in the future in the event they fail "to progress," if not impossible to properly investigate complaints against them while they have a plaque on the wall attesting to their enlightenment.[144]

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[142] Robert Troutman, Jr., to LBJ, November 1, 1961 (LBJ VP SF 85 *PCEEO July-December, 2*).
[143] Richard C. Wells to Sterling Tucker, December 20, 1961 (NUL II D31 *PCEEO 1961-2*).
[144] *Ibid.*

The Kennedy administration had come to the White House full of high hopes and promise, quickly establishing a stronger enforcement mechanism and the promise to do better than Nixon's PCGC. But after its first year in office, strong questions persisted about the commitment of the PCEEO and its chairman, Vice President Johnson, to the cause of equal employment opportunity. Triangulating their political potency between civil rights advocates in the North, powerful anti-rights forces from the South, and northern corporations, the administration sought the appearance of working towards civil rights, and the PCEEO appeared to most, at least at first glance, to be doing that work. In reality, the Committee was mainly an empty vessel.[145]

On March 30, 1962, the PCEEO submitted its first annual report to the president. The report contained the first real set of numbers since the previous October, and—at least in comparison with the work of the predecessor PCGC—the numbers looked good. In contract employment, the committee received 704 complaints during its first year of operation (compared with 1,042 for the entire seven and a half-year span of the PCGC), with 215 "carried through to completion. Of these, 139 or 65% resulted in corrective action."[146]

Two weeks later, Herbert Hill of the NAACP addressed the committee on behalf of his organization. While he felt that Executive Order No. 10925 was an improvement over the previous policy, "policy is not practice." Hill told the committee that there was still not enough evidence to judge the effectiveness of the PCEEO. He called *Plans for Progress* just another public-relations entity, "part of the same sordid pattern." And he called Robert Troutman, the PFP head, a tool of Southern senators, but correctly said that

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[145] MacLean, in Freedom Is Not Enough, concurs that *Plans for Progress* was largely a failure (p. 44).
[146] PCEEO Report, March 30, 1962 (LBJ VP SF 139 *Labor, PCEEO, January-April*).

the real responsibility lay not with Troutman but with the president, the vice president, and Secretary of Labor Arthur Goldberg. He called the PCEEO Kennedy's only civil rights initiative, and pointed out that the president had not even attempted to get it mandated with legislation.[147]

Even as Hill was sharing his concerns about the PCEEO, Meany and Johnson began considering the matter of compliance among the unions. Development of what would ultimately come to be called *Union Programs for Fair Practices* began in late 1961, when the PCEEO entered into a discussion with members of the AFL-CIO Executive Council on the subject of creating "Plans for Progress" for unions. By April 1962, the AFL-CIO Executive Council and the PCEEO had agreed on a draft, and had chosen the new title so as not to confuse labor's *Programs* with management's *Plans*.

Meany's membership on the PCEEO blurred the dividing line between Big Labor and the federal government, and the initial drafts of the *Programs* clearly bore his stamp. Like *Plans for Progress*, the *Union Programs for Fair Practices* extended voluntary compliance coverage over constituencies that were already partially covered, but also had the potential to serve as union propaganda, relating the signatories' past compliance efforts and their current anti-discriminatory regimens. In brief, the *Programs* committed the union signatories to do what their constitutions said they already had to do, but also to actively recruit non-whites for apprenticeship and membership and to work with employer groups on the Joint Apprenticeship Committees to set up equal opportunity machinery in such programs.[148]

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[147] Statement of Herbert Hill to the PCEEO, April 6, 1962 (NAACP III A184 *Herbert Hill, Statements*).
[148] PCEEO Press Release, November 15, 1962 (LBJ VP CR 12 *Press Releases*).

One hundred and twenty union leaders signed the agreements on November 15, 1962, although these did not include two important building trades unions: the IBEW and the Sheet Metal Workers. That the leaders of these critical building trades refused to sign agreements as innocuous as the *Programs*—which did little more than reiterate the non-discrimination clauses in their own unions' constitutions—demonstrated their continuing inability to enforce their own statutes at the local level.[149]

In June 1962, the federal government announced that it would be constructing additional buildings in Washington as well as overhauling Pennsylvania Avenue. In response to the news, Herbert Hill wrote Vice President Johnson to remind him of the problems faced by the Nixon committee in integrating IBEW Local #26 and pointed out that the other construction unions in the district were almost as discriminatory. Hill asked that the United States Employment Service be used—rather than the unions—to obtain qualified workers for the jobs, warning of a potential for massive protests otherwise. In response, the PCEEO announced in July that it would undertake a major program of compliance reporting from building contractors in the District of Columbia. By November, the committee had developed special compliance reports for the entire construction industry, and announced that the new system would go into effect January 1, 1963 (which was, incidentally, the hundredth anniversary of the emancipation of the slaves).[150] But it would not be Herbert Hill's advice that ultimately forced a change in the

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[149] List of Signers of Union Programs for Fair Practices, November 15, 1962 (LBJ VP CR 13 *Union Programs for Fair Practices* [UPFP]); and Hobart L. Taylor to LBJ, February 27, 1963 (LBJ VP SF 198 *Labor, PCEEO, March-May*).

[150] Herbert Hill to LBJ, June 27, 1962 (NAACP III A190 *R Miscellaneous*); John D. Pomfret, "U.S. Plans Drive for Job Equality," *New York Times*, July 29, 1962; PCEEO Press Release, October, 1962 (NUL II A42 *PCEEO, 1962, 1*); and PCEEO Press Release, November 16, 1962 (LBJ VP Collection of George E. Reedy [Reedy], Box 22 *Press Releases, 1962* folder).

vice president's attitude towards civil rights and reformed the PCEEO; that would come thanks to renewed flak over *Plans for Progress,* the committee's showpiece program.

Controversy over *Plans for Progress* and the leadership of Robert F. Troutman came to a head in late June 1962, when a *New York Times* article described a developing rift within the operations of the PCEEO between the "forced compliance" method of the committee's executive director on the one hand, and Troutman's "voluntary compliance" (i.e. *Plans for Progress*) method on the other. The article discussed Troutman's connections with Southern industry and politicians and suggested that he might be working for the PCEEO for some ulterior fiduciary motive.[151] A subsequent editorial favored the enforcement approach, stating that Troutman's *Plans for Progress* voluntary approach had yielded only 2000 jobs, and at that rate, it would take thousands of years to end discrimination in government contract employment.[152] In July, the annual NAACP convention passed a resolution calling the "voluntary approach [of *Plans for Progress*] virtually useless."[153] Finally, in early July former NUL Director Lester Granger joined the anti-Troutman chorus, relating how he had a year earlier expressed to Troutman that such "re-education" of business leaders as contained in *Plans for Progress* had been tried since 1947 to no avail, and that he felt it was a shame that the PCEEO, which had real power, would waste those powers getting businessmen to sign statements as they always had—statements which would continue to be ignored. An aide admonished Johnson to

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[151] Peter Braestrup, "U.S. Panel Split Over Negro Jobs," *New York Times*, June 18, 1962.
[152] Editorial, *New York Times*, June 19, 1962. The editorial did not give any figures on how many jobs had been created by the enforcement approach.
[153] NAACP Resolution, July, 1962 (NAACP III A14 *Resolutions*).

take Granger's opinion seriously, warning that he was an important voice in moderate black America, and pointing out that even if he didn't, many Blacks did. [154]

On August 20, 1962, vice presidential aide Hobart Taylor became executive vice chairman of the PCEEO, responsible for overseeing *Plans for Progress*, *Union Programs for Fair Practices*, and all compliance operations; three days later, Troutman submitted his resignation to President Kennedy.[155] The administration had removed a white southerner and replaced him with a Black Detroit lawyer. The question remained, however, whether Taylor represented the new face of a public relations entity or a new direction in the committee's operations.

Hobart Taylor, Jr., was the son of a prominent Black businessman from Houston, Texas. In 1948 his father had been the first Black delegate to a Democratic national convention, and was a close friend to Lyndon Johnson. The younger Taylor was educated at Howard University and the University of Michigan Law School and served as a clerk for the chief justice of the Supreme Court of the State of Michigan. From 1949 to 1958 Taylor served as Assistant District Attorney in Detroit and Corporation Counsel for Wayne County, Michigan, at which point he became a named partner in a prestigious Detroit law firm. His brief tenure outside public service ended in 1961, when on the recommendation of his father, Taylor became a vice presidential aide.[156]

The resolution of the Troutman affair and the appointment of Taylor to run the committee's operations gave Johnson the impetus to overhaul the entire way the PCEEO

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[154] Lester Granger, "Manhattan and Beyond" column, July 7, 1962 (LBJ VP SF 139 *Labor, PCEEO, July-September*), and Reedy to LBJ, July 20, 1962 (LBJ VP SF 139 *Labor, PCEEO, July-September*).
[155] PCEEO Draft Press Release, August 20, 1962 (LBJ VP CR 12 *Press Releases*); White House Press Release, August 23, 1962 (LBJ VP SF 139 *Labor, PCEEO, July-September*).
[156] PCEEO Press Release, April 7, 1964 (Meany RG1-038 73 *12*); Richard Allen Burns, "Taylor, Hobart T., Sr.," *The Handbook of Texas Online*, http://www.tsha.utexas.edu/handbook/online/articles/TT/fta30.html, accessed November 17, 2007.

did business and, for that matter, his own commitment to equal employment opportunity. Until now, the criticisms of Hill and others had been largely correct: aside from an increase in contract discrimination complaints, the committee was largely a public relations venture, like its predecessor. Week after week, month after month, the PCEEO had churned out press releases touting the numbers—these many complaints resolved, those many companies signed up with *Plans for Progress*. Considering the enhanced powers of the PCEEO over the PCGC, i.e. inherent investigatory and debarment authority, the committee really hadn't accomplished all that much. But by the end of 1962, with Hobart Taylor running the committee's operations and with a newfound attitude towards contract compliance as paramount, Johnson resolved to use his political muscle in the cause of equal employment opportunity.[157]

In 1963, the vice president finally went to work. At a January 17 address to a banquet for *Plans for Progress* signers, the vice president not only reminded the CEOs that their *Plans* did not relieve them of their obligations under Executive Order No. 10925, but told them that as signers they were expected to go further, actively recruiting nonwhite trainees for future hiring and engaging in activities to help eradicate prejudice throughout society. Six days later, he told an assembly of compliance officers of the federal contracting agencies that ensuring compliance with the equal opportunity clause in federal contracts was the core of their mission for their agencies. And the PCEEO newsletter that month would show a stark contrast to earlier iterations: reports of visits and speeches by committee members and staff were shunted to the back, while the front

[157] Graham, in The Civil Rights Era, does not see the resolution of the Troutman affair as the watershed moment that I do, noting that the performance of the PCEEO before Troutman's resignation was not as lackluster as civil rights groups contended (pp. 58-63). But Graham cites no non-administration sources for his opinion.

page consisted of a list of achievements for the year, including the debarment of one contractor (the first ever for a violation of the non-discrimination clause) and a 71% action rate in contract compliance complaint dispositions.[158]

In February and March, Johnson tasked Taylor and the committee staff with working to get the electricians and sheet metal workers to sign *Union Programs for Fair Practices*; meanwhile, Taylor continued with the nitty-gritty work of compliance complaint processing. And on May 29, 1963, the vice president commended Taylor and the Committee's staff for resolving 75 contract compliance cases per month, compared to the old PCGC's 23.[159] But as Philadelphia erupted into violence over discrimination in construction employment and other northern cities followed suit, it remained an open question whether the changes instituted at the PCEEO by the vice president would be sufficient to make an impact on employment discrimination.

1963: The First Long, Hot Summer

Philadelphia had been the scene of racial violence before 1963. During the Second World War, white bus, train, and trolley drivers and mechanics struck the city's rapid transit system after a majority of workers voted to be represented by the Transport Workers' Union, an affiliate of the CIO that was more sympathetic to the needs of African-American workers than the AFL-affiliated Philadelphia Rapid Transit Employees' Union. As the first Blacks were promoted out of the shops and placed behind the wheels, some

[158] PCEEO Press Releases, January 17 and 23, 1963, and PCEEO Newsletter, January 1963 (LBJ VP Reedy 23 *Press Releases 1963*).
[159] Hobart L. Taylor to LBJ, February 27, 1963 (LBJ VP SF 198 *Labor, PCEEO, March-May*); Reedy to LBJ, March 2, 1963 (LBJ VP SF 198 *Labor, PCEEO, March-May*); and PCEEO Press Release, May 29, 1963 (LBJ VP CR 12 *Press Releases*).

six thousand white employees walked off the job, shutting down Philadelphia's mass transit system for six days in 1944.

> Ugly rumors began to flood the city; hotheads and hoodlums began breaking windows of white shop owners and attacking automobilists in Negro neighborhoods; looting followed. It became unsafe for Negroes to travel in certain areas of the city, and a number of colored travelers were attacked by whites. Three white motorists drove through a Negro neighborhood and without warning or stopping, shot a 13 year old Negro lad—all of the ingredients of a first-class race riot were boiling and brewing in the cauldron of a city of 2,000,000 persons, three hundred thousand of whom were colored, smarting under the insults being heaped upon them by bigoted [Philadelphia Transit Company] strikers and sympathizers.[160]

Thanks to a sympathetic media, local and federal government officials, the army, and "the Philadelphia police, which all reports credit for keeping order, rather than creating disorder," tensions were relaxed in Philadelphia. Secretary of War Henry Stimson ordered the arrest of several striking workers and threatened to revoke the draft deferments of the rest, and the strike ended. Philadelphia workers were able to commute to the factories where they continued to participate in America's war effort, and the Black drivers remained on the job. Local needs had pressed the federal government into response. But the sympathy of government and media rested squarely on wartime production needs. It remained to be seen, as Black migrants continued to enter the city in ever-greater numbers during the 1940s and 1950s, if Philadelphia could avert worse bloodshed during peacetime.[161]

During the 1950s, Philadelphia's growing Black community faced a host of challenges. Between 1940 and 1960, Philadelphia saw an increase in population typical for the Second Great Migration. The Black population more than doubled during these

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[160] Theodore Spaulding, "Philadelphia's Hate Strike," *The Crisis*, September 1944.
[161] *Ibid*; Allan M. Winkler, "The Philadelphia Transit Strike of 1944," *Journal of American History*, Vol. 59, No. 1 (June, 1972), pp. 73-89; and Matthew J. Countryman, Up South: Civil Rights and Black Power in Philadelphia (Philadelphia: University of Pennsylvania, 2006), p.30.

years, from 250,000 to 529,000. Many of the new arrivals settled in North Philadelphia, then a middle-class white neighborhood. But as Black numbers grew, whites fled to the suburbs of Bucks and Montgomery Counties or across the Delaware River into New Jersey. As other neighborhoods were "defended" by their white residents—through restrictive title covenants or even violence—North Philadelphia rapidly became the City of Brotherly Love's Harlem.[162]

As the whites left, so too did government and financial interest, and the neighborhood declined. Sewers went into disrepair, and garbage trucks skipped over entire blocks. Crime increased and the white police force began to behave as internal colonialists—keeping at bay a local, downtrodden culture alien to their own interests and experiences. Residential buildings fell into disrepair. Mostly employed outside the neighborhood as unskilled workers, domestics, and the like, Black workers turned over much of their small incomes to white landlords. Retail businesses, largely owned and operated by whites, took the rest of the money out of the neighborhood.[163]

In February 1963, an article in *Greater Philadelphia Magazine* detailed the problems faced by African-American skilled workers in Philadelphia, mostly in the building trades. Unions worked in tandem with the local school board to run their apprenticeship programs. The local office of the Bureau of Apprenticeship and Training (BAT), husbanding federal funds, allowed the schools only to admit youngsters likely to be employed, and thus the union sponsorship practices, whereby only whites were

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[162] Leon H. Sullivan, Build, Brother, Build (Philadelphia: Macrae Smith, 1969), p. 54. For a definition of "defended" vs. "undefended" neighborhoods, see Thomas J. Sugrue, The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit (Princeton: Princeton University Press, 1996), pp. 209-258.

[163] Sullivan, pp. 56-58. For more on internal colonialism, see Peter Bohmer, "African-Americans as an Internal Colony: The Theory of Internal Colonialism" in John Whitehead and Cobie Kwasi Harris, Eds., Readings in Black Political Economy (Dubuque, IA: Kendall/Hunt, 1999).

admitted to membership, served to exclude blacks from federally- and City-funded apprenticeship programs. Those few Blacks who did manage to complete training outside of the formal apprenticeship programs would not be sponsored for journeyman membership in the unions. The article concluded by pointing out that no Philadelphia local actually had discriminatory clauses in their constitutions or bylaws, but only a few had statutes *against* racism, and even fewer actually had black members.[164]

Working to force the City of Philadelphia to live up to its responsibilities to its Black citizens was Cecil B. Moore. A native of West Virginia, Moore served in the United States Marine Corps during World War II and attended Temple University Law School in Philadelphia, working as a whiskey salesman to pay his way.[165] During the 1950s, Moore joined the Citizens' Committee against Juvenile Delinquency as head of the Law Enforcement Committee, and he later served as that organization's president.[166] In 1959, Moore gained a militant reputation in the local branch of the NAACP when he organized an electoral challenge to the staid branch leadership that resulted in the retirement of the branch president. The subsequent election went against Moore's slate, but Moore's reputation as a troublemaker for the old guard was cemented as he filed a divisive (if ultimately fruitless) appeal of the results with the organization's national office.[167] Moore bided his time, and by 1963 his brand of charismatic leadership and militant protest was gaining in popularity. He won election to the branch's presidency and immediately declared his intention to move Philadelphia's Black community to protest: "I will expect my people to stand up and be counted…or have their names listed

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[164] "Jim Crow's Sweetheart Contract," *Greater Philadelphia Magazine*, February, 1963.
[165] Gerald L. Early, This Is Where I Came In: Black American in the 1960s (Lincoln, University of Nebraska Press, 2003), p. 89.
[166] Countryman, pp. 95-98.
[167] Countryman, pp. 85-86.

as an enemy of democracy."[168] With the allocation by the City of $31 Million for the construction of schools in the city's Black neighborhoods, Moore resolved that the time was right to take action against the discriminatory construction unions.[169]

School construction was not the only area where the City of Philadelphia was spending money to pay construction crews supplied by all-white unions. Across the street from City Hall, the City was constructing the Reyburn Administration Building, and on March 31, the local branch of the Congress of Racial Equality (CORE) gave Philadelphia Mayor James Tate a week to take action against racial hiring policies on the site, threatening sit-ins and picketing. The City took no action against the contractors or the unions working on the site, and on April 14, CORE members picketed Mayor Tate's house. Tate told them "I've done everything I can," and said, "go picket the labor unions, not me."[170] But after three days of watching the picketers outside his family home, Tate—who came out of a postwar Democratic clique with a moderate outlook on civil rights—made an about-face, and "ordered the City Board of Labor standards to 'face up to the issue.'" The picketing ended, but CORE promised more non-violent direct action unless Tate took further steps against employment discrimination.[171]

CORE was founded in 1942 by students at the University of Chicago and James L. Farmer, Jr., a Methodist minister who would lead the organization, with interruptions, until 1965. The organization was founded on the principle of militant non-violence, pioneered by Mohandas K. Gandhi against British colonial rule in India and later

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[168] Inez L. Thompson, "NAACP prexy outlines militant program," *Philadelphia Afro-American*, January 19, 1963; Aldon D. Morris, Origins of the Civil Rights Movement (NY: The Free Press, 1984), pp. 285-286.
[169] Chet Coleman, "Board of Education sets up $31-Million Program, All for Schools in Negro Areas," *Philadelphia Tribune*, February 19, 1963.
[170] "CORE Pickets Tate's Home and City Hall," *Philadelphia Bulletin*, April 14, 1963.
[171] "CORE Says It Will Prod Tate Until City Job Bias Ends," *Philadelphia Bulletin*, April 17, 1963.

associated most closely with Rev. Dr. Martin Luther King, Jr. Militance was a very different tactic in the pursuit of civil rights than those employed by the NAACP and NUL, older organizations that preferred negotiation, arbitration, legislation, and moral suasion. While CORE had participated in organizing the Montgomery Bus Boycott in 1956, by the time of the Philadelphia picketing the organization's biggest claim to fame was the Freedom Rides of May, 1961. Black and white protestors, carefully selected by CORE organizers, rode Greyhound buses from Washington, DC, into the Deep South. The Blacks rode in the front and the whites in the back, a direct affront to the segregationist conventions governing bus travel (but perfectly legal under federal interstate transportation laws, thanks to a 1960 Supreme Court decision). The attacks the Freedom Riders suffered at the hands of white mobs in Anniston and Birmingham, Alabama, and their jailing in Jackson, Mississippi, served to demonstrate the depth of white antipathy to civil rights as well as the indecisiveness of the Kennedy administration when it came to enforcing federal law in protection of some of the nation's most vulnerable citizens.[172]

In Philadelphia in 1963, the local CORE branch consisted of seasoned civil rights veterans. Two weeks after picketing Mayor Tate's home, with the mayor still paying only lip service to the notion that the City should not fund discrimination in employment, an inter-racial group of CORE members staged a two-day sit-in at the mayor's City Hall office. In response, Tate directed the City Commission on Human Relations to call hearings on discrimination in the building trades. The Commission published a notice

[172] August Meier and Elliott Rudwick, CORE: A Study in the Civil Rights Movement, 1942-1968 (Urbana, IL: University of Illinois, 1975); Allen J. Matusow, The Unraveling of America (NY: Harper, 1986); David Halberstam, The Children (NY: Random House, 1998).

asking for witnesses to testify if they had been excluded from city-financed construction work.[173] CORE appeared to have won a significant victory.

During the first two weeks of May, 1963, the Philadelphia Commission on Human Relations (CHR) held hearings on discrimination in the building trades. Representatives of the local Urban League testified that Plumbers' Local #690, IBEW Local #98, Steamfitters' Local #420, and Roofers Locals #30 and #113 practiced discrimination in apprenticeship and journeyman membership, and did not refer Black workers to jobsites through their hiring halls. The League recommended formation of a joint labor-civil rights-government committee to integrate the unions and that City contracts be pulled from contractors hiring members of unions that did not comply.[174] On May 6, CORE went a step further, recommending that the City take over the hiring process for City-funded construction jobs.[175]

Union officials, for the most part, only appeared after being served subpoenas, and most testified that their organizations did not discriminate. A Bricklayers' official "angrily [denied] charges that his local was guilty of discriminatory policies," stating "that out of 1200 members of the Local about 100 were Negroes, some of whom were stewards." An IBEW leader protested that his union was non-discriminatory and the head of the Steamfitters' Local claimed that any shortage of Black members was due to the fact that Blacks simply didn't apply. But the less-disingenuous leader of Roofers' Local #111 testified that the one-third of his union that were black were classified as unskilled

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[173] "Mayor's Office Sit-In Forces Building Trades Study," *Philadelphia Tribune*, April 27, 1963.
[174] Philadelphia Urban League Testimony before the Philadelphia Commission on Human Relations, May 3, 1963 (NUL II D66 *1963*).
[175] Orrin Evans, "CORE Urges City Take Over Project Hiring," *Philadelphia Bulletin*, May 6, 1963.

"helpers," and that the union had banned upgrading of such "helpers" to the next level—"mechanics"—which brought a $2 per hour pay raise.[176]

Frustrated with the seeming inactivity of the commission and the continuing work of all-white skilled crews at the Reyburn building site, the interracial CORE protesters who had staged the sit-in at Tate's City Hall office did so again on May 12, this time demanding that Tate stop work at the site until the skilled workforce was integrated. Two days later, Tate shut down the construction of the municipal building pending a report from the CHR hearings, citing the possibility that contractors were not fulfilling the equal employment clause of their contracts.[177]

While most construction workers were immediately sent home from the Reyburn site, Tate's order did not apply to one particular contractor, whose workers remained on the job until the end of the day. The NAACP's Cecil B. Moore now entered the fray, telling the press that while he approved of the mayor's decision, the Philadelphia branch of the NAACP would not allow the workers from the remaining contractor to continue work at the site. "If this project isn't shut down by noon tomorrow [May 15] we will throw a picket line around it and we will shut it down."[178]

Moore's threat was not idle. Although decades of scholarship on the civil rights movement have privileged the activities of CORE during the Freedom Rides, The Southern Christian Leadership Conference in the Montgomery Bus Boycott, and the

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[176] Fred Bonaparte, "Court Orders Go Out to Unions From CHR Office," *Philadelphia Tribune*, May 11, 1963; Mark Bricklin, "Craft Union Bias Blamed on Wish to Stymie Rivals," *Philadelphia Tribune*, May 14, 1963; and Orrin Evans, "Head of Electrical Union Denies it Bars Negroes," *Philadelphia Bulletin*, May 17, 1963. It is likely that the Bricklayers' statistics included an auxiliary Black local or classification system similar to that of the Roofers.

[177] "20 From CORE Stage Sit-In in Tate's Office," *Philadelphia Bulletin*, May 14, 1963; James H.J. Tate, "Mayor Asks Support for Effort to End Bias," *Philadelphia Bulletin*, May 15, 1963.

[178] Philip Fine, "He Tells CORE Unions Must Admit Negroes," *Philadelphia Bulletin*, May 15, 1963.

lunch-counter sit-ins of the Student Non-Violent Coordinating Committee—not to mention the brutal beatings of Black students at Little Rock High School in 1957 and movement leaders like John Lewis on the Edmund Pettus Bridge in 1965—cementing in the American mind the image of the non-violent Black protestor remaining calm in the face of white brutality,[179] in fact Blacks in the North—perhaps because of the greater freedoms and rights they enjoyed, at least in the twentieth century—were far less inclined to calmly take the insults and violence of their oppressors. Northern civil rights militancy was not necessarily non-violent, and Cecil Moore's fiery rhetoric represented the epitome of such militancy. His threat resulted in negotiations, and on May 17 the mayor gave in and all construction work ceased at the Reyburn Administrative Plaza site.[180]

White construction workers and contractors did not take the City's action lying down. Angry at being laid off, with some stating that they had been out of work for six months before this job, a group of construction workers marched on City Hall. There they encountered Cecil Moore, with whom they engaged in an angry shouting match. Three subcontractors threatened to sue the City for stopping the work, and the affected unions requested that the City pay their workers while the work was stopped (the request was denied). They claimed that they were not racist, that Blacks either didn't apply for union membership and employment or weren't qualified, and that their hiring and membership procedures were fair. One union spokesman called the laid-off workers "innocent victims."[181]

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[179] Steven F. Lawson, "Freedom Then, Freedom Now: The Historiography of the Civil Rights Movement," *American Historical Review* Vol. 96, No. 2 (April 1991), pp. 456-471.
[180] "NAACP Plaza Sit-in Cancelled With Warning," *Philadelphia Tribune*, May 18, 1963.
[181] Douglas H. Bedell, "McShain's Crew is Pulled Off Job," *Philadelphia Bulletin*, May 16, 1963; "3 Firms Warn City It Will Pay for Shutdown" and "City Won't Pay 5 Unions Idled in Shutdown," *Philadelphia Bulletin*, May 17, 1963. Those workers who claimed that they had been out of work for six months prior to

Yet the CHR remained hopeful that its hearings and the Reyburn site shutdown would result in the end of racial segregation in the building trades in Philadelphia. The commission's chairman felt that Black youths might be encouraged to immediately take training in order to fill newly available jobs. The Philadelphia NAACP and other local organizations began actively recruiting Black men to apply for membership in the building trades unions.[182]

Following on his success at shutting down the Reyburn Plaza construction site, Cecil Moore resolved that the NAACP would take the lead in fighting racial discrimination in City construction projects. The Philadelphia Board of Education was about to set aside $31 Million for schools in Black neighborhoods—a positive thing for Black education—but the construction would involve skilled union labor, which remained segregated. On May 20, Moore demanded Mayor Tate force the unions to end discrimination or shut down the remaining city construction sites. If the terms were not met by May 24, he said, the NAACP would organize picketing at the sites, beginning with the school construction project at 31st Street and Susquehanna Avenue.[183]

Moore's position got a boost on May 22, 1963, when the CHR released its report. Based on its hearings, the commission recommended "City contractors be required to hire a 'reasonable number' of Negroes, who, it said, have been excluded from employment as plumbers, steamfitters, sheet metalworkers, and roofers." CORE turned the report into

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their work on the Reyburn site were likely telling the truth, but disingenuously, as they failed to mention that the cyclical nature of construction work usually resulted in unemployment during the winter months. Presumably these workers had a good chance of finding other work now that it was mid-May.

[182] Douglas H. Bedell, "Negroes Urged to Seek Cards in Building Trades Unions," *Philadelphia Bulletin*, May 19, 1963.

[183] Chet Coleman, "Board of Education Sets Up $31-Million Program, All for Schools in Negro Areas," *Philadelphia Tribune*, February 19, 1963; James Jones to Philadelphia AFL-CIO Executive Board, February 27, 1963 (Meany RG1-098 95 *9*); "NAACP Urges Schools to Stop All-White Jobs," *Philadelphia Bulletin*, May 20, 1963; and Lou Potter, "NAACP Gives City Until Friday to Oust Biased Unions on City Projects, Will Face Mass Picketing if No Action Taken," *Philadelphia Tribune*, May 21, 1963.

concrete demands, asking for the City to hire and apprentice enough skilled Blacks to give them 15% of all workers on City building sites immediately, and 60% of all building trades apprentices over the following two years.[184]

In an attempt to avoid the impending picketing at the school construction site, Mayor Tate announced on May 23 that the City, the unions, and a contractors' association had come to an agreement regarding City building sites, and that work would resume at Reyburn Plaza soon. But official attempts to mediate with Moore failed, and on the morning of May 24, 1963, three days of picketing began at 31st and Susquehanna. As we have seen, the picketing resulted in the hiring of four skilled Black construction workers at the school site and an agreement between the NAACP, the Philadelphia Building Trades Council, and the City that more would be hired at other school construction sites around the city by June 12. None of the unions went on strike, although the Steamfitters did temporarily withdraw from the Building Trades Council in protest.[185]

Moore's success at 31st and Susquehanna was due in no small part to the unmitigated support he received from the national NAACP office during 1963. Whereas Roy Wilkins often tried to hold back charismatic leaders in his own city, Moore's fiery rhetoric posed no threat to Wilkins' brand of leadership at the national level. If anything, Cecil Moore (like Herbert Hill) allowed Wilkins to play the moderate on the national stage when dealing with government officials like Kennedy and Johnson or Big Labor officials like Meany.[186]

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[184] "Negro Labor Quota on Jobs Set by CORE," *Philadelphia Bulletin*, May 22, 1963.
[185] "All Night Talks Reach Pact," *Philadelphia Bulletin*, May 31, 1963.
[186] Wilkins to JFK, May 28, 1963 (NAACP III A174 *Kennedy Correspondence*); NAACP Press Release, May 30, 1963 (NAACP III A190 *Labor, Pennsylvania*). Clarence Taylor, in Knocking On Our Own Door: Milton A. Galamison and the Struggle to Integrate New York City Schools (NY: Columbia University Press, 1997), reports on Wilkins' testy relationship with similar charismatic leaders in New York (p. 128).

For his part, Herbert Hill at the NAACP's national office in New York was thrilled by the success of Moore's pickets in Philadelphia. In a statement to *The New York Times*, Hill encouraged Blacks around the country to follow the lead of Philadelphia by picketing discriminatory construction sites.[187]

Hill's encouragement didn't take long to bear fruit. During the first week of June, Black and white members of several civil rights groups picketed the site of the new Harlem Hospital in New York City in protest of the local skilled building trades' refusal to admit Blacks to membership. After two days in which the number of pickets and represented groups grew exponentially, the City's acting mayor closed the site and appointed a committee to negotiate a compromise.[188] Shortly thereafter, in Newark, New Jersey, "a group calling itself the Newark Coordinating Council presented an ultimatum to Mayor Hugh J. Addonizio saying that it would picket building sites in the city where alleged anti-Negro discrimination existed in the hiring of construction workers. It set a deadline of July 10 for the mayor to set up a Fair Employment Practices Committee." Newark, which had "the largest proportional Negro population of any major population center north of the Mason-Dixon line," was undergoing a massive federally-funded urban renewal program that employed scores of white construction workers.[189] Finally, the author of a *New York Times Magazine* piece, calling the future "bleak," linked the demonstrations to the increasing jobless rate, which affected Blacks nearly three times as much as whites.[190]

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[187] John F. Morrison, "Protests Here Only the Start, NAACP Warns," *Philadelphia Bulletin*, May 30, 1963.
[188] Velma Hill, "Harlem Pickets Force City Hall to Halt Project," *New America*, June 10, 1963.
[189] Milton Honig, "Discrimination Protests Rising in Newark," *New York Times*, June 16, 1963.
[190] Gertrude Samuels, "Even More Crucial Than in the South," *New York Times Magazine*, June 30, 1963.

The racial unrest in the North took place in the context of major unrest in the South, especially in Birmingham, Alabama, where Blacks were protesting their continued exclusion from Southern voter rolls and mistreatment by the authorities. In Birmingham, Police Chief T. Eugene "Bull" Connor authorized his officers to use attack dogs and water cannons to quell the protests of schoolchildren.[191] The nation's downtrodden were rising up, and the violence with which white authorities responded—in Birmingham as in Philadelphia—was being televised nightly to a national audience. The cries for equal opportunity could be ignored no longer, and the federal government—which appeared to have been caught asleep at the wheel—would have to respond, and fast.

The Federal Response

In May of 1963, as Philadelphia's civil rights community erupted against discriminatory construction unions, Vice President Johnson spoke at Gettysburg, Pennsylvania, in anticipation of the centennial of the battle that turned the tide of the Civil War. Stating that African-Americans must no longer be asked for patience, but for perseverance, "the Negro says 'Now,'" he said. "Others say 'Never.' The voice of responsible Americans—the voice of those who died here and the great man who spoke here—their voices say 'Together.' There is no other way."[192]

Johnson had succeeded in reforming the PCEEO, but as the violence in Philadelphia and other cities demonstrated, the committee had not yet had sufficient time for its reforms to make much difference at the local level, its policies to make much of a

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[191] On the racial violence in Birmingham, see, for instance, Allen J. Matusow, The Unraveling of America: A History of Liberalism in the 1960s (NY: Harper & Row, 1984), pp. 86-89, and Judith Stein, Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism (Chapel Hill: University of North Carolina Press, 1998), pp. 37-38.

[192] PCEEO Press Release, May, 1963 (LBJ VP SF 198 *Labor, PCEEO, March-May*).

difference in the way in which workers were hired. A determined federal response to the cries for civil rights throughout the nation would require the leadership of the president.

On June 4, President Kennedy announced that he would amend Executive Order No. 10925, which had established the PCEEO, to specifically include construction contracts, and he ordered Secretary W. Willard Wirtz at the Department of Labor to investigate practices in the construction industry as a whole.[193] But this amendment was to be merely a stopgap measure until the Congress could pass what the administration called "The Civil Rights Act of 1963." As the President said on June 11, 1963, in a televised address to the nation,

> We preach freedom around the world, and we mean it. And we cherish our freedom here at home. But are we to say to the world—and much more importantly, to each other—that this is the land of the free—except for the Negroes; that we have no second-class citizens—except Negroes; that we have no class or caste system, no ghettoes, no master race—except with respect to Negroes?
>
> Now the time has come for this nation to fulfill its promise. The events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them. The fires of frustration and discord are burning in every city, North and South, where legal remedies are not at hand. Redress is sought in the streets, in demonstrations, parades, and protests which create tensions and threaten violence and threaten lives.
>
> We face, therefore, a moral crisis as a country and a people. It cannot be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk….
>
> Next week I shall ask the Congress of the United States to act, to make a commitment it has not fully made in this century to the proposition that race has no place in American life or law.[194]

The President's "Civil Rights Act of 1963" addressed federal expenditures in title VI and private-sector employment in its proposed Title VII. No longer a "President's

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[193] Wirtz replaced Goldberg as Secretary of Labor when the latter was appointed to fill the vacated United States Supreme Court seat of Associate Justice Felix Frankfurter in August 1962.

[194] JFK, *Civil Rights Address*, June 11, 1963 (http://www.americanrhetoric.com/speeches/jfkcivilrights.htm, accessed November 17, 2007).

Committee," Title VII's proposed Equal Employment Opportunity Commission (EEOC) would have a stronger mandate and would be able to act with a confidence unknown to the PCEEO, which the White House felt had acted hesitantly out of a fear of reprisals from Southern senators (such as funding cuts, which had befallen Franklin Roosevelt's FEPC). Here at last, more than halfway into his term, was the legislation promised by Kennedy during the 1960 presidential campaign.[195]

Labor Secretary W. Willard Wirtz, who as PCEEO vice chairman had recently "dispatched swarms of inspectors to federally-aided construction jobs to root out discriminatory hiring practices by threatening contract cancellation," also now for the first time implemented pre-bid equal employment qualifications. Rather than attempting to police contractors when construction was imminent or after a project was already underway, bidders would now be evaluated for their fitness to comply with the equal opportunity clause *before* the contract was signed. "We are saying to the contractors and the unions...that these are the standards and if they are your standards you have the bid and, if they are not, we are not going to do business with you." This represented a sea change in the way the federal government conducted business, in that it created a potential for the lowest bidder to be denied a contract for a perceived inability or unwillingness to employ nonwhites on an equal basis and engage in affirmative programs to help them compete equally.[196]

Ultimately, however, and contrary to the statements of union leaders like Meany, the major hurdle to equal employment opportunity in construction lay with union control

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[195] J. Francis Polhaus to Roy Wilkins, May, 1963 (NAACP III A175 *Kennedy Miscellany 2*).
[196] John A. Grimes, "U.S. Drive for Unions to Drop Race Barriers Faces Many Obstacles," *Wall Street Journal*, June 13, 1963; "Jobs Available for Negroes, Wirtz Testifies," *Philadlephia Bulletin*, June 27, 1963; and DOL Draft Policy, June 27, 1963 (Meany RG1-038 73 *17*).

over hiring, not with employer recalcitrance. The Philadelphia demonstrations had ostensibly been in protest of the contractors' policies, but in the end, compromise had been reached only through union concessions. And so the PCEEO was faced with the same question that had earlier plagued the PCGC: were unions that acted as hiring agents *de facto* subcontractors, or were they third parties?

The PCEEO, however, unlike the old PCGC, had a specific mandate pertaining to unions. Executive Order No. 10925 stated that

> The Committee shall use its best efforts, directly and through contracting agencies…to cause any labor union…to comply with, and to comply in the implementation of, the purposes of this order.
>
> The Committee may…hold hearings…with respect to the practices of any such labor organization…and may recommend remedial action if, in its judgment, such action is necessary or appropriate. It may also notify any Federal, state, or local agency of its conclusions and recommendations with respect to any such labor organization which in its judgment has failed to cooperate with the Committee, contracting agencies, contractors, or subcontractors in carrying out the purposes of this order.[197]

Secretary Wirtz interpreted this clause as giving the PCEEO the authority to regulate unions' referral practices with regard to federal construction contracts, with implementation effected through the liability of the general contractor for the behavior of subcontractors. That is, Wirtz saw the unions as subcontractors and recommended that the committee threaten to debar any contractor for its unions' non-compliance with the equal opportunity clause.[198]

Armed with the amended executive order and Secretary Wirtz's recommendations, The PCEEO's contract compliance regime swung into action. By the end of June, more than 400 equal opportunity reports had been collected by the

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[197] JFK, Executive Order No. 10925 (NUL II A3 *B, 1961*), §304-305.
[198] W. Willard Wirtz to LBJ, August 19, 1963 (LBJ VP Reedy 26 *Wirtz, Willard*).

committee out of a total of 1,400 federal construction contracts, with more reports coming in every day.[199]

Field officers for contracting agencies remained on high alert throughout the summer, taking preventive steps to avoid protests by civil rights organizations as well as "payback" strikes by union locals, and reporting to the PCEEO as well as their own agencies. A typical case involved a Black Chicago sheetmetal worker who was offered a job on a union project at a federal contract site for a higher wage than he had been making at a non-union project. When this worker quit his old job to take the better-paying union job, the employer informed him that because he was not a member of the union, he would be expected to start at a much lower pay rate, and as an apprentice, despite several years of prior experience. The GSA officer supervising the project brought in a representative of the PCEEO to consult. They met with the employer and representatives of the Sheetmetal Workers' Local and the Black worker was restored to his promised rate of pay and granted journeyman status, averting protest demonstrations and possible violence.[200]

By the end of the summer, Secretary Wirtz had drafted a comprehensive procedure for implementing the executive orders in apprenticeship programs, the "gate-keepers" of membership in the building trades unions. Ruling out quotas, his procedure asked regional directors to "use all means" to ensure that apprenticeship programs were in compliance and recruiting and selecting applicants based on merit alone, and listed procedures for pulling federal registration from apprenticeship programs for non-compliance—and the appeals process for such cases. (Federal registration allowed

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[199] PCEEO Press Release, June 25, 1963 (Meany RG1-038 73 *6*).
[200] PCEEO Press Release, July 24, 1963 (LBJ VP Reedy 23 *Press Releases, 1963*)

students in an apprenticeship program to be employed on federal contracts.) The procedure included a definition of "merit employment" that said "in some cases what seems to be a fair standard can be discriminatory if it is not essential and serve[s] to eliminate all minority members. For example, the test standards may be set beyond job requirements, and the requirement of relevant work experience, while objective, can reinforce previous discriminatory practices that prevented obtaining this desirable but not essential experience."[201] In short, the "best man for the job" would not necessarily be the man with the most credentials. If a high school diploma were not an essential requirement of the job, it would not confer any advantage to the applicant who held it.

The late spring of 1963 had been a proving ground for the Kennedy Administration in the field of civil rights. The previous winter had seen Vice President Johnson finally find his calling as head of the PCEEO, and the committee, with the resignation of Bob Troutman, the hiring of Hobart Taylor, and the ascension of the dynamic Willard Wirtz, was in a strong position to respond to the crises in Philadelphia and other cities. And President Kennedy himself, who had for so long been more style than substance, had finally come out strongly for equal employment opportunity, strengthening his previous executive order and proposing the most comprehensive civil rights law since Reconstruction.

But by midsummer, debate on the president's "Civil Rights Act of 1963" had been postponed by the United States Senate, and mainstream civil rights leaders were becoming increasingly concerned about the possibility of more violence. To commemorate the centennial of the Emancipation Proclamation, A. Philip Randolph

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[201] DOL Draft Procedures, September 27, 1963 (NUL II D33 *DC, 1963, 3*).

resurrected his plans for a "March on Washington for Jobs and Freedom." To channel the energies of the unemployed, frustrated, and angry, the leaders seized on the march as an opportunity to bring together tens of thousands of Americans in a peaceful protest aimed ultimately at passage of the civil rights bill.[202]

The August 28, 1963, March on Washington, attended by at least 200,000 people, is probably best remembered for Martin Luther King's now-famous "I have a dream" speech, which today serves as an enduring epitaph for the slain leader. But other speakers, mostly without King's impressive oratorical skills, decisively made the case for passage of the civil rights bill. Said Roy Wilkins of the NAACP:

> We want employment, and the pride and responsibility and self-respect that goes with equal access to jobs. We want a fair employment practices bill as part of the legislative package….[203]

Walter Reuther, head of the United Auto Workers' Union and member of the AFL-CIO Executive Council, spoke for Big Labor, alluding to the difficulties liberal union leaders faced in forcing integration in the rank and file:

> It is long past the time for the Congress of the United States to act affirmatively and adequately to secure, guarantee, and make effective the constitutional liberties of every American without regard to race, creed, or color.[204]

But the most stirring equal employment opportunity rhetoric of the day came from the NUL's Whitney Young:

> The hour is late. The gap is widening. The rumble of the drums of discontent, resounding throughout this land, are heard in all parts of the world. The missions which we send there, to "keep the world safe for democracy," are

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[202] Young, TV Interview, August 18, 1963 (NUL II E49 *TV Interviews, 1963-4*).
[203] Remarks of Roy Wilkins at the March on Washington, August 28, 1963 (NAACP III A227 *March on Washington Speeches and Statements*).
[204] Remarks of Walter Reuther at the March on Washington, August 28, 1963 (NAACP III A227 *March on Washington Speeches and Statements*).

> shallow symbols unless with them goes the living testament that this country practices at home the doctrine which it seeks to promote abroad.[205]

Young, clearly the most eloquent of the three, said "the scales of equal opportunity are now heavily weighted against the Negro and cannot be corrected in today's technological society simply by applying equal weights." To remedy this disparity, he proposed a "Domestic Marshall Plan" in federally-funded education, employment, housing, and health and welfare initiatives aimed at pulling the Black community up to the level of the white community. Young reminded the nation that the Black community "is in revolt today, not to change the fabric of our society or to seek a special place in it, but to enter into partnership in that society," because the Black man "has given his blood, sweat, and tears to the building of our country; yet, where the labor and initiative of other minority groups have been rewarded by assimilation within the society, the black American has been isolated and rejected."[206]

Kentucky-born Whitney M. Young, Jr., was already a college graduate with training in electrical engineering from the Massachusetts Institute of Technology when he entered the United States Army as a private in a road construction crew during the Second World War. He was quickly promoted to sergeant as he successfully navigated between the resentments of the other men in his all-Black regiment and the racial prejudice of the Southern white officers assigned to supervise them. After the war, Young earned his Master's degree in social work at the University of Minnesota.[207]

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[205] Remarks of Whitney Young at the March on Washington, August 28, 1963 (NAACP III A227 *March on Washington Speeches and Statements*).
[206] Young, "Domestic Marshall Plan," *New York Times*, October 6, 1963.
[207] See, for instance, Dennis C. Dickerson, Militant Mediator, and Rudi Williams, "Whitney M. Young, Jr.: Little Known Civil Rights Pioneer," *Defenselink News*, February 1, 2002.

While a graduate student, Whitney Young worked at the St. Paul, Minnesota branch of the NUL and after graduation in 1947 was promoted to a leadership position there. As President of the Omaha Urban League in 1950, Young became friendly with the national organization's executive director, Lester Granger. For most of the 1950s, Young served as Dean of Social Work at Atlanta University, and in 1961 he was asked by the NUL Board of Trustees to succeed Granger as head of the NUL. At the NUL, Young took the organization in a more militant direction in order to keep up with the changing tenor of the Civil Rights movement, advocating peaceful demonstrations in addition to the organization's traditional backroom negotiations.[208]

Had the fate of the Civil Rights Bill been decided by the marchers on the Washington Mall, it surely would have passed by a veto-proof margin. As it was, the delays of weeks in the Senate turned into months as the bill languished in committees in both Houses. And over the entire proceedings, of course, loomed the threat of a Southern filibuster.

On Labor Day, President Kennedy again addressed the nation on the subject of equal employment opportunity:

> This year, I believe, will go down as one of the turning points in the history of American labor. Foremost among the rights of labor is the right to equality of opportunity; and these recent months, one hundred years after the Emancipation Proclamation, have seen the decisive recognition by the major part of our society that all our citizens are entitled to full membership in the national community. The gains of 1963 will never be reversed. They lay a solid foundation for the progress we must continue to make in the months and years to come. We can take satisfaction that 1963 marks a long step forward toward assuring for all Americans the opportunities for life, liberty, and the pursuit of happiness pledged by our forefathers in the Declaration of Independence."[209]

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[208] *Ibid.*
[209] Quoted in a DOL Press Release, December 30, 1963 (NUL II A17 *DOL, 1964, 1*).

As seen by his televised speech on civil rights in early June and his Labor Day address in early September, the president had at last found the political will to move in the defense of the rights of the politically weakest Americans.

Unfortunately for the young president, his vision of 1963 as a "turning point" would indeed prove true, but not in the way he imagined. On Friday, November 22, 1963, an assassin's bullet ended his life as the presidential motorcade drove through Dallas, Texas. Despite having apparently been the work of a lone, deranged gunman, the assassination linked John F. Kennedy to Medgar Evers, the slain NAACP activist from Jackson, Mississippi, and four teenage girls who had been killed in a church bombing in Birmingham, Alabama, in a continuum of violence surrounding the civil rights movement that year. With the ascension of Lyndon Baines Johnson to the White House, the first Southern president since Reconstruction, the prospects of passage of the civil rights bill seemed bleak.[210]

President Johnson, however, acted swiftly to dispel any notion that he was unwilling to further the cause for which his predecessor had fought. Proving that his "conversion" of the previous year had been in earnest, the new president gave Secretary Wirtz and Hobart Taylor of the PCEEO the full support of the White House, and called upon Congress to pass the civil rights bill as a memorial to the slain President Kennedy.[211]

Johnson quickly earned the tentative support of Whitney Young, who said that a reconstructed Southerner as president might be more effective than a Northern liberal in

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[210] Johnson was not the first Southern-*born* President since Reconstruction; that title belonged to Woodrow Wilson, who was born and raised in Virginia but spent his adult life as a resident of New Jersey.
[211] DOL Press Release, December 9, 1963 (NUL II A17 *DOL, 1964, 1*).

furthering the cause of civil rights, going so far as to predict that the assassination would ultimately be helpful to the civil rights bill in that it made many in the nation feel unsafe from the right wing. But Young warned that if the civil rights bill wasn't passed soon, the responsible civil rights leaders would lose ground to those he called the "irresponsible leadership"—people who advocated rioting and other forms of violent protest.[212]

In the event, it was both which occurred. In the early summer of 1964, more than a year after the violence in Philadelphia and Birmingham, Congress passed the 1964 Civil Rights Act. The new law's strongest provisions were Title VI, which established that no federal dollars could be spent on projects which involved racial discrimination, and Title VII, which made discrimination in private employment for reason of "race, color, religion, sex, or national origin" illegal, and established the Equal Employment Opportunity Commission (EEOC) to enforce the provision.[213]

But as the summer of 1964 wore on, race riots on a scale unseen since World War II broke out in seven American cities, including Philadelphia. On the night of Friday, August 28, Philadelphia police officers were in the process of arresting a woman when youths attacked the police and the riot spread like a wildfire. Cecil B. Moore and other community leaders did their best to stop the violence, but the riot wasn't brought under control until the next evening, when Mayor Tate ordered all off-duty cops into action. Just as the reinvigorated PCEEO, a televised presidential address on civil rights, and a strengthened executive order had not been sufficient to prevent violence in the summer of 1963, so too had strong civil rights legislation failed to prevent urban rioting in the summer of 1964. With the national unemployment rate among Black youths still nearly

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[212] Young, TV Interview, December 8, 1963 (NUL II E49 *TV Interviews, 1963-4*). See also Dickerson, Militant Mediator, pp. 245-246.
[213] U.S. Congress, "Civil Rights Act of 1964," H.R. 7152, July 2, 1964.

twice as high as that of whites, the passage of the landmark Civil Rights Act had not been enough, by itself, to prevent another long, hot summer.[214]

[214] "The Nation: Now Philadelphia," *New York Times*, August 30, 1964; DOL Press Release, July 27, 1964 (NUL II A17 *DOL, 1964, 4*). Between June 1962 and June 1964, the white youth (age 14-24) unemployment rate increased from 13.2 to 14.7%, while nonwhite youth unemployment increased from 19.1 to 24.0%. In the age 20-24 subset, white unemployment increased from 8.0 to 8.5%, while nonwhite unemployment slightly decreased, from 15.8 to 15.0%. Between 1962 and 1964, therefore, the average age of the unemployed Black became *younger*.

"It is no mere coincidence to say that there are fewer than 300 licensed [Black] journeyman electricians in the entire country."
—Otis E. Finley, NUL Associate Director, November 4, 1961

"We seek not just freedom but opportunity—not just legal equality but human ability—not just equality as a right and a theory, but equality as a fact and as a result."
—President Lyndon Johnson, June 4, 1965

"I believe that the written and oral test that I took were not scored upon fairly because I believe I passed the oral as well as written."
—Black electrician Ernest Jackson, filing a discrimination complaint against the IBEW, September 27, 1966

CHAPTER THREE
Grasping at Solutions, 1964-1967

In 1962 James Ballard, a "twenty-two-year-old Negro Air Force veteran," applied for an apprenticeship at the office of Sheet Metal Workers Local #28 in New York City. He was dutifully asked to complete an apprenticeship application form. But then he was shown a stack of papers and told "he would just have to wait his turn." This was irregular; the sheet metal workers had never followed a "first-come, first-served" policy but typically ranked applicants based on less-objective criteria. Ballard was also advised that in order to qualify, he would have to pass a "General Aptitude Test Battery conducted by the New York State Department of Labor." Such tests had rarely been used before; clearly Ballard was being put through a more difficult application regimen than usual in order to discourage him from entering the program. When Ballard passed the test with flying colors (and indeed received the highest recommendation possible from the Labor Department for "jobs in sheet metal at the trainee or apprentice level"), Local #28 nevertheless did not allow him to enter the next apprenticeship class, and the Joint Apprenticeship Committee concurred. Who actually was admitted? Only white youths, of whom "more than 90 per cent…were sons or nephews of members of Local 28."[215] Ballard faced the same injustice seen by Thomas Bailey and countless other African-Americans who had attempted to break the racial glass ceiling separating the better-paying skilled construction trades from the less-skilled trowel trades.[216]

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[215] Herbert Hill, *Testimony on Equal Opportunity Contract Compliance*, December 5, 1968, in *Construction Labor Report* #690 (December 11, 1968); George D. Zuckerman, "Sheet Metal Workers' Case: A Case History of Bias in the Building Trades," *New York Law Journal*, September 8, 1969.
[216] See Chapter One for the story of Thomas Bailey.

NUL Associate Director Otis Finley listed the employment problems faced by blacks in Congressional testimony advocating fair employment practices legislation and pointed in particular to the discriminatory practices of the building trades unions:

> One has only to observe the virtual absence of skilled Negro workers on building projects in every major city to realize that some forces are operative to prevent their employment in the building and construction trades. It is no mere coincidence to say that there are fewer than 300 licensed [Black] journeyman electricians in the entire country, or that there are fewer than 300 licensed [Black] journeyman plumbers in the entire country…. More often than not, when a Negro applies for apprenticeship training he is told first to get a job in his field to be certified for the course, but when he applies for a job in his field, he is told that he must first have some training…management not hiring Negroes do not sponsor Negro apprentices. Since apprentices often are brothers, sons, and relatives of union members, this places further limitations upon Negroes because of the few represented in some unions.[217]

Such discrimination, Finley said, constituted "a serious threat to our free society."[218]

Discrimination in apprenticeship in the building trades was one of the most visible ways in which Blacks continued to be excluded from the benefits of a booming economy during the 1960s. And as the federal government increased domestic spending on urban renewal, Model Cities, and the rest of President Johnson's numerous anti-poverty programs, the lack of skilled Blacks working at construction sites in the nation's cities represented an affront to all the James Ballards—to every young Black man who had been turned away from a job because of the color of his skin or, just as insidiously, because of the dearth of quality educational opportunities available in the inner city. As long, hot summer followed long, hot summer, the young, Black unemployed collectively proved a tinderbox that exploded with worsening violence. Besieged on "the Negro Problem" from both sides of the political spectrum, the Johnson Administration looked

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[217] Otis E. Finley, "Statement before the House Committee on Labor and Education," November 4, 1961 (NUL II E36 *Finley, House Committee on Labor and Education*).
[218] *Ibid.*

for solutions to the President's Committee on Equal Employment Opportunity (PCEEO) and the Department of Labor (DOL). What they developed was a local-based approach that would differ from city to city and succeed or fail based on local conditions and the relative skills and talents of the federal officers—the mid-level bureaucrats—in charge of implementing each program. These federal officers were motivated by a belief in the inherent importance of racial equality, the ethos known as Great Society Liberalism. But the failure to conciliate—to push the unions and contractors to change on their own—would lead to more dramatic actions.

Apprenticeship in the Building Trades

Although apprenticeship was not the only method of obtaining a skilled trade in building construction, it was the single most popular way for a young man to attain journeyman membership in the unions and the best way for unions to limit the number of skilled craftsmen so as to maintain their high wages.[219]

Most skilled apprenticeship programs in the building trades were administered by a Joint Apprentice Committee (JAC), which consisted of union members and contractors. Apprenticeships could be anywhere from one to four years in length, but tended to take about three years, with one or two years of evening classes—usually conducted by the JAC at a local public school—while each apprentice worked in the craft alongside six to ten journeymen. Apprenticeship programs certified by the Labor Department's Bureau of Apprenticeship and Training (BAT) were eligible for federal funds, use of public facilities for classes, and paid on-the-job training on federally-funded construction

[219] USCM, *Changing Employment Practices*; Linder, Wars of Attrition, pp. 113-114.

contracts. Contractors paid the wages of apprentices, which started at around half the journeyman scale and increased each year to nearly full scale.[220]

The prospective apprentice came from one of several backgrounds. The most common route nationally was through nepotism. For the lucky sons and nephews of skilled construction workers, the father or uncle suggested apprenticeship whenever the union was accepting applications after the youth had attained a certain age, usually 17 or 18 years. The relative would sometimes take the youth down to the union hall for the first time and introduce him around, virtually ensuring that as long as he had basic mechanical aptitude, an apprenticeship slot would be his.[221]

The second most common way youths found out about apprenticeships was in school or through a community organization. Unions or employer organizations would send representatives to "career day" at the junior high schools and high schools, drumming up interest in the craft among the children and forging relationships with guidance counselors and other school administrators so that when they were accepting applications for apprenticeship the counselor could be called upon to refer a few prospects. Religious, fraternal, and community organizations, such as the Roman Catholic Church, the Benevolent and Protective Order of Elks, and the Urban League, also ran vocational or other youth programs that had links with unions and employer

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[220] "Jim Crow's Sweetheart Contract," *Greater Philadelphia Magazine*, February, 1963; Leonard J. Biermann, *file memo*, February 10, 1965 (Records of the Department of Labor [DOL], Papers of Secretary W. Willard Wirtz [Wirtz], Box 246 *PCEEO, 3b* folder, National Archives and Records Administration, College Park, MD); William C. Webb to Meany, February 15, 1965 (Meany RG1-038 72 *12*); John F. Henning to David G. Filvaroff, May 3, 1965 (DOL Wirtz 246 *PCEEO, 5*); Hugh C. Murphy to Arthur Chapin, March 2, 1965 (DOL Wirtz 246 *PCEEO, 3b*); and "Employers, Unions Train Apprentices," *Cleveland Press*, April 16, 1966.

[221] Clifford P. Froehlich, "Career Guidance With Minority Group Youth: A Cooperative Effort," address to the Youth Training-Incentives Conference, February 4, 1957 (NUL I G7 *PCGC, Reports and Miscellaneous Material*); NAACP Press Release, March 7, 1964 (NAACP III A191 *Labor, S Miscellaneous, 1*); USCM, *Changing Employment Practices*; and "Employers, Unions," *Cleveland Press*.

organizations and would refer youths. Prospective apprentices from such school and community referrals had the advantage of being from a "known source" to the union, like a school guidance counselor or trusted local priest, but did not usually have the added advantage of a relative already involved in the trade.[222]

Finally, some youngsters found out about apprenticeship openings through advertisements in local newspapers. Youths who applied based on such advertisements were comparatively the least advantaged, ultimately being strangers to the members of the union. The BAT required that the JACs post such advertisements as a prerequisite for certification, but a JAC could try to limit and pre-screen the youths who found out about apprenticeships by carefully selecting the publications in which to advertise.[223]

Prospective building trades apprentices would submit applications and then take a written examination, administered by the JAC. Those who passed would be eligible for an oral interview with a member of the JAC, and then assigned a score, relative to the other applicants, based on the written exam, oral interview, and other criteria such as educational, military, or criminal background, or prior work in construction or another trade. Different JACs and different trades assigned different weights to each of the selection criteria, ultimately offering apprenticeships to the top scorers.[224]

Apprenticeship in the skilled trades, for these lucky few, meant eventual entry into a lucrative trade, membership in a powerful union, and steady—if seasonal—work. But in the short term it usually meant immediate employment at apprentice wages which, even at half-scale, constituted a fine living for a working-class eighteen-year-old.

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[222] Froehlich, "Career Guidance;" USCM, *Changing Employment Practices*; "Employers, Unions," *Cleveland Press*; and NUL Brochure, January 18, 1967 (NUL III 134 *Project LEAP, Brochure*).
[223] USCM, *Changing Employment Practices*.
[224] NAACP Press Release, March 7, 1964 (NAACP III A191 *Labor, S Miscellaneous, 1*); USCM, *Changing Employment Practices*; and "Employers, Unions," *Cleveland Press*.

There were three primary methods whereby Blacks were excluded from apprenticeships. First, the JAC could fail to adequately advertise the pending apprenticeship class in Black communities, placing the recruiting advertisement in newspapers that Black youths were unlikely to read (such as trade publications) or by foregoing such advertisements altogether, relying on word-of-mouth to recruit sufficient white applicants while risking BAT de-certification.[225]

Second, the committee could set admission standards unreasonably high, adding qualifications that were irrelevant to the job. If, for instance, a number of the white applicants held high school diplomas while most or all of the Black applicants did not, the JAC could change the weighting of admission criteria so that a high school diploma brought a significant number of additional points, even if such credential was immaterial to an applicant's fitness for apprenticeship in the particular craft. Or applicants with arrest records could be disqualified, even if these arrests had never led to a conviction for any crime—a step which would tend to disqualify more Black applicants than white due to discriminatory policing methods in the inner city.[226]

Third, the JAC could place undue weight on the oral interview, which tended to be subjective (and thereby promote the inclinations of the interviewer—racist, nepotic, or otherwise), and less weight on the more objective written examination. Even some otherwise liberal interviewers might favor white applicants, somehow feeling it necessary

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[225] See, for instance, "Hit Unions on Hiring of Negroes," *Cleveland Press*, February 19, 1966.
[226] Jack Adler to Wilkins, January 14, 1965 (NAACP III A190 *Labor, Pennsylvania*); Joseph B. Meranze, "Negro Employment in the Construction Industry," in Herbert R. Northrup and Richard L. Rowan, Eds., The Negro and Employment Opportunity: Problems and Practices (Ann Arbor: University of Michigan, 1965), pp. 199-206; and "Hit Unions," *Cleveland Press*.

to ensure that any Black applicant who passed did so through a more rigorous vetting process[227]—following the dictum that "the first Black has to be the best Black."

When all else failed, the JAC or union could simply cancel the apprenticeship class (or never accept applications in the first place). This posed the danger that retirees would not be promptly replaced on "the bench," but such a danger might be offset, at least for the unions and for the short term, by higher wages or fewer seasonal layoffs. If a union required new members but was unwilling to hold an apprenticeship class out of fear of integration, it could always admit whites directly to journeyman status and give them necessary training and supervision on the job. Such tactics could not be maintained over the long term, but were used as a stopgap measure in the hope that outside integration pressure would eventually abate.[228]

Apprenticeship was the gateway to a lucrative career in the skilled building trades, and as such it became the focus of efforts to implement the 1963 amendment to Executive Order No. 10915, specifically including building construction in contract compliance enforcement activities. And the government official most directly responsible for such efforts during the first years after the assassination was Vincent Macaluso.

Implementing the Executive Order:
Vincent G. Macaluso and the Area Coordinator Program

In June of 1963, President Kennedy responded to outbreaks of racial violence in Birmingham and elsewhere in the country by proposing comprehensive civil rights legislation—his so-called Civil Rights Act of 1963—as well as amending Executive

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[227] California FEPC Press Release, December 31, 1965 (NUL II A34 *Miscellany, A*); "Hit Unions," *Cleveland Press*.
[228] "Hit Unions," *Cleveland Press*; Marie Hurley to Vincent G. Macaluso, April 17, 1967 (DOL OFCC ADC26, *St. Louis Correspondence, 1967*).

Order No. 10915. Congress spent a year hemming and hawing over the proposed legislation, with Southern senators threatening a filibuster. Meanwhile, the PCEEO spent the same year developing new compliance machinery for the construction industry. With the death of President Kennedy in late November, President Johnson recommitted the White House to passage of the legislation, while Labor Secretary W. Willard Wirtz took over as *de facto* PCEEO chairman in the absence of a vice president. On June 8, 1964, a cloture motion—to overcome a Southern filibuster—was filed in the United States Senate to consider what would shortly become known as The Civil Rights Act of 1964. That same day, the *New York Times* published an article about the creation by the PCEEO of a 40-person task force to study problems of equality in employment in the construction industry. It had been a year since Kennedy had submitted the legislation and amended the executive order and now, at last, concrete action had been taken on both fronts.[229]

The PCEEO divided its new construction industry task force into teams of three to four people each and sent them to cities representing ten local regions around the country. The *New York Times* reported that "with major emphasis on New York, Chicago, Cleveland, Philadelphia, and San Francisco, the teams will visit contractors' associations, building trades unions and major individual contractors…they will check construction sites and where it is evident that discrimination is occurring, will seek to have it corrected." Although the legislation—which would end discrimination in all employment, not just federal contracts—had yet to be signed, these PCEEO teams would also be investigating the non-federal construction work of federal contractors. A federal contract could be revoked (and a contractor debarred from future contracts) if the

[229] John D. Pomfret, "U.S. Will Attack Job Bias In Construction Industry; Two-Part Program to Seek Cooperation of Contractors—Special 40-Man Force will Concentrate on 10 Regions," *New York Times*, June 8, 1964.

contractor was using unfair hiring practices on private jobsites, even if his federal work was technically in compliance.[230]

The project was placed under the coordination of Vincent Macaluso, who had recently been named special assistant to Hobart Taylor, the committee's executive vice chairman. The following week, Macaluso's teams fanned out across the nation, and the NUL told Macaluso that the organization was "impressed" with the plan, recommending several Black construction contractors around the country for Macaluso to include in his investigation.[231]

Vincent G. Macaluso was born in 1922 into the family of a civil engineer and grew up wherever his father could find work building tunnels, including Waterville, Canada; Antwerp, Belgium; and Tuxedo, New York—where he learned to ski. During World War II, Macaluso interrupted his studies at Yale University to serve with the U.S. Army's Tenth Mountain Division—the skiing soldiers—and he saw action in northern Italy during the winter of 1944-45. After the war he completed college, attended law school, married, and in 1951 took his first civilian job with the federal government—as a staff lawyer with the National Labor Relations Board (NLRB). He served at the NLRB through 1954, at which point he entered the private sector as a labor lawyer. At the start of the Kennedy administration, Macaluso was working as a staff lawyer for ARMA Corporation, a defense contractor, and when that company joined *Plans for Progress* in 1962, it was Macaluso who drafted the firm's *Plan*.[232]

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[230] *Ibid*.
[231] PCEEO Press Release, June 8, 1964 (Meany RG1-078 73 *12*); Cernoria D. Johnson to Macaluso, June 12, 1964 (NUL II A42 *1964, 1*).
[232] Macaluso interview with the author, January 4, 2008.

In September 1963, through a family connection, Macaluso was hired by the White House to serve as Executive Secretary of the President's Committee on Labor-Management Relations, where he became acquainted with Hobart Taylor and Labor Secretary Wirtz. Two months later President Kennedy was assassinated, and Taylor, now a White House aide, recruited Macaluso to work as a staff lawyer for the PCEEO. Macaluso spent the winter and early spring of 1964 investigating discrimination at a defense plant in Huntsville, Alabama, and in the late spring was put in charge of the PCEEO's new construction industry task force.[233]

The task force teams spent the summer and fall of 1964 assessing compliance conditions in their assigned cities, meeting with union representatives, contractor associations, individual contractors, local officers of contracting agencies, and civil rights groups. In December, Macaluso reported to Taylor on the teams' findings. While conditions varied in individual cities, the report stated that opportunities for nonwhites were generally poor, mainly owing to the use of union hiring halls and the racist attitudes of local union business agents. This despite the apparent willingness of many contractors to hire without discrimination in order to get the "best man for the job."[234]

Meanwhile, the Department of Labor continued its work implementing equal opportunity in apprenticeship. Secretary Wirtz issued new guidelines for equal opportunity in existing apprenticeship programs, made effective May 1, 1964. BAT-certified apprenticeship programs would need to exercise equal opportunity in the selection of apprentices. In addition, the BAT began placing apprentices with contractors independently of the JACs, and on July 6, the department announced the graduation of

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[233] *Ibid.*
[234] Macaluso to Hobart Taylor, Jr., December 16, 1964 (DOL Wirtz 245 *1a*).

three Black construction apprentices in Washington—an architectural draftsman and two carpenters—who were promptly awarded "certificates of journeyman status" by the BAT.[235]

The Labor Department's work in ensuring equal opportunity in apprenticeship was made all the more important as rioting broke out in several cities, transforming the season of the 1964 Civil Rights Act into the long, hot summer of 1964. By the end of August, seven Northern cities had seen outbreaks of violence. Professionals at the BAT and elsewhere in the Labor Department linked the Black unemployment rate—and the idleness and poverty it indicated—with the propensity to violence in the inner city. Black unemployment remained double that of whites, and was increasing among working-age teenagers faster than among their elders. Their work now took on a special urgency. To inform non-white youth about the available opportunities, the bureau opened apprenticeship information centers in eight cities resulting in apprenticeship placements in four of the skilled building trades.[236]

In the fall of 1964, the Department of Labor partnered with the NUL to establish several on-the-job training (OJT) programs aimed at inner-city youth, again bypassing the JACs. After the NUL submitted a proposal, Wirtz agreed that local branches of the league would administer the programs under contract with the Department. The NUL moved quickly to establish OJT programs in four cities, including Cleveland where "350 long-

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[235] *Plans for Progress* Press Release, May 1, 1964 (DOL Wirtz 154 *5a*); DOL Press Release, July 6, 1964 (NUL II A17 *DOL, 1964, 3*); and PCEEO Press Release, July 16, 1964 (DOL Wirtz 154 *7b*). These men were not, however, accepted into union membership at that time.

[236] DOL Press Releases, July 27 and August 17, 1964 (NUL II A17 *DOL, 1964, 4*); "The Nation: Now Philadelphia," *New York Times*, August 30, 1964; and Arthur A. Chapin, "Remarks to the Job Development and Education Council session of the 1964 NUL annual conference," August 5, 1964 (NUL II F19 *1964, A-K*). The cities were Washington, Boston, Chicago, Cincinnati, Detroit, Newark, Baltimore, and Cleveland; the trades were the plumbers, steamfitters, electricians, and carpenters.

term unemployed workers would have the opportunity to learn a skill." Finally, using funds procured under the Economic Opportunity Act, the department set up the Neighborhood Youth Corps program to pay "modest wages for part-time jobs" in order to help alleviate the continuing problem of unemployment among inner-city youth.[237]

In tandem with the efforts of the Labor Department and NUL, the PCEEO established a locally-based program in contract construction known as the area coordinator program. During the Spring of 1965, the committee appointed twenty "area coordinators for construction" for selected cities to work, under Vincent Macaluso's direction, with unions, contractors, and local representatives of federal contracting agencies to implement the provisions of the equal employment clause in contracts as well as those contained in Title VII of the 1964 Civil Rights Act.[238] As Taylor put it,

> The coordinators will be responsible...for making sure that all federal agencies act as one in regard to equal employment opportunity...each coordinator will conduct discussions and negotiations with contractors, subcontractors, apprenticeship committees, unions, building trades councils, builders' associations, community groups and other interested parties to assure that equal employment opportunity is provided in all employment practices and policies and all relevant training and apprenticeship programs. The coordinator also will keep statistics on the labor force on jobs in his area and will encourage private organizations, unions, schools and other sources to identify minority personnel who are qualified and seek apprentice or journeyman positions.[239]

For the most part, these area coordinators were already federal employees familiar with their assigned locales and with jobs related to construction. The area coordinator for St. Louis, for instance, Woody Zenfell, was the Interior Department's on-site engineer for

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[237] DOL Press Releases, July 20 (NUL II A17 *DOL, 1964, 3*), October 5 and 12 and November 9, 1964 (NUL II A17 *DOL, 1964, 4*); NUL Press Release, October 9, 1964 (NUL II E34 *October, 9b*). The other cities were Evansville, Indiana; Pittsburgh, Pennsylvania; and the neighborhood of Harlem in New York City.

[238] PCEEO Press Release, March 18, 1965 (LBJ, Papers of Presidential Aide [Aides] Lee C. White [White] 4, *Committee on Equal Employment Opportunity, 1964*).

[239] PCEEO Press Release, March 18, 1965.

construction of the Gateway Memorial Arch. Although most of the area coordinators were white, which gave them something in common with white union leaders, Charles Doneghy in Cleveland was Black, which purported to give him common ground with Black community organizers. Women area coordinators, like Jodie Eggers of Nashville, relied on their knowledge of the government contracting process, but fought an uphill battle to impress in the hyper-masculine world of construction work. Most of the financing for the program—meaning the salaries of the area coordinators themselves—would be supplied "by the agencies involved in the largest dollar volume of construction."[240]

On April 21, 1965, Macaluso sent his first memo to the area coordinators, setting out the guidelines for their work. He would expect weekly reports detailing their activities, including the names of people in meetings they attended, the significance of each reported event, appraisals of each contractor's compliance situation, and projected activities for the following two weeks. He asked that they maintain up-to-date lists of union apprenticeship rolls, hold "kick-off meetings" with pertinent members of their communities, and submit recommendations for how the area coordinator program should function in the future.[241]

Never before had a federal agency engaged in such a hands-on, details-oriented program to ensure compliance with the non-discrimination clause in federal contracts. The PCEEO was clearly taking construction industry compliance seriously. But unlike

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[240] Taylor to agency heads, April 26, 1965 (DOL Wirtz 246 *4b*); PCEEO Press Release, April 30, 1965 (DOL Wirtz 246 *5*); Remarks of Woody Zenfell to the Associated General Contractors of St. Louis, May 13, 1965 (DOL OFCC ADC 26 *Newsclips*); PCEEO Press Release, May 21, 1965 (Meany RG1-038 73 *16*); and Desmond H. Sealy to NUL Affiliates, May 26, 1965 (NUL II D34 *1964-5*).

[241] Macaluso to area coordinators, April 21, 1965 (LBJ Aides White 4, *Committee on Equal Employment Opportunity, 1964*).

the higher-profile *Plans for Progress*, the area coordinator program would see no fancy dinners or signing ceremonies at the White House, and received little press at its inception. This was not a public relations ploy to make it appear as if the administration cared about civil rights; here at last, for critics like the NAACP's Herbert Hill, was real evidence that the Johnson administration was serious about living up to its own rhetoric on equal employment opportunity and enforcing the non-discrimination clause in federal contracts and Title VII of the Civil Rights Act of 1964.

Taking a Stand: Lyndon B. Johnson and Civil Rights, 1965

The president had already set a high bar with his own rhetoric. In the wake of police violence against civil rights demonstrators in Selma, Alabama, Johnson addressed Congress on March 15, 1965, pushing new voting rights legislation with the language of the movement:

> What happened in Selma is part of a far larger movement which reaches into every section and state of America. It is the effort of American Negroes to secure for themselves the full blessing of American life.
>
> Their cause must be our cause too. It is not just Negroes, but it is all of us, who must overcome the crippling legacy of bigotry and injustice.
>
> *And we shall overcome.*[242]

For the president of the United States to recite such a phrase was similar in impact to Abraham Lincoln's meeting with Sojourner Truth and Frederick Douglass in the White House. Whitney Young immediately commended Johnson for what the NUL leader called the "most powerful statement ever made by a President of the United States."[243]

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[242] LBJ, "The American Promise: Remarks of the President to a Joint Session of the Congress," March 15, 1965 (LBJ Aides Harry C. McPherson [McPherson] 21, *Civil Rights, 1965*).
[243] NUL Press Release, March 16, 1965 (NUL II E35 *1965*).

Johnson had traveled a long road to that Congressional address. For much of his vice presidency, Johnson had demonstrated that the PCEEO would receive little more attention from his office than its predecessor committee had received from Vice President Nixon. He had organized photo opportunities for showpiece programs like *Plans for Progress* and *Union Programs for Fair Practices*, which basically confirmed promises already made by companies and unions not to discriminate. But during his final year as vice president he had hired Hobart Taylor to run the committee and had begun to take his responsibilities toward Black citizens seriously, and in his first year as president, largely in response to the March on Washington and the calls of Whitney Young for a "Domestic Marshall Plan" and Martin Luther King for a "G.I. Bill for Negroes," he had defined civil rights—especially in employment—as being one of the most important policy areas of his administration.[244]

The Civil Rights Act of 1964—passed mainly through Johnson's legerdemain and clout with his former colleagues in the Senate—devoted nearly half of its text to "Title VII—Equal Employment Opportunity." The title rendered illegal any act of discrimination in employment or union membership on the basis of "race, color, religion, sex, or national origin."[245]

As we have seen, however, the passage of the act had failed to prevent the large-scale rioting seen that summer, although it did harden the support of the mainstream civil

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[244] On Johnson's transformation, see Richard C. Wells to Sterling Tucker, December 20, 1961 (NUL II D31 *PCEEO, 1961-2*); PCEEO draft press release, August 20, 1962 (LBJ VP CR 12 *Press Releases*); PCEEO Press Release, November 14, 1962 (LBJ VP Reedy 22 *Press Releases, 1962*); PCEEO Press Releases, January 17 and 23, 1963 (LBJ VP Reedy 23 *Press Releases, 1963*); Todd Gitlin, The Sixties: Years of Hope, Days of Rage (Toronto: Bantam Books, 1987), p. 168; and *op. cit.* n. 144. On the Domestic Marshall Plan, see Young, "Domestic Marshall Plan," *New York Times*, October 6, 1963; and on the G.I. Bill for Negroes, see "Shuffling the Planks," *Time*, July 17, 1964.

[245] U.S. Congress, "Civil Rights Act of 1964," H.R. 7152, July 2, 1964.

rights leaders for the president's re-election campaign. Roy Wilkins, Martin Luther King, Jr., Whitney Young, and A. Philip Randolph issued a manifesto on July 29 (James Farmer of CORE and John Lewis of the Student Nonviolent Coordinating Committee agreed in principle but did not sign) decrying the riots and declaring a moratorium on marches and protests until after the election.[246] With the support of the civil rights leaders and most of the nation, Johnson handily won the election. Now he could take concrete steps to enforce his civil rights vision, to live up to his own rhetoric.

Early in 1965, Johnson moved to overhaul the government's civil rights and equal employment machinery, to give it his own presidential stamp. Two major factors influenced his thinking. One was a new vice president, Hubert H. Humphrey, who as senator had played a leading role in passage of the Civil Rights Act of 1964. He expected to again play a leading role in civil rights, as Johnson had before the Kennedy assassination. The other factor was the new legislation. Title VII of the Civil Rights Act of 1964 went into effect on July 2, 1965.

The vision of President Kennedy on equal employment opportunity lived on in the existing mechanisms under Executive Order No. 10925, as amended, as well as Title VII. These were the PCEEO, which oversaw semi-independent programs like *Plans for Progress* and *Union Programs for Fair Practices* and handled complaints of discrimination in federal government and federal contract employment, and the new Equal Employment Opportunity Commission (EEOC), which would receive and conciliate complaints of employment discrimination in the private sector, now illegal under Title VII. In addition, there was the Civil Rights Commission (formed in 1958 to

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[246] "Statement of Civil Rights Organization Leaders," July 29, 1964 (NAACP III A73 *Statements*); Clare Booth Luce, "Summit Meeting or Surrender," *New York Herald-Tribune*, August 11, 1964 (NUL II E3 *Title VI, 1964, August*).

enforce voting rights under the Civil Rights Act of 1957) and the contract compliance and equal opportunity offices of the federal agencies.[247]

On assuming the vice presidency, Hubert H. Humphrey sought to implement his own vision on this federal civil rights machinery. The several agencies, committees, and commissions now constituted an increasingly large arm of the government that Humphrey felt would best operate with unified oversight through his own coordination. To that end, he proposed forming a new body, the President's Council on Equal Opportunity (PCEO), which he would chair. So as to avoid adding substantively to the growing civil rights bureaucracy, the PCEO would have minimal staff and not actually perform any functions except oversight of other agencies. Busy pushing new voting rights legislation and a comprehensive domestic agenda—not to mention fighting the escalating war in Vietnam—Johnson acquiesced to the wishes of his new vice president and created, by executive order, the PCEO as the supreme oversight body on civil rights.[248]

On June 4, 1965, in his commencement address at Howard University, the president defined affirmative action as the key to equal opportunity:

> You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say "You are free to compete with all the others," and still justly believe that you have been completely fair.

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[247] U.S. Congress, "Civil Rights Act of 1964," H.R. 7152, July 2, 1964; Matusow, The Unraveling of America, pp. 210-11.

[248] PCEEO Press Release, January 4, 1965 (DOL Wirtz 245 *1a*); Hubert H. Humphrey to LBJ, January 4, 1965 (LBJ Aides White 4 *President's Council on Equal Opportunity [V.P.]*); LBJ to Humphrey, February 5, 1965 (LBJ, Records of the White House Central Files [WHCF] FG403 *President's Committee on Equal Employment Opportunity, 1/1/65*-); White House Press Release, May 10, 1965 (LBJ Aides Will R. Sparks [Sparks] 8 *Equal Employment Opportunity*). I ask the reader's indulgence in carefully discerning between the new PCEO (President's Council on Equal Opportunity), created for Humphrey, and the older PCEEO (President's Committee on Equal Employment Opportunity), created by Kennedy. These bodies will only exist simultaneously for a few paragraphs in this one chapter.

> Thus it is not enough just to open the gates of opportunity. All of our citizens must have the ability to walk through those gates.
>
> This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equality but human ability—not just equality as a right and a theory, but equality as a fact and as a result….
>
> To this end equal opportunity is essential, but not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family you live with, and the neighborhood you live in, by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the infant, the child, and the man.[249]

The president announced that the following year he would host a White House conference, "To Fulfill These Rights"—consciously recalling President Truman's 1947 conference "To Secure These Rights"—at which public policy and civil rights professionals would discuss possible solutions to the nation's continuing racial inequality.

Five days after the president's Howard University commencement speech, on June 9, 1965, an NUL Press release stated that tensions in the nation's cities were cooler overall than during the previous summer. The report warned, however, that if tokenism continued, especially in the building trades, riots might erupt again.[250]

Then came Watts.

On August 11, 1965, fierce rioting broke out on the streets of the Watts section of Los Angeles, California. When two white police officers questioned Black 21-year-old Marquette Frye on suspicion of drunken driving, Mrs. Frye came out to scold her son. A crowd appeared, and one of the officers became involved in a "scuffle" with some of the people on the street. The officers called for assistance and the scene erupted into a full-fledged melee. The neighborhood quieted the following day as local ministers and gang

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[249] LBJ, "To Fulfill These Rights: Remarks of the President at Howard University, Washington, DC," June 4, 1965 (LBJ Aides McPherson 21 *Civil Rights, 1965*).
[250] NUL Press Release, June 9, 1965 (NUL II E35 *1965*).

leaders attempted to negotiate with the chief of police, hoping that a permit for a street fair might channel the energies of the neighborhood's young, unemployed Blacks into more peaceful pursuits. The permit was not granted, and the evening of August 12 saw policemen—and any other whites who ventured into the neighborhood—attacked with clubs, bats, and Molotov cocktails. Over the next six nights, businesses were looted and attacks continued against members of the police force. Not until August 19 was the police chief able to declare the situation under control.[251]

In the aftermath of the Watts Riot, police chiefs around the country considered martial plans for quelling future disturbances and conservative commentators excoriated the president for not sending in the National Guard at the first instance of violence. But some moderates, like A. Philip Randolph, specifically called for jobs as the antidote to further incidents, and it was their advice that the president took. Johnson understood that he could not prevent riots in the immediate future any more than he could push back the tide of the nearby Chesapeake Bay, but he felt that through the energetic application of sound and just public policies, he could lessen their likelihood in the long run.[252]

This feeling was soon borne out by the McCone Report—produced by a California commission chaired by a conservative Republican businessman—which blamed the Watts riot on the lack of jobs and proper education in the inner city. The report stated that tokenism would not solve a problem faced by 350,000 unemployed

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[251] Leonard H. Carter to Wilkins, September 10, 1965 (NAACP III A333 *Watts Riot*). For more on Watts, see Guichard Parris and Lester Brooks, Blacks in the City: A History of the National Urban League (Boston: Little, Brown, 1971), p. 435; and Matusow, The Unraveling of America, pp. 196, 360-361.
[252] A. Philip Randolph, "How To Prevent Race Riots," *New York Amsterdam News*, September 4, 1965. On LBJ's response to the riots, see, for instance, Daryl Michael Scott, Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche (Chapel Hill: University of North Carolina Press, 1997) pp. 153, 156-157.

African Americans. The solution lay in the systematic, long-term education and training of all Americans on an equal basis.[253]

As a first step, the president moved to reconsolidate the civil rights machinery of the federal government.[254] Although ostensibly requested by Humphrey, the resultant changes in fact represented Johnson's wishes rather than those of his vice presidential "civil rights czar."[255] Executive Order No. 11246, issued September 24, 1965, abolished Humphrey's PCEO as well as the older PCEEO. *Plans for Progress* and *Union Programs for Fair Practices*, already semi-independent entities largely run by their corporate and union signers, were moved to the Labor Department. Because the new EEOC could only attempt conciliation of complaints and had no real power, but the PCEEO could revoke contracts and debar contractors, contract compliance—including Vincent Macaluso's area coordinator program for construction—was moved to the DOL as well, where the programs would continue to enjoy executive powers as the new Office of Federal Contract Compliance (OFCC) under the leadership of Edward C. Sylvester.[256]

Since the EEOC was without real enforcement authority, the most promising area of President Johnson's civil rights agenda remained, as when he had been vice president, in the field of contract compliance. And within the OFCC, the billions of dollars being spent annually on federal construction, and the rampant discrimination being practiced by the building trades in their apprenticeship programs, gave Vincent Macaluso's construction area coordinators program the most potential. If the Johnson administration

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[253] Alfred Friendly, "Official Watts Riot Report Pulls No Punches," *Washington Post*, December 13, 1965. Matusow also discusses the McCone Report in The Unraveling of America, p. 361.
[254] Lee C. White to LBJ, September 20, 1965 (LBJ Aides White 4 *President's Council on Equal Opportunity [V.P.]*).
[255] Humphrey to LBJ, September 24, 1965 (Meany RG1-038 73 *14*).
[256] LBJ, *Executive Order No. 11246*, September 24, 1965 (Meany RG1-038 73 *14*); Wirtz, "Secretary's Notice No. 94-65," October 5, 1965 (DOL OFCC ADC 18 *Wirtz, Correspondence with*).

could integrate one of the most visible areas of employment discrimination, perhaps future rioting could be averted. But, like turning back the Chesapeake tides, integrating skilled building construction would be no easy task.

The Construction Area Coordinators in Action: Three Cities

With the establishment of the OFCC within the Department of Labor in October 1965 and the dissolution of the PCEEO, Vincent Macaluso's construction area coordinators program was transferred from the oversight of White House aide Hobart Taylor to OFCC Director Edward C. Sylvester.

Macaluso's new boss was from Detroit, like Hobart Taylor. But unlike Taylor, Sylvester was a native of that city, and attended Wayne State University, where he studied engineering. During World War II, Sylvester was promoted from army private all the way up to first lieutenant, serving in the Pacific theater as well as in Europe. For most of the 1950s he served as a civil and structural engineer in Detroit, and by 1958 Sylvester was president of a timber company in Liberia. He returned to the United States in 1960 to work on the national staff of Democratic presidential candidate Stuart Symington, and ultimately went to work for the Kennedy Administration in 1962, serving in Wirtz's Labor Department as Deputy Administrator at the Bureau of International Labor Affairs. As a young Black administrator, he impressed the secretary and when Johnson issued Executive Order No. 11246, Wirtz tapped Sylvester to head the new OFCC.[257]

With 41 employees and a $700,000 annual budget, Sylvester's OFCC was but a small cog in a great machine, but a critical cog nonetheless in that it bore responsibility

[257] Matt Schudel, "Labor, Hill Official Edward Sylvester Dies," *Washington Post*, February 18, 2005; Wirtz, "Secretary's Notice No. 94-65."

for implementing compliance with the non-discrimination clause in contracts totaling approximately $35 Billion. The area coordinator program dovetailed nicely with the overall methodology of the Labor Department's OFCC, which differed greatly from that of the EEOC. The EEOC, a quasi-independent body whose members served at the pleasure of the president, received major press coverage and waited for complaints to be filed by individuals and groups, like the PCEEO's old contract compliance program. The OFCC, on the other hand, as a bureaucratic agency within a large federal department, received little press but was proactive: instead of acting on complaints, the OFCC initiated programs to seek out and eliminate discrimination in government contracts. And whereas the EEOC, created by statute, had only conciliation as a weapon, the OFCC, created by presidential executive order, had the president's imprimatur for an arsenal which included the power to revoke contracts, withhold funds, and debar contractors from doing business with the government in the future.[258] At the PCEEO, Macaluso had been Taylor's "special assistant." Now at the OFCC, Macaluso took the position of OFCC Assistant Director for Construction.[259]

With threatened protests at job sites in Cleveland and San Francisco over discrimination in hiring, and boycotts by unions in St. Louis over the hiring of non-union Black construction workers, Sylvester moved quickly to develop a "1966 Federal Contract Construction Program." Based on Macaluso's reports from the activities and experiences of the area coordinators, and in consultation with the heads of contracting agencies engaged in construction, Sylvester's 1966 program consisted mainly of the

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[258] Wirtz, "Secretary's Notice No. 94-65;" Donald Slaiman, *Labor News Conference*, October 24, 1965 (NAACP III A178 *NAACP, 1965*); Robert Dietsch, "Bans Hiring Bias on U.S. Contracts," *Cleveland Press*, February 10, 1966.

[259] Macaluso first used his new title in a letter to Edward C. Sylvester dated November 4, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*).

requirement that all contractors submit "written Affirmative Action Programs" to the contracting agencies and the OFCC. These affirmative action programs might contain a variety of options, but Sylvester's program strongly suggested they include minority outreach for apprenticeship opportunities (which could include establishing relationships with high school guidance counselors in Black and Hispanic communities or funding programs to speak about construction to junior high school classes); the hiring of a specific number of Black apprentices (and the maximum possible number of apprentices overall, so as to make room for them); a vigorous recruitment search for Black journeymen both inside and outside the unions; the establishment of centralized hiring procedures and a pledge that such procedures would be based on the principle of non-discrimination; the training of foremen in non-discrimination practices; and the promise to enforce the same program among subcontractors.[260]

Although the construction area coordinator program involved fifteen area coordinators assigned to twenty-two cities, [261] it was the experiences of three area coordinators in particular that most influenced the thinking of Edward Sylvester in the development and evolution of the 1966 program. These were Woodrow W. Zenfell, area coordinator for Kansas City and St. Louis, Missouri; Charles Doneghy, area coordinator for Cleveland and Columbus, Ohio; and Robert Magnusson, area coordinator for San Francisco, California. The varieties of experience these three area coordinators

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[260] Macaluso to Sylvester and Ward McCreedy to Sylvester, November 4, 1965; Biermann to Sylvester, November 22, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*); OFCC *Suggested Programs*, December 22, 1965; F.V. Helmer to Paul McDonald, February 2, 1966; F. Peter LiBassi to Sylvester, Richard M. Schmidt to Sylvester, Clyde C. Cook to Sylvester, and Paul McDonald to Sylvester, February 3, 1966; Richard F. Lally to Sylvester, February 9, 1966; Harry S. Traynor to Sylvester, February 14, 1966; Jack Moskowitz to Sylvester, February 23, 1966; and Alfred S. Hodgson to Sylvester, February 25, 1966 (DOL OFCC ADC19 *Federal Contract Construction Program*); and Sylvester to agency heads, June 8, 1966 (DOL OFCC ADC18 *Transition*).

[261] Dietsch, "Bans Hiring Bias."

accumulated helped Macaluso and Sylvester understand how best to approach the thorny problem of integrating the unions and the jobsites.

St. Louis: Woody Zenfell

In 1960, World War Two veteran and Vicksburg, Mississippi, native Woodrow W. Zenfell was working as an engineer on the Blue Ridge Parkway in Tennessee. An employee of the National Park Service, Department of the Interior, he was asked to become the Chief Structural Engineer for the Gateway National Expansion Memorial, known colloquially as the St. Louis Arch. Zenfell immediately relocated to St. Louis.[262] During his five years working on the arch, Zenfell acquired a wealth of local experience and technical knowledge and was even exposed to the issue of equal employment opportunity:

> Woody's job as Park Service engineer was to serve as liaison between the builders and the National Park Service. He was in the thick of just about every decision made regarding the Arch. Media liaison? That was his job. Dealing with dignitaries that would come around from time to time? That was his job, too.
>
> The day two men scaled the Arch in protest of the lack of minorities on the job? That was up to Woody to handle.
>
> And handle it he did, with Southern charm and a soft, Mississippi drawl.[263]

Clearly he was the right man for the job of OFCC area coordinator for construction, and his appointment went into effect on April 30, 1965.[264]

As area coordinator for construction, Zenfell had his work cut out for him. In 1965, St. Louis had "173 federally-involved construction projects ($50,000 or more) having a total valuation of $500,000,000." None of the skilled trades had even a single Black youth enrolled as an apprentice, and four of the skilled trade unions—the

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[262] Donald Janson, "Arch in St. Louis Inching Skyward," *New York Times*, August 30, 1964.
[263] Leslie McCarthy, "Arch Memories," *Webster-Kirkwood Times*, October 21, 2005.
[264] PCEEO Press Release, April 30, 1965 (DOL Wirtz 246 *PCEEO, 5*).

pipefitters, plumbers, electrical workers and ironworkers—had no Black journeymen either. Zenfell spent the summer and much of the fall of 1965 trying in vain to get the ironworkers to lower their apprenticeship standards, which he felt were too high.[265]

Perhaps the most visible of the federal construction projects in St. Louis was the one at which Zenfell had recently been employed. Intended as a grand entranceway to the American West, the arch had been completed earlier in the year, as had the edifice of the visitors' center. In the Fall of 1965, the General Contractor opened the bidding process for a plumbing subcontractor to work on the visitors' center interior.[266]

Granting a subcontract to a plumber proved difficult, as several area plumbing companies withdrew their bids when they became aware that the OFCC would be scrutinizing the Arch project for compliance. The contractors had exclusive hiring-hall contracts with the local plumbers' union, which required that only union plumbers be allowed to work on any given project. The plumbers union had no Black members, and not a single Black apprentice out of a class of 100 youths. In neighboring East St. Louis, the plumbers' apprenticeship program was seen as so discriminatory that the BAT decertified the program. Zenfell engaged in meetings with interested parties, and the award ultimately went to Elijah Smith Plumbing, a black-owned business from East St. Louis. The owner was active in the local NAACP and a member of the St. Louis Commission on Human Relations. He employed plumbers from an integrated (but mostly

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[265] Zenfell to Macaluso, August 27 and 31, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*) and September 24, 1965 (DOL OFCC ADC 25 *Unions Practicing Discrimination*).
[266] Macaluso to Sylvester and Ward McCreedy to Sylvester, November 4, 1965; Paul Boyajian to Ward McCreedy, November 9, 1965; and Biermann to Sylvester, November 22, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*).

Black) plumbers' union affiliated not with the AFL-CIO but with the Congress of Independent Unions (CIU), a local umbrella organization.[267]

The decision to award the plumbing subcontract to Smith was greeted with disdain by the St. Louis Area Building Trades Council, AFL-CIO, which unanimously voted on December 27, 1965, to walk out of the electric job and any other construction jobs related to the Arch as long as non-AFL-CIO plumbers were employed by Smith on the project. The walkout, which occurred on January 7, 1966, effectively shut down the project, for there were no electricians to even string temporary lights so that the CIU-affiliated plumbers could work.[268]

Coordinating the OFCC's response in Washington, Edward Sylvester asked his men on the ground, including Macaluso and Zenfell, to prepare all their documentation of the situation with the plumbing subcontract. This paperwork was then turned over to U.S. Attorney General Nicholas Katzenbach with the request that he file the first-ever "pattern or practice" lawsuit under Title VII of the 1964 Civil Rights Act. At the same time, the case was submitted to the NLRB for investigation of the walkout as an illegal "secondary boycott." Under the Taft-Hartley Labor Relations Act of 1947, no union could boycott a jobsite or an employer for reasons unrelated to its own membership. In essence, the OFCC was asking the NLRB to determine whether the AFL-CIO electricians' walking

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[267] Hugh C. Murphy to Joseph W. Beetz, November 30, 1965; Leroy R. Brown to Zenfell, December 23, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*); "AFL-CIO Unions Deny Arch Boycott; Long Legal Battle Opens Over Practices on Visitor Center," *St. Louis Globe-Democrat*; and "Tells of Effort to Get Firm at Arch to Quit; Witness Says Union Council Made Plea to U.S. on E. Smith," *St. Louis Post-Dispatch*, February 4, 1966.

[268] Arthur A. Hunn, *Policy Statement*, December 27, 1965 (DOL OFCC ADC26 *Correspondence, 1965-1966*); Ted Schafers, "Dispute Stops Riverfront Visitor Center Project Work," *St. Louis Globe-Democrat*, January 12, 1966; "A Principle at Stake," editorial, *St. Louis Post-Dispatch*, January 22, 1966; "U.S. Charges Bias to AFL-CIO Unit; Labor Department Requests Action in St. Louis Dispute," *New York Times*, January 23, 1966; Hugh Davis Graham, The Civil Rights Era: Origins and Development of National Policy (NY: Oxford University Press, 1990), pp. 285-286; and MacLean, Freedom Is Not Enough, pp. 92-93.

off the job in protest of the employment of the CIU plumbers (or, put more succinctly, the non-employment of the AFL-CIO plumbers) constituted an illegal "sympathy strike." The Justice Department and the NLRB pursued the matter in a combined case in St. Louis Federal District Court, where on February 8, 1966, the judge found that the walkout by the Building Trades Council constituted an illegal secondary boycott and issued a temporary injunction, ordering the electricians back to work on the Arch visitors center.[269]

The fallout from the District Court decision in St. Louis was quick and positive. Unable to strike against non-union contractors and fearing they would lose their lucrative hiring contracts over equal employment opportunity, the St. Louis building trades unions embarked on a campaign to integrate their membership and apprenticeship rolls. IBEW Local #1 signed a working agreement with a local Black electrical contractor, making his projects officially "union" projects, and opening the door for his mostly Black employees to successfully apply for journeyman membership in the union. Said the contractor, "I guess the Arch fight is bringing about a change all around."[270] By early March 1966, Zenfell was pushing the sheet metal workers to decrease their journeyman-to-apprentice ratio, thereby paving the way for a large apprenticeship class, and by the end of the

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[269] Sylvester to agency heads, January 5, 1966; Sylvester to Thomas D. Morris, January 7, 1966; Sylvester to Wirtz, January 20, 1966; Sylvester to Nicholas deB. Katzenbach, January 21, 1966; Sylvester to Franklin D. Roosevelt, Jr., and Sylvester to Stewart L. Udall, January 24, 1966 (DOL OFCC ADC26 *Correspondence, 1965-1966*); "St. Louis Union Group Accused of Interfering With Race Hiring Law; Labor Agency Requests Action Against the Area's Building Trades Council of AFL-CIO," *Wall Street Journal*, January, 1966; "AFL-CIO Unions Deny Arch Boycott," *St. Louis Globe-Democrat*, February 4, 1966; "Unions Charged; Justice Department Files First Job Bias Suit," *Cleveland Plain Dealer*; "U.S. Charges Unions Deny Negroes Jobs," *St. Louis Globe-Democrat*, February 5, 1966; and "End Secondary Boycott, Union Told in St. Louis; Racial Charges Pending," *Wall Street Journal*, February 8, 1966. Katzenbach, as Assistant Attorney General under Robert Kennedy, had been the federal officer at the famous showdown with Alabama Governor George Wallace over integration of the state university there; Macaluso, it will be recalled, had previously worked for the NLRB.

[270] Ted Schafers, "Negro Contractor, IBEW Sign Pact," *St. Louis Globe-Democrat*, February 21, 1966.

month, he had succeeded in getting the St. Louis Lathers to admit the first two Black apprentices in the union's history.[271] But the union which took the matter most seriously was the heretofore all-white Pipefitters, who created a six-month "crash" program for ten skilled Black pipefitters to go straight to journeyman membership in the union.[272] The "lily-white" St. Louis building trades, threatened by Zenfell's activities, had thrown down the gauntlet. The OFCC had taken it up, and—aided by a sympathetic court decision—won a decisive victory.

Cleveland: Charles Doneghy

In April, 1966, the United States Civil Rights Commission (CRC) held hearings in Cleveland on the state of civil rights in the city and environs. The CRC had been established by the Civil Rights Act of 1957 mainly to investigate disenfranchisement in the South, but in 1964 President Johnson delegated the commission to investigate and report on all civil rights issues by holding public hearings in cities throughout the nation.[273]

If the EEOC had little power, the CRC had even less. The OFCC could revoke contracts and debar contractors, and the EEOC could conciliate with offenders and recommend cases for prosecution by the Attorney General, but the CRC could only hold hearings and write reports. The public announcement for the Cleveland hearings stated

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[271] Hurley to Zenfell, March 10, 1966, and Hurley to Macaluso, March 31, 1966 (DOL OFCC ADC26 *Correspondence, 1965-1966*).
[272] Maury E. Rubin, "Pipefitters Local 562 Gives Advanced Job Opportunities To 10 New Negro Members Now Working On The Job In Training Program," *St. Louis Labor Tribune*, February 17, 1966; "Steamfitters' Crash Program Enrolls 10 Negroes; Men Will Be Paid Journeymen's Wages Throughout Training Project," *St. Louis Argus*, February 18, 1966.
[273] "LBJ to Get Area Report on Rights," *Cleveland Press*, March 24, 1966.

that they would be "part of an in-depth study of civil rights problems in areas of education, employment, housing, health and welfare, and police-community relations."[274]

The CRC devoted one full day of their week-long hearings to discrimination in the building trades. One witness, a Black plumbing contractor, "had tried from 1933 to 1963 before he got any of his Negro workers into Local 55 of the Plumbers Union," according to a newspaper account. After three decades, he had succeeded in obtaining union membership for only two of his Black employees, who together constituted more than half the Black union plumbers.[275] There were only three Black union plumbers in all of Cleveland!

A staff researcher for the commission testified that only 2.4 per cent of whites in the building trades were unemployed, whereas the figure for Blacks was 8.9%, almost four times as high. He went on to say that five skilled construction unions in Cleveland—the IBEW, the sheet metal workers, the ironworkers, the plumbers, and the pipefitters—had a total of 7,786 journeymen members, of whom only fifty-three were Black, and only eight of those were currently employed in the building trades. Thus employed Blacks constituted slightly more than one-tenth of one percent of the membership of these unions. These same unions also had a total of 367 apprentices, of whom only one was Black. Of the five trades singled out at the CRC hearings, only the IBEW lacked an apprenticeship class.[276]

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[274] *Ibid.* and Doris O'Donnell, "City Gets Rights Mandate," *Cleveland Plain Dealer*, April 10, 1966.
[275] Julian Krawcheck and Don Baker, "Rights Probers Told of Racial Hiring Practices," *Cleveland Press*, April 6, 1966; O'Donnell, "City Gets Rights Mandate."
[276] Krawcheck and Baker, "Rights Probers Told;" O'Donnell, "City Gets Rights Mandate;" William O. Walker, "Down the Big Road: 'This Has Been A Sorry Story,'" column, *Cleveland Call & Post*, April 16, 1966; Biermann, *file memo*, February 10, 1965 (DOL Wirtz 246 *PCEEO, 3b*).

In the face of such overwhelming evidence of discrimination, construction area coordinator Charles Doneghy resolved to integrate one of the most discriminatory trades in the city: the electrical workers. He identified the biggest government contractors first with the intention of pushing the union to admit Blacks afterwards. One such contractor was Lake Erie Electric, which held a contract with the National Aeronautics and Space Administration (NASA) for a seven-month, $78,000 project. The company had an exclusive hiring agreement with IBEW Local #38, which had no Black members. Threatening possible debarment, Doneghy pressed Lake Erie to sign a pre-award affirmative action agreement. The agreement contained the following four provisions:

- Contractor understands that "affirmative action" under the EEO [equal employment opportunity] clause in his contract in this situation means that his firm will actively recruit minority group employees for work in the trades where they are not now independently represented.
- Contractor understands that mere reliance upon union referral does not satisfy the EEO clause in his contract.
- Contractor understands that his "affirmative action" under the EEO clause in his contract requires that he actively seek minority group candidates for apprenticeship classes through local public school administrators and teachers and local civic and church leaders, and through newspaper advertisements and all other media which effectively reach the minority groups.
- Contractor understands that the EEO clause in his contract means that he will instruct his subcontractors to take the same kind of "affirmative action" that he is taking, where it is appropriate, and that the compliance of the subcontractors is his continuing responsibility.[277]

Lake Erie checked each of the four boxes, indicating acceptance of all of the provisions. Doneghy told Macaluso that the head of the company said "if it were necessary to integrate his work force" to avoid contract cancellation, "that is what he would have to do."[278] And so Doneghy set to work with the company on the details of an

[277] Charles Doneghy, *Area Coordinator's Log*, January 13, 1966 (DOL OFCC ADC2, *Cleveland, 1966*).
[278] Doneghy, *Area Coordinator's Log*, January 14 and 25, 1966 (DOL OFCC ADC2, *Cleveland, 1966*).

affirmative action plan which would comply with the provisions listed in the pre-award agreement.

With the pre-award agreement in place, Doneghy turned his attention towards IBEW Local #38, so that Lake Erie and other electrical contractors could draw from qualified Black electrical workers in order to meet their affirmative action obligations. Local #38 had no Black members and did not even have an apprenticeship class. Using the threat of BAT de-certification of their JAC and the possibility that jobs would dry up without federal dollars, Doneghy was able to convince the union to call a new apprenticeship class and even announce publicly that it was seeking Black applicants. The Cleveland Urban League immediately referred thirty-one graduates of its Manpower Advancement Program (MAP), a local pre-apprenticeship training program.[279]

Then came Hough, the worst riot in Cleveland's history. On July 18, 1966, after a white bartender refused to serve a glass of water to a Black patron, the Hough neighborhood (pronounced "huff," as in "Rough Hough") erupted into violence. For seven days, the area between Superior and Euclid Avenues, stretching west for one and a half miles from Rockefeller Park, was akin to a war zone. The governor deployed the Ohio National Guard in an attempt to quell the disturbance, which resulted in four deaths and at least thirty injuries. Two hundred and thirty-five residents were arrested (but none charged with any crime). Three of the four fatalities were Black, including one woman who was apparently killed in a spray of police gunfire while leaning out of her second-floor window, and a man who was killed by a white mob while waiting in a car near his job in a neighboring Italian-American neighborhood. Due to a delay in mobilizing the

[279] "Electrical Groups Seek to Train Negro Youths," *Cleveland Press*, June 28, 1966; Harry A. Lenhart, Jr., "U.S.-Aided Negroes Pass Union Exam," *Cleveland Plain Dealer*, July 29, 1966.

National Guard from an air base in Kentucky, the violence only ended with heavy rains on July 24. The need for more employment opportunities for Cleveland's Black youth had never seemed more urgent.[280]

A week after the riots ended, newspapers reported that thirty of the NUL-MAP applicants for IBEW apprenticeship had successfully passed the written exam.[281] But Doneghy's hopes were dashed in September 1966, when the NUL-MAP applicants were rejected by the IBEW following a series of oral interviews with union leaders. As had happened so often in the past, the interviewers had ensured that the Black applicants did not advance into apprenticeship with the union. "They asked question [sic] that didn't seem to tie in with electricity," reported one applicant.[282] Said another, "I believe that the written and oral test that I took were not scored upon fairly because I believe I passed the oral as well as written."[283] Yet another wrote carefully:

> I, Kenneth D. Roberts, a student of Manpower Advancement Program, took on July 9, 1966 a Written Examination For an electrical apprentiship [sic], given by the Electrical Workers Union Local 38. And also received a notice to take an oral exam which was given at the Elec Workers Union Local 38, in which I also took. And on a later date I received a notice stating that I did not qualify. But I, with a considerable reasonable doubt, I believe that I successfully qualified on both examinations, and declaring that a discriminatory act was produced by the Electrical Workers Union Local 38, against me because of race or color.[284]

While the writing skills of these applicants clearly were not perfect, nevertheless their written statements conveyed the earnestness of their belief that they were indeed qualified

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[280] "The Riot's Real Causes," Editorial, *Cleveland Press*, August 10, 1966; Marc E. Lackritz, The Hough Riots of 1966 (Cleveland: Regional Church Planning Office, 1968); "Hough Riots," *Encyclopedia of Cleveland History*, http://ech.case.edu/ech-cgi/article.pl?id=HR3, accessed December 24, 2007; "Hough Heritage," http://www.nhlink.net/ClevelandNeighborhoods/hough/history.htm, accessed December 24, 2007; *Report of the United States Civil Rights Commission*, March 1, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); and Transcript, Ramsey Clark Oral History Interview IV, 4/16/69, by Harri Baker, Electronic Copy, LBJ Library, pp. 1-2, 8.
[281] Lenhart, "U.S.-Aided Negroes;" "Negro Apprentices," Editorial, *Cleveland Plain Dealer*, July 30, 1966.
[282] Wilbert Baker to EEOC, September 27, 1966 (NUL III 137 *EEOC, 1965-9*).
[283] Ernest Jackson to EEOC, September 27, 1966 (NUL III 137 *EEOC, 1965-9*).
[284] Kenneth D. Roberts to EEOC, September 27, 1966 (NUL III 137 *EEOC, 1965-9*).

and had been fraudulently kept from apprenticeship opportunities due to racism. These and other statements were collected by the NUL, sworn and notarized, and forwarded to the EEOC in Washington.[285]

While Doneghy succeeded in getting contractors like Lake Erie Electric to agree to integrate, he suffered a setback in the battle to increase Black apprenticeship in the IBEW. Part of the reason may have been his own color: unlike white southerner Woody Zenfell, Doneghy could not easily move among the lily-white leadership of the local unions. But Doneghy was also trying to get the unions to exercise change from within, whereas Zenfell had the advantage of a Justice Department lawsuit.

Meanwhile, Macaluso and Sylvester were working on a comprehensive program for Cleveland which would address apprenticeship, journeyman membership, and actual contract hiring, but first they would try out a version in San Francisco.

San Francisco: Bob Magnusson

In 1966, San Franciscans were constructing new post office buildings, several hospitals, an atomic energy laboratory, and a handful of housing projects, all fully- or partially-financed by agencies of the federal government. But the largest project under construction at the time was the new Bay Area Rapid Transit System (BART).[286]

BART was financed in part by the federal government's Department of Transportation and in part by a public bond issued by the three affected counties—San

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[285] These complaints would ultimately become part of a DOJ lawsuit, *U.S. v. IBEW Local 38*, 59 L.C. 9226 (1969). The district court held that the union was not required to seek minority members, although this decision was soon rendered moot by the Fifth Circuit Court of Appeals in *Local 53, International Association of Heat and Frost Insulators and Asbestos Workers v. Vogler*, 59 L.C. 9195 (1969). For more on these cases, see Moreno, From Direct Action to Affirmative Action, pp. 257-259.

[286] *Federally Financed Construction*, November 4, 1966 (DOL OFCC ADC13 *San Francisco Related Material, 2*).

Francisco, Alameda, and Contra Costa.[287] The system had four major legs, terminating in the northeast at Concord, in the north at Richmond, in the southeast at Fremont, and in the west at West Portal in San Francisco and in Daly City in San Mateo. There were major hubs in Oakland and central San Francisco, and the most labor-intensive (and expensive) component of the project was the trans-bay tube, connecting the two. The projected cost was $350 Million, which would pay over eight thousand workers to dig ditches and tunnels, lay tracks, build trestles and viaducts, and construct stations.[288]

The problem was that public funds (both from the bond issue as well as from the federal government) were being used to finance projects on BART that employed all-white union labor. As the head of the local NAACP put it to Secretary Wirtz,

> We have been extremely critical of BART for its minority hiring practices but, we are growing increasingly convinced that a greater share of the blame rest with the subcontractors who are doing most of the construction work and who have to use union members.
>
> I wish to advise you that as the building of BART progresses, the bitterness of unemployed Negro workers will grow and we can anticipate possibly disastrous confrontations between Negroes and white persons before the construction has been completed….
>
> Several building trades unions involved have very poor records of hiring minority workers and unless drastic action is initiated, their ranks will remain for the most part "lily" white.[289]

The number of skilled construction workers needed for BART was so large that at various stages of construction, the three participating counties would not be able to produce sufficient union journeymen in particular crafts to fully staff the project. To meet their projected needs, contractors sought additional workers in particular skilled crafts

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[287] One of the branches had a terminus in San Mateo County, just south of the border with San Francisco County, but San Mateo did not participate in the management of, or fundraising for, the system.
[288] Tom O'Leary, "Rapid Transit Hits Rough Spot," *Christian Science Monitor*, November 11, 1965; "Now Under Construction: Rapid Transit for the Bay Area," Brochure, Winter, 1967 (DOL OFCC ADC13 *San Francisco Related Material, 1*).
[289] Leonard H. Carter to Wirtz, January 13, 1967 (DOL OFCC ADC12 *San Francisco Correspondence, 1967, January-March*).

from unions in the surrounding counties, despite the fact that there were trained Black non-union journeymen in those crafts in San Francisco, Alameda, and Contra Costa. Advocates of local Black construction workers resolved to fight this, forming an organization called Job Opportunities-BART (JOBART). What JOBART mainly lobbied for—with local elected officials, BART officials, federal officials, and even the construction unions—was the implementation of a single principle: that hiring for BART exhaust the lists of qualified construction workers in the three counties paying for the bond—union and non-union alike—before turning to unions in neighboring counties.[290]

Soon after his appointment, Department of Housing and Urban Development (HUD) officer-turned OFCC Area Coordinator for Construction Robert C. Magnusson held initial meetings with Macaluso and Sylvester at separate times in San Francisco in the spring and early summer of 1966. BART was clearly the most important project on Magnusson's desk, but very little of its funding came from the federal government, and California's fair employment practices law did not have a strong enforcement regime. Sylvester's "1966 Federal Contract Construction Program" was now in effect. The program required that all federal contractors attend pre-award meetings with the contracting agency and area coordinator to discuss various affirmative action activities. Magnusson felt that equal opportunity could be achieved throughout BART construction by requiring that federal contractors meet Sylvester's standards (and those of President Johnson's Executive Order No. 11246) on all their contracts, including those not funded by the federal government, and the area coordinator went to work drafting a standard affirmative action plan which would be offered to contractors willing to "play ball."

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[290] O'Leary, "Rapid Transit," *Christian Science Monitor*, November 11, 1965; JOBART to BART, March, 1966 (DOL OFCC ADC3 *San Francisco*).

Sylvester, Macaluso, and Magnusson were gambling that the contractors would not simply throw up their hands at union recalcitrance and forgo their federal contracts. With Bay Area construction having already come under fire from local grassroots organizations like JOBART, the OFCC officers hoped that the contractors would agree that integration was inevitable, and decide not to fight it. As in Cleveland, the OFCC was relying on conciliation to effect change from within, and did not have a Justice Department lawsuit in the works to force compliance as they had in St. Louis.[291]

Nevertheless, they won the bet. On October 1, 1966, the General and Specialty Contractors' Association of Berkeley, CA resolved to favor local residents for employment on BART and other publicly-financed contracts. Three weeks later, the general manager of BART said "there are no particular problems for [BART] in participating in a specific, forceful, affirmative action program as long as it is not placed in a competitive disadvantage in obtaining bids."[292]

With BART management and Bay Area construction contractors willing to entertain affirmative action plans, Magnusson, Macaluso, and Sylvester began working on a comprehensive program to tailor the nationwide "1966 Federal Contract Construction Program" to the specific needs of the San Francisco area. In particular, the program would consider the fact that despite the size of the BART project and others, union unemployment in the construction industry was higher in 1966 than it had been in the previous thirty years, with Alameda County alone registering a thirty per cent

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[291] "Fair Hire Meeting Set," *Daily Pacific Builder*, March 11, 1967; Robert C. Magnusson to Sylvester, July 1, 1966; and Magnusson to Macaluso, August 22, 1966 (DOL OFCC ADC3 *San Francisco*). For more on grassroots civil rights organizing in the Bay Area, see Robert O. Self, American Babylon: Race and the Struggle for Postwar Oakland (Princeton, NJ: Princeton University Press, 2003).

[292] General and Specialty Contractors' Association *Resolution*, October 1, 1966; Ray Dones to LBJ, October 10, 1966 (LBJ WHCF BE16 *Construction*); and B.R. Stokes to Robert C. Weaver, October 21, 1966 (DOL OFCC ADC3 *San Francisco*).

unemployment rate (this was possible despite BART employment due to the different stages of construction which employed many workers in the individual crafts, but only for short periods of time).[293] Meanwhile, the overall unemployment rate in San Francisco's Black and Hispanic neighborhoods was skyrocketing to nearly fifty per cent (when those who had given up the job search were counted).[294] Magnusson understood that the San Francisco unions would fight tooth and nail against any proposed growth in their journeyman membership. A more feasible route for San Francisco lay in apprenticeship, where the willingness of contractors to implement affirmative action plans could be exploited to hire and train the maximum number of Black youths. If the union-controlled JACs didn't approve, they could be de-certified.[295] On December 22, 1966, Sylvester sent a preliminary order to the heads of contracting agencies with projects in the San Francisco area, advising them of BART's willingness to cooperate in affirmative action, and setting forth the basic conditions that would, after several drafts, become the "Operational Plan for San Francisco Bay Area Contract Construction Program."[296]

As expected, the plan's nine provisions charged each contractor to work hardest at integrating apprenticeship, and emphasized cooperation with unions.[297] The program expected contractors to

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[293] "Construction Unions Warn of Job Crisis," *San Francisco Chronicle*, February 24, 1967.
[294] "S.F. and Oakland Poverty Areas; Survey Finds Bleak Job Picture," *San Francisco Chronicle*, February 16, 1967.
[295] Rubin, "Pipefitters Local 562," *St. Louis Labor Tribune*, February 17, 1966; Macaluso to Sylvester, February 14, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); "S.F. and Oakland Poverty Areas," *San Francisco Chronicle*, February 16, 1967; "Construction Unions Warn," *San Francisco Chronicle*, February 24, 1967; Magnusson to Macaluso, February, 1967 (DOL OFCC ADC24 *Monthly Reports, 1967, January-June*.
[296] Sylvester to agency heads, December 22, 1966 (DOL OFCC ADC3 *San Francisco*).
[297] Robert A. Sauer to Department of Housing and Urban Development, January 6, 1967 (DOL OFCC ADC12 *San Francisco Correspondence, 1967, January-March*).

(1) cooperate with the unions with which it has agreements in the development of programs to assure qualified members of minority groups of equal opportunity in employment in the construction trades;
(2) actively participate individually or through an association in Joint Apprenticeship Committees to achieve equality of opportunity for minority group applicants to participate in the apprenticeship programs;
(3) actively seek to sponsor members of minority groups for pre-apprenticeship training;
(4) assist youths with minority group identification to enter each apprenticeship program;
(5) improve opportunities for the upgrading of members of the construction force;
(6) seek minority group referrals or applicants for journeymen positions;
(7) make certain that all recruiting activities are carried out on a non-discriminatory basis;
(8) make known to all of its subcontractors, employees and all sources of referral of its equal employment opportunity policy;
(9) encourage minority group subcontractors, and subcontractors with minority group representation among their employees to bid for subcontracting work.[298]

Sylvester formally issued the order, called "The San Francisco Plan" for short, on February 6, 1967. Unfortunately for skilled and aspiring Black San Francisco construction workers, the OFCC quickly deemed the plan a failure.[299] The emphasis on cooperation, which was clearly all Magnusson could expect given the overall employment situation, allowed contractors to get away with little more than lip service and tokenism. At HUD, the largest federal contracting agency in the Bay Area, senior officials marginalized the San Francisco Plan as well as Magnusson himself. Still on the HUD payroll, Magnusson was placed in a shared 8-foot by 10-foot office without access to a secretary; for several weeks, until Sylvester was able to prevail upon Magnusson's supervisor, the San Francisco area coordinator was reduced to submitting hand-written

[298] Sylvester to agency heads, February 6, 1967 (DOL OFCC ADC12 *San Francisco Correspondence, 1967, January-March*).
[299] Sylvester to agency heads, June 29, 1967 (DOL OFCC ADC12 *San Francisco Correspondence, 1967, April-June*); and Graham, The Civil Rights Era, p. 286.

reports and making frequent visits to the HUD mailroom.[300] By early July, with virtual contempt from the contractors, unions, and government officials responsible for implementation, the San Francisco Plan had failed to produce any tangible results.

The experiences of the area coordinators during 1966 proved to Macaluso and Sylvester that different employment conditions in different cities outweighed their similarities when it came to crafting a comprehensive integration program for the building trades. In St. Louis, sufficient trained Blacks could be moved directly into journeyman status due to unions' fear of continued federal court actions. In Cleveland and in San Francisco, integration in apprenticeship seemed to be key, but the different experiences of Doneghy and Magnusson with their local JACs showed that these cities required different approaches as well. Unlike in St. Louis, no federal lawsuit accompanied the work of Doneghy or Magnusson. The inability of Doneghy and the NUL to place trained pre-apprenticeship graduates with the IBEW, and the outright hostility faced by Mangusson at HUD in San Francisco, led to a growing frustration at the OFCC. Stronger measures were required.[301]

The Cleveland Plan

Whereas the San Francisco Plan focused on apprenticeship and conciliation, confronted by high unemployment both inside and outside the construction unions despite the presence of the $900 Million BART construction project, the drafting of an Operational Plan for Cleveland posed different problems altogether. In January 1967, during a season

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[300] Adrian Dove to Sylvester, July 25, 1967 (DOL OFCC ADC12 *San Francisco Correspondence, 1967, July-September*).
[301] Sylvester to Agency Heads, February 10 and March 15, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).

normally slow for the industry, union unemployment in construction was extremely low and dropping. This trend continued as the winter deepened, and by mid-February Area Coordinator Doneghy reported that "the bench is bare," a circumstance which Macaluso immediately likened—in a reverse metaphor, given the season—to "snowballs in July."[302]

Unlike in San Francisco, where much of the work was in the single major project, Cleveland was rife with smaller—but nevertheless substantial—construction projects. In addition to Lake Erie Electric's NASA project, Western Reserve University was constructing new campus buildings; the University of Akron was constructing a Cleveland campus; and there were senior citizens' homes, a hospital, and several housing complexes on their way up—all relying, in whole or in part, on federal funds.[303]

Several grassroots organizations were operating to train Black youths for apprenticeships in Cleveland. As we have seen, the NUL had its MAP Program, which had successfully trained youths for the written IBEW apprenticeship exam the previous summer. Fresh from his success training youths for construction apprenticeships in Brooklyn, New York, Ernest Green (of the *Little Rock Nine*) brought his Workers' Defense League (WDL)-sponsored apprenticeship training program to Cleveland in early 1967. And Philadelphia Rev. Leon Sullivan's Opportunities Industrialization Center (OIC) opened up a branch in Cleveland in April of that same year. These programs gave

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[302] Doneghy to Macaluso, January 16, 1967; Macaluso to Sylvester, February 14, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).

[303] Ted B. Sennett to Ben D. DeJohn, April 13, 1967; Thomas Ruble to Federation Towers, Inc., May 3, 1967; Dove to Sylvester and Clifford E. Minton to Howard L. Graham, June 7, 1967; Nick J. Mileti to Robert D. Sauer, June 19, 1967; and H.D. Conant to DeJohn, August 7, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); Mileti to Sauer, July 20, 1967 (DOL OFCC ADC9 *Cleveland Correspondence, 1967, July*); and Sam Chambers to Doneghy, September 6, 1967 (DOL OFCC ADC9 *Cleveland Correspondence, 1967, September-December*).

the lie to union and contractor claims that no qualified Black youths were available for apprenticeship.[304]

Based on the overall unemployment rate, Doneghy's experience with the local IBEW, and the presence of minority-oriented training programs, Sylvester and Macaluso resolved that Cleveland was an opportune place to launch a more aggressive plan, and the Cleveland Operational Plan was just that. It called for the now-usual pre-award conferences between contractors and federal contracting agencies, and expected all bidders to meet Labor Department criteria for equal opportunity certification and submit an affirmative action plan. But unlike the San Francisco Plan, it was confrontational in style: building on the affirmative action plan forged with Lake Erie Electric, contractors were expected to hire journeymen from non-union sources if the unions could not provide significant non-white employees, and apprenticeship programs without Black apprentices would be de-certified.[305]

In the midst of implementation of the Cleveland Plan, a major court case pushed the OFCC to take even more direct action. On May 17, 1967, a federal district judge in Columbus ruled in the case of *Ethridge v. Rhodes* that construction on a particular project be stopped until the trade unions working on the project, or the general contractor and his subcontractors, integrated. The next day, spurred to action by the court ruling, Macaluso ordered that $48 Million in federal funds for a variety of Cleveland projects be withheld until each contractor could demonstrate that he had integrated his workforce, announcing that the OFCC would make a decision on an additional $60 Million within three or four

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[304] Doneghy to Macaluso, April n.d., 1967 (OFCC ADC24 *Monthly Reports, 1967, January-June*); William F. Miller, "Negroes in Trades Is His Goal," *Cleveland Plain Dealer*, August 24, 1967.
[305] Sylvester to Agency heads, March 15, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); Graham, The Civil Rights Era, p. 286.

weeks. For the first time, all federal construction expenditures in an entire city were halted for non-compliance with the non-discrimination clause.[306]

The stoppage of funds by Macaluso represented a major step forward in the progression of compliance activity. During the 1950s, when the non-compliance clause was first added to federal contracts, the signature of the contractor was deemed sufficient to release funds. In 1960, as we have seen when McCloskey & Co. put "a chap on the payroll" on the southwest Washington, DC, redevelopment project, token compliance became necessary to continue to receive funds. With Sylvester's Federal Contract Construction Program for 1966, successful bidders were expected to at least pay lip service to the ideals of equal opportunity by attending a pre-award meeting and submitting a plan for affirmative action, but little follow-up was required and few such plans were fully implemented; in any event, the money always continued to flow. Now the OFCC was taking compliance a step further. The default position of the federal expenditures was reversed. Instead of having to make promises to keep the money flowing, contractors would have to demonstrate compliance to *start* the money flowing. And until they did, the federal government would not spend a dime on construction in the seven-county Cleveland area.

Predictably, the skilled craft unions opposed Macaluso's decision. They had achieved their goal of full employment, which would be lost if they were forced to accept new Black members or share construction employment with non-union men. Full employment meant not only that all union members were employed—and that they could

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[306] Antony Mazzolini, "U.S. Stops Funds on Projects Here," *Cleveland Press*, May 18, 1967; "U.S. Stalls $43 Million in Projects Here, Citing Unions' Bias," *Cleveland Plain Dealer*, May 19, 1967; "Union Bias Halts Projects, Cleveland," *San Francisco Chronicle*, May 19, 1967; and Wilkins, *News Conference Statement*, June 27, 1967 (NAACP IV A21 *Civil Rights, Wilkins*).

depend on significant overtime pay—but that the unions could successfully demand that contractors accelerate wage increases. If additional workers were allowed onto the jobsites, union or not, the swelled numbers would probably slow down pay increases. And the boom times were almost certainly temporary; few expected the bench to remain bare for long. If there was a time to take advantage of low membership, this was it. The plumbers, for instance, were specifically not starting a new apprenticeship class and would not replace members who retired. Rather than comply with the Cleveland Plan, the plumbers sought to focus work on non-federal jobs until the federal money started flowing again (which they and others predicted would happen eventually whether the jobsites were integrated or not). The union began referring newly-available members to the non-federal construction projects of Republic Steel of Cleveland. But even Republic Steel was not immune to the Cleveland Plan; they had some contracts with the GSA, and Sylvester wrote the agency to plug this potential plumbers loophole.[307]

Federally-assisted institutions had mixed reactions to the Cleveland Plan. Some, like Western Reserve University, whose federal construction funds came from the Department of Health, Education, and Welfare (HEW), welcomed the opportunity to force integration on contractors and unions alike. Others, like Federation Towers, a housing project for union retirees being built by the local AFL-CIO with funds from the Department of Housing and Urban Development (HUD), challenged the decision as changing "the rules of the game" after contracts had already been signed. And one hospital with a HEW-funded construction contract complained to Ohio Senator Frank Lausche in the hopes that the Senator's office would convince the OFCC to restore

[307] Sylvester to Wirtz, June 27, 1967; Sylvester to Harry R. Van Cleve, Jr., June 28, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).

funding (the senator was placated after Sylvester wrote that the contractor for the project had failed to submit an acceptable affirmative action plan).[308]

Most contractors welcomed the decision, one seeing it as an opportunity to "get his house in order."[309] Some also saw it as an opportunity to weaken the stranglehold the unions had on hiring.[310] But there was still the question of demonstrating results: how could a contractor effectively prove to Macaluso that he had integrated his workforce when the funds weren't flowing and the work wasn't being done?

The solution was adding a column to the manning table. The manning table was essentially a list of employees in each craft for a given project (or subcontractor's portion of a project), and was a long-established practice in contract construction reporting. Fred Kerr, of the Gillmore-Olsen Company, general contractor on the NASA project, proposed adding the total number of non-whites in each craft:

> …we intend to provide…Negro and Spanish surname representation in the crafts specified below in accordance with the following:
>
> | CRAFTS | TOTAL REQUIRED | TOTAL MINORITY | APPROXIMATE MONTHS ON THE JOB |
> |---|---|---|---|
> | Operating Engineers | 5 | 2 | 5 |
> | Plumbers | 4 | 1 | 4 |
> | Iron Workers | 6 | 1 | 5 |
> | Electricians | 7 | 2 | 12 |
> | Sheet Metal Workers | 2 | 1 | 3 |
> | Steam Fitters | 4 | 1 | 4 |
>
> The minority representation will be employed in craft-type jobs; i.e. pre-apprentice, apprentice, journeyman or supervision.[311]

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[308] Harold S. Stern to HUD, May 24, 1967; Minton to Graham, June 7, 1967; Doneghy to Minton, June 14, 1967; Earl B. Raymer to Frank J. Lausche, June 16, 1967; Ray M. White to Raymer, and Lausche to Sylvester, June 19, 1967; Sylvester to Lausche, June 30, 1967; and Conant to DeJohn, August 7, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).
[309] Doneghy, *File Memo*, June 22, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).
[310] George Hudak to Mechanical Contractors' Association of Cleveland, Inc., May 25, 1967 (OFCC ADC9 *Cleveland Correspondence, 1967, July*).
[311] Fred M. Kerr to Sherwood Holman, June 1, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*).

This particular manning table went far beyond mere tokenism. NASA immediately agreed; Macaluso and Sylvester concurred; and the project funds were released to Gillmore-Olsen. Other contractors—both in order to demonstrate compliance and ensure that they did not lose bids to contractors providing the new affirmative action manning tables—quickly followed suit. By June 27, the federal funds were again flowing to four of the thirteen Cleveland-area contractors, and two more had meetings with their respective agencies scheduled for the next week, at which they would present new affirmative action plans—and amended manning tables.[312]

Kerr's manning table concept represented an entirely new paradigm for affirmative action. Prior to its introduction, affirmative action meant taking concrete, race-conscious steps to help Blacks and Hispanics compete on an equal footing with whites—or, to paraphrase President Johnson's Howard University address, to allow them to compete under the same conditions from the same starting line. Affirmative action, frankly, was difficult to accomplish. It took work. It meant funding scholarships and training programs, creating new jobs, and engaging in follow-up and oversight to monitor each program's progress. For a JAC, it meant advertising apprenticeship opportunities in Black newspapers, forging and maintaining social relationships with Black community leaders, actually visiting Black neighborhoods. For a union, it meant seeking trained Black craftsmen to admit as journeymen, thus enlarging the local and risking a fuller bench and slower pay increases. And for a construction firm—as seen in the affirmative

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[312] Sylvester to Wirtz, June 27, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); Graham, The Civil Rights Era, pp. 286-7. The use of manning tables to demonstrate compliance with the equal opportunity clause in federal contracts would later be decried as a quota system by politicians, union leaders, and journalists who generally lacked an understanding of how common such forms had been prior to their use for this purpose and how their use was initially proposed by the industry, as seen here, and not by government officials, who agreed to it (and would later require it) as evidence of compliance for each construction project, not as a list of quotas for future contracts.

action agreement with Lake Erie Electric—it meant breaking exclusive hiring agreements with lily-white unions at the risk of not having an adequate supply of trained workers or, worse, a strike.

The manning table—for all its convenience in terms of reporting (which federal officials like Macaluso and Doneghy certainly appreciated) represented the easy way out. On the one hand, the contractor could simply break his promise, fulfill his other obligations under the contract and collect his money, and later claim there were no trained Blacks to meet the projection—or that the union had failed to provide them. On the other, if the contractor hired the promised number of Black craftsmen, that ended his—and the OFCC's—larger responsibility for long-term improvements. The contractor was not required to post advertisements or forge long-lasting relationships in the Black community, let alone provide training opportunities to prevent the next generation from slipping back into segregation. In short, the manning table, which led to goals and ranges, then to quotas, and ultimately hiring decisions that could quite plausibly be called "reverse racism," subverted President Johnson's vision that held affirmative action as necessary to equal opportunity. The manning table rendered a laudable moral goal with the potential to reshape American race relations into a simple matter of hiring the minimum necessary to keep "big brother" happy so the federal funds kept flowing.

Following on the heels of Macaluso's order withholding funds for Cleveland, the NAACP, at Herbert Hill's behest, launched a nationwide campaign to get the government at all levels and in all localities to stop funding segregated construction. The organization notified local branches of the *Ethridge v. Rhodes* decision and asked them to investigate employment conditions at local construction sites, and Executive Director Roy Wilkins

telegrammed forty-two state governors asking them not to let any construction contracts with state funds until the building trades or contractors in their state integrated, sending a similar telegram to Labor Secretary Wirtz asking that all federal construction funds be stopped.[313] A turning point, they felt, had clearly been reached. Unions and contractors had failed to adequately integrate the skilled trades after OFCC conciliation; only tougher measures—the withholding of funds, the debarment of contractors—would result in serious changes to the racial makeup of the workforce.

For his part, Wirtz wasn't sure nation-wide action ought to be directed at the building trades. While the secretary was aware that discrimination existed in the skilled building trades in a number of localities, and certainly supported the activities of Sylvester and Macaluso in fighting it, he knew that neither federal construction nor the unions—the majority of whom, he felt, were not engaging in discrimination—would be served by a blanket withholding of funds. The building trades included some of the most visible examples of discrimination, but also included unions—like the Laborers—who were majority-Black. They didn't deserve, as he put it, "finger-pointing."[314]

He may have had a point. The secretary had in his hands a report he had commissioned from University of Texas professors F. Ray Marshall and Vernon M. Briggs, entitled *Negro Participation in Apprenticeship programs*:

> It is our conclusion that pre-apprenticeship programs designed to compensate disadvantaged youngsters for their deficiencies are effective means of both providing opportunities to these youngsters and supplying qualified applicants to apprentice programs.… We are persuaded…that racial discrimination continues to be an important problem, we are convinced that its

[313] Wilkins to State governors, and Wilkins to Wirtz, June 27, 1967 (NAACP IV A40 *Labor, Ohio*).
[314] "A Significant But Little Publicized Report," Editorial; and "The Press Paid No Attention to This Report," *Construction Craftsman*, Vol. 6, No. 5 (July-August-September, 1967).

> relative importance has declined in recent years and that measures to recruit, train, and counsel qualified applicants currently are much more important.[315]

George Schultz, dean of the University of Chicago Graduate Business School (and later Wirtz's successor as Labor Secretary during the Nixon administration), agreed, noting that apprenticeships in the construction trades tended to produce future foremen, contractors, and union leaders, rather than rank-and-file workers. As seen in the direct admission of Black journeymen plumbers in St. Louis, there were other integration routes available.[316]

The road ahead, as far as Wirtz and Sylvester were concerned, lay not in blanket sanctions of the entire industry, which the NAACP was asking at the state and federal level, but the continued city-by-city approach, with individual plans tailored to different localities. But the conciliatory San Francisco Plan, in a high-unemployment area, had had little impact, as was arguably the case with another local plan for St. Louis, where little progress had been made after the big moves towards following the Arch walkout. In Cleveland, the confrontational style in a low-unemployment area had worked only when a District Court decision prompted Macaluso to pull the plug on federal funds.

Cleveland Area Coordinator Charles Doneghy was finding himself incredibly busy during the summer of 1967, meeting with unions, contracting parties, and federal contracting agencies, attending pre-award conferences, and reviewing manning tables and affirmative action plans from anxious contractors. The OFCC detailed an intern to Cleveland, and Nashville Area Coordinator Jodie Eggers temporarily moved to Cleveland to help out as well. But Doneghy found time in July to travel to another city to give a

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[315] F. Ray Marshall and Vernon M. Briggs, Jr., The Negro and Apprenticeship (Baltimore: Johns Hopkins Press, 1967), quoted in *ibid*.

[316] "A Significant But Little Publicized Report;" Howard G. Foster, "Nonapprentice Sources of Training in Construction," *Monthly Labor Review*, February, 1970. Graham concurs in The Civil Rights Era, p. 280.

report. Doneghy presented his experience with the Cleveland Plan, and the success of the manning tables, to a group of federal officials preparing a comprehensive affirmative action program for construction in Philadelphia.[317]

The development of federal civil rights policies demonstrated that government, when managed effectively, could serve to improve the lives of its citizens in areas other than the common defense. When elected leaders—in this case President Johnson—can identify and give voice to the needs of society—in this case the rising demands for true equality of opportunity—they can influence appointed officials and bureaucratic civil servants alike in the service and development of those policies. And when the bureaucracy is effectively motivated, as was the case in St. Louis, or when conditions are ripe, as was the case in Cleveland, the government can foster positive change. When conditions are poor and bureaucrats are uninterested, as was the case in San Francisco, the system breaks down, and government fails.

As the Kennedy administration's civil rights "tsar," Lyndon Johnson ascended to the presidency at the peak of the civil rights movement. By 1963 the cause of civil rights, as seen in activities like the Freedom Rides and the Birmingham protests, had come to enjoy widespread sympathy in the white community outside of the Deep South and was gaining ground legislatively. With his ascension, Johnson elevated civil rights within the federal government from a vice presidential issue—something that had been fobbed off by Eisenhower onto Nixon's portfolio, and by Kennedy onto Johnson's—to a truly

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[317] Sylvester to Wirtz, June 27, 1967 (DOL OFCC ADC8 *Cleveland Correspondence*); Bennett O. Stalvey, Jr. to Macaluso, July 14, 1967; Stalvey to Philadelphia Federal Executive Board Subcommittee on Contract Compliance in Construction (FCCCS), July 25, 1967 (DOL OFCC ADC14 *Correspondence, July-October*).

presidential matter. And it was that leadership—presidential leadership—which helped make possible the groundbreaking 1964 Civil Rights Act, the single most comprehensive and important piece of civil rights legislation since Reconstruction. Then, in 1965, President Johnson embarked on a truly revolutionary course, defining affirmative action as the key to equal employment opportunity and telling his beleaguered nation that "we shall overcome."

It was from the statements and direction of President Johnson that the officers of the federal government's civil rights machinery took their cues. Johnson set a tone and established a mood—Great Society Liberalism—that made officials like Ed Sylvester and Vince Macaluso understand the importance of creating a society where the experiences of men like James Ballard—who never did become an apprentice sheet metal worker—would be the exception rather than the rule.[318] Through trial and error, they set about fulfilling the president's promises to the nation.

But at the very moment Johnson was achieving such personal success as the civil rights president, the nation turned a corner in race relations—and not for the better. Civil rights without economic results bred resentments, and the new laws and executive orders were not reversing the alarming trends in unemployment. As white unemployment decreased while Black unemployment increased, the economic gap of *de facto* segregation replaced the older social divide of *de jure* segregation. And with tensions high over the escalating war in Vietnam and an unfair national draft policy, the nation's

[318] Zuckerman, "Sheet Metal Workers' Case," *New York Law Journal*, September 8, 1969.

slums erupted into violence, from Watts in Los Angeles to Hough in Cleveland—to Newark—to Detroit—to Chicago.[319]

The momentum of the civil rights movement, which had achieved its greatest successes with the sympathy and support of liberal whites, began to lose steam, threatened as much by a northern white backlash against urban violence as by unreconstructed Southern racists. As one summer followed the next and riot was followed by riot, each seemingly worse than the last, the backlash threatened to derail all of the precious achievements of the previous decade.

[319] For more on the political impact of the riots see Gitlin, The Sixties, pp. 168, 221, 302; Kearns, Lyndon Johnson, pp. 259-60; Matusow, The Unraveling of America, pp. 215-16; and Kevin Mumford, Newark: A History of Race, Rights, and Riots in America (NY: New York University Press, 2007), pp. 125, 149-50, 173.

"There are differences between this administration and the last. We're not running a P.R. program; we're running a program that will have results."
—Arthur Fletcher, August 28, 1969

"Blacks, yes! Gangs, no!"
—Chicago construction workers' chant outside federal hearing on discrimination in the building trades, September 24, 1969

Nothing is more unfair than that the same Americans who pay taxes should be deprived of an equal opportunity to work on federal construction contracts."
—President Richard Nixon, December 19, 1969

"The name of the game is to put some economic flesh and bones on Dr. King's dream."
—Arthur Fletcher, December 20, 1969

CHAPTER FOUR
Pushing the Envelope: The Philadelphia Plans, 1967-1969

In the spring of 1968, white electricians John Melleher, Joe Quinn, and John Kennedy filed a complaint with the Philadelphia Human Relations Commission, claiming that they had been "denied work at the United States Mint" construction site "because of their race." These union men felt they had been passed over by Nager Electrical Company, a subcontractor on the project, for non-union Black electricians in violation of Title VII of the Civil Rights Act of 1964. The Commission dismissed the case, noting that the Mint project was federally financed and that such discrimination complaints were therefore out of its jurisdiction.[320]

At the heart of the complaint was the men's sense that the affirmative action program being used by the contractor, under the federal government's Philadelphia Plan, gave an unfair advantage to non-union, and therefore inadequately trained, Black workers. Further, they noted that there were significant numbers of Black workers already on the Mint job who were bona fide union members (although none were electricians). On May 7, when Nager Electrical hired a second non-union Black electrician, twenty-one whites walked off the job in protest.[321]

The Philadelphia Plan was the federal government's latest solution to the problems of discrimination in the building trades. Evolving out of the Cleveland Plan of 1967, the Office of Federal Contract Compliance (OFCC) developed the program with the specific intent of avoiding racial violence in a city on the brink. The majority of federal construction dollars was being spent in the city's Black neighborhoods but these dollars were ending up in the pockets of skilled white union construction workers.

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[320] "U.S. Mint Project Slowed by Dispute," *New York Times*, May 8, 1968; "3 White Electricians Lose Appeal on Discrimination," *New York Times*, May 21, 1968.
[321] *Ibid*.

The Philadelphia Plan differed from the previous affirmative action plans in the construction industry in that it was developed in tandem with the local Federal Executive Board (FEB), which ensured top-level coordination among the federal contracting agencies. President Johnson had established the FEBs in late 1964 by executive order as a response to the riots which had erupted in seven cities that summer, including one particularly violent outbreak in Philadelphia. Consisting of senior local officials from each of the federal departments with a major presence in the city, the FEBs were to coordinate federal activities and "rally private industry to help avert civil disorders."[322]

By the end of 1968, the plan was on the verge of making significant progress in integrating the skilled trades in the Philadelphia area. But its similarity to racial quotas, and the burdens it placed on contractors, brought challenges of increasing intensity—first from the unions, as we have seen at the Mint site, then from individual members of Congress, and finally from the General Accounting Office (GAO). The ostensibly nonpartisan GAO had been established by Congress in 1921 as an independent agency to analyze and supervise federal expenditures under the leadership of the Comptroller General of the United States. During the 1960s, the comptroller general had been attempting to expand the authority of the GAO, and in 1968 he challenged the Philadelphia Plan on the grounds that it violated procurement law. The Philadelphia Plan did not survive the presidential transition.

Bowing to increased pressure from civil rights advocates and local grassroots organizations, the Nixon Labor Department issued a revised version of the Philadelphia Plan in the Summer of 1969. But the revised plan also came under attack—and this time

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[322] Graham, The Civil Rights Era, p. 287.

the Comptroller General was joined by powerful Southern conservative Senators. With renewed protests and violence at construction sites around the country, and with a presidential administration perceived as hostile to civil rights, the Nixon White House took up a spirited defense of the Philadelphia Plan at the intersection of race and politics.

The Operational Plan for Philadelphia

An overview of the construction industry in Philadelphia in 1967 revealed a mixed picture of the status of African Americans in the skilled trades. In the Plumbers' Union, six out of sixty apprentices were Black, or ten per cent; given the national trends at the time, that represented a modestly positive figure. The electricians were also taking positive steps to increase the percentage of Black journeymen, then only one per cent (14 out of 1400); they admitted eleven non-white apprentices. Other trades, however, were slower in integrating, to say the least: the sheet metal workers, for instance, had no Black or Hispanic journeymen out of a total membership of 1200. After losing a lawsuit in the summer of 1967, they accepted two Black journeymen (thus bringing non-white representation in the union to *one-sixth of one per cent*) and 3 Black apprentices. With Blacks at about 30 per cent of the population of Philadelphia (approximately 600,000 out of 2.06 million), these figures constituted clear evidence of historically racist patterns and continuing discriminatory practices.[323]

[323] Frank V. Loretti to Macaluso, April 29, 1966, and Bennett O. Stalvey, Jr., to Macaluso, August 26, 1966 (DOL OFCC ADC3 *Philadelphia Correspondence*); Richard J. Levin to Philadelphia Commission on Human Rights, August, 1966 (DOL OFCC ADC14 *Philadelphia Correspondence, 1966, January-June*); "U.S. Warns 200 Unions Against Bias in Training," *Philadelphia Bulletin*, March 29, 1967; and Stalvey, *Monthly Reports*, June, 1967 (DOL OFCC ADC24 *Monthly Reports, 1967, January-June*), and August, 1967 (DOL OFCC ADC24 *Monthly Reports, 1967, July-December*).

The unions could not blame their reluctance to admit Blacks on a shortage of work. The 1967 federal construction allocation to the city—more than $300 Million—was 52 per cent higher than it had been in 1966. What's more, nearly two-thirds of that was being spent by the Department of Housing and Urban Development (HUD), and the single largest category of HUD spending—$144.5 Million, or nearly half the city total—was for urban renewal, a category which disproportionately included construction in predominantly Black neighborhoods. The Department of Health, Education, and Welfare (HEW) came in second, at $53 Million, mostly for school construction, followed by the General Services Administration (GSA), at $49 Million, which included construction of the new United States Mint. Construction at the Navy Yard was part of the $12 Million Department of Defense allocation, and the Federal Aviation Administration (FAA) was constructing a new airport for $1 Million.[324] In short, at least half of the increasing federal construction budget for Philadelphia was being spent on building sites in predominantly Black neighborhoods, but the vast majority of the skilled workers on those jobsites were white.

National building trades leaders agreed that the skilled trades needed to work harder to integrate, but placed more of the blame on apathy among prospective Black apprentices than on institutional discrimination. One Bureau of Apprenticeship and Training (BAT) official said that, despite the apparent willingness of Philadelphia

[324] Stalvey to Macaluso, April 14, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*); Philadelphia Chamber of Commerce Press Release, November 23, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, November-December*).

building trades to accept Black applicants, he couldn't find "a dozen qualified Negroes" to apply for apprenticeship positions.[325]

To increase the number of qualified Black applicants, union leaders favored "apprenticeship outreach" programs such as those developed by the Workers' Defense League in Brooklyn, New York, under the leadership of Ernest Green;[326] Chicago's "Jobs Now" program; and the NUL's On-the-Job-Training programs, funded in several cities by the Department of Labor. In Philadelphia, the apprenticeship outreach program was organized by the local branch of the Negro Trade Union Leadership Council (NTULC), an organization founded by A. Philip Randolph in New York in 1959 to promote the interests of Blacks in organized labor. But the result was little better than that seen when the Cleveland NUL supplied applicants for IBEW apprenticeships in 1966. By March 1969, after more than two years in operation, the Philadelphia NTULC apprenticeship outreach program had failed to significantly break through unions' discriminatory practices; they succeeded in placing only two electricians, two ironworkers, and seven plumbers or pipefitters in union-sponsored apprenticeships.[327]

As de-industrialization brought more unemployment to the North, national Black unemployment increased faster than that of whites, and the summer of 1967 proved a tinder-box for violent outbreaks in the nation's cities. The worst riots took place in June in Tampa, Florida, and in July in Newark, New Jersey, and Detroit, Michigan. In

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[325] Martin J. Herman, "Training Expert Says Manual Trades Have Hard Time Finding Apprentices," *Philadelphia Bulletin*, November 24, 1966.
[326] The Workers' Defense League was founded in 1936 as a legal aid society to assist laid-off employees in obtaining unemployment insurance.
[327] DOL Apprenticeship Outreach Reports, December 1968 (Meany RG9-002 28 *54*), and March, 1969 (NUL III 142 *Reports, 4*).

Philadelphia, brief outbreaks of racial violence were quickly suppressed by rapid community and police response, but the city remained on edge throughout the summer.[328]

In order to maintain the relative calm in Philadelphia, Mayor Tate announced a major plan to avert racial violence in the city, including the creation of 500 new city jobs (applicants would fill out paperwork in one of several "jobmobiles"—employment trucks patrolling Black neighborhoods); increased municipal services in the ghetto (including garbage collection and expanded opening hours for playgrounds); and reassignment of the best police officers to riot-prone areas. Operating on the theory that riots were the result of unemployment and a sense of abandonment by the wider society, Tate's plan had the two-pronged effect of creating jobs as well as increasing the overall municipal presence in areas where both had been sorely lacking.[329]

By late summer, more applicants—and with a higher level of skill than initially expected—had signed up for city jobs through Tate's "jobmobiles" than there were jobs available. To meet the increased demand for jobs, Tate asked the local Federal Executive Board (FEB) to meet with 250 employers to develop additional solutions to avert the pending racial crisis. In Philadelphia, the members of the FEB were senior local officials from each of the pertinent departments; federal officers of a somewhat lower rank generally filled committees, which focused on areas of acute of concern to the board. The Philadelphia FEB was led by HUD regional director Warren Phelan.[330]

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[328] "Hot Summer—Philadelphia: Peaceful; Tampa: Shaky Control," *New York Amsterdam News*, June 17, 1967; "Fast Police Action Halts Disturbance in S. Phila. Area," *Philadelphia Tribune*, July 29, 1967; Randolph, Wilkins, Young, and Martin Luther King, Jr., Joint Statement, *AFL-CIO News*, July 29, 1967; and Wirtz to LBJ, November 3, 1967 (LBJ WHCF FG235 *9/28/67-11/30/67*); Gitlin, The Sixties, pp. 168, 221, 302; Kearns, Lyndon Johnson, pp. 259-60; Matusow, The Unraveling of America, pp. 215-16.

[329] Lawrence H. Geller, "500 Jobs Available for Jobless; Other Demands Being Met," *Philadelphia Tribune*, August 1, 1967. For more on the causes of riots, see *op. cit.* Ch. 3 nn. 251-253.

[330] Kos Semonski, "Tate to Meet Employers to Avert Strife," *Philadelphia Bulletin*, July 31, 1967; "Human Relations Chief Hails Excellence of Jobmobile Recruits," *Philadelphia Inquirer*, August 23, 1964; Stalvey

Warren Phelan was born in 1910 in the small town of Havre, Montana, and graduated from the University of Montana in 1934. He worked as a public welfare officer for the State of Montana for the rest of the Great Depression, enlisted in the Navy, was commissioned an officer in 1944, and served in the Pacific Theater during World War II. After the war, Phelan took a Master's degree in social administration at Western Reserve University in Cleveland, working part time for the Cleveland Housing Authority. He then spent a year working in the juvenile court system of the District of Columbia, whereupon he was hired by HEW. In 1951 Phelan transferred to the Federal Housing and Home Finance Agency (HHFA), and in 1955 became an HHFA Philadelphia Field Representative for Urban Redevelopment. In 1961, he was promoted to regional administrator for Philadelphia,[331] and he retained the title when the agency was folded into the new federal department, HUD, in 1966. Having witnessed the 1963 protests over segregated employment in the building trades, Phelan felt that a major area of importance for the Philadelphia FEB was integration in the construction industry, and in 1967 he reached out to OFCC Construction Area Coordinator Bennett O. Stalvey, Jr., to work towards that end.

In 1962, Bennett Stalvey was an advertising director from Chicago living with his growing family in a white, segregated neighborhood in Omaha, Nebraska. When his wife became involved in a failed drive to integrate the neighborhood with the family of a local African-American doctor, the Stalveys were forced to relocate. They chose Philadelphia,

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to Macaluso, October 18, 1966 (DOL OFCC ADC3 *Philadelphia Correspondence*); Stalvey, *Monthly* Report, August 1967 (DOL OFCC ADC24 *Monthly Reports, 1967, July-December*); and Graham, The Civil Rights Era, p. 287.

[331] Housing and Home Finance Agency Press Release, September 27, 1961 (Papers of the Urban League of Philadelphia, Clippings, *Philadelphia Bulletin, Phelan*, Temple University Urban Archives, Philadelphia, Pennsylvania).

where Stalvey took a federal job. In the summer of 1966, after Philadelphia had been through two construction area coordinators in little over a year of the program's operation, Vincent Macaluso tapped Stalvey for the position.[332]

When Phelan of the FEB reached out to Stalvey of the OFCC, he asked a question pertinent to the FEB but which temporarily stumped Stalvey: how did the OFCC handle situations where multiple federal agencies were working on the same equal opportunity problem? In other words, how did the area coordinator—usually a junior federal officer—coordinate the compliance activities of senior federal officials?[333]

What Phelan had inadvertently stumbled upon with this question was the source of the problem area coordinators had been facing since Macaluso had first started the program for the PCEEO. But Phelan was also offering a solution which had not been previously considered: the use of the local FEB to assist the area coordinator. Phelan and his fellow FEB members were senior federal officials in the city and together could manage a coordinated effort. Without their help, Stalvey might well fall short.

The Philadelphia FEB had a committee which analyzed and acted on matters such as discrimination in the local building trades called the Critical Urban Problems Committee. Stalvey arranged for Macaluso to attend a meeting of this committee in February, 1967, and the committee, at Phelan's urging, established a subcommittee comprised of junior federal officers to focus explicitly on developing an area-wide affirmative action plan for construction to be coordinated by the FEB. Phelan appointed

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[332] Macaluso to Stalvey, July 28, 1966 (DOL OFCC ADC3 *Philadelphia Correspondence*). Additional biographical information is from two books by Stalvey's wife at the time, Lois Mark Stalvey: The Education of a WASP (NY: William Morrow, 1970) and "The Urban Child: Getting Ready for Failure," in Children, Nature, and the Urban Environment: Proceedings of a Symposium-Fair (Upper Darby, PA: U.S. Department of Agriculture, Forest Service, Northeastern Forest Experiment Station, 1977), pp. 38-41.
[333] Stalvey to Macaluso, October 18, 1966 (DOL OFCC ADC3 *Philadelphia Correspondence*).

Stalvey chairman of this Federal Contract Construction Compliance Subcommittee (FCCCS) and tasked him with developing an operational plan for construction integration by midsummer.[334]

From April through July 1967, the FCCCS investigated the construction compliance situation in Philadelphia and hammered out the various clauses of the document, and Macaluso and Sylvester were brought in as consultants. Macaluso explained the basic contours of the San Francisco and Cleveland Plans and that the Cleveland Plan, with its tough enforcement, relatively high non-white employment goals, and practice of requesting manning tables from contractors, was better suited to the conditions found in Philadelphia than was the San Francisco Plan. Cleveland Area Coordinator Charles Doneghy spoke to the subcommittee about his experiences implementing the Cleveland Plan.[335]

The ultimate result, the Operational Plan for Philadelphia (OPP), built on the successes of the Cleveland Plan but bore the mark of the more ambitious FEB-coordination program. The OPP required low bidders for federally-funded (or federally-assisted) construction projects within the five-county metropolitan area (Bucks, Chester, Delaware, Montgomery and Philadelphia counties) to submit pre-award affirmative

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[334] Stalvey, *Monthly Reports*, December 1966 (OFCC ADC24 *Monthly Reports, 1966*), January and March 1967 (OFCC ADC24 *Monthly Reports, 1967, January-June*); Stalvey to Macaluso, February 10, February 27, March 27, April 27, June 21 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*), and July 10, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*); Federal Contract Construction Compliance Subcommittee of the Critical Urban Problems Committee, Philadelphia Federal Executive Board (FCCCS) meeting minutes, February 20 and April 5, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*); FCCCS Membership List, August 28, 1967 (DOL OFCC ADC14 *Federal Executive Board [FEB] Meeting*); Stalvey to Richard Bourbon, March 7, 1967; Warren P. Phelan, *Invitation to FCCCS Membership*, March 22, 1967; Phelan to Stalvey, June 16, 1967; and Phelan to FCCCS, June 22, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*).

[335] FCCCS, *Meeting Minutes*, February 20, 1967; Phelan, *Invitation to FCCCS Membership*, March 22, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*); and Stalvey to Macaluso, July 14, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*).

action plans which contained goals for non-white hiring. These affirmative action plans were to emphasize outreach recruitment operations aimed at local Black and Hispanic communities and include the maximum possible number of apprentices (so as to encourage the unions and contractors to admit more Blacks into their apprenticeship programs). Low bidders would also be required to attend a pre-award equal opportunity meeting with the contracting agency's local compliance officer and Area Coordinator Stalvey, and to submit up-to-date manning tables twice per month, wherein they were to be encouraged to "blow off steam" in the hopes that contractors' written frustrations with unions and other problems implementing their hiring goals would provide a means for the FCCCS to focus on particular problem areas as the Plan was implemented. Unlike the Cleveland Plan, where Doneghy and Macaluso ultimately set the specific goals for each contractor, the Philadelphia Plan would be "voluntary," in that the contractors would develop their own goals (but Stalvey would ensure that each contractor's goals were significant).[336]

The drafting of the OPP caused a great deal of excitement at the OFCC, where Sylvester called the FEB coordination component "a prototype for the future."[337] But coordination at the local level also needed support at the national level. To that end, Sylvester and Macaluso organized a meeting in Washington, DC, on August 30, 1967, for Phelan and Stalvey to explain the OPP to the heads of the contracting agencies, including two cabinet members: Secretary Robert C. Weaver of HUD (which represented nearly two-thirds of all federal construction spending in Philadelphia), and their boss, Secretary

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[336] Phelan to FCCCS, April 27, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, January-June*); FCCCS, *Meeting Minutes*, February 20, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*); and OFCC, *Proposed Agenda*, August 1, 1967, and *Summary*, August 1967 (DOL OFCC ADC14 *FEB Meeting*).

[337] Sylvester to Roger W. Wilkins, September 21, 1967 (DOL OFCC ADC14 *FEB Meeting*).

Wirtz. The meeting and subsequent follow-up by Sylvester and Wirtz resulted in the approval of the OPP by all agencies except the Department of Defense (whose representatives stated that the nature of their construction programs required a national affirmative action program rather than a series of local programs). The chairman of the United States Civil Service Commission went so far as to send copies of the OPP to all local FEBs around the country, urging them to consider developing similar programs. Phelan announced that the OPP would go into effect on November 30, 1967.[338]

Even before the OPP officially went into effect, contracting agencies began informing bidders that any projects scheduled to begin after the start date would be subject to the rules of the OPP. In short, this meant that the OPP was already in effect as pertained to the bidding process, pre-award meetings, and affirmative actions plans (including manning tables).

At least one agency, the FAA, took its own interpretation of the OPP even further than the plan's specifications. When Latrobe Construction Company, general contractor for a new local airport, submitted an acceptable affirmative action plan at the end of October, 1967, a local FAA official told Latrobe that his agency would "move on to the next low bidder" unless Latrobe integrated its work force on a completely unrelated project, 400 miles away, in Ohio. The FAA determined that with 101 white (and zero Black) operating engineers currently employed on their Ohio project, Latrobe was

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[338] Stalvey to Macaluso, August 4, September 13, and September 22, 1967; Phelan to Agency Heads, August 7, 1967; DOL Draft Press Release, August 15, 1967; Sylvester to Wirtz, August 28, 1967; Stalvey to FCCCS, September 12, 1967; Paul Boyajian to Phelan, Lorimer Peterson to Phelan, and William J. Kendrick to Phelan, September 15, 1967; Timothy J. May to Phelan, September 18, 1967; Jack Moskowitz to Phelan, September 19, 1967; Harold T. Hunton to Phelan, September 26, 1967; Macaluso to Sylvester, September 28, 1967; and John W. Macy, Jr., to FEB Chairmen, October 30, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*); Hurley to Macaluso, August 16, 1967 (DOL OFCC ADC14 *FEB Meeting*); FEB Press Release, October 25, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, November-December*); and Graham, The Civil Rights Era, p. 288.

unworthy of a Philadelphia project regardless of how far the company promised to go to integrate its workforce in Philadelphia.[339] By refusing a Philadelphia contract to a company engaging in discrimination elsewhere, the FAA compliance officer was both extending the OPP beyond the five-county Philadelphia area and demonstrating the awesome power of the mid-level federal bureaucrat—and that this power, when placed in the hands of a Great Society liberal, could be brought to bear forcefully on behalf of African-American workers. This case also demonstrated the dynamic use of the bureaucracy that made the OPP different from the previous plans, through FEB coordination.

The Federal Highway Administration (FHWA) also proved it would brook no argument when came to enforcing the OPP. In February 1968, the Pennsylvania Department of Highways was set to open bidding for a project to build a bridge for Interstate Route 95 at Girard Point on the Schuylkill River when they were told by the FHWA division engineer that federal funds would only be provided if the contractors were prepared to meet the conditions of the OPP. The Associated General Contractors of America complained that this provision was being inserted into the process less than two days before the formal opening of bids, but to no avail. The FHWA would not budge, and the State of Pennsylvania agreed; contractors had by now been familiar with the

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[339] Stalvey to Macaluso, September 8, September 11, October 3 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*), October 24, and November 3, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, November-December*); Donald M. Durkin to Leonard LaRosa, October 2, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, July-October*); Stalvey, *Monthly Report*, October 1967 (DOL OFCC ADC24 *Monthly Reports, 1968-9*); Macaluso to Sylvester, November 7, 1967, and Dove to Macaluso, December 21, 1967 (DOL OFCC ADC14 *Philadelphia Correspondence, 1967, November-December*).

provisions of the OPP for several months, and the project would go forward only under the conditions of the OPP.[340]

The AFL-CIO weighed in quickly. As the OPP went into effect, the Building Construction Trades Department (BCTD), AFL-CIO, was holding its annual convention in Bal Harbour, Florida. In response to the Cleveland, St. Louis, San Francisco, and Philadelphia Plans, all of which had been implemented during 1967, the delegates issued the following public resolution:

> WHEREAS, The [OFCC] requires federal contractors and federally-assisted construction contractors to employ Negroes and members of other racial minorities; and
>
> WHEREAS, This OFCC policy must be clearly distinguished from the purpose and philosophy of the Civil Rights Act of 1964…and
>
> WHEREAS, Overzealous efforts by OFCC to aid Negroes, coupled with intemperate use of federal economic power, have already resulted in unwarranted delays on federal and federally-assisted construction projects…now therefore be it
>
> RESOLVED, That the [BCTD] endorses generally the principle of affirmative action to assist Negroes and other minority group persons in finding suitable employment…and be it further
>
> RESOLVED, That this Department condemns OFCC use of such formulas as "minority representation in every craft and every phase of work" on every federal and federally-assisted project, which formula is often impossible of fulfillment and destructive of established working conditions and performance standards….[341]

In sum, the delegates to the BCTD convention protested that their own policies were non-discriminatory, but that the programs being put forward by the OFCC were unfair to whites, would result in a decrease in the quality of work, had already resulted in a slowdown of construction, and were illegal in any event under the 1964 Civil Rights Act.

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[340] George F. Fenton to Robert G. Bartlett, February 21, 1968; Bartlett to Fenton, February 22, 1968; William E. Dunn to James J. Reynolds, March 5, 1968; Reynolds to Dunn, March 25, 1968; and Cushing N. Dolbeare to Wirtz, April 20, 1968 (DOL, Records of the Office of the Secretary, Chronological File, 1968 [1968]).

[341] "Union-Government Consultation, Not Conflict, on Tough Issues Urged at BTD Convention," *Construction Labor Report* No. 637, December 6, 1967.

Labor Secretary Willard Wirtz, addressing the convention, defended the policies of the OFCC and said that these programs were not preferential of any particular race, but rather sought to address the effects of previous discrimination. He noted that he would be opposed to any sort of quota system, looked forward to working with the BCTD leadership to develop additional policies to increase non-white employment in the skilled trades, and said that the Labor Department would continue to subsidize the local apprenticeship outreach programs.[342]

The BCTD position was not shared by mainstream civil rights organizations, who disagreed with the notion that the OPP was unfair to white workers. The local NAACP and NUL both came out in support of the Plan in May 1968, just as the first contracts with pre-award affirmative action plans began to get approval from the contracting agencies.[343]

But clearly the most important external support for the OPP came from the City of Philadelphia, which announced in February 1968 that it would adopt the OPP for its own contracts, whether or not they received federal assistance. As monitored by the city's Commission on Human Rights, City contracts began to pass over low bidders unwilling to implement affirmative action goals similar to those contained in the OFCC plan. The City was followed in its decision by the local Catholic Archdiocese in August and the

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[342] Damon Stetson, "Unions Told to Aid Entry of Negroes, but Meany Warns Building Trades to Keep Standards," *New York Times*, December 2, 1967.
[343] Sylvester to Philip N. Savage, May 15, 1968, and Sylvester to Andrew G. Freeman, May 21, 1968 (DOL 1968).

quasi-public utilities in September. These moves represented a major expansion for the OPP as it went beyond federal and federally-assisted contract construction.[344]

In June, with the first ten projects approved under the OPP, Stalvey could project employment of fifty to sixty Black workers in the seven critical trades (electricians, sheet metal workers, plumbers, roofers, ironworkers, steamfitters, and elevator constructors), or approximately thirty per cent of the total number of workers, estimated at between 170 and 190. Contractors promised to make every good faith effort to recruit numbers of Black or Hispanic workers in each trade equal to or greater than the goals stated in their manning tables, and hire outside the unions if necessary. As Figure 1 demonstrates, the numbers of Blacks projected to be employed in the critical trades under the OPP continued to climb through December 1968, when approved affirmative action plans under the OPP projected 225 Blacks out of 900 workers in the critical trades—a more modest, but hardly less ambitious, twenty-five per cent.[345]

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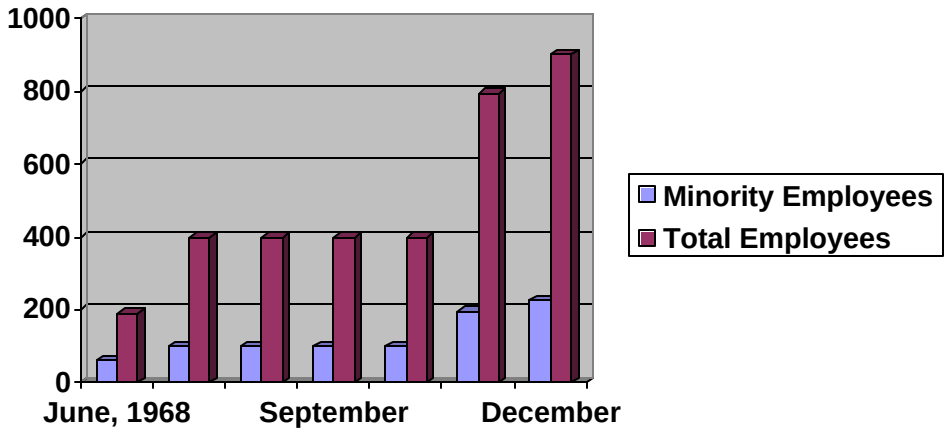
[344] Stalvey, *Monthly Reports*, February, March, and September, 1968 (DOL OFCC ADC24 *Monthly Reports, 1968-9*); "City is Asked Not to Patronize 1,447 Firms That Discriminate," *Philadelphia Tribune*, July 27, 1968.

[345] Stalvey, *Monthly Reports*, June, August, September, October, November, and December 1968, and January 1969 (DOL OFCC ADC24 *Monthly Reports, 1968-9*); Graham, The Civil Rights Era, pp. 288-9.

Figure 1:
Projected Critical Trades Employees in Federal Contract Construction under the OPP (According to Pre-Award Affirmative Action Plans)[346]



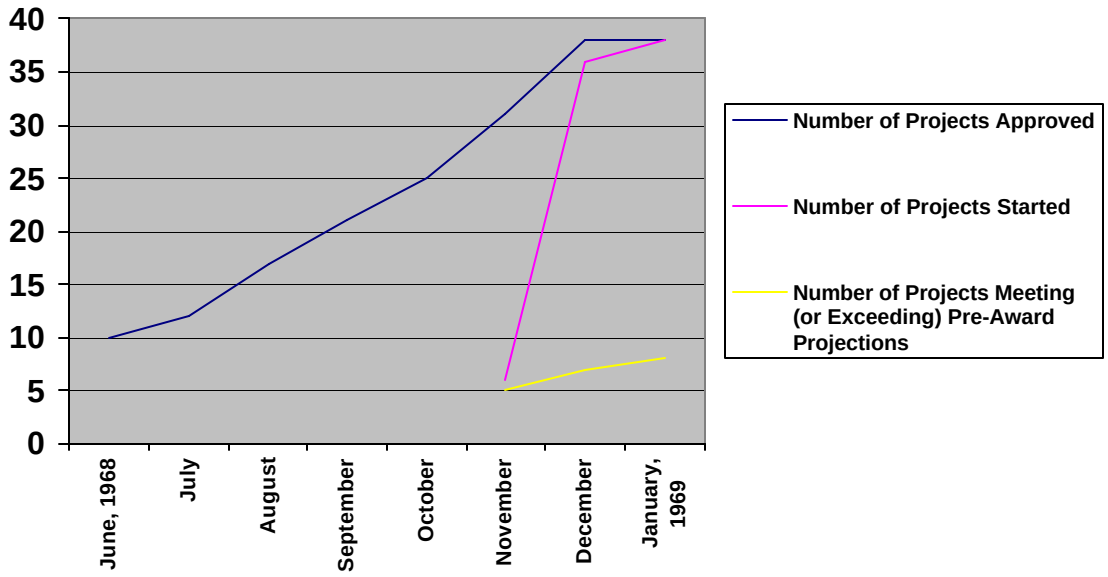
Were these projected figures to actually be implemented—and Stalvey believed, based on his knowledge of the contractors and the amount of skilled Blacks in the community, that they would[347]—this represented a major change for Black employment in the critical trades. According to these numbers, the OPP represented the beginning of the end of institutional racism in the Philadelphia building trades.

While Figure 1 may be fairly said to represent the *ambitions* of the affirmative action plans approved under the OPP, Figure 2 represents the reality. The OPP construction projects got off to a slow start because of a summertime Rodsetters' strike, which slowed continuing projects and delayed new ones. As Figure 2 demonstrates, projects continued to be approved under the OPP between June and October, but no OPP-approved construction project actually broke ground until November 1968, a year after the official implementation date. That month, Stalvey reported that five of the six commenced projects were meeting or exceeding their affirmative action goals, while the

[346] *Ibid.*
[347] *Ibid.*

sixth was not yet employing the critical trades. Each project employed different trades at different stages of construction, with critical trades usually coming to work later in the life of a project.

Figure 2:
Project Approval and Start rate under the OPP
And number of projects meeting Pre-Award Projections for Non-white Hiring[348]



This fact came into particularly sharp relief in December and January, as the remaining approved projects broke ground but only about fifteen per cent of them met or exceeded their non-white hiring goals. If not for the delay in breaking ground on the OPP projects caused by the Rodsetters' strike, that percentage would likely have approached 100 by that date, as the contractors increased their use of employees in the critical trades. Stalvey was confident that despite the delays caused by the strike, all OPP project contractors would meet or exceed their goals by late spring or early summer 1969.[349] In

[348] Stalvey, *Monthly Reports*, November and December 1968, and January 1969 (DOL OFCC ADC24 *Monthly Reports, 1968-9*).
[349] Stalvey, *Monthly Report*, December 1968 (DOL OFCC ADC24 *Monthly Reports, 1968-9*).

short, the OPP was only just beginning to work in January 1969, and it appeared at that time to be headed towards success, despite ominous political rumblings in opposition.

Stalvey's conviction that the OPP was on the verge of success, based as it was on the situation in Philadelphia, did not account for politics in Washington. Although the OPP—like Macaluso's entire area coordinator program—was developed in response to a bureaucratic "mood" on civil rights pervasive in the Johnson administration and inspired, as we have seen, by the president's own rhetoric on affirmative action at his 1965 Howard University commencement address (and from a legalistic standpoint based on the imprimatur of Executive Order No. 11246), it did not enjoy the explicit political backing of the White House. The Johnson administration saw no political gain in pitting two of its most important constituencies—civil rights leaders and sympathizers on the one hand, and organized labor on the other—against each other. Johnson himself had always tread lightly when it came to unions, seeing labor as critical to his political future when, as chairman of the PCEEO, he had allowed George Meany virtually unchecked authority in drafting the *Union Programs for Fair Practices*. Related programs that received more publicity—and explicit administration support—were the DOL's apprenticeship outreach and HUD's Model Cities, which together resulted in a nation-wide deal in which the building trades agreed to train ghetto residents in construction skills while rebuilding the neighborhoods in which they resided, and which seemed to satisfy all interested parties except Herbert Hill of the NAACP, who pointed out that the program's "trainees" weren't actually apprentices and were given no guarantees of union membership upon completion of the program. But the OPP, with its resemblance to a quota system, was too

much of a political hot potato for Johnson. The White House did not oppose the program, but it did not explicitly endorse it either.[350]

On the other hand, the OPP and Macaluso's other construction plans did not lack for antagonists. First, as we have seen, were the unions, who opposed the plan as a quota system at the leadership level and walked off the job at the local level—at the construction site for the U.S. Mint.[351] Contractors also opposed the plan, not only because of the danger it posed to their fragile relationships with the unions but more importantly because the program's deliberate vagueness—on the number of Blacks to be employed—posed potential obstacles in the bidding process and the possibility of increased costs after low bids had been accepted. Bidders had difficulty estimating such costs accurately and worried that overestimating on employee costs would result in their losing bids. With no outspoken allies in the White House, and large, powerful enemies in the industry, it was only a matter of time before the OPP faced challenges in the political arena.

It was on the issue of vague bidding requirements that the plan came under attack in May 1968, even before the first contract had been signed. The attack came from an obscure government office, the General Accounting Office (GAO), and its even more obscure director, the Comptroller General of the United States.

Comptroller General Elmer Staats presided over a bureau technically part of the legislative branch of the federal government but with sweeping powers over procurement

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[350] Richard J. Levine, "Construction Unions to Alter Negro Policy, But Shift Won't Fill Rights Groups Goals," *Wall Street Journal*, July 17, 1968; "Group Plans to Block Model Cities Renewal If Labor Bias Found; NAACP Says It'll Go to Court If U.S. Accepts Hiring Policy Set by Building Trades Unions," *Wall Street Journal*, July 18, 1968; Graham, The Civil Rights Era, p. 294.

[351] The general contractor for the Mint job, McCloskey & Co., and the contracting agency, GSA, were incidentally the same as in Southwest Washington's Area B construction project discussed in Chapter One.

similar to those held by the regulatory agencies of the executive branch, and he did so with an accomplished bureaucrat's touch. As historian Hugh Graham put it:

> A Midwesterner of Scandinavian descent, Staats had earned his doctorate in public administration from the University of Kansas in 1936, and most of his…service as a career civil servant had been spent in the Budget Bureau. Joining the Bureau in 1939 and rising through recognized proficiency, Staats [became] deputy Budget director in 1958. In 1966, President Johnson…appointed Staats Comptroller General of the U.S. As the federal government's chief accountant and a gray bureaucrat of vintage invisibility, the Comptroller could trace his office all the way back to the creation of the Treasury Department in 1789. Since 1921 [the position] had been head of the General Accounting Office, which was created as the fiscal and budgetary watchdog of Congress by the Budget and Accounting Act of that year. This in turn threatened the traditional autonomy of the mission agencies, who feared that the GAO's cost-conscious reviews of their contracts would chill their client relationships and inhibit their programs. Since this was a rather naked political objection, the agencies also objected on the constitutional grounds that as a legislative department the GAO would improperly be exercising judicial functions over executive agencies. The separation-of-powers argument was a serious and difficult one. But the agencies' concern for their own congressional appropriations kept them from objecting too…strenuously…. The GAO did not fit neatly into the tripartite logic of separated powers that the Founders had envisioned.[352]

The GAO and government contractors made strange bedfellows indeed. Since the function of the GAO was to regulate government contracts on behalf of Congress, ruling on matters relating to procurement law, contractors usually feared the office of the Comptroller General as a potential impediment to their securing lucrative contracts, and tended to forge close relationships instead with officers of the contracting agencies. But now, with the FEB's involvement making the contracting agencies cold to any arguments against the OPP, the contractors and their Congressional allies turned to Staats, who had already gained a reputation for taking on the executive branch on matters pertaining to individual contracts (an expansion of his jurisdiction over procurement law). Staats had

[352] Graham, The Civil Rights Era, p. 292. Graham's account of the motivations of the comptroller general and the tensions between the GAO and federal agencies jibes with my own.

set a precedent in 1966 by ruling on an individual case involving a small contract, but in 1968 he was, according to Graham, ruling on the validity of lucrative defense contracts, provoking a polemical battle with the Attorney General which lasted until the end of the Johnson administration.[353]

In the winter of 1968, as the first OPP bids were moving into the pre-award phase, contractor complaints reached the ears of the ranking Republican on the House Committee on Public Works, Congressman William Cramer of Florida. A pro-business conservative, Cramer asked the Comptroller General to investigate, and Staats looked into the matter. In May 1968, Staats warned Secretary Wirtz that the OPP failed to clearly set out hiring requirements in the invitations to bid. The requirement of a pre-award conference in which the low bidder could be disqualified from the contract, Staats maintained, constituted a post-bid hurdle which was antithetical to the bidding process whereby the government ensured that taxpayer dollars were efficiently spent. Staats asked Wirtz to include concrete hiring requirements in the official contract regulations issued through his office before the OPP went into effect.[354]

Staats' warning—a further example of his attempted expansion of the powers of the GAO—seems important in retrospect, as shall become clear. But Wirtz did not see these concerns as particularly important, and the secretary was loath to place what might be called a quota system into the official federal contract regulations. Title VII of the Civil Rights Act of 1964 explicitly forbade requiring preferential hiring of non-whites so as to bring an employer's work force in line with the racial makeup of the local community. The OPP did not in fact require preferential hiring, and although it was a fine

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[353] Graham, The Civil Rights Era, p. 293.
[354] Elmer Staats to Wirtz, May 22, 1968 (DOL 1968); Graham, The Civil Rights Era, p. 294.

distinction that it required only that the contractor take affirmative steps to increase the non-white proportion of the workforce, it was in any event a valid distinction. Nevertheless, Wirtz did not make the affirmative actions required under the OPP an official part of the federal labor regulations, and Staats' warning went unheeded.[355]

Staats wasn't finished with the OPP. Confident of the legality of his position, on November 18, 1968, the Comptroller General took the extraordinary step of declaring the OPP illegal under procurement law, and warned Wirtz that his office would not allow funds to be released for any additional contracts signed under it unless the DOL issued regulations:

> Although it may be true that the present lack of specific detail and rigid guideline requirements for an acceptable affirmative action permits the utmost in creativity, ingenuity and imagination, it is equally true that it permits denial of a contract to a low bidder to be based on purely arbitrary or capricious decisions, and award to be made on the basis of similar decisions.[356]

In short, the requirements were vague, and did not belong in the post-bid (what the OFCC called pre-award) phase. These discrepancies left too much discretion to individual federal officers like Bennett Stalvey, and without a formal appeals process, the OPP was unfair to bidders.

To pro-OPP figures like Phelan, Sylvester, and the NAACP's Herbert Hill, this was a familiar obfuscation, reminiscent of the official attitude of the AFL-CIO towards discriminatory unions.[357] What the disingenuous Staats failed to remember was that federal contracts had never automatically gone to lowest bidder, but rather the lowest bidder to meet the requirements of the contract. What Staats was really saying—similar

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[355] U.S. Congress, "Civil Rights Act of 1964," H.R. 7152, July 2, 1964; Wirtz to Lawrence G. Williams, May 24, 1968 (DOL 1968).
[356] Staats to William C. Cramer and to Wirtz, November 18, 1968 (DOL 1968).
[357] The AFL-CIO practice was that racial discrimination, unlike racketeering or communism, did not warrant expulsion from the umbrella organization. See Chapter One for more details on this.

to what Meany had said to A. Philip Randolph in 1959—was that racism was not an important enough problem to warrant sanction. Staats' opinion held that the non-discrimination clause in federal contracts did not carry the same value as other clauses pertaining to the fitness of the contractor for the work, and that the federal government could disqualify potential contractors for other deficiencies (such as a poor record of on-time completion, failure to make budget, or a simple lack of detail in the bid), but not for racial discrimination.

Although instigated by a southern congressman, this was ultimately a confrontation between two types of federal bureaucrats. On the one hand were Great Society liberals like Macaluso, Phelan, and Stalvey, who—following Syracuse University's H. George Frederickson—viewed social equity as the "third pillar" of public policy, and believed that taxpayer dollars should be spent on programs which helped achieve racial (and later gender) equality. On the other hand were the traditional bureaucrats, represented by Staats. The traditional school of thought held that the only responsibilities of the public servant were to ensure efficiency and economy. For Staats, the bureaucrat's role was to ignore the ends and concentrate on the means—to remove values and morals completely and focus on the rules for the sake of the rules.[358]

Wirtz did not fight Staats' ruling. He did not have the explicit support of the White House; the attorney general was still fighting Staats on defense procurement; and in any event the Johnson administration had only eight weeks remaining in office. No new contracts were signed under the OPP after the ruling, but Stalvey continued to make

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[358] On the "third pillar" of public policy and its relationship with the first two, see, for instance, H. George Frederickson, The New Public Administration, (Tuscaloosa: University of Alabama Press, 1980), and Frederickson, "Public Administration and Social Equity," *Public Administration Review*, Vol. 50, No. 2 (March-April 1990).

favorable reports on the progress of the OPP until March 1969, when Staats published his opinion. The existing OPP contractors abandoned their affirmative action plans and the OFCC was back to square one. But as a new presidential administration took over, that office—and other civil rights-related entities within the government—would face a number of other challenges.[359]

The Nixon Administration and Civil Rights, 1969:
Mistakes and Setbacks

In 1968, while Phelan and Stalvey were implementing the OPP in Philadelphia, the nation experienced much tumult, centering on—but not limited to—the battle for the presidency. On March 31, facing increasingly sharp attacks from within his own party on his prosecution of the war in Vietnam, including a credible challenge from New York Democratic Senator Robert F. Kennedy, President Johnson announced that he would not seek re-election, saying that the concerns the nation faced in 1968 were too great for him to spend time campaigning.[360] Four days later, Civil Rights activist and Nobel Peace Prize winner Martin Luther King, Jr., was shot to death outside his hotel room in Memphis, Tennessee, where he had been advocating for the rights of Black sanitation workers.[361] Two months after that, on June 5, as he was claiming victory in the California Democratic primary which would likely sweep him into the nomination and possibly the

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[359] Stalvey, *Monthly Reports*, December, 1968, and January, February, and March, 1969 (DOL OFCC ADC24 *Monthly Reports, 1968-9*); Graham, The Civil Rights Era, pp. 296-7. MacLean, in Freedom Is Not Enough, contends (wrongly) that the Johnson administration "ultimately shelved the idea for fear of clashes with unions, construction contractors, and conservative critics alike" (p. 96). Stalvey's reports show no such "shelving;" contractors simply abandoned the RPP in March 1969 when Staats' ruling was made public.

[360] Tom Wicker, Johnson Says He Won't Run; Halts North Vietnam Raids; Bids Hanoi Join Peace Moves," *New York Times*, April 1, 1968.

[361] John M. Barry, "Labor-Negro Ties Stressed As 40,000 March for King," *AFL-CIO News*, April 13, 1968.

presidency, Senator Kennedy was shot to death.[362] The Democratic nomination ultimately went to Vice President Hubert Humphrey, a key sponsor of the 1964 Civil Rights Act and Johnson's onetime civil rights czar. But Humphrey faced a backlash from working-class and Southern whites incensed over what they saw as the administration's milquetoast response to seemingly annual summertime urban riots, and narrowly lost the White House to former Vice President Richard M. Nixon.[363]

The Nixon administration quickly set a different tone on civil rights issues. Elected by a thin majority which included strong support in the white South among former Democrats like South Carolina Senator Strom Thurmond, Nixon understood that he would have to walk a fine political line between maintaining that support and following his own personal belief—inherent in his Quaker background and demonstrated in his vice-presidential activities as PCGC chairman—in equal opportunity.[364] To keep this balance, he would have to choose his battles carefully, but in 1969 he stumbled—three times. The president's first political blunder came in the spring when a flap developed in a Senate committee over a decision by the EEOC and its young, Johnson-appointed chairman, Clifford Alexander.

The Equal Employment Opportunity Commission (EEOC) was created by act of Congress under Title VII of the Civil Rights Act of 1964, which went into effect on July 2, 1965. Although the new commission should have supplanted the PCEEO, Congress

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[362] John G. Morris, "Kennedy Claims Victory, and Then Shots Ring Out," *New York Times*, June 5, 1968.
[363] On voter demographics in 1968, see, for instance, Kevin P. Phillips, The Emerging Republican Majority (New Rochelle, NY: Arlington House, 1969).
[364] On Nixon's personal feelings on civil rights and civil rights policy, see Graham, The Civil Rights Era, pp. 302-303; Judith Stein, Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism (Chapel Hill: University of North Carolina Press, 1998), pp. 148-149; and Kevin L. Yuill, Richard Nixon and the Rise of Affirmative Action (Lanham, MD: Rowman and Littlefield, 2006), pp. 122-125.

had failed to give the commission any real power—no authority to issue orders to recalcitrant employers or unions, or even to sue in federal court under its own imprimatur. When conciliation—the commission's only real authority—failed to produce results, the EEOC would have to depend on the Department of Justice to sue under the "pattern or practice" section of the law.

To ensure that the government did not give up any existing authority in the area of civil rights—the PCEEO could cancel contracts, debar contractors, and enforce fair employment in the civil service—President Johnson moved contract compliance to the OFCC, in the Department of Labor, and fair employment in the federal government to the Civil Service Commission. The EEOC accepted private sector complaints of unfair hiring and employment practices dating from its inception, engaged in conciliation activities to attempt to convince and cajole employers and unions to integrate, and advocated—especially after White House aide Alexander took over in 1967—for Congress to amend the law so that the commission could issue cease-and-desist orders to segregated unions and workplaces and sue in federal court to have those orders enforced.[365]

With the advent of the Nixon administration, Clifford Alexander announced that he would not resign his position as chairman of the EEOC, arguing that the Commission was by statute independent of any political party, with a fixed number of Democrats and Republicans. He vowed to remain in the position until the end of his term in 1972, but late in March 1969 he was challenged on the Commission's recent decision to request that the OFCC debar three Southern textile firms from defense contracts. The challenge came from Illinois Republican Senator Everett Dirksen when the committee called

[365] EEOC Annual Report, January 1969 (NAACP VI A23 *5*); Congress of the United States, S. 2029, April 29, 1969 (Presidential Papers of Richard M. Nixon [Nixon], Collection of White House Aide Leonard Garment [Garment] 86 *168*, NARA).

Alexander to testify on the three defense contractors. Dirksen, one of the principal architects of Title VII, felt that the EEOC was overstepping its authority, and said that Alexander was harassing businesses and threatened to go "to the highest office in the land to get somebody fired." Later that day the White House press secretary announced that the president would soon name a new chairman to the committee, and on April 8, reasoning that he would be incapable of doing his job effectively without White House support, Alexander submitted his resignation. News stories, editorials, and cartoons publicly blasted Nixon as having fired Alexander for "doing his job." The overwhelming—and incorrect—opinion of Black newspapers was that Dirksen was doing Nixon's bidding, and that the president should not have interfered in the operations of the EEOC. Dirksen's motives were in fact based on a genuine—albeit misguided—concern that the EEOC's zeal to integrate was interfering with the prerogatives of free enterprise. Nonetheless, by removing Alexander and alienating the Black press, Nixon had made his first political mistake on civil rights.[366]

Nixon's second political mistake came in mid-summer, when his administration backed a bill to reform the EEOC. The administration's bill was at odds with the prevailing—and more ambitious—bill then extant, which had been delayed consideration in the previous Congress. The extant bill would give the EEOC "cease-and-desist" authority, meaning the Commission could order employers to hire complainants and

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[366] "Alexander Under Fire For 'Doing His Job,'" *Washington Afro-American*, April 1, 1969; Marjorie Hunter, "Dirksen Upbraids U.S. Rights Official," *New York Times*, March 28, 1969; Clifford L. Alexander, Jr., to Richard Nixon, April 8, 1969 (Nixon Garment 86 *168*); "Alexander's Troubles," editorial; "Alexander 'Fired' for 'Doing Job;'" and "Al'xndr Gains Support," *New York Amsterdam News*, April 12, 1969; "Job Discrimination Must Go!!," editorial; "Top U.S. Bias Fighter Shot Down; Nixon May Launch Local Man," *Philadelphia Tribune*, April 15, 1969; "Cause to Pause," editorial; Gertrude Wilson, "Is Dirksen Setting the Tone?," column, *New York Amsterdam News*, April 19, 1969. For a more comprehensive discussion of Ervin's motivation on civil rights and free enterprise, see Graham, The Civil Rights Era, pp. 336-342; Moreno, From Direct Action to Affirmative Action, p. 223; and Maclean, Freedom Is Not Enough, pp. 97-98.

award back pay and other damages, and would transfer the OFCC, with its contract cancellation and debarment authority, from the DOL to the EEOC. The administration bill, on the other hand—defended in the press and in Congressional testimony by Nixon's new EEOC chairman, William H. Brown, III—contained no provision for cease-and-desist or OFCC transfer. Both bills would give the EEOC the ability to sue employers in federal court without first going through the DOJ.[367]

Brown had been nominated to fill one of the designated Republican seats on the EEOC by President Johnson in October 1968, but Senator Dirksen placed a hold on his appointment. When Alexander announced his resignation—from the chairmanship but not the commission—President Nixon nominated Brown as his successor. Senator Dirksen withdrew his hold on the nomination and Brown was confirmed on May 10, 1969, "by a voice vote with a few audible nays."[368]

During his confirmation hearings, Brown had stated that he favored giving cease-and-desist powers to the EEOC. But as soon as Nixon's intent became clear, the new chairman went on record supporting the administration's version of the EEOC bill, which would give the commission no such powers. And Nixon's status on civil rights was not helped when, in the course of the flap over Brown's flip, an article appeared in the *Philadelphia Evening Bulletin* "estimating that of the 175 [EEOC] staffers in Washington more than 100 are thinking of leaving" over the perceived "incompetence" of the new chairman. Ultimately neither bill would pass during the 91st Congress, but the press

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[367] Arthur F. Burns to Nixon, August 8, 1969; U.S. Congress Bill S. 2806, August 8, 1969.
[368] "Nixon Names William Brown Head of EEOC," *AFL-CIO News*, May 10, 1969; "Ex-Asst. D.A. Called 'Front Man' For Nixon's Lax Anti-Bias Bill," *Philadelphia Tribune*, August 16, 1969; and Warren Hoge, "Nixon's Gentle Job Crusader," *New York Post*, September 13, 1969.

picked up on Brown's apparent about-face, giving Nixon his second political mistake on civil rights after less than a year in office.[369]

The problem with not granting the EEOC cease-and-desist authority, but expecting it to rely on the power to sue in federal court, was not merely a matter of institutional procedure. Former chairman Clifford Alexander, who resigned his commission membership before the year was out, worried that without cease-and-desist, the fate of the commission's decisions on equal employment would be in the hands of Southern judges, who presumably would not look favorably on attempts to integrate at the expense of immediate productivity, corporate profits—and the segregationist ethos.[370] One such judge would soon represent yet another blow to Nixon's delicate balancing act: Clement F. Haynsworth, Jr., of the Federal Appeals court in Virginia. The president nominated Haynsworth in the summer of 1969 to replace disgraced Supreme Court Justice Abe Fortas, who had accepted questionable honoraria.

Nixon came into the White House with a debt to white Southern conservatives, and early in his tenure in the Oval Office his staff developed what became known as the "Southern Strategy"—the deliberate courting of Southern white (and long reliably Democratic) votes so as to strengthen his tenuous support in Congress in the 1970 midterm elections (he was the first president in the twentieth century to enter office with both houses under the control of the opposition party) and ensure his own re-election in 1972. The Nixon administration, therefore, saw the political mistakes it had made over

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[369] Henry T. Aubin, "Brown Called Incompetent; Staffers Quit Rights Agency," *Philadelphia Bulletin*, August 12, 1969; Philip Shandler, "Job Bias Agency Slows to Crawl," *Washington Evening Star*, December 6, 1969. For more on William Brown and cease-and-desist, see Graham, The Civil Rights Era, pp. 428-430.

[370] "Ex-Asst. D.A. Called 'Front Man' For Nixon's Lax Anti-Bias Bill," *Philadelphia Tribune*, August 16, 1969.

the handling of the EEOC chairmanship and proposed expansion of the commission's powers as ultimately less important than embarrassments which might harm him among the growing Republican constituency in the white South.[371]

Senator Strom Thurmond's support of Nixon had marginalized a potential third-party spoiler among unreconstructed Southerners, former Alabama Governor George Wallace. To repay Thurmond, Nixon took into the White House one of the South Carolina Senator's chief lieutenants, Harry Dent, and vowed to appoint a "strict constructionist" conservative judge to the Supreme Court, ostensibly to give the court ideological and regional balance after fifteen years of its leaning northern and liberal. The Haynsworth appointment's connection to Thurmond was so overt that one NAACP correspondent called it a conspiracy and went so far as to file an unsuccessful lawsuit in civil court against the president and the South Carolina senator.[372]

Haynsworth himself was the fourth-generation scion of a plantation-owning North Carolina family. His record of trial decisions was generally anti-labor and anti-civil rights, and many had been overturned on appeal. The nomination immediately garnered opposition from the AFL-CIO, the NAACP, and both the mainstream and Black press.[373]

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[371] The "Southern Strategy" has been recounted in far greater detail than is possible in the present work. See, for instance, Graham, The Civil Rights Era; Joan Hoff, Nixon Reconsidered (NY: Basic Books, 1994); Richard Reeves, President Nixon: Alone in the White House (NY: Simon and Schuster, 2001); Stein, Running Steel, Running America; and Yuill, Richard Nixon and the Rise of Affirmative Action.

[372] Bruce Rabb to Leonard Garment, July 23, 1969 (Nixon, Collection of White House Aide Bradley Patterson [Patterson] 66 *Supreme Court Appointment*); Office of Senator Strom Thurmond, *Press Release*, August 18, 1969; and The Committee for a Fair, Honest, and Impartial Judiciary, *Draft Complaint*, September 5, 1969 (NAACP VI A26 *Federal Government, Supreme Court, Haynsworth, 4*).

[373] "Rumored Consideration," *The Wall Street Journal*, August 1, 1969; NAACP Press Releases, August 9 and August 18, 1969, and Wilkins to The Leadership Conference for Civil Rights, August 21, 1969 (NAACP VI A26 *Federal Government, Supreme Court, Haynsworth, 2*); "A Turn Back," editorial, *New York Amsterdam News*, August 23, 1969; "Labor Hits Nixon Choice for Supreme Court Seat; Haynsworth Record Scored as 'Hostile,'" *AFL-CIO News*, August 23, 1969; "Judge Clement Haynsworth," *Time*, August 29, 1969; Lewis Ets-Hokin to Meany, August 31, 1969 (Meany RG1-038 130 *3*); Stephen Gill Spottswood to Nixon, September 9, 1969 (NAACP VI A18 *Board Resolutions*); AFL-CIO Press Release, September 13, 1969 (Meany RG1-038 82 *39*); "Haynsworth: No," editorial, *New York Amsterdam News*,

Nevertheless, the American Bar Association gave Haynsworth their approval, the nomination was reported out of the Judiciary Committee (i.e. the committee approved the nomination for review by the full Senate), and it seemed likely that Haynsworth would be confirmed. But when reports surfaced that the nominee had presided on civil cases in which his wife's company was a litigant, this conflict of interest appeared too similar to the very reasons for Justice Fortas' retirement, and Haynsworth's nomination was rejected by the Senate on November 29, 1969, by a vote of 55-45 (making him the first Supreme Court nominee to be so rejected since 1930). By failing to nominate a conservative southerner who could withstand public scrutiny, Nixon suffered a blow to his Southern strategy, an embarrassment in the eyes of his Southern white conservative constituents.[374]

With their first year in office drawing to a close, the Nixon administration had alienated the mainstream civil rights leadership and Big Labor and suffered a major embarrassment in their campaign to bring the white South over to the Republican banner. And although the Haynsworth nomination was defeated mainly for conflict of interest charges, the lesson of the four-month debate over the judge's qualifications was clear: the AFL-CIO and the NAACP posed a unified front against Nixon's Southern strategy. When a fighter is on the ropes, he really has only two choices: get out of the ring or come back swinging. Hardly the retiring type in only the first year of his presidency, Nixon sought a way to strike a blow. He found it in the Revised Philadelphia Plan.

September 27, 1969; "NAACP Continues Haynsworth Fight," *New York Amsterdam News*, October 18, 1969; "Nixon Should Give Up On Judge Haynsworth," editorial, *Bremerton Sun*, October 21, 1969; "F.Y.I.," editorial, *Washington Post*, October 22, 1969.

[374] "Rights Leaders Hail Haynsworth Denial," *New York Amsterdam News*, November 29, 1969.

The Revised Philadelphia Plan

As a civil rights agency, the OFCC was not immune to the adverse changes affecting the federal civil rights regimen which came with the new administration. The Office endured personnel cutbacks, especially in the construction area coordinator program; the twenty area coordinators were decreased to ten regional coordinators, and their responsibilities were increased to cover all federal contracts, not just those in construction. As one of Macaluso's key officers, Stalvey made the cut, and became OFCC regional coordinator for the mid-Atlantic region, including all of New Jersey, Pennsylvania, and Maryland.[375]

Stalvey's primary focus remained Philadelphia, where grassroots organizations were incensed over cancellation of the OPP. Stalvey worriedly reported that renewed protests at construction sites had the potential to become civil disorders as the summer approached. Further, the abandonment of the OPP at the federal level put the city's own plan in jeopardy, since it had relied on the OFCC and FEB for enforcement. And the Philadelphia Board of Education—which had been at the center of the 1963 protests—was conducting hearings on the use of their facilities by discriminatory construction unions. The abandonment of the OPP put the outcome of those hearings in doubt, and Stalvey found that most of his job that spring as a federal officer was, quixotically, working to maintain and expand the local government's affirmative action plans.[376]

What Stalvey needed to take the pressure off the local government's OPP "spinoffs" was help from his superiors in Washington. Macaluso would have liked to have given Stalvey more support but had a number of increased responsibilities due to the cutbacks in his program. In any case, as a Democrat appointed during the Kennedy

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[375] Stalvey, *Monthly Report*, April, 1969 (DOL OFCC ADC24 *Monthly Reports, 1968-9*).
[376] *Ibid*. and John Brantley Wilder, "Detail Methods Unions Use to Bypass Negroes," *Philadelphia Tribune*, March 22, 1969.

administration, Macaluso was doing his best to keep his political head down in what had nominally become a civil service position (and thus theoretically immune from the political winds).[377] Sylvester had been promoted out of the OFCC by President Johnson in 1968 and was no longer in the federal service; an interim director would shortly be replaced by the Nixon administration. The transition was not giving Stalvey the help he needed.

This changed on March 14, 1969, when President Nixon nominated Arthur Fletcher, a Black Republican from Washington State, as DOL Assistant Secretary for Wage and Labor Standards. With the primary responsibility of establishing working relationships with local government officials around the nation, and with the OFCC falling under his portfolio, Fletcher quickly evaluated the various OFCC programs and decided that Stalvey, Macaluso, and Phelan had been on the right track with the OPP. On June 12, 1969, he announced that the Philadelphia Plan would be re-written to meet the objections of the comptroller general and that the revised version would be implemented forthwith.[378]

Arthur Fletcher was born in 1924 in Arizona, the son of a soldier in a Black cavalry unit of the United States Army. Despite his mother's training as a teacher, she cleaned homes to supplement the family income, which taught Fletcher the effects of job discrimination. His family moved from one Army base to another for most of his childhood, finally settling in Junction City, Kansas, where Fletcher graduated from the local high school after organizing a protest against segregated yearbook sections. Then he

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[377] Macaluso interview with the author, January 4, 2008.

[378] Nixon to United States Senate, March 14, 1969 (Nixon, Collection of the Department of Labor [DOL] 5 *Executive, 1*); "Negro Named to Key Position in Labor Department," *Philadelphia Bulletin*, March 15, 1969; Peter H. Binzen, "U.S. to Revise and Reinstate 'Phila. Plan' on Minority Hiring," *Philadelphia Bulletin*, June 12, 1969.

joined the Army and was sent to Europe during World War Two, where he was wounded while serving under General George Patton. Fletcher returned to Kansas and attended Washburn University in Topeka on the G.I. Bill. A college football career resulted in his becoming a defensive end for the Los Angeles Rams in 1950, and he went on to become the first Black player for the Baltimore Colts. During his brief football career, Fletcher donated some of his income to the plaintiffs in the anti-segregation case against the Topeka School Board (later known as *Brown vs. Board of Ed*).[379]

Fletcher returned to Kansas again in 1954 to campaign among Black voters for liberal Republican gubernatorial candidate Fred Hall. When Hall won, he put Fletcher in charge of overseeing State highway contracts, a position he used to ensure that ample contracts went to Black-owned businesses. Complaints of unfair treatment from white contractors convinced him to leave the state with his young family, and after unsuccessfully attempting to integrate an all-white neighborhood in Sacramento, California, Fletcher settled in Pasco, Washington, where he established, in 1965, a cooperative self-help organization.[380]

That organization's success spawned a movement known as "Black capitalism," which won Fletcher a seat on the Pasco City Council in 1967 and brought him to the attention of former Vice President Nixon, who was then considering a second bid for the White House and was seeking a policy proposal which would mesh the achievements of

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[379] "A Hard-Driving Black Official: Arthur Allen Fletcher," *New York Times*, December 2, 1971; Graham, The Civil Rights Era, p. 326; Arthur Fletcher biography at *The History Makers*, from an interview conducted on May 29, 2003 (http://www.thehistorymakers.com/biography/biography.asp?bioindex=526&category=lawMakers, accessed March 14, 2008); "Presidential Adviser Arthur Fletcher, 80, Dies; 'Father of Affirmative Action' Counseled Nixon, Ford, Reagan, G.H.W. Bush," *Associated Press*, July 13, 2005.

[380] Michael Flynn, "Former Pro Football Star: 'Black Capitalism Founder Battles for Lieutenant Governorship," *Philadelphia Bulletin*, September 30, 1968; Arthur Fletcher biography at *The History Makers*.

the civil rights era with the ideology of the Republican party. In 1968, Nixon tapped Fletcher for service on a special minority advisory committee for the presidential campaign. Fletcher's service and outlook also served his own political ends: he won the Republican nomination for Lieutenant Governor of Washington state, winning primaries in every county, a particularly remarkable feat considering that fewer than two per cent of the electorate was Black. While he narrowly lost the general election, the Nixon administration did not forget his early support, nor the role his self-help civil rights theories could play in the new administration. On March 14, 1969, Nixon nominated Fletcher to be Assistant Secretary of Labor for Wage and Labor Standards.[381]

Upon confirmation by the Senate, Fletcher now shared the mantle of senior Black official in the Nixon administration with former CORE Director James Farmer, now an Assistant Secretary at HEW. With that mantle came an awesome moral responsibility. However Fletcher's political beliefs may have differed from more left-leaning leaders of the civil rights movement, his appointment represented continuity with the Black officials of the Johnson administration, during which the civil rights movement had seen its greatest successes. As assistant secretary of labor, Fletcher represented the drive for integration in federal contract employment. And since the most blatant discrimination in contract employment was occurring in the skilled building trades, Fletcher resolved to go to work in that area. He consulted with the OFCC and determined that the Philadelphia Plan would be revived.

Fletcher had done his homework well. Under the Revised Philadelphia Plan (RPP), contracting agencies would include detailed non-white hiring goals or percentage

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[381] Flynn, "Former Pro Football Star;" John Whitaker to Bill Casselman, February 25, 1969; and Nixon to United States Senate, March 14, 1969 (Nixon DOL 5 *Executive, 1*).

ranges in the invitation to bid, thereby precluding the possibility that contractors would face additional costs as a result of post-bid negotiations. And he had ensured that the terms of the RPP were cleared by the solicitor of labor, who ruled that the plan was legal under procurement law, thereby obviating the possibility of any further challenge from the comptroller general's office.[382]

Like the OPP, the new RPP covered the same five counties in the Greater Philadelphia area—Bucks, Chester, Delaware, Montgomery, and Philadelphia—as well as five skilled trades—ironworkers, plumbers, steamfitters, sheet metal workers, and electrical workers. Dropped from the revised plan were the operating engineers, with whom the DOL was then working on a nation-wide integration agreement; added to the new plan were the roofers and elevator constructers (whose relatively small membership excluded Blacks altogether).[383]

Released on June 27, 1969, the RPP did not state specific goals, but after public hearings in July held by Macaluso and Stalvey (attended by representatives of the plumbers but none of the other affected trades, who stayed away in protest)[384] and in August by Fletcher,[385] the OFCC released the specific goals of the program. On average, they expected the covered trades to be approximately seven per cent Black or Hispanic by the end of 1970, rising to about twenty-five per cent by the end of 1973.[386] These goals were significantly lower that those of the OPP, at least for the first three years; Fletcher

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[382] Graham, The Civil Rights Era, pp. 327 and 330.
[383] Arthur Fletcher to Agency Heads, June 27, 1969 (Meany RG1-038 72 *15*); Richard J. Levine, "U.S. Takes New Step to End Discrimination in Federally Aided Construction Programs," *Wall Street Journal*, June 30, 1969; Fletcher, *Address to the Annual NAACP Convention*, July 2, 1969.
[384] Martin J. Herman, "6 of 7 Unions Boycott Meeting on Phila. Plan," *Philadelphia Bulletin*, July 10, 1969.
[385] "U.S. Aide Calls Phila. Plan Just 'A Beginning;' Says Labor Dept. Will Institute Project Despite Problems," *Philadelphia Bulletin*, August 28, 1969.
[386] Henry T. Aubin, "U.S. Guidelines Are Issued for Minority Hiring, *Philadelphia Bulletin*, September 23, 1969.

called the higher goals of the OPP an unrealistic public relations ploy by the previous administration. "There are differences between this administration and the last," Fletcher said. "We're not running a P.R. program; we're running a program that will have results."[387]

Another important difference between the RPP and the OPP was the "good faith" clause, which Fletcher pointed to as evidence that the goals were not, in fact, synonymous with "quotas." If a contractor failed to meet his agreed-upon goals for non-white hiring, he had only to show that he had exercised "good faith" in doing so for funding to continue (as long as such "good faith" was not limited to simply asking the union for workers). The term was deliberately left undefined so as to give contractors who exercised affirmative action as much leeway as possible should their efforts fail to produce results.[388]

The RPP also contained a training component which the OPP had lacked. The RPP called upon the DOL's Manpower Administration Office to provide funding for non-white training programs (independent of the unions, if necessary) which would select youths from Philadelphia's Black community to receive on-the-job training on federal projects at no additional cost to the contractor.[389]

After being declared legal by the solicitor of labor, the RPP quickly earned the endorsements of two key players within the administration. A senior Justice Department official said that "we find [the plan] to be consistent with the executive order [No. 11246]

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[387] Fletcher to George P. Schultz, August 29, 1969 (DOL, Papers of Undersecretary James D. Hodgson [Undersecretary Hodgson] 14 *Philadelphia Plan*); John Brantley Wilder, "Biased Unions Are Blasted by Black Workers: Want Philadelphia Plan to Become Law of Land; All-Out Fight Pledged," *Philadelphia Tribune*, August 30, 1969.
[388] Fletcher to agency heads, June 27, 1969 (Meany RG1-038 72 *15*).
[389] *Ibid*.

and with the Civil Rights Act of 1964."[390] And unlike his predecessor Willard Wirtz, who had quietly abandoned the OPP the previous November, Labor Secretary George P. Schultz called the RPP "a fair and realistic approach, not an arbitrary imposition, in the pursuit of goals I believe are reasonable."[391] The editors of *The New York Times*, also endorsing the plan, speculated that the Schultz and DOJ endorsements indicated that support for the program reached all the way up to the White House.[392]

In the civil rights community, qualified support came quickly from such longtime advocates of construction integration as Herbert Hill and Philadelphia NAACP President Cecil B. Moore. And the RPP received a big boost from the construction industry when the Mechanical Contractors Association of Philadelphia endorsed the plan as well. Fletcher personally visited the Executive Director of the Philadelphia Urban League and NAACP chief Roy Wilkins to promote the plan.[393]

The NUL and NAACP were officially leery of quotas for their restrictive nature as well as their propensity to inflame white sentiment against civil rights causes, and had to be convinced the specific goals of the RPP represented the minimum, not maximum number expected to be hired. Similar plans had been attempted during the Great Depression, when Interior Secretary Harold Ickes had used the weight of the federal government in the construction market to affect equal opportunity. The result, which set quotas at the proportion of Blacks employed in the construction industry before the

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[390] Jerris Leonard to Laurence H. Silberman, June 26, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*).
[391] "Schultz Defends New Plan to get Jobs for Negroes," *New York Times*, July 6, 1969; Fletcher to Wilkins, July 18, 1969 (NAACP VI G9 *Labor, Department of Labor, 1969-71*).
[392] "Breaking Down the Bars," editorial, *New York Times*, August 12, 1969.
[393] Clay Dillon, "Construction Work Bidders Required to Hire Blacks for Better-Pay Jobs," *Philadelphia Tribune*, July 8, 1969; and "To Push Quota Hiring," *New York Amsterdam News*, August 16, 1969; "Biased Unions Are Blasted," *Philadelphia Tribune*, August 30, 1969; and William H. Lindsay, Jr., to Horace Menasco, October 17, 1969 (DOL Undersecretary Hodgson 14 *Philadelphia Plan*).

depression, had mitigated the worst effects of the economic downturn but relegated Blacks to the discriminatory 1930 employment levels.[394]

The organizations also worried about the effect an endorsement of a government-sponsored quota system would have on their support in the white liberal community, particularly among Jews. Quotas had been used to exclude Jews from elite colleges like Harvard, and indeed were a common restriction on Jews in Europe going back to the Middle Ages. The establishment of Brandeis University in 1948, a secular Jewish college, on a strictly non-quota basis, was meant as a strike against quotas in any form.[395] In sum, the endorsement of the RPP by leaders of the Urban League and NAACP was qualified with the caveat that the plan not engage in any firm quota system.

The endorsement of the RPP by administration officials and civil rights leaders meant little to Elmer Staats, however. On August 5, 1969, despite the ruling by the solicitor of labor, the comptroller general found the RPP to be illegal.[396] But his ruling was based not on procurement law, but rather Title VII of the Civil Rights Act of 1964, section 703(j), which held that

> Nothing in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified

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[394] Paul D. Moreno, From Direct Action to Affirmative Action: Fair Employment Law and Policy in America, 1933-1972 (Baton Rouge: Louisiana State University Press, 1997), pp. 56-62.
[395] Abram L. Sachar, A Host at Last (Boston: Little, Brown, & Co., 1976), p. 258. But James E. Jones, Jr., argues in "The Bugaboo of Employment Quotas" (*Wisconsin Law Review* Vol. 341, No. 21 [1970], pp. 341-403) that the American distaste for employment quotas to help minority groups in fact stems from collective guilt at using quotas *against* minority groups and immigrants from countries deemed "unworthy," such as China.
[396] Staats to Schultz, August 5, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*).

> by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.[397]

In other words, Title VII did not support quotas or preferential treatment in order to remedy the discrimination for which Title VII was passed.

Staats found, in particular, that the RPP could easily be used to discriminate against whites. Posing a hypothetical situation, he asserted:

> If, for example, a contractor requires 20 plumbers and is committed to a goal of employment of at least five from minority groups, every nonminority applicant for employment in excess of 15 would, solely by reason of his race or national origin, be [discriminated against] in his opportunity for employment, because the contractor is committed to make every effort to employ five applicants from minority groups.[398]

This requirement that whites be rejected after their quota had been filled, Staats felt, constituted discrimination under Title VII, which afforded the same protections to whites as it did to Blacks.

Further, in citing Title VII while ruling against the RPP, Staats revealed that the true nature of his opposition to the Philadelphia Plan (and that of his congressional allies like William Cramer) was abhorrence of racial quotas more than any genuine concern for the cost to contractors, which had been his complaint about the OPP. Without any evident violation of procurement law, he reached out to other areas of legislation. In doing so, Staats was again attempting to extend his authority. Few in the executive branch would begrudge the comptroller general his right to pass on procurement law; that was, after all, one of the main functions of the GAO. But by declaring the RPP illegal under the civil

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[397] U.S. Congress, "Civil Rights Act of 1964," H.R. 7152, July 2, 1964.
[398] Staats to Schultz, August 5, 1969.

rights act, as Graham has noted, he was stating that he had the authority to interpret laws having nothing to do with procurement.[399]

In any event, Staats was joined in his opposition to the RPP by the *Philadelphia Bulletin*, which, as the voice of the city's commercial interests, decried the plan's "quotas" as potentially damaging to community relations by pitting whites against Blacks for the same jobs.[400] (Of course, the Black community had already been "damaged" by the withholding of those jobs by whites in the first place.) The *Bulletin* argued that rather than institute quotas, the interests of the Black community would be better served by more federal funding of the local apprenticeship outreach program, wherein the Negro Trade Union Leadership Council trained local youths for apprenticeship examinations.[401] In this opinion they were joined by AFL-CIO President George Meany, as well as the leaders of the local Building Construction Trades Council.[402]

With Staats asserting his authority to interpret laws unrelated to procurement, the Nixon administration had to either fight Staats' interpretation or allow the comptroller general, in essence, to set up the GAO as a fourth branch of government. Attorney General Mitchell chose to fight, and on September 22, 1969, issued his formal response to Staats' opinion. He conceded that the comptroller general could rule on procurement issues related to other laws, such as the 1964 Civil Rights Act, but that such opinions, unlike those strictly limited to procurement law, were not final. On this matter, the comptroller general could be overruled by the attorney general, Mitchell claimed, and

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[399] Graham, The Civil Rights Era, pp. 331-2.
[400] "The Question of Quotas," editorial, *Philadelphia Bulletin*, July 8, 1969.
[401] "'Philadelphia Plan' Impasse," editorial, *Philadelphia Bulletin*, August 14, 1969.
[402] Damon Stetson, "Meany Doubtful on Hiring Quota Plan," *New York Times*, August 9, 1969.

only an act of Congress or concurring federal court decision could result in Staats' opinion having the force of law.[403]

In response to Staats' specific objections, Mitchell said that "The obligation of nondiscrimination...does not require and, in some circumstances, may not permit obliviousness or indifference to the racial consequences of alternative courses of action which involve the application of outwardly neutral criteria." In other words, nondiscrimination and "color-blindness" were not always compatible; race could be considered in order to implement the nondiscrimination clause in contracts and comply with Title VII. He said that if Staats' hypothetical plumbing contractor indeed made a good faith effort to recruit Black workers, such situations as Staats feared would rarely arise, and if they did, such a good-faith effort would inoculate the contractor from charges of discrimination and would allow him to hire the sixteenth white if he were best qualified.[404]

Interestingly, neither Mitchell's nor any other legal interpretation at the time considered that in fact subsection 703(j) did *not* outlaw quotas. Taken literally, the opening clause of the passage, "Nothing in this title shall be interpreted to require," meant only that Title VII did not *authorize* quotas. The subsection did not explicitly declare quotas illegal, as long as such quotas were based on authority held outside of Title VII. The RPP drew its authority not from Title VII but from Title VI, which governed federal expenditures, and Executive Order No. 11246, which gave the OFCC the power to cancel contracts. Officers of the OFCC could not file charges with the EEOC for a contractor's failure to comply with a quota, because the EEOC handled

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[403] John N. Mitchell to Schultz, September 22, 1969 (Nixon Garment 142 *Philadelphia Plan, 1*).
[404] *Ibid*.

complaints of discrimination under Title VII, but they could certainly withhold federal funds from such a contractor.[405]

Despite the comptroller general's ruling, Fletcher signed an order on September 23, 1969—the day after the release of Attorney General Mitchell's opinion—implementing the RPP. One month later, on October 23, the first RPP contract was signed, between HEW and the Bristol Steel and Iron Works of Richmond, Virginia, to build "an addition to a children's hospital and a child guidance center." By the end of 1969, Stalvey was able to report that there were already seven contracts under the RPP, with a value of more than $30 Million (although none of the projects had yet broken ground due to cold weather).[406]

With the comptroller general and the attorney general at an impasse over the legality of the RPP, the question would have to be decided by Congress, the federal courts, or both. And for the proponents of the RPP to prevail they would need the political support of the White House. Nixon's White House, however, had thus far not demonstrated any particular zeal for civil rights issues. To secure White House support for the RPP, Fletcher and Schultz had to demonstrate the program's political value, and their efforts received a boost in the fall of 1969 as protests broke out at construction sites

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[405] In 1979, the Supreme Court addressed this question in *United Steelworkers v. Weber* (99 S.Ct. 2721 [US S.Ct., 1979], 20 EPD par. 30,026), finding that 703(j) assumed, by stating that Title VII did not allow quotas under the act, that quotas were in fact legal otherwise. David E. Robertson and Ronald D. Johnson, "Reverse Discrimination: Did Weber Decide the Issue?" *Labor Law Journal*, November, 1980. While Justice Brennan's majority decision is an accurate reading of the letter of the law, the legislative history points in another direction. Section 703(j) was specifically included in order to avoid losing the support of Senator Dirksen over quotas. LBJ Transcripts, Burke Marshall Oral History Interview I, October 28, 1968, p. 21, and Clarence Mitchell Oral History Interview I, April 30, 1969, pp. 19-20, by Thomas H. Baker. Stein, in Running Steel, Running America, p. 84, and Graham, in The Civil Rights Era, p. 151, also relate accurately the legislative history of Title VII, Dirksen, and quotas. Nonetheless, while the court can consider legislative history, it was the letter of the law which received a majority vote in both houses of Congress and which President Johnson signed, and the court chose to look to that letter in *Weber*.

[406] DOL Press Release, September 23, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*); "'Philadelphia Plan' Contract," *New York Times*, October 23, 1969; and Stalvey to Menasco, December 22, 1969 (DOL, Records of the Office of the Secretary, Chronological File, 1969 [1969] *2*).

in Pittsburgh, Chicago, and elsewhere in the nation—protests far more potent and widespread than those seen at sites in Philadelphia and Newark in the spring of 1963.

According to an EEOC report, Blacks constituted over sixteen per cent of the population of Pittsburgh while the percentage of Blacks in the skilled building trades in the city stood at only one per cent. On August 29, 1969, the Western Pennsylvania Master Builders' Association—the Pittsburgh construction contractors' umbrella organization—refused to participate in the extension of a Black-controlled apprenticeship outreach and training program designed to increase the number of Black youths in construction apprenticeships. In response, mass protests broke out at several major construction sites around the city. Clashes between protestors and police resulted in the injury of forty-five people (including twelve policemen) and one hundred and eighty arrests. Two days later, as negotiations resulted in the temporary halting of work at several job sites, angry white construction workers organized a protest of their own, at Pittsburgh's city hall. Undeterred, Black community activists organized weekly Monday protests at construction sites, demanding not only an extension of the apprenticeship outreach program but integration at the journeyman level. Negotiations with the contractors continued throughout September and October.[407]

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[407] Michael Stern, "Effort to Train Blacks For Construction Jobs Falters in Pittsburgh; Graduates Get Top Pay Running Heavy Equipment, but Black Control Irks Unions, Firms," *Wall Street Journal*, July 24, 1969; "Five Building Projects Halted in Pittsburgh By Demands of Blacks; Demonstrators at Construction Sites Seek the Placement of Negroes in Area Trade Unions," *Wall Street Journal*, August 26, 1969; "Job Protest Spurs Pittsburgh Clash; Negroes Battle Policemen—180 Arrested, 45 Injured," and Donald Janson, "Construction Job Rights Plan Backed at Philadelphia Hearing, *New York Times*, August 27, 1969; "U.S. Steel Won't Halt Building in Pittsburgh Over Negroes' Demands; But Company Says It Has Begun To Intercede on Blacks' Behalf; Further Demonstrations Seen," *Wall Street Journal*, August 28, 1969; Western Pennsylvania Master Builders' Association *Statement*, August 28, 1969 (Meany RG9-002 10 *1*); "Race Conflict Over Jobs," editorial; Donald Janson, "Whites Denounce Pittsburgh Mayor; 4,500 Protest at City Hall Over Loss of Pay in 2-Day Construction Shutdown," *New York Times*, and "Pres. Nixon Should Forget The White Backlash And Help Negroes Get Jobs," editorial, *Philadelphia Tribune*, August 30, 1969; "Demonstrations Against Bias Halted in Pgh.," *Philadelphia Tribune*, September 6, 1969; "Federal

The concept of "Black Mondays" proved transferable. In Chicago, NUL statistics estimated the building trades overall non-white component—including both skilled and less-skilled trades—at three per cent, whereas the local building trades council estimated it to be ten per cent but would not break that figure down by individual craft. In August, protests shut down twenty building sites and HUD threatened to delay all contracts in the city until the industry could work out the tensions.[408] Consciously recalling the late Martin Luther King's *Letter from a Birmingham Jail*, the Reverend Jesse Jackson, arrested while protesting at a Chicago building site, wrote a letter of his own from a Chicago jail:

> We do not seek to take white jobs. But neither do we intend to allow whites to keep Black jobs while we are passively quiet and docile.
>
> There will be no more rest and tranquility until our just pleas are heeded. Many of the whites are employed upon the prerogatives of discrimination and exclusionary procedures.[409]

With similar protests erupting in Seattle, Los Angeles, and Buffalo, and still more planned for San Francisco, Milwaukee, Cleveland, and Boston, Fletcher announced that he would hold hearings on the building trades in Chicago on September 24, 1969, in anticipation of issuing an affirmative action program for Chicago similar to the RPP. But instead of orderly proceedings in the Chicago federal building, Fletcher was forced to postpone the hearings and move the location to the better-secured Customs House, as

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Agencies Move In to Put Out Fire of Racial Unrest in Chicago Construction," *Construction Labor Report* No. 730, September 17, 1969; Clayton Willis to Garment, September 18, 1969 (Nixon Garment 84 *EEOC, 1969, 4*); Macaluso to John L. Wilks, October 16, 1969 (Nixon Garment 1 *Memos, 1969, October*).

[408] "20 Chicago Building Projects Shut Down by Hiring Protests," *New York Times*, August 10, 1969; "Chi Blacks Renew Job Site Protests," *New York Amsterdam News*, August 30, 1969; "Race Conflict Over Jobs," editorial, *New York Times*, August 30, 1969; "Federal Agencies Move In to Put Out Fire," *Construction Labor Report* No. 730, September 17, 1969; "Nationwide Black Walkout Urged to Back Job Demand," *New York Times*, September 22, 1969; Seth S. King, "4,000 Negroes in Chicago Rally in Bid For Skilled Building Jobs," *New York Times*, September 23, 1969; "Showdown on Negro Jobs in the Building Trades," *U.S. News and World Report*, September 29, 1969; and Macaluso to Wilks, October 16, 1969 (Nixon Garment 1 *Memos, 1969, October*).

[409] "Jesse Jackson writes from Chicago Jail," *Philadelphia Tribune*, September 20, 1969.

thousands of white construction workers blocked the entrance and chanted "Blacks, yes! Gangs, no!" (One of the organizations that had organized the protests at the Chicago job sites was the Conservative Vice Lords, a local street gang.)[410]

The construction workers quickly turned to violence, pummeling a Black motorist's car (as well as a police officer who intervened). When four Black youths were surrounded by the mob, one brandished a gun and fired several warning shots into the air. After being beaten by the crowd, the four were arrested for gun possession. A small group of white women, holding placards in favor of union and jobsite integration, were surrounded and threatened by the "cursing, flag-waving, beer-drinking white construction workers," as the *Philadelphia Tribune* called them, but by then it was the third day of such protests, and the police had become better organized. The women were protected and Fletcher was able to hold his hearings, which resulted in the contractors, unions, and community groups agreeing to a voluntary plan to admit as many as four thousand more Blacks into the construction unions by the end of 1971. The OFCC was able to gather enough information to put seventeen contractors on notice that they would be debarred unless they complied with the non-discrimination clause of their federal contracts.[411]

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[410] Damon Stetson, "Negro Groups Step Up Militancy in Drive to Join Building Unions; Blacks, dissatisfied with Slow Pace of Job Integration, Increase Picketing and Work Stoppage at Projects," *New York Times*, August 28, 1969; "Federal Agencies Move In to Put Out Fire," *Construction Labor Report* No. 730, September 17, 1969; A.P. Toner to John Ehrlichman, September 24, 1969 (Nixon Garment 86 *Ehrlichman, 65*); James Strong, "Trades Talk Delayed as 500 Jam Room; Workers Shout Down U.S. Aids," *Chicago Tribune*, September 25, 1969; Seth S. King, "Whites in Chicago Disrupt Hearing; 5 Hurt and 9 Arrested in Dispute on Job Bias," *New York Times*, September 26, 1969; King, "Whites in Chicago Continue Protest; A Plan to Take More Blacks Into Building Union Scored," *New York Times*, September 27, 1969; "2000 Construction Union Members Attack Negroes Outside U.S. Building," *Philadelphia Tribune*, September 30, 1969; Macaluso to Wilks, October 16, 1969 (Nixon Garment 1 *Memos, 1969, October*); "Seattle," *New York Amsterdam News*, October 18, 1969; and Fletcher, The Silent Sell-Out: Government Betrayal of Blacks To The Craft Unions (NY: The Third Press, 1974), pp. 70-73.

[411] James D. Hodgson to Joseph Loftus, October 20, 1969, and Wilks to Agency Heads, October 29, 1969 (DOL Hodgson Undersecretary 8 *OFCC*); Wilks to Leonard, October 31, 1969 (DOL, Collection of Secretary Schultz [Schultz] 69 *FCC, 8*); "Chicago Building Trades Promote Job opportunities for 4,000 Blacks," *AFL-CIO News*, September 13, 1969; and Fletcher, *Ibid*.

If the botched handling of the EEOC chairmanship, the failed nomination of a conservative southerner to the Supreme Court, and the massive demonstrations at construction sites around the country weren't enough to convince the White House to support the RPP, rising inflation would. With the escalating cost of the war in Vietnam, Nixon's cutbacks of domestic federal programs were not sufficient to curb inflation rates. At the president's urging, Labor Secretary George Schultz studied the skilled construction workers' union-mandated wage increases. The administration was determined to reassign blame for the nation's economic woes.[412]

The Construction Users' Anti-Inflation Roundtable, an organization of very large contracting companies, wholeheartedly agreed that union wages were a prime culprit for rising inflation. Of course they knew better; the seasonality of construction employment made high wages necessary to help workers keep up with the rising cost of living.[413]

Nonetheless, in addition to their desire to take a positive step on civil rights after the EEOC debacle, the White House had found a way to scapegoat the construction unions for the Vietnam-induced rising inflation. The RPP served that purpose, as well as providing a convenient wedge issue with the potential to split the Big Labor-Civil Rights coalition that had defeated the Haynsworth nomination. In the fall of 1969, President Nixon and his staff committed themselves to supporting the RPP against the comptroller general and his congressional allies.[414]

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[412] "Schultz Assigned: Nixon Orders Study of Key Labor Issues," *AFL-CIO News*, March 15, 1969. The notion that White House backing of the RPP was connected to Nixon's policy of weakening unions was first discussed by Linder, in Wars of Attrition (pp. 3-8, 239-240, 253-260, 415, 421); Stein, in Running Steel, Running America, concurred (p. 314).

[413] "Wages, Civil Rights Need an Answer," *Engineering News-Record*, December 11, 1969; Linder, Wars of Attrition, *ibid*.

[414] The notion that Nixon used the Philadelphia Plan for the political purpose of dividing the civil rights leadership from Big Labor was first posited in 1971 by Stephen Clapp. In "Divide and Rule" (*Public Information Center News*, Vol. 1, No. 12 [June 1971], pp. 1-4), Clapp noted that "What the hiring plans

Congressional debate over the conflict between the administration and the comptroller general began early in August. After Republican Senator Paul Fannin of Arizona publicized Staats' rebuttal to Schultz's statement on the legality of the RPP, Democratic Senator John McClellan of Arkansas, the chairman of the Appropriations Committee, rose before the full senate on August 13, 1969, to tell his colleagues about what he saw as an "act of defiance" on the part of the secretary of labor.[415]

Fannin and McClellan were strange bedfellows. As a corporate-minded Republican, Fannin opposed the RPP for the same reason his colleague from Illinois, Everett Dirksen, opposed Clifford Alexander's activities at the EEOC: he saw it as governmental intrusion in the prerogatives of business. McClellan, on the other hand, was a Southern Democrat who opposed the RPP for traditional racist reasons: if Congress

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have done is increase animosity between blacks and the labor movement, which has been used to political advantage by [Republican] mayors and governors" such as New York's Governor Nelson Rockefeller and Mayor John Lindsay, as discussed in greater detail in the next chapter. As evidence for this thesis, Clapp interviewed Bayard Rustin, George Meany, Clifford Alexander, and Herbert Hill. Historians have generally drawn similar conclusions. Graham, in The Civil Rights Era, sees the subsequent promotion of Secretary Schultz to head the White House Office of Management and Budget as a political payoff for hitting labor with the RPP (p. 344) and adds that the inclusion of Hispanics, specifically Cubans, to affirmative action coverage by the RPP was crassly political (p. 328). J. Larry Hood, in "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government" (*Presidential Studies Quarterly* 23 [Winter, 1993], pp. 145-167), saw the RPP as an exercise in the expansion in the powers of the presidency at the expense of Congress, which I shall address below. Hoff's Nixon Reconsidered is largely an attempt to view Nixon beyond the prism of Watergate. Nevertheless, she admits that Nixon used the RPP to draw attention to the civil rights issues of the North, and away from the South, as part of the "Southern Strategy" (pp. 91-92). Stein, in Running Steel, Running America, finds that Nixon pushed the RPP so as to break unions' control over wage levels (*op. cit.* n. 412). MacLean, in Freedom Is Not Enough, concurs with Graham and the present author (pp. 99-100). Lastly, Yuill disagrees in Richard Nixon and the Rise of Affirmative Action, noting that the RPP threatened to split useful constituencies in the Southern strategy as much as it did the rights-labor coalition (pp. 145-6). While Yuill's is indeed a compelling argument, it falls short based on the accounts of Garment, Fletcher, and Ehrlichman. In 1971, White House civil rights aide Leonard Garment confirmed that the administration expected contractors to use the Philadelphia Plan as "leverage" against the power of the unions (Garment, *NAM speech*, November 12, 1971 [Nixon Garment 29 *NAM1I*]), and Fletcher made similar public statements (Fletcher, "Address at Annual Convention of Associated General Contractors," *Construction Labor Report* No. 808, March 17, 1971). White House aide John Ehrlichman, in his 1982 memoir Witness to Power: The Nixon Years (NY: Simon & Schuster, 1982) specifically stated that Nixon had fought the battle to save the RPP to split the rights-labor coalition (pp. 228-229).

[415] "Administration Fight on Construction Bias opposed by U.S. Aide; Comptroller General Contends So-Called 'Philadelphia Plan' Violates '64 Civil Rights Act, *Wall Street Journal*, August 6, 1969; *Congressional Record—Senate*, August 13, 1969, pp. S9952-4.

were to allow the Nixon administration to force construction contractors in the North to integrate, the administration might next focus on the Southern workplace or—even worse, to his mind—public schools. And a public challenge to an integration program in a northern city might serve to deflect the attention of the press from the slow pace of integration in the South.[416]

When it became clear over the following months that the administration would not back down in its promotion of the RPP, Democratic Senator Sam Ervin of North Carolina resolved that his committee would hold hearings on the matter. The Subcommittee on the Separation of Powers—a subcommittee of the Senate Committee on the Judiciary—held hearings and solicited written opinions during October and November 1969. EEOC Chairman Brown submitted a brief in which he supported the RPP as a legitimate and necessary plan for affirmative action, and Schultz submitted a lengthy legal justification of the plan, in consultation with the solicitor of labor. In public testimony before the committee, Staats reiterated his opposition to the plan, stating that Schultz and Mitchell, in their zeal to implement the program, failed to understand the truly coercive nature of the RPP. He explained that while the plan itself did not call for quotas, he believed that contractors, desperate not to lose contracts, would impose hard quotas to avoid the wrath of the OFCC. Quotas in fact, if not in intent, were quotas nonetheless, and thereby rendered the RPP illegal, he said, under the Civil Rights Act.[417]

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[416] On Fannin and McClellan, see Kearns, Lyndon Johnson and the American Dream, pp. 184-5, and Stein, Running Steel, Running America, pp. 22-23.

[417] Sam J. Ervin to William H. Brown III, October 15, 1969; Brown to Ervin, October 24, 1969; and Staats, *Testimony before the Subcommittee on the Separation of Powers, Senate Committee on the Judiciary*, October 28, 1969 (DOL 1969 *1*); Schultz to Ervin, November 28, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*); and Graham, The Civil Rights Era, p. 336.

Staats upped the ante on November 9, 1969, when he wrote a letter to all contractors in Philadelphia telling them that he would not disburse funds to them for any contracts signed under the RPP.[418] This was not a move against the contractors themselves, most of whom would not request funds for RPP contracts for several more months, but rather a warning shot at the administration. Staats was flexing his muscle. He followed this letter with another to Schultz, along with a copy of his senate testimony, saying that "the General Accounting Office will regard use of the Plan as a violation of the Civil Rights Act of 1964 in passing upon the legality of matters involving expenditures of appropriated funds for federal or federally-assisted contracts incorporating the Plan."[419] Between the activities of the Ervin committee and these threats from Staats, the comptroller general and his allies had thrown down the gauntlet. Just how far the Nixon White House would go to take it up remained an open question.

But it would not be the Ervin Committee which would take formal action against the RPP. During his testimony, Staats recommended that Congress uphold his ruling by passing an appropriations law. Staats was only seeking to protect what he saw as the prerogatives of his office, and Senators like Ervin were uninterested in a drawn-out debate over affirmative action. And so it was the Senate Appropriations Committee, chaired by notorious segregationist Richard Russell, Democrat of Georgia, which led the attack. On December 2, 1969, Staats wrote Senator Robert Byrd, Democrat of West Virginia and a member of the committee, requesting that he attach a rider to an appropriations bill which would establish his authority to rule on the legality of all

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[418] Paul Delaney, "U.S. Aide To Block Hiring Plan Pact; Controller General [sic] Will Act Against First Participant," *New York Times*, November 9, 1969.
[419] Staats to Schultz, November 12, 1969 (DOL 1969 *1*).

matters related to procurement, regardless of which laws he drew from in drafting his opinion.[420]

In December 1969, the Senate Appropriations Committee was considering a supplemental appropriations bill. This particular bill, H.R. 15209, had already been approved by the House of Representatives. On Wednesday, December 17, the committee was prepared to vote on the bill, and most observers expected that it would be ready for the president's signature in time for the Christmas break. Just prior to the vote, Senator Byrd introduced the following rider:

> Sec. 904. In view of, and in confirmation of, the authority vested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any federal statute.[421]

The Byrd Rider would give the opinions of the Comptroller General the force of law on any matter dealing with the federal budget, explicitly lifting his limitation to procurement law. Were the Byrd Rider to pass, Staats' opinions on matters outside of procurement law would be final, and the RPP would be illegal. In short, the GAO would become a virtual fourth branch of government in charge of the federal treasury. And Byrd—that great senatorial upholder of the Constitution—would sublimate his sense of the constitutional right to his sense of the segregationist right.

The choice of the supplemental appropriations bill for inclusion of the Byrd Rider was frankly ingenious. H.R. 15209 had been passed by the House of Representatives to provide federal support to the survivors of Hurricane Camille and other pressing matters.

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[420] Graham, The Civil Rights Era, pp. 338-339.
[421] *Congressional Record—Senate*, December 18, 1969, p. S17133.

Once approved by the committee, it was expected that it would be approved *pro forma* and quickly by the Congress as a whole, with few senators or congressmen wanting to appear to be in opposition to disaster relief. For the same reason, the bill was unlikely to receive a presidential veto. The enemies of the RPP—Staats, the AFL-CIO, Southern segregationists and construction contractors—had chosen their plan of attack carefully, and the committee approved the Byrd Rider for inclusion in the bill and unanimously reported it to the full Senate.[422]

Senate proponents of the RPP got their chance to attack the Byrd Rider the next day, on Friday, December 18, when the full Senate considered the supplemental appropriations bill. New York Senator Jacob Javits and Hawaii Senator Hiram Fong, both Republicans, argued that the RPP would be helpful to Blacks and Hispanics and that its legality should be challenged in the courts, not in Congress. Javits worried that the Byrd Rider would give far too much power to the comptroller general. Their efforts to have the Senate declare the rider "not germane," and strike it from the bill, failed. The Senate approved the bill, with the rider attached. Since the Senate bill now differed from the House version, the House-Senate conference committee, whose purpose was to reconcile the two versions, considered the bill on Saturday, December 20. The conference committee approved the Senate version, the one with the Byrd Rider attached. This left the fate of the Byrd Rider—and therefore the legality of the RPP—to the House of Representatives, which scheduled a vote on the Senate version for the following Monday,

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[422] "Senate Upholds Ruling Against Anti-Bias Plan on Construction Hiring; Setback Is Seen for Nixon in Bid to Establish Minimum Job Quotas on Federal Work," *Wall Street Journal*, December 19, 1969; George Lardner, Jr., "Senate Votes Against Philadelphia Work Plan; Hands Nixon Setback in Rejecting Move to Put More Negroes in Building Jobs," *Los Angeles Times*, December 19, 1969; Robert B. Semple, Jr., "Philadelphia Plan: How White House Engineered Major Victory," *New York Times*, December 26, 1969; and Graham, The Civil Rights Era, pp. 339-40.

December 22. Were the House to vote to recommit the bill to the Senate, rejecting the Byrd Rider, they would run the risk of not approving an important disaster relief bill before the holiday break, a political *faux pas*.[423] Things did not look good for the Philadelphia Plan, and it appeared that the administration had suffered yet another setback on civil rights.

At the news of the Byrd Rider and its passage by the Senate, Nixon held a meeting in the oval office with Schultz, Fletcher, press secretary Ronald Ziegler, White House civil rights aide Leonard Garment, and House Minority Leader Gerald Ford to strategize their response. Immediately the group swung into action. Fletcher pressed the NAACP and NUL to actively lobby Congress, while Schultz worked to get the industrial unions—many of whom were already significantly integrated, and whose leaders were seen as resentful of the craft unions' continued recalcitrance—to repudiate AFL-CIO president Meany's statements in opposition to the RPP. Ford, for his part, worked to ensure that every Republican in the House of Representatives voted against the Byrd Rider.[424]

Ziegler, meanwhile, coordinated a series of press conferences and public statements for the *ad hoc* team. The president told the press that the RPP had his full support, noting that "the Philadelphia Plan does not set quotas; it points to goals." Giving

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[423] *Congressional Record—Senate*, December 18, 1969, pp. S17131-57; Mitchell to Hugh Scott, December 18, 1969 (*Congressional Record—Senate*, pp. S17139-40); "Quotas and Goals," editorial, *Washington Post*, December 22, 1969; "Aid to Jim Crow," editorial, *New York Times*, December 22, 1969; Semple, "Congress and Nixon: Fight Grows Sharper," *New York Times*, December 22, 1969; Meany to members, House of Representatives, and Staats to Biemiller, December 22, 1969 (Meany RG9-002 38 *42*); George Lardner, Jr., "Hill Battle is Escalating Over Equal Jobs Plan," *Washington Post*, December 22, 1969; "Nixon Acts to Save Philadelphia Plan Which Aids Black Workers," and "The Philadelphia Plan Killers," editorial, *Philadelphia Tribune*, December 23, 1969; Semple, "Philadelphia Plan," December 26, 1969.

[424] John R. Price to Ehrlichman, December 22, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*); Semple, "Philadelphia Plan," December 26, 1969; Garment, *Backgrounder on the Philadelphia Plan Vote*, December 31, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*).

three press statements on the subject over four days, he urged the House to reject the Byrd Rider and threatened a veto, saying that he might ask Congress to return immediately after Christmas, if need be, to pass a relief bill that didn't nullify the RPP:

> Nothing is more unfair than that the same Americans who pay taxes should by any pattern of discriminatory practices be deprived of an equal opportunity to work on federal construction contracts….
>
> The Attorney General has assured the Secretary of Labor that the Philadelphia Plan is not in conflict with Title VII of the Civil Rights Act of 1964. I, of course, respect the right and duty of the Comptroller General to render his honest and candid views to the Congress. If in effect we have here a disagreement in legal interpretation between the Attorney General and the Comptroller General the place for the resolution of this issue is in the courts.
>
> However, the Rider adopted by the Senate last night, would not only prevent the federal departments from implementing the Philadelphia Plan; it could even bar a judicial determination of the issue.
>
> Therefore, I urge the conferees to permit the continued implementation of the Philadelphia Plan while the courts resolve this difference between Congressional and Executive legal opinions.[425]

With the president vigorously and publicly backing the Philadelphia Plan, Ziegler took the offensive, announcing that if the Byrd Rider were ultimately defeated and Staats continued to refuse to disburse funds under the RPP, Attorney General Mitchell would sue the GAO. And Schultz and Fletcher held two press conferences at the White House to explain why the RPP was important and how it would be nullified if Congress passed the rider. Deliberately playing upon a growing national consensus for fair play and respect for the non-violent methods of the late Martin Luther King, Jr.—while also employing imagery from his days as a football player—Fletcher told reporters that "the name of the game is to put some economic flesh and bones on Dr. King's dream."[426]

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[425] Nixon, *Press Statement*, December 19, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*).

[426] Schultz, Fletcher, and Ronald L. Ziegler, *White House Press Conference*, December 18, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*); Nixon, *Press Statements*, December 19, 1969; Ziegler and Garment, *White House Press Conference*, December 19, 1969 (Nixon Garment 143 *Philadelphia Plan, 2*); Schultz, *Press Statement*, December 20, 1969 (DOL 1969 *2*); Schultz and Fletcher, *White House Press Conference*, December 20, 1969 (DOL 1969 *2*); David E. Rosenbaum, "Schultz Appeals to house on Jobs; Urges Defeat

In the House, Ford circulated comments written by Schultz in opposition to the Byrd Rider, called "Why Vote to Recommit," which explained that the rider gave sweeping, unprecedented authority to the comptroller general. Ford urged his colleagues in the House to recommit the bill to the Senate, thereby insisting on approval of the original, House-approved, version—without the rider.[427]

Their work paid off. On Monday, December 22, the House voted, 256 to 108, to recommit the bill to the Senate without approval. The following day the Senate reversed itself rather than risk not passing the relief bill before Christmas, and accepted the House version—without the Byrd Rider—by a vote of 39 to 29. The Byrd Rider had been stricken from the supplemental appropriations bill, Congress had failed to uphold Staats' opinion on the RPP, and the Nixon administration—after a year of blunders—claimed a major victory in the field of civil rights.[428]

In 1967, Vincent Macaluso's construction area coordinator program reached maturity. Building on the successes and failures of St. Louis, San Francisco, and Cleveland, Area Coordinator Bennett Stalvey worked in tandem with Warren Phelan's Federal Executive Board to produce the Philadelphia Plan. Stalvey felt that the early reports on affirmative action under the plan foreshadowed its success, but just as integrated construction jobs

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of a Move to Halt Philadelphia Plan," *New York Times*, December 21, 1969; Nixon, *Press Statement*, December 22, 1969 (DOL 1969 *2*); "Congress Ends Session; Nixon Gains a Victory; Senate Drops Its Bid to Kill The Philadelphia Plan for Minority Jobs in Building," *Wall Street Journal*, December 24, 1969; Semple, "Philadelphia Plan," December 26, 1969; Garment, *Backgrounder*, December 31, 1969.

[427] Schultz, "Why Vote to Recommit," and Ford to House Republicans, December 20, 1969 (DOL 1969 *2*).

[428] *Congressional Record—House*, December 22, 1969, pp. 40903-21; UPI Newswires, December 22, 1969 (DOL 1969 *2*); Spencer Rich, "Negro job ratio plan is upheld by Congress," *Detroit News*, December 23, 1969; Warren Weaver, Jr., "Congress Avoids Tie-Up on Rights, prepares to Quit; Heeds Nixon Appeal to Turn Down a Rider Blocking Negro Hiring Plan; Windup Today is Likely; Tax Bill Approved by Both Houses, but Foreign Aid Measure is Postponed," and Tom Wicker, "In The Nation: Quotas, Goals and Tricks," *New York Times*, December 23, 1969.

were getting off the ground, Comptroller General Elmer Staats declared the plan illegal under procurement law. On their way out of office, and with a number of successful civil rights achievements under their belt, Willard Wirtz and the Johnson administration did not argue with the GAO, and when the Staats opinion was published the following spring, the contractors ignored their affirmative action agreements forged under the plan. But Nixon appointee Arthur Fletcher revised the Philadelphia Plan, and when the comptroller general again challenged the plan—this time under the Civil Rights Act of 1964—the White House met the challenge. They fought Staats' allies in Congress, and won.

Unlike the Johnson administration, the Nixon White House badly needed a successful civil rights initiative. Both Nixon and Johnson had somewhat lackluster civil rights records as vice presidents. But whereas President Johnson clearly identified himself early in his presidency with the surging civil rights movement, Nixon's first year in the oval office was spent making cutbacks to social programs and firing the EEOC chairman for political reasons. With protests and violence erupting at construction sites throughout the country, the Revised Philadelphia Plan seemed a way for Nixon to take up the mantle of the civil rights presidency.

If the mood of the country demanded a positive civil rights policy, politics demanded careful consideration. The AFL-CIO and NAACP had scored a major victory in the defeat of Southern conservative Judge Haynsworth's nomination to the Supreme Court, even if the nomination's demise had more to do with personal ethics than his record on civil rights or labor. The Revised Philadelphia Plan was supported by civil rights groups but opposed vigorously by Big Labor, which preferred voluntary affirmative action programs like apprenticeship outreach and negotiated integration plans

like the one forged in Chicago in the wake of the hardhat riots there. Nixon's successful backing of the Philadelphia Plan was a blow against the AFL-CIO and would help him drive a wedge between Big Labor and civil rights leaders.

As a first-term president elected with hostile majorities in both Houses of Congress, the battle over the Byrd Rider also served to strike a blow against Democratic control of the government. Allowing Comptroller General Staats the power to interpret laws unrelated to procurement would have represented a major concession of the executive power. By forcing Congress to pass the supplemental appropriations bill before the Christmas break, Nixon exercised political and executive power and showed the Democratic leaders that his would be a dynamic—one might even say imperial—presidency, not to be trifled with.

As 1969 drew to a close, a seat on the Supreme Court remained vacant and the rights-labor alliance seemed in flux. Flush with victory from the Byrd Rider battle, and still playing by the rules of his Southern Strategy, Nixon resolved to appoint another white Southern conservative to the Supreme Court, but one without a record hostile to labor. The rights-labor coalition would be tested again.

And as Philadelphia contractors began implementing their affirmative action goals, the program faced yet another challenge. The Contractors' Association of Eastern Pennsylvania filed suit against the Department of Labor in federal district court under the Civil Rights Act of 1964. Meanwhile, the complaints of men like Melleher, Quinn, and Kennedy—the three white electricians who had walked off the U.S. Mint site in protest of what they saw as reverse discrimination—only grew louder. Were the mandatory affirmative action goals of the Revised Philadelphia Plan legal, or were they illegal

quotas—racism in reverse? The fate of contract compliance—and the Nixon administration's only civil rights initiative—hung in the balance.

"It's a slap in the face to the nation's Negro citizens."
—George Meany on the nomination of G. Harrold Carswell to the U.S. Supreme Court, January 31, 1970

"These 'home-town solutions,' which are being substituted for the Philadelphia Plan, are a meaningless hodgepodge of quackery and deception, of doubletalk and doublethink."
—Herbert Hill, June 30, 1970

"There is no question that compliance is lagging."
—Bennett Stalvey, May 3, 1970

"Blacks would like for the president to be on the offensive early in the third quarter in order to have a good fourth quarter. We are entering the third quarter."
—Arthur Fletcher, January 4, 1971

CHAPTER FIVE
Constructing Affirmative Action, 1970-1973

In 1970, three trained steamfitters—George Rios, a Puerto Rican, and Eugene Jenkins and Eric O. Lewis, both African American—were rebuffed when they attempted to obtain "A Branch" journeyman membership in New York City Steamfitters Local #638, and were refused jobs by all members of the local Mechanical Contractors Association (MCA). Wylie B. Rutledge, another African American, was rejected by the local Joint Apprenticeship Committee (JAC) when he applied for apprenticeship as a steamfitter.[429]

Local #638 maintained two grades of steamfitters: "A Branch," whose members were referred to lucrative, specialized jobs in construction, and "B Branch," whose members worked primarily in repair shops, performing routine maintenance. The union's "A Branch" admitted its first Black steamfitter in 1967 only after being ordered to do so by the City Commission on Human Relations.[430] The union did not maintain a hiring hall *per se*, since the MCA, an organization of steamfitting contractors in the city, maintained fairly stable work crews, moving them from job to job. The union and the MCA had a generally good relationship, and together they ran the JAC to the detriment of Black applicants like Rutledge.[431]

As the steamfitters JAC received increasing pressure from the Bureau of Apprenticeship and Training (BAT) to admit Blacks into apprenticeship during the late 1960s, they agreed to establish an affirmative action plan. What this meant in practice, as Rutledge discovered in 1970, was that the JAC would advertise the formation of each new apprenticeship class in a local Black newspaper, the *New York Amsterdam News*,

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[429] "Steamfitters Union Object of Fed Suit," *New York Amsterdam news*, March 13, 1971.
[430] "Gains Made in Unions in New York, New Jersey," *New York Amsterdam News*, September 23, 1967.
[431] George Rios et al, Plaintiffs-Appellees, v. Enterprise Association Steamfitters Local 638 of U.A. et al, Defendants-Appellants, and Unites States of America, Plaintiff Appellee, v. Enterprise Association Steamfitters Local 638 of U.A. et al, Defendants-Appellants (*Rios et al v. Enterprise*), June 24, 1974 (United States Court of Appeals, Second Circuit, 501 F.2d 622).

and then promptly reject any Black applicant on whatever grounds the committee found most convenient. Were most of the white applicants residents of Staten Island, and the Blacks residents of Harlem or Bushwick? Call it a Staten Island Steamfitters' apprenticeship class, exclude Black applicants for failure to meet residency requirements, and grant a waiver to white applicants who resided elsewhere. Did the Black applicants lack high school diplomas? Make high school graduation a requirement for admission, and grant a family waiver to any white without such a credential who had a father or an uncle in the trade. Perhaps the Black applicants were all older than twenty-five years; in that case, create an age limit and only admit the younger whites. Or if the Blacks were under 21 and the whites were older, do the opposite. Meanwhile, the lie of the "Steamfitters Accepting Apprentices" advertisement blared out of the *Amsterdam News*, luring unwitting Black youths into what usually amounted to little more than a waste of time.[432]

Not this time.

Rios, Jenkins, Lewis, and Rutledge sought help from Fight Back, a Harlem-based organization dedicated to fighting for fair employment in the New York construction industry, and the Employment Project at Columbia University's Center on Social Welfare Policy and Law. Together with Fight Back and Columbia—a melding of a grassroots organization with a prestigious academic institution—the four workers brought a class-action lawsuit against the union, the MCA, and the JAC, and on March 25, 1971, a federal district judge found that the New York City Steamfitters' union "has followed a course of racial discrimination over the years." The judge ordered the union to admit

[432] "Steamfitters Now Recruit Apprentices, *New York Amsterdam News*, December 21, 1968; "Steamfitters' Union Offers Apprenticeship," *New York Amsterdam News*, December 27, 1969; "Steamfitters Union Object of Fed Suit," March 13, 1971.

Rios, Jenkins, and Lewis as "A branch" journeymen as a preliminary injunction based on their violation of Title VII of the Civil Rights Act of 1964. The case was then consolidated with other cases against Local #638 being brought by the DOJ, and on January 3, 1972, another federal district judge ordered the union to admit "some 169 qualified non-white workers to membership," and enjoined them from striking a contractor for laying off Black and white workers in equal numbers.[433]

The union did not appeal; the worm had clearly turned. But the courts were still not finished with the case, now known as *Rios, et al, v. Enterprise Association Steamfitters*. Still to be considered were compensatory damages for the plaintiffs and injunctions to ensure fair employment practices in the future. In 1972 Congress gave the EEOC the power to sue on its own authority, and the commission joined the plaintiffs in *Rios*.

The union, meanwhile, signed a city-based affirmative action program called the New York Plan in an attempt to avoid major financial penalties or court-imposed quotas. Signing the New York Plan, a union-industry knockoff of the Revised Philadelphia Plan which did little to integrate unions or jobsites, failed to convince the court, and on June 21, 1973, the union was ordered to hold regular examinations for members of its "B branch" who wished to be upgraded to the "A branch." For three months, the union could admit only graduates of its apprenticeship class and qualified non-whites. The JAC was required to admit a total of 400 new apprentices during 1973, "of whom 175 should be non-white, indentured into a program not to exceed four years." And all of these provisions would be overseen by a court-appointed administrator, to whom the

[433] "Steamfitters Union Object of Fed Suit," March 13, 1971; "Court Orders Union to Stop Race Bias," *New York Times*, March 25, 1971; Rios et al v. Enterprise, June 24, 1974.

defendants were ordered to submit acceptable affirmative action plans by the end of the year, plans which would result in Black and Puerto Rican union membership and contract employment of 30% by 1977. Again and again, in decisions which continued through the 1980s, the court reaffirmed its judgment, eventually citing the Supreme Court's 1979 decision in *United Steelworkers v. Weber* that the imposition of such a quota was not a violation of the Civil Rights Act of 1964, and only changed the specific quota and the timeline for its fruition.[434]

The initial decisions in *Rios, et al, v. Enterprise Association Steamfitters* were part of a developing trend, as the federal government, Big Labor, and civil rights organizations continued to grapple with the question of affirmative action and fair employment during the early 1970s. In the revised Philadelphia Plan, the federal government had developed a program with the potential to force the skilled construction unions to finally open their doors to African American workers. A series of favorable court decisions and a committed team of Labor Department officials appeared to be the perfect combination for full implementation. But White House support, predicated as it was on the political dynamic, remained tenuous. For the proponents of fair employment, much depended on the decisions made by President Nixon, who soon showed that he would sacrifice his ideals on civil rights if it brought him political advantage. The president very quickly faced a series of choices that put the long-term viability and efficacy of affirmative action programs in doubt.

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[434] *Rios et al v. Enterprise*, June 24, 1974; *Rios et al v. Enterprise*, June 24, 1975 (United States Court of Appeals, Second Circuit, 520 F.2d 352); *Rios et al v. Enterprise*, September 7, 1976 (United States Court of Appeals, Second Circuit, 542 F.2d 579); and *Rios et al v. Enterprise*, as amended, December 1, 1988 (United States Court of Appeals, Second Circuit, 860 F.2d 1168). On *Weber*, see *op. cit.* n. 405.

The Nixon administration came under renewed attack from Big Labor when the president attempted for a second time to appoint a conservative white southerner to the United States Supreme Court. Unable to use the appointment to drive a wedge between the unions and civil rights organizations, the White House resolved to play to the patriotism and anti-communist sentiment of white workers while simultaneously undermining the Philadelphia Plan. And although the Plan survived court challenges and ultimately succeeded in integrating the skilled construction unions, changes in the industry—from a sharp decrease in federally-funded jobs to the ceding of control over hiring to jobsite foremen—resulted in continued discrimination in employment in the skilled trades.

The Labor-Rights Coalition in a New Political Paradigm

Fresh from his victory in Congress over the Byrd Rider, President Nixon resolved to put to the test the breach he had made between the leaders of the civil rights movement and organized labor.[435] Still feeling obligated to repay his electoral debt to Strom Thurmond, and hoping to turn a courting of the white South to his advantage in the 1970 midterm elections and his own 1972 presidential bid, Nixon sought a Southern conservative candidate to fill the still-vacant Supreme Court seat left by Justice Fortas (which he had failed to fill with the appointment of Clement Haynsworth the preceding summer), one without any personal skeletons in the closet which would frighten Senators. He thought he found that candidate in Florida Judge G. Harrold Carswell of the United States Court

[435] Paul Delaney, "Blacks Still Say 'Show Us' Despite Nixon Effort on Philadelphia Plan," *New York Times*, January 11, 1970; "Meany Asks Solidarity on Civil Rights," *AFL-CIO News*, July 4, 1970.

of Appeals, and on January 19, 1970, Nixon sent his nomination of Carswell to the Senate.[436]

The Senate considered the Carswell nomination for three months, during which time no allegations of financial impropriety or professional misconduct surfaced. What did surface, however, was a checkered race-relations history. Although he presented himself as favoring equal opportunity and an eventual end to segregation, Carswell had been an avid supporter of Strom Thurmond's during the 1948 Dixiecrat insurgency; had himself run (unsuccessfully) for office that same year, giving a speech which overtly appealed to white racism; had participated in the privatization of a segregated public golf course in order to avoid its integration; and had ruled from the bench in such a manner as to allow the perpetrators of lynchings to escape prosecution on technicalities. Within eleven days of the nomination, the leaders of six major civil rights organizations had written to the president asking him to withdraw Carswell's name.[437]

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[436] "Courting the South with Judge Carswell," editorial, *St. Petersburg Times*, January 21, 1970; "New Nominee," editorial, *New York Amsterdam News*, January 24, 1970; Bayard Rustin, "Two Steps Backward," column, *New York Amsterdam News*, February 7, 1970; Rustin, "Why Carswell Lost," column, *New York Amsterdam News*, April 18, 1970; and Dennis C. Dickerson, Militant Mediator: Whitney B. Young, Jr. (Lexington: University Press of Kentucky, 1998), p. 263. On Nixon's decision to nominate Carswell, see Hoff, Nixon Reconsidered, p. 44, and Richard Reeves, Richard Nixon: Alone in the White House (NY: Simon and Schuster, 2001), pp. 160-161.

[437] John A. Morsell, *Statement*, Marion Palfi to Wilkins, and NAACP Press Release, January 21, 1970 (NAACP VI A25 *Carswell, 1*); "Carswell Disavows '48 Speech Backing White Supremacy," *Associated Press*, January 21, 1970; Fred P. Graham, "Meany Will Fight Carswell Choice; He Calls Nomination 'a Slap in the Face' to Negroes—Senate Hearings Today," *New York Times*, January 27, 1970; Wilkins to James O. Eastland, and Clarence Mitchell to Philip A. Hart, January 27, 1970 (NAACP VI A25 *Carswell, 1*); Thomas W. Matthew to Morsell, January 28, 1970 (NAACP VI A25 *Carswell, 1*); Young, "The Carswell Appointment," column, January 28, 1970 (NUL III 441 *To Be Equal*); Morsell to Matthew, January 29, 1970 (NAACP VI A25 *Carswell, 1*); Wilkins, Dorothy Height, Bayard Rustin, Young, Ralph Abernathy, and Randolph to Nixon, January 30, 1970 (NAACP VI A25 *Carswell, 1*); Rustin, "Two Steps Backward," column, *New York Amsterdam News*, February 7, 1970; "Washington," *New York Amsterdam News*, February 28, 1970; "Against Carswell," editorial, *New York Amsterdam News*, March 7, 1970; "More Carswell," editorial, *New York Amsterdam News*, March 21, 1970; "Administration Accused of 'Writing Off' Negro," *AFL-CIO News*, April 4, 1970; and NAACP Press Release, April 8, 1970 (NAACP VI A25 *Carswell, 3*); Morsell to Nixon, April 10, 1970 (NAACP VI A25 *Nixon, 1*); "Carswell's Views Beat Him; Racism Called Factor," *New York Amsterdam News*, April 11, 1970; "The Carswell Defeat," editorial, and Rustin, "Why Carswell Lost," column, *New York Amsterdam News*, April 18, 1970; "Meany

For all his past attacks on civil rights, what Carswell did not have was a record of decisions antagonistic to the interests of organized labor. For Nixon this represented the perfect political triangulation: the Philadelphia Plan was supported by civil rights leaders and opposed by Big Labor; the Carswell appointment, reasoned White House strategist Harry Dent, would be opposed by civil rights activists but supported by the AFL-CIO. Whether or not the Senate confirmed Carswell, his appointment would further endear Nixon and the Republicans to white Southerners, and drive deeper the wedge he had placed through the heart of the rights-labor coalition.[438]

But then something happened that the administration did not expect. For the first time in the history of the AFL-CIO or its predecessor AFL, Big Labor opposed a Supreme Court nomination on grounds other than a record of decisions considered hostile to labor. On January 31, 1970, AFL-CIO President George Meany publicly labeled the nomination "a slap in the face to Negroes," and the next week the AFL-CIO executive board urged the Senate to reject Carswell.[439]

Of course, observers in the civil rights movement were not surprised; Meany in particular and the other leaders of the AFL-CIO in general had long espoused racial egalitarianism, and the Carswell nomination represented a fairly safe way for Meany to put his money where his mouth was, as it were. But the importance of Meany's stance cannot be understated. Here was the widely-respected leader of an advocacy organization

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Asks Solidarity on Civil Rights," *AFL-CIO News*, July 4, 1970; Hoff, Nixon Reconsidered, pp. 46-48; and Reeves, Richard Nixon, p. 161.

[438] James Boyd, "Harry Dent, the President's Political Coordinator, Says: 'I gave Thurmond 100% loyalty and now I give Mr. Nixon 100%," *New York Times*, February 1, 1970; Reeves, Richard Nixon, p. 160.

[439] "Nixon Selects Carswell for Seat on High Court," *AFL-CIO News*, January 24, 1970; Fred P. Graham, "Meany Will Fight Carswell Choice," January 27, 1970; "Contempt of Court," editorial, *New York Times*, January 28, 1970; "Nomination of Carswell Called Slap at Negroes," *AFL-CIO News*, January 31, 1970; "AFL-CIO Urges Senate to Reject Carswell," *AFL-CIO News*, February 7, 1970; and "An Appalling Appointment," editorial, *AFL-CIO News*, February 21, 1970.

for labor rights—an organization which had yet to fully integrate it own ranks—challenging the president of the United States on a matter which on its face had little or nothing to do with labor rights. But by the end of the 1960s, Meany had come to understand civil rights as a human rights issue—irretrievably linked to labor rights—and if Carswell was hostile to civil rights, he would not get the support of Big Labor.[440]

In the end, the Senate rejected the Carswell nomination—as it had that of Haynsworth the preceding fall—not for his civil rights or labor record, but for something else entirely. For Haynsworth, that "something else" had been impropriety; for Carswell it was "mediocrity." The judge's decisions had been overturned so many times that his record brought into question his intellectual soundness. And it didn't help when Nebraska Republican Senator Roman Hruska pleaded Carswell's case by saying—in a manner which indicated that the Senator either thought the Jewish justices had been the smartest, or was just plain anti-Semitic—"So what if he is mediocre? There are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they? We can't have all Brandeises, Cardozos, and Frankfurters and stuff like that there." In any event, on April 8, 1970, the Senate rejected the nomination, 51 to 45. Ostensibly bowing to an insistence by the Senate that Fortas not be replaced by a conservative white Southerner, Nixon shortly named Harry Blackmun of Minnesota to fill the seat, an appointment which the Senate quickly confirmed.[441]

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[440] David L. Perlman, "Nixon Suffers 2nd Defeat On Filling Court Vacancy; GOP Votes Key to Loss of Carswell," *AFL-CIO News*, April 11, 1970; Rustin, "Why Carswell Lost," April 18, 1970; and "Meany Asks Solidarity on Civil Rights," *AFL-CIO News*, July 4, 1970. Robinson, in George Meany and His Times, could find no other motivation for Meany to oppose the Carswell appointment than that "his record as a racist was worse than that of Haynsworth" (p. 287). For more on Meany and racial egalitarianism, see *op. cit*. ch. 1 nn. 91, 93.

[441] "The U.S. Senate's Duty to Our Highest Court," editorial, *St. Petersburg Times*, January 24, 1970; Nixon to William B. Saxbe, April 1, 1970 (Nixon, Papers of White House Aide Charles W. Colson [Colson], 44 *Carswell, 1*); "Judge Carswell: The President's 'Right of Choice,'" editorial, *Wall Street*

Defeated as he was in its desire to use the Supreme Court vacancy to drive a wedge between the civil rights movement and organized labor, President Nixon cast about for another opportunity to accomplish the same goal. He found it the next month, when white construction workers—the very group cast as villains in the battle over the Philadelphia Plan—rose up in violent support of the president and his Vietnam policies and in opposition to the antiwar sentiment of the left. And the president realized that his long history as an anti-communist could net him a more valuable constituency than his lackluster record on civil rights.[442]

On May 8, 1970, approximately 1,000 college students and other protesters gathered at Federal Hall on Wall Street in New York City to mourn the four students killed days earlier at Ohio's Kent State University, protesting the Nixon administration's ongoing involvement in Vietnam. Their rally continued peacefully and without incident throughout the morning, but at around noon, some 200 counter-protestors, mostly construction workers wearing hardhats, converged on the site. Held off for a time by a thin line of policemen, the hardhats soon rushed the anti-war protestors, reportedly reserving their greatest ferocity for the men with the longest hair. Some then marched north to City Hall Park, where they engaged in a rock-throwing fight with students at Pace University, and stormed City Hall itself, demanding that the building's flag—which

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Journal, April 2, 1970; Semple, "Strike Fever Speeds Up Wage-Price Spiral," *New York Times*, April 5, 1970; NAACP Press Release, April 8, 1970 (NAACP VI A25 *Carswell, 3*); Nixon, *Statement*, April 9, 1970 (Nixon Colson 44 *Carswell, 1*); Morsell to Nixon, April 10, 1970 (NAACP VI A25 *Nixon, 1*); William S. White, "Carswell Affair is a Tragedy at American, Personal Levels," column, *Wall Street Journal*, April 11, 1970; Perlman, "Nixon Suffers 2nd Defeat On Filling Court Vacancy," April 11, 1970; "The Carswell Defeat," editorial, *New York Amsterdam News*, April 18, 1970; and Reeves, Richard Nixon, p. 185.

[442] Graham, in The Civil Rights Era, sees Nixon's decision to court the hardhats as simply more in line with his political ideology (p. 344). Linder, in Wars of Attrition (p. 286), and MacLean, in Freedom Is Not Enough (p. 100-101), see the decision as stemming from Nixon's genuine affection for any person or group that would support his decision to expand the Vietnam War into Cambodia, something much more important to the president than equal employment opportunity.

was at half-mast out of respect for the victims at Kent State—be raised to full staff. By about 2:00 P.M., the riot had ended.[443] For the rest of the month, construction workers engaged in mostly peaceful counter-protests in support of the president and the war policy, but individual acts of violence continued against those who appeared to represent the counter-culture of the 1960s.[444]

The spectacle of the proletariat bludgeoning leftists was, as Peter Levy[445] tells us, a product of the Vietnam War. During the 1930s, labor was reliably left-wing; many rising union leaders flirted with communism, and Walter Reuther of the United Auto Workers famously worked in the Soviet Union as part of an exchange program.[446] Following World War II, both the rank-and-file and the leaders of unions became staunchly anti-communist, but obviously remained liberal on the issue of labor rights within the New Deal framework, and usually supported Democratic politicians. During the early and mid-1960s, white factory workers generally supported civil rights bills as well as Johnson's escalation of the war in Vietnam. Many in the rank and file could even support civil rights from the conservative viewpoint, which accepted Great Society programs as a form of rehabilitation for the poor. But as the summertime riots grew worse, traditional civil rights and liberal groups began to lose ground to more radical organizations like the Black Panthers and Students for a Democratic Society, and Democrat party leaders from Robert Kennedy to George McGovern embraced entitlement solutions to race and poverty questions, white workers increasingly viewed

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[443] Homer Bigart, "War Foes Here Attacked by Construction Workers; City Hall is Stormed," *New York Times*, May 9, 1970; Reeves, Richard Nixon, p. 216.
[444] Gertrude Wilson, "Brown Shirts—Hard Hats," column, *New York Amsterdam News*, June 20, 1970.
[445] Peter B. Levy, The New Left and Labor in the 1960s (Urbana: University of Illinois Press, 1994).
[446] Nelson Lichtenstein, Walter Reuther: The Most Dangerous Man in Detroit (Urbana: University of Illinois Press, 1995), pp. 32-46.

the left with revulsion.[447] This backlash had propelled Nixon into the White House, and the pro-war demonstrations at Wall Street were only the latest (and most violent) iteration of an increasingly divergent movement. The hardhats were behaving like Brown Shirts, according to one columnist,[448] and like any right-wing demagogue, Nixon took full advantage. Where he had failed with Supreme Court appointments, he would succeed with patriotism.

President Nixon had a tough row to hoe in order to garner political support from the construction unions and their workers. In addition to the RPP, the president had made construction workers the whipping boy for his economic policy. Rather than blame federal spending on the war in Vietnam for the spiraling inflation and economic recession at home, Nixon blamed the rising wages of skilled construction workers. This was akin to the chicken blaming the egg for being laid; in any event, dealing with seasonality of employment and regular layoffs, most construction workers needed what appeared to be excessively high wages just to keep up with the rising cost of living.[449]

It was their widespread patriotism—and support of the president's Vietnam policy—that gave Nixon his political opening with the traditionally Democratic hardhats. And it was Peter Brennan in particular who caught the president's attention as a powerful potential ally.

Peter Brennan was born in 1918 and attended Commerce High School in New York City, after which he became an apprentice painter and took classes at City College.

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[447] See, for instance, Gareth Davies, From Opportunity to Entitlement: The Transformation and Decline of Great Society Liberalism (Lawrence: University Press of Kansas, 1996).
[448] *Op. cit.* n. 444.
[449] AFL-CIO *Draft Statement*, January 12, 1970 (Meany RG1-038 107 *9*); Nixon, *Press Statement*, March 17, 1970 (Nixon Garment 143 *Philadelphia Plan, 2*); Charles W. Colson to Nixon, April 15, 1970 (Nixon Colson 20 *Building Trades Meeting, March 23, 1970*); and Reeves, Richard Nixon, pp. 165, 215-216. for more on this aspect of Nixon's policy, see *op. cit.* n. 412.

At the start of World War II, Brennan was a journeyman painter, active in union organizing. During the war, he served in the United States Navy on a submarine in the Pacific, and shortly thereafter, in 1947, became business manager of his local painters' union. In 1951, Brennan was named director of the New York City Building Trades Maintenance Division, and in 1957 was elected president of the New York City Building Construction Trades Council. He soon began serving concurrently as head of the Building Trades Council of New York State.[450]

By 1970, Brennan had added the Vice Presidencies of the New York City and New York State AFL-CIO to his portfolio, become a close advisor to AFL-CIO president George Meany, and was considered a likely successor to the president of the AFL-CIO's Building Construction Trades Department. While he quickly disavowed any responsibility for the riots that followed the counter-protest at City Hall, it was Brennan who organized the (mostly) peaceful rallies that followed nearly every day for the rest of the month. The lifelong Democrat and dynamic union leader caught Nixon's attention at a meeting with other building trades leaders at the White House in March, and soon he and the president were meeting regularly. Nixon was cultivating a powerful ally in a traditionally Democratic constituency.[451]

With burly construction workers attacking gangly college students in the streets of New York, the White House response was purely political. Reasoning that federal involvement in the matter might serve to alienate the "silent majority" on which the

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[450] "Brennan Appointment to Secretary of Labor Draws Varied Reactions From Labor, Civil Rights Groups," *Construction Labor Report* No. 897, December 6, 1972; "An Outspoken Union Man at Head of Labor Department: Peter Joseph Brennan," *New York Times*, November 30, 1972.

[451] Colson to Nixon, April 15, 1970; Ziegler, *Press Conference*, and Colson to Nixon, May 26, 1970 (Nixon Colson 20 *Building Construction Trades Council*); Colson to Hodgson, February 2, 1971, and Colson to Dwight L. Chapin, February 5, 1971 (Nixon Colson 95 *New York City, Workers Building Construction Council*).

president's political fortunes rested, the White House treated the hardhat riots quite differently than student anti-war demonstrations.[452] Whereas the president had made a habit of scolding student protesters, admonishing them to remain peaceful, no such admonishment of the hardhats came from the White House. For all of Nixon's calls for "law and order" when the potential lawbreakers were of the left, actual lawbreaking by possible political allies was greeted with invitations to the White House.[453]

To cement his growing friendships with the leaders of the building trades, especially Brennan, the president stopped talking about the Philadelphia Plan.[454] At the DOL, Arthur Fletcher grew concerned that the hardhat riots were designed to deflect national and White House attention away from union policies of racial exclusion.[455] If that were the case, Herbert Hill warned that they were succeeding. By September, the NAACP's labor secretary warned that the Nixon administration had abandoned the Philadelphia Plan and in fact all major civil rights initiatives.[456] If he couldn't use affirmative action to split the labor-rights coalition, Nixon would simply appeal directly to the patriotism of the larger constituency.[457] And labor was clearly a larger constituency than Black people. In any event, by mid-1970 the Philadelphia Plan and other affirmative action programs for construction had begun to take on a life of their own.

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[452] Tom Charles Huston to Ehrlichman, May 12, 1970 (Nixon Colson 95 *New York City, Workers Building Construction Council*).
[453] Colson to Peter Brennan, April 1970, (Nixon Colson 95 *New York City, Workers Building Construction Council*); Ziegler, *Press Conference*, and Colson to Nixon, May 26, 1970; "Being Patriotic," editorial, *New York Amsterdam News*, June 6, 1970; Colson to Nixon, September 12, 1970 (Nixon Colson 20 *Building Construction Trades Council*); "Nixon and the Bums," editorial, *Scanlan's Magazine*, September 1970; and Victor Riesel, "Soft on Hard Hats? Nixon Rejects Advisers Urging Him to Declare War on Labor," column, December 7, 1970 (Nixon Colson 73 *Riesel*).
[454] Ziegler, *Press Conference*, May 26, 1970.
[455] "Official Sees Racist Ruse in Marches Backing Nixon," *St. Louis Post-Dispatch*, May 27, 1970; Milton Viorst, "Judging Deeds and Not the Words," column, *Washington Evening Star*, July 30, 1970.
[456] John E. Burnett to Hill, June 8, 1970 (NAACP VI G3 *1970, 2*); Hill, *Press Statement*, September 7, 1970 (NAACP VI G10 *Labor, Herbert Hill, Speeches and Testimonies*).
[457] *Op. cit.* n. 431.

A Proliferation of Plans

In 1970, under pressure from the AFL-CIO and contractors, the Labor Department presided over the creation of a dual system for contract compliance in local building construction. The mandatory plans, modeled after and building upon the Philadelphia Plan, were imposed by the OFCC in cities where civil rights groups, labor, and contractors could not work out voluntary plans—also called "Hometown Solutions"—whereby the parties would agree to their own affirmative action training and hiring programs.

The defeat of the Byrd Rider may have cowed Congress into grudging acceptance of the Philadelphia Plan, but not so the AFL-CIO. In a speech on January 12, 1970, Meany blasted the Plan at the National Press Club as a political ploy, and the "good faith" clause as allowing contractors to ultimately hire few or no Blacks.[458] By contrast, he held up the "Chicago Plan"—a voluntary agreement between contractors, unions, and community organizations forged out of the "Black Monday" demonstrations there the previous fall—as eminently superior. The Chicago Plan promised at least one thousand new construction jobs for non-whites over four years, and, coupled with the DOL-funded apprenticeship outreach program, sought to significantly increase non-white union membership.[459]

Labor Secretary Schultz agreed that—at least in principle—such "Hometown Solutions" were preferable to the mandatory approach of the Philadelphia Plan. The problem was that the White House—in the wake of its victory in the Byrd Rider fight—

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[458] Building Construction Trades Department, AFL-CIO, *Chicago Plan*, January 12, 1970 (Meany RG1-038 *107*); Tom Wicker, "In the Nation: Philadelphia, Chicago, and Meany," *New York Times*, January 18, 1970; Meany, "To End Job Bias," letter to the editor, *New York Times*, February 7, 1970. On Meany's motivations, see Robinson, George Meany and His Times, pp. 289-292.
[459] Meany, *Address to the National Press Club*, January 12, 1970 (Meany RG9-002 *32*).

saw the Philadelphia Plan as the model, and increased the 1970 budget of the OFCC to that end.[460] In consultation with White House aide Leonard Garment, the president's special assistant on civil rights, Schultz and Fletcher resolved to use the threat of the imposed plan to push unions and contractors to develop voluntary Hometown Plans of their own. The OFCC would implement local versions of the mandatory Philadelphia Plan in cities which failed to develop satisfactory Hometown Plans. This served the dual purpose of satisfying the unions—who were, after all, the DOL's primary constituency—while pushing them inexorably towards integration.[461] To demonstrate that he was in earnest, on May 16, 1970, Schultz announced that the DOL would spend nearly half a million dollars on non-white recruitment in Chicago, and transferred thirty staffers to the OFCC to help the regional coordinators assist in the implementation of other Hometown Plans.[462]

The construction unions had also complained that they had been singled out, that discrimination was no worse in the building trades than in other fields. (They were right, of course; discrimination was just as bad in some other areas, but nowhere was it as visible to the Black community, and thereby as constant an affront, as in construction.) To address this concern, the OFCC introduced "Order No. 4," a version of the

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[460] *John Herling's Labor Letter*, January 24, 1970 (Meany RG21-001 6 *20*); John Herbers, "Gains Are Made in Federal Drive for Negro Hiring; Philadelphia Plan, Showing Some Success, Is Being Cautiously Extended; Urban Talks Pressed; Hundreds Of Suits Under '64 Civil Rights Act Expected to Spur New Progress," *New York Times*, January 25, 1970; "Job Bias Fighters Win Big Boosts in Nixon's First Full Budget," *Wall Street Journal*, February 3, 1970.

[461] DOL Press Release, January 26, 1970 (Meany RG21-001 6 *20*); Garment to Patrick J. Buchanan, and Fletcher, *Press Conference*, January 28, 1970 (Nixon Garment 142 *Philadelphia Plan, 1*); Frank C. Porter, "U.S. To Extend Hiring Plan to 20 Cities," *Washington Post*, February 7, 1970; "Unions Ordered to Hire More Blacks; Philadelphia Plan Opposed by Industry," *Florida Star*, February 14, 1970; "Minority Job Plans Pushed by Labor Dept.," *AFL-CIO News*, February 14, 1970; "Schultz Selects 19 Cities for Philadelphia Plan; Is Opposed Strongly by AFL-CIO," *Indianapolis Labor Tribune*, February 20, 1970; "Job Equality Drive Pushed," *Federal Times*, March 4, 1970.

[462] "Labor Dept. Approves Grant to 'Chicago Plan,'" *AFL-CIO News*, May 16, 1970; and Byron Calame, "Labor Department Setting Up Unit to Spur Local Solutions to Construction Job Bias," *Wall Street Journal*, June 7, 1970.

Philadelphia Plan which required all government contractors, not just those in construction, to submit affirmative action programs.[463] The way in which Order No. 4 was implemented, however, caused concern in Congress. Senator Ervin complained that the regulation had not been properly vetted by advance publication in the Federal Register, and opposed the order in any event, saying that Schultz had lied to him in testimony the previous fall by stating that the Philadelphia Plan would be limited to that city alone.[464] But having a debate over a failure to pre-publish federal regulations was a political non-starter. As Graham and Hood have noted, the result was a paradigm shift in the power of the executive branch vis-à-vis that of Congress.[465]

For his work defeating the Byrd Rider, pacifying the construction unions, and enlarging the power of the president in the face of a hostile Congress, Nixon rewarded Secretary Schultz by naming him the first Director of the White House Office of Management of Budget, and made Undersecretary James D. Hodgson, who had worked closely with Schultz and Fletcher on the Philadelphia Plan, the new secretary of labor.[466]

Over the next two years, the OFCC approved Hometown Plans in twelve cities, and in California, Governor Ronald Reagan proposed a statewide voluntary plan. While this posed a problem of ratios—non-whites constituted only ten per cent of the statewide population but were much better represented in the big cities—the OFCC ultimately

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[463] Dana Bullen, "Job Bias Guidelines Tightened," *Washington Star*, January 15, 1970.
[464] "Ervin Criticizes Orders on Hiring; Says Congress is Deceived by New Racial Quotas," *New York Times*, January 16, 1970; "U.S. Issues, Recalls New Racial Job Code," *Washington Post*, January 16, 1970.
[465] Graham, The Civil Rights Era, p. 343; and Larry J. Hood, "The Nixon Administration and the Revised Philadelphia Plan for Affirmative Action: A Study in Expanding Presidential Power and Divided Government," *Presidential Studies Quarterly*, Winter 1993, pp.161-162.
[466] Graham, The Civil Rights Era, pp. 344-345.

approved the California Plan. And while each of these "Hometown Solutions" posed its own problems, none generated as much controversy as the New York Plan.[467]

In March 1970, New York Building Trades President Peter Brennan began touting a plan to train local Blacks and Hispanics for union membership. Quickly dubbed the New York Plan, Brennan's program soon won the support of his fellow union leaders and the local contractors' associations.[468]

What the Brennan plan lacked, however, was support from the local Black community—a critical factor in the OFCC's approval of the Chicago Plan and other Hometown Plans. The reason soon became clear, as community leaders tore Brennan's Plan apart in print and protested it at jobsites. The plan was simply an apprenticeship-training plan, and did not make any provisions for journeyman union membership, let alone actual paying jobs. But what made the New York Plan truly abhorrent to community leaders was Brennan's proposal to establish a separate training center for Blacks recruited under the Plan. Sixteen years after *Brown v. Board*, a New Yorker was proposing the establishment of a segregated training facility![469]

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[467] Atlanta Building Trades Council, *Atlanta Plan*, April 19, 1970; Robert McGlotten to Slaiman, April 13, 1970; Slaiman to Biemiller, April 14, 1970 (Meany RG21-001 6 *20*); "Minority Hiring in Construction in 2 Cities," *New York Amsterdam News*, July 11, 1970; Reagan to Nixon, July 14, 1970, in Graham (Ed.), Civil Rights During the Nixon Administration, 1969-1974 (Frederick, MD: University Publications of America, 1989), reel 7, p. 107; "Kansas City Building Trades Sign Minority-Hiring Plan," *Wall Street Journal*, July 21, 1970; "Minority Youths Start Training in Chicago Plan," *AFL-CIO News*, August 15, 1970; "Minority Jobs Plan Approved in Indianapolis," *AFL-CIO News*, August 29, 1970; DOL Press Releases, July 9, 1971 and January 18, 1972 (Nixon Garment 142 *Philadelphia Plan, 1*); James D. Williams to Madelyn Andrews, March 15, 1972 (NUL III 32 *Labor, Labor Affairs Program, 1971-2*); DOL Press Releases, May 28, 1972 (Nixon Patterson 56 *OFCC*), July 24, 1972 (Nixon Patterson 57 *Philadelphia Plan*), and September 21, 1972 (Nixon Garment 142 *Philadelphia Plan, 1*); and Jon Katz, "Labor Dept. Mulls Plan to Cut Construction Minority Quota," *Washington Post*, September 7, 1972.

[468] "New York Plan," editorial, *New York Amsterdam News*, March 28, 1970; "New York Plan Keyed to Minority Training," *AFL-CIO News*, March 28, 1970.

[469] Thomas P. Ronan, "Construction Men Sign Trainee Pact; Governor and Mayor Praise Plan to Expand Education of Minority Workers," *New York Times*, December 11, 1970; Hill to Fletcher, December 11, 1970 (NAACP VI G9 *Labor, DOL, 1969-71*); Simon Anekwe, "NAACP Threatens Court Action," *New*

Such opposition might have otherwise been sufficient to scuttle the New York Plan, but in 1970, thanks to Nixon's rigorous courting of the hardhats, Brennan was becoming a powerful and respected figure in the highest circles of government. The New York Plan quickly garnered the support of Republican Governor Nelson Rockefeller and Republican Mayor John Lindsay. On January 30, 1971, Lindsay quietly made it law in New York City by including it in an executive order.[470]

The controversy over the New York Plan was loud enough to attract the attention of the United States Commission on Civil Rights, however, and the commission held hearings on the matter that March. While Brennan and other union leaders testified in favor of the Plan, Herbert Hill and other representatives of civil rights and non-white labor organizations presented a solid front in opposition.[471] Although the commission had no formal power, its recommendations and findings often drew the close attention of compliance officials. But Brennan had an ace up his sleeve. In June, he met one-on-one with President Nixon, and shortly thereafter the president ordered the OFCC to approve the New York Plan as an acceptable Hometown Solution and thereby exempt the city's construction contractors and unions from the threat of an imposed affirmative action plan.[472]

York Amsterdam News, December 26, 1970; and Anekwe, "NYC vs. Philly," *New York Amsterdam News*, January 2, 1971.

[470] Hill to Fletcher, December 11, 1970 (NAACP VI G9 *Labor, DOL, 1969-71*); Anekwe, "Slip NY Plan Into Law; Unannounced, Unpublicized," *New York Amsterdam News*, January 30, 1971.

[471] "Uncle Sam Looks at NY Plan," *New York Amsterdam News*, March 6, 1971; Emanuel Perlmutter, "Building Unions Defend Hiring Policy," *New York Times*, March 10, 1971; Anekwe, "Blast New York Plan," *New York Amsterdam News*, March 13, 1971; Napoleon B. Johnson, II, *Statement to the United States Commission on Civil Rights*, March 23, 1971 (NUL III 32 *Labor, Labor Affairs Program, 1971-2*); and Anekwe, "Solid Anti-NY Plan," *New York Amsterdam News*, March 27, 1971.

[472] Henry C. Cashen, II, to Colson, April 28, 1971, and Colson to Ehrlichman, May 5, 1971 (Nixon Colson 69 *Hardhats*); Colson to Haldeman, May 6, 1971 (Nixon Colson 65 *Arthur Fletcher*); and Colson to Nixon, July 26, 1971 (Nixon Colson 23 *Brennan*).

Other cities had neither the union and contractor goodwill nor the political clout of a Peter Brennan, and in these cases the OFCC implemented mandatory plans without first trying Hometown Solutions.[473] In Washington, D.C., this strategy met with marked success: the Washington Plan, implemented around construction of the District's Metro (rapid transit) system, forced contractors into compliance even for their non-governmental construction work, and brought non-white representation in the skilled trades in that city from virtually nil in 1970 to 16.1% by mid-1971.[474] Other cities receiving mandatory plans were Seattle, where protests by Black and Hispanic workers at construction sites at the University of Washington forced government action, and St. Louis, where sadly the achievements in integrating the plumbers and pipefitters following the Memorial Arch walkout of 1966 had not been sufficient to bring those unions into long-term compliance.[475]

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[473] Paul Delaney, "Minority Job Aid by U.S. Questioned; Magnuson Challenges Race Formulas in Nixon Plans," *New York Times*, August 15, 1970; DOL Press Release, June 1, 1971 (Nixon Garment 143 *Philadelphia Plan, 2*); Merelice K. England, "Minority Hiring Pushed in Big Cities; U.S. Aims to Put Black Faces Under Hard Hats," *Christian Science Monitor*, June 7, 1971; DOL Press Release, June 10, 1971 (Nixon Garment 142 *Philadelphia Plan, 1*); and John Evans to Todd Hullin, October 5, 1972, in Graham, Civil Rights During the Nixon Administration, reel 19, p. 253.

[474] Alexander to Garment, January 23, 1970; Alexander, *Statement*, January 26, 1970; and Garment to Fletcher, February 2, 1970 (Nixon Patterson 2 *A*); Philip Shandler, "Blacks Still Lagging in Construction Pay," *Washington Star*, February 4, 1970; Fletcher to Garment, February 17, 1970, and Garment to Alexander, February 24, 1970 (Nixon Patterson 2 *A*); Austin St. Laurent to United States Congress, March 2, 1970 (Meany RG21-001 6 *20*); Daniel Patrick Moynihan to Ellis S. Perlman, April 20, 1970 (Nixon DOL 5 *General, 2*); "Labor Agency Imposes Minority Hiring Rules On Builders in Capital; 'Washington Plan' Quotas for U.S.-Aided Job Contractors Stiffer Than in Philadelphia," *Wall Street Journal*, June 2, 1970; "D.C. Construction Unions Protest New Racial Quota Hiring Directive, *AFL-CIO News*, June 6, 1970; "Labor Secretary Orders 'D.C. Plan,'" *Philadelphia Tribune*, June 9, 1970; "Washington, D.C." *New York Amsterdam News*, June 26, 1971; Wilks to Washington Plan Review Committee, July 31, 1971 (Nixon Patterson 56 *OFCC*); and Richard L. Rowan and Lester Rubin, Labor Relations and Public Policy Series Report No. 7, Opening the Skilled Construction Trades to Blacks: A Study of the Washington and Indianapolis Plans for Minority Employment (Philadelphia: Industrial Research Unit, the Wharton School, University of Pennsylvania, 1972), pp. 110, 193.

[475] AMCO Board Members to Hodgson, December 18, 1970, and Wilks to Fletcher, December 21, 1970 (DOL Secretary Hodgson 52 *Fletcher*); OFCC, *St. Louis Plan*, July 7, 1971, and Patrick H. Gannon to Garment, July 8, 1971 (Nixon Garment 142 *Philadelphia Plan, 1*).

By the summer of 1971, it was clear that the Hometown Solutions were not working as well as the imposed plans. While the Indianapolis Voluntary Plan was meeting with some success in all skilled unions except the Carpenters,[476] other voluntary plans were failing abysmally to meet their own stated goals. Contracting agencies had all but stopped signing construction contracts in the Pittsburgh area for contractors' failure to submit acceptable affirmative action plans, and the OFCC was forced to replace the Atlanta and Rochester Voluntary Plans with mandatory plans.[477] Worse still, the Chicago Plan—the showpiece of the Hometown Solutions, touted by Meany in his attacks on the Philadelphia Plan—had virtually no chance of meeting the Federation president's prediction that its labor unions would be fully integrated by Labor Day, 1971.[478]

Meanwhile, the White House continued to make it clear that the president's support of the Philadelphia Plan had been but a blip on a radar screen which showed no other major civil rights policy. Nixon and EEOC Chairman Brown stuck to their guns on the reorganization of the commission, favoring the proposed amendment to the Civil Rights Act of 1964 which would give the EEOC the power to sue in federal court but not cease-and-desist authority nor a transfer of OFCC from the DOL. By the end of 1970 one

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[476] Rowan and Rubin, Opening the Skilled Construction Trades to Blacks, pp. 187, 193.

[477] "HUD Advises Action Against IBEW Local And 17 Subcontractors; Alleged Hiring Prejudice Is Issue In Complaint Against Electrical Concerns, Union in Pittsburgh," *Wall Street Journal*, June 5, 1970; "NAACP Threatens a Lawsuit," *Wall Street Journal*, October 27, 1970; Colson to Arnold R. Weber, April 29, 1971 (Nixon Colson 40 *Building Construction Trades*); "White House Plans Offensive on Job Bias in Construction Trades Until '72 Election," *Wall Street Journal*, May 6, 1971; Weber to Colson, May 12, 1971 (Nixon Colson 40 *Building Construction Trades*); "Washington, D.C.," *New York Amsterdam News*, June 12, 1971; DOL Press Release, June 18, 1971 (Nixon Garment 142 *Philadelphia Plan, 1*); Bob Smith, editorial, June 18, 1971 (Nixon Patterson 56 *OFCC*); Paul Delaney, "Blacks Eye Militancy for Building Jobs," *New York Times*, June 28, 1971; William B. Gould, "Blacks and the General Lockout; In Spite of the Various Plans Put Forward in the Trades, Minorites are Still Blocked," *New York Times*, July 17, 1971; Gannon to Garment, May 10, 1972, and DOL Press Release, May 11, 1972 (Nixon Patterson 56 *OFCC*).

[478] "NAACP Threatens a Lawsuit;" Colson to Arnold R. Weber, April 29, 1971; "White House Plans Offensive on Job Bias in Construction Trades Until '72 Election;" Weber to Colson, May 12, 1971; "Washington, D.C.," *New York Amsterdam News*, June 12, 1971; DOL Press Release, June 18, 1971; Bob Smith, editorial, June 18, 1971; Delaney, "Blacks Eye Militancy;" Gould, "Blacks and the General Lockout;" Gannon to Garment, May 10, 1972; and DOL Press Release, May 11, 1972.

of the two top-ranking Blacks in the administration, former CORE Director James Farmer, had resigned from his post as Assistant Secretary of HEW.[479] With the Congressional Black Caucus threatening to boycott the president's 1971 State of the Union Address, even such a loyal official as Arthur Fletcher—now alone as the highest-ranking Black in the administration—could not help but comment, resorting to his old football metaphors: "Blacks would like for the president to be on the offensive early in the third quarter in order to have a good fourth quarter. We are entering the third quarter."[480]

As the 1972 presidential election approached, President Nixon came under increased pressure to disavow policies that smacked of racial preference. Labeling such policies "reverse racism," antagonists worried—as Staats had in 1969—that race-conscious government programs violated the Civil Rights Act of 1964. White House aides worried that the growing white backlash against the perceived excesses of the 1960s and the civil rights movement, which had helped to topple the Johnson administration, might take a bite out of Nixon's re-election bid. In the summer of 1972, when the American Jewish Committee asked both major-party nominees to publicly state their position on quotas—which Jews traditionally abhorred for their restrictive qualities—both Nixon and Democratic nominee George McGovern replied that they opposed quotas.[481]

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[479] Paul Delaney, "Nixon Is Seeking to Placate Black Aides Ready to Quit," *New York Times*, January 4, 1971; "New Look in D.C.?" editorial, *New York Amsterdam News*, January 9, 1971; and Jack Anderson, "All-out Effort Failed to Nip Black Boycott," column, *Philadelphia Bulletin*, February 6, 1971.
[480] Fletcher, "Quote of the Day," *New York Times*, January 4, 1971.
[481] Floyd L. Ruch to Roy L. Ash, September 21, 1970, and Andrew M. Rouse to Ruch, October 5, 1970 (Nixon Garment 84 *EEOC, 1969, 3*); Philip E. Hoffman, "Open Letter to the Candidates," August 4, 1972 (Nixon Patterson 30 *EEO*); Nixon to Hoffman, August 11, 1972, in Graham, Civil Rights During the Nixon Administration, reel 19, p. 271; McGovern to Hoffman, August 14, 1972 (Nixon Patterson 30 *EEO*); Paul Delaney, "Nixon Held Likely to Drop Program of Minority Jobs; Is Reported Ready to Scrap the

The president now came under fire for his continued implementation of the Philadelphia Plan. If he opposed quotas, how could he justify goals and timetables for non-white hiring in the construction industry? In the event, Nixon went in the opposite direction entirely, rhetorically abandoning the Philadelphia Plan in a Labor Day speech before construction workers. This left EEOC Chairman Brown furious, and he circulated a memo to his staff stating that discrimination cases against construction unions and employers would be prosecuted with the same vigor as before.[482] White House aide Leonard Garment, trying to staunch the bleeding, noted publicly that the Philadelphia Plan was based on "good faith" attempts on the part of contractors to bring their jobsites into compliance, stating that meeting the goals within stated timetables would not only alleviate the effects of past discrimination but constitute evidence of such good faith. But it was a very fine point.[483]

The Nixon administration's ambivalence regarding the Philadelphia Plan, coupled with the president's fastidious courting of the support of Peter Brennan, paid off in spades. On September 26, 1972, worried that McGovern represented what they saw as the excesses of Great Society Liberalism (and a position on Vietnam that seemed to indicate a softness on communism), nine of the seventeen traditionally-Democratic presidents of the international building trades unions gave the Democratic nominee an early October surprise, endorsing Nixon's re-election, and the BCTD—and even George Meany

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Philadelphia Plan for Construction Industry; Quotas Being Reviewed; Fletcher, Former U.S. Aide Who Administered Policy, Denounces President," *New York Times*, September 4, 1972; and John P. Mackenzie, "Quotas and Politics," *Washington Post*, September 24, 1972.

[482] "The Philadelphia Dilemma," editorial, *Washington Star*, September 13, 1972; Jack Anderson, "Viet War Communication 'Mess' Told," column, *Wall Street Journal*, November 11, 1972.

[483] Garment, "On Quotas and Affirmative Action," October 9, 1972, in Graham, Civil Rights During the Nixon Administration, reel 19, pp. 257-269; and Evans to Bud McFarlane, October 31, 1972 (Nixon Garment 142 *Philadelphia Plan, 1*).

himself—declared their official neutrality in the election—a major coup for the White House.[484]

But Nixon's victory in November 1972 was cheered by one hardhat more than any other: Peter Brennan. On November 29, 1972, President Nixon accepted the resignation of Labor Secretary Hodgson and appointed Brennan as his replacement. Brennan quickly declared the Philadelphia Plan a failure, unsurprisingly saying that he would favor programs like his own segregated New York Plan.[485] The future of integration in the building trades lay in doubt.

The Philadelphia Plan in Practice:
African Americans and the Building Trades, 1970 to the Present

In January 1970, the Contractors' Association of Eastern Pennsylvania filed suit against the Department of Transportation to change the terms of a contract to build a highway in Chester County, Pennsylvania, one of the five counties covered by the Philadelphia Plan. The plaintiffs contended that the requirement that their members implement the Philadelphia Plan on the highway job constituted illegal enforcement of a quota system. Title VII of the Civil Rights Act of 1964 required that they hire their workers on a non-discriminatory basis, and the Philadelphia Plan, they concluded, ordered otherwise. The contractors feared that by complying, they would be subject to equal employment

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[484] "Chiefs of Nine Building Trades Unions Endorse Candidacy of Nixon for Second Term in Office," and "Statement of General Presidents of Building Trades Unions Endorsing the Reelection of President Nixon," *Construction Labor Report* No. 887, September 27, 1972; Stetson, "200 Labor Chiefs in City Form Nixon Committee," *New York Times*, September 28, 1972; and John H. Lyons, "The President's Page," *Ironworker*, October 1972.

[485] James M. Naughton, "Construction Union Chief in New York Is Chosen to Succeed Hodgson," "Second-Term Cabinet," editorial, and "An Outspoken Man," *New York Times*, November 30, 1972; "Brennan Appointment To Secretary of Labor Draws Varied Reactions From Labor, Civil Rights Groups," *Construction Labor Report* No. 897, December 6, 1972; and Philip Shabecoff, "U.S. Inaction Seen on Minority Jobs; Officials Say Administration Lets Contractors Evade Hiring Requirements," *New York Times*, December 19, 1972.

opportunity lawsuits from frustrated white jobseekers. The lawsuit was quickly combined with a similar suit filed by the same plaintiffs against the Department of Agriculture for implementing the Philadelphia Plan on another local project, which named Schultz, Fletcher, and OFCC Director John L. Wilks as co-defendants.[486]

Having won the support of the White House in 1969 and defeated opposition in Congress, Fletcher was not perturbed. He predicted that the Philadelphia Plan would survive court challenges, and that it would ultimately do for equal employment what the *Brown* decision had done for school integration. His opinion was shared by the City of Philadelphia, which filed a brief asking that the case be dismissed.[487]

In the event, it was better for the proponents of affirmative action that the case was *not* dismissed, for it resulted in a series of favorable court decisions and produced a record of case law establishing the legality of the RPP. In March 1970, a Philadelphia Federal District Judge found for the defendants, ruling that the goals and timetables listed in the Philadelphia Plan did not constitute quotas and deadlines.[488] The Contractors' Association appealed, and a year later, in April 1971, the United States Court of Appeals for the Third Circuit upheld the decision.[489] The Association then appealed to the Supreme Court, which refused to hear the case the following October. The Philadelphia Plan was now, for all intents and purposes, the law of the land.[490]

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[486] Gresham C. Smith to Silberman, January 6, 1970 (DOL Undersecretary Hodgson 14 *Philadelphia Plan*); "Contractors File Suit to Roadblock Philadelphia Plan," *Philadelphia Tribune*, January 13, 1970.
[487] Martin J. Herman, "U.S. Aide Sees Court Consent to Phila. Plan," *Philadelphia Bulletin*, February 5, 1970; "City Fights Protest to Phila. Plan," *Philadelphia Tribune*, February 7, 1970; and "Phila. Plan Likened to 1954 Ruling," *Philadelphia Bulletin*, February 26, 1971.
[488] Donald Janson, "U.S. Judge Upholds Controversial Philadelphia Plan to Increase Hiring of Minorities in Building Industry," *New York Times*, March 15, 1970.
[489] Janson, "Minority Hiring Upheld by Court; Philadelphia Plan Is Termed 'Valid Executive Action,'" *New York Times*, April 24, 1971.
[490] Fred P. Graham, "High Court Lets Hiring Plan Stand; Rejects Pleas by Contractors Who Oppose Program of Quotas in Philadelphia," *New York Times*, October 13, 1971.

It was unsurprising that the Supreme Court denied certiorari in the RPP case (i.e. refused to hear the appeal), because it had earlier that year upheld similar case law in its unanimous ruling in *Griggs v. Duke Power Company*. At issue in *Griggs* was the right of an employer to administer ostensibly neutral hiring tests despite the disparate impact such tests might have on non-whites when they examined skills unrelated to job performance. For instance, the requirement of a high school diploma for unskilled or semi-skilled labor in a paper mill would have a disparate impact on the Black community because limited, segregated school facilities resulted in a disproportionately low amount of Black high school graduates, and completion of a high school education was unnecessary to fitness for such jobs.[491]

Historian Paul Moreno sees the *Griggs* decision as the completion of a shift in emphasis on individual rights to group rights, an upholding of the EEOC's interpretation of Title VII of the Civil Rights Act of 1964 over Congressional intent. In other words, *Griggs* allowed employers to use quotas to meet their obligations under Title VII, in that quotas recognized membership in a non-white ethnic or racial group as a hiring factor outside of other qualifications. But it was the court's subsequent decision to deny certiorari to the RPP appeal in *Contractors' Association of Eastern Pennsylvania* which had the greatest effect on the integration of government contract employment. In the building trades, which relied so heavily on federal contracts, it was this decision that made the most difference. In short, *Griggs* ratified the EEOC's understanding of Title VII, which governed private employment; *Contractors' Association of Eastern Pennsylvania* ratified the OFCC's interpretation of Title VI, which governed federal

[491] Moreno, From Direct Action to Affirmative Action, pp. 271, 276.

expenditures. Further, the denial of certiorari in *Contractors' Association of Eastern Pennsylvania* upheld the use of the manning table, which was an earlier compliance shortcut that led to quotas. It was the conclusion of both of these cases—not *Griggs* alone—which resulted in the legalization of *de facto* quotas to meet equal employment obligations.[492]

The defeat of attempts to render the Philadelphia Plan illegal, along with the imposition of mandatory city-based construction compliance programs, did not instantly translate into full integration of the skilled building trades. Although the AFL-CIO civil rights committee claimed significant strides towards integrating the trades, an EEOC report in May 1970 showed that 75% of all Blacks in the building trades were still in the Laborers' Union, the least skilled (and usually lowest-paid) of the trowel trades.[493]

Largely as a result of the lawsuit, implementation of the Revised Philadelphia Plan got off to a rocky start in 1970. Although eleven jobs had commenced and five had reached the 10% completion point by May, OFCC Director Wilks reported that none of the contractors were in full compliance with the program, and that there was no evidence that the RPP had resulted in the hiring of even a single new Black employee. Regional Coordinator Bennett Stalvey admitted to the *New York Times* "there is no question that compliance is lagging." By July, it was clear that at least part of the problem had to do

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[492] Moreno, From Direct Action to Affirmative Action, pp. 265-266. MacLean, in Freedom Is Not Enough, also overemphasizes *Griggs* (p. 109), and finds that equal employment opportunity advocates, after what she calls a failure of direct action, went directly to the courts for redress under Title VII (pp. 95-96). In fact, as we have seen, direct action (such as at Philadelphia construction sites in 1963) led to a renewed commitment from the executive branch to implement affirmative action through programs at the OFCC. Paul Frymer, in "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions" (*American Political Science Review* Vol. 97, No. 3 [August 2003], pp. 483-499), agrees with me that *Contractors Association* was more operative here than *Griggs* (p. 492).

[493] "Results Cited in Efforts to Aid Minorities," *AFL-CIO News*, February 28, 1970; "Say Unions Need Do More," *New York Amsterdam News*, May 30, 1970; and "Outreach Helps 6,900 Youths Enter Crafts," *AFL-CIO News*, October 10, 1970.

with contracting agencies' failure to submit reports; with no pressure to show compliance themselves, the bureaucrats failed to apply pressure on the contractors. Despite the March ruling which found the RPP to be legal, the contractors and unions hoped for better luck with their appeal and in the meantime resolved to drag their feet, all the while drawing $7 Million in federal funds for their work on RPP jobs.[494]

With the Nixon administration cozying up to the hardhats, civil rights leaders saw the RPP's sluggish start as indicative of administrative abandonment. The NAACP's Herbert Hill and Roy Wilkins both called the plan a failure, and Wilkins exasperatedly admonished existing Black construction workers to do their best to set a good example and show contractors that they were just as capable as whites, since government enforcement of equal employment opportunity, he felt, was not forthcoming.[495] Hill condemned the administration for abandoning the Philadelphia Plan, calling the Hometown Plans "a meaningless hodgepodge of quackery and deception, of doubletalk and doublethink."[496] The Director of the Philadelphia NUL called the RPP "a flop" and said that apprenticeship outreach remained the best method for integrating the skilled trades.[497]

In response to the criticism and the reality of early difficulties implementing the RPP, Wilks, Fletcher, and Secretary Hodgson resolved to crack down on recalcitrant contractors and push the contracting agencies to submit more timely reports. With some 18 contractors in non-compliance, the OFCC pushed the agencies to issue "show-cause

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[494] "Philadelphia Plan Fails Its Early Tests," *New York Times*, May 3, 1970; Wilks to Hodgson, May 19, 1970, and Wilks to Silberman, July 1970 (DOL Undersecretary Hodgson 14 *Philadelphia Plan*).
[495] Wilkins, "The Philadelphia Plan," column, *New York Amsterdam News*, August 1, 1970.
[496] Hill, *Speech*, June 30, 1970 (NAACP VI A3 *Convention Speeches*).
[497] Madeleine Cushman to Philadelphia NUL Action for Jobs Committee, May 21, 1970 (Papers of the Equal Employment Opportunity Commission, Collection of Chairman William H. Brown, Jr., 1970, *June*, NARA); "Urban League Head Calls Philadelphia Plan 'Flop,'" *Philadelphia Tribune*, August 18, 1970.

notices"—warning letters requiring the contractor to show probable cause that he had exercised good faith in attempting to integrate or face loss of the contract.[498]

For once, the crackdown was little carrot and lots of stick, and the harder part of the stick was the threat of debarment, a step rarely taken in the past for non-compliance with the equal opportunity clause. One contractor, Edgely Air Products of Levittown, failed to adequately integrate or show good faith. Edgely was a sheetmetal subcontractor on a University of Pennsylvania job partially funded by the Department of Health, Education, and Welfare (HEW). At OFCC urging, HEW agreed to make an example of Edgely, and cancelled the contract.[499] The message was clear: the OFCC had the power to revoke and debar, and was willing to use it. By the end of the summer of 1970, Blacks constituted 22.7% of the skilled workers on RPP projects, up from just 2% at the outset of the program, and the DOL credited the RPP for the employment of forty-one new skilled Black construction workers. Hodgson even noted that in some crafts compliance was significantly above 1970 expectations, and had reached the full integration promised for the end of the plan, still three years away.[500]

Some criticism of the RPP continued, especially from unlikely bedfellows George Meany and Herbert Hill. Arguing the superiority of the Hometown Plans, Meany accused the DOL of fudging the numbers, allowing RPP contractors to get away with what the

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[498] Hodgson to Wilks, May 25, 1970, and Wilks to Compliance Officers, June 26, 1970 (DOL Undersecretary Hodgson 14 *Philadelphia Plan*); "HUD and HEW Move Against Contractors over Minority Hiring; Show-Cause Orders Issued to 6 Builders in 'Philadelphia Plan' Charging Lack of Good Faith," *Wall Street Journal*, July 10, 1970; and Wilks to Silberman, July 1970.

[499] Wilks to Silberman, August 12, 1970 and September 4, 1970 (DOL Undersecretary Hodgson 14 *Philadelphia Plan*); "U.S. Will Terminate a Contract for Failure to Hire Negroes," *New York Times*, August 20, 1970.

[500] "Philadelphia Plan Topping Hiring Goals, Labor Agency Says; Minority Workers in Five Skilled Trades Rose to 22.7% of 180 Employes, Survey Shows," *Wall Street Journal*, August 21, 1970; DOL Press Release, September 10, 1970 (Nixon Garment 142 *Philadelphia Plan, 1*); "Hodgson Asserts Philadelphia Plan Exceeds Its Goals," *New York Times*, September 11, 1970; and "Philadelphia Plan Ahead of Schedule," *Philadelphia Tribune*, September 22, 1970.

Wall Street Journal called "motorcycle compliance"—contractors' shuttling Black workers from one project to another to fool inspectors into thinking their numbers were greater than they actually were.[501] And in the summer of 1971, Hill got into a public argument with Fletcher at the NAACP convention over the RPP. Pointing out that Edgely Air Products—whose contract had been cancelled—was but a minor subcontractor, Hill accused Fletcher of letting the bigger contractors with larger pieces of the federal pie pass for paying mere lip service to the notion of "good faith." Fletcher rebutted that the RPP had already succeeded in meeting its 1971 goals, and that as small as Edgely might be, the message of contract cancellation was not lost on the other contractors. The OFCC, in fact, had taken the extraordinary step of debarring Edgely from future contracts until the company could show sufficient integration in its non-federal construction work. And to show that they weren't just frying the small fish, but that the same thing really could happen to any non-compliant contractor, the OFCC debarred Russell Associates, Inc., a Philadelphia plumbing contractor.[502]

By the end of 1971, the OFCC and contracting agencies, in any event, had gotten wise to such techniques as "motorcycle compliance" and were conducting surprise inspections at all RPP jobsites, writing down the names of individual Black workers.[503] The overall results were slightly below the goal for that year, with some crafts not quite

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[501] Richard Starnes, "Controversy Frustrates 'Philadelphia plan,'" *Washington Daily News*, September 9, 1970; Elliot Carlson, "A Slow Start: The Philadelphia Plan to Integrate Unions Called Failure by Some; Hiring Goals Still Not Met; Blacks Shifted Among Jobs To Fool U.S. Inspectors; But Backers See Potential," *Wall Street Journal*, December 3, 1970; and AFL-CIO Press Release, December 14, 1970 (Meany RG1-038 82 *82*).

[502] Orrin Evans, "U.S. Accuses Bucks Firm of Racial Bias in Hiring," *Philadelphia Bulletin*, July 9, 1971; "Contractor Barred from Federal Jobs," *New York Times*, September 18, 1971; and DOL Press Release, September 28, 1972 (Nixon Garment 142 *Philadelphia Plan, 1*).

[503] OFCC, *ESA Compliance Check*, October 8, 1971 (Nixon Patterson 56 *OFCC*); "The Philadelphia Dilemma," editorial, *Washington Star*, September 13, 1972; and "Minority Journeymen and Apprentices Admitted to Unions Under the Revised Philadelphia Plan," November 21, 1972 (Meany RG9-002 38 *42*).

in compliance and a few crafts ahead of the game. Of the 743 workers employed in the critical trades, 102 were non-whites, or 13.7%. These included 34 of 270 electrical workers (12.6%); 16 of 103 in sheet metal work (17.4%); 22 of 181 plumbers (12.7%); 9 of 93 steamfitters (9.6%); 17 of 83 ironworkers (12.5%); and 2 of 13 elevator constructors (15.4%). The average for these trades had been 2% in 1969, with some trades employing exactly zero Blacks or Hispanics. By the end of 1972, all contractors had met the goals of the RPP except in sheetmetal, which nevertheless came close at 13.5% non-white employment. Average Black and Hispanic representation at RPP job sites was 16.6%, and union membership approximately 15%.[504]

Apprenticeship provided additional cause for hope. Thanks to the DOL's apprenticeship outreach program, administered in most cities by the NUL, there were some 8,000 Black youths in construction apprenticeships in 1970, constituting 11% of the national total, and about half of those were training for membership in the skilled unions. In 1971, that number had swelled to 10,000.[505] Clearly Blacks were applying, being accepted, and remaining enrolled in skilled construction apprenticeship programs. One EEOC researcher said that this would translate into the slow but steady integration of the trades at the journeyman level during the 1970s.[506]

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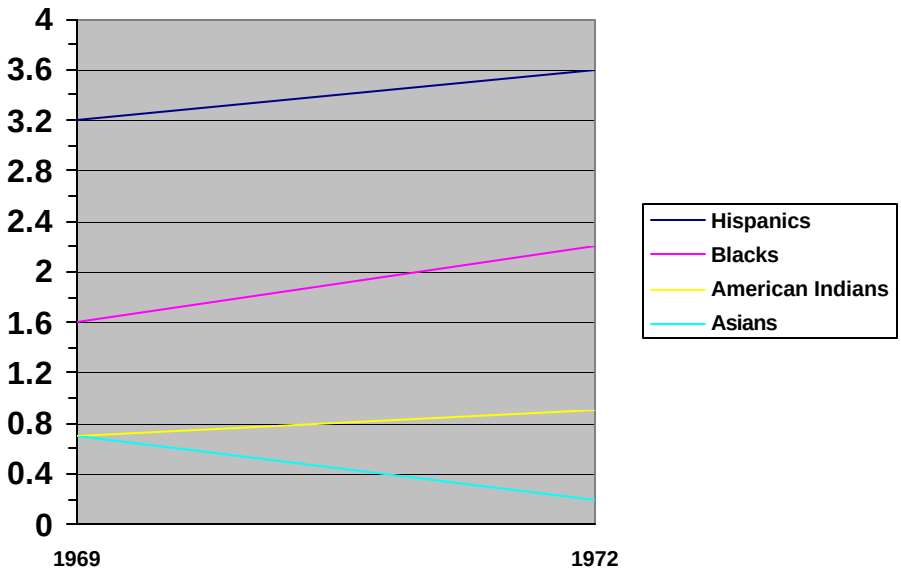
[504] DOL Press Releases, October 15, 1971, March 31, 1972, and September 13, 1972 (Nixon Garment 142 *Philadelphia Plan, 1*); Edwin C. Sexton, Jr., *Report to the Republican National Committee*, December 21, 1971 (NUL III 29 *Government Affairs Department*); John Evans to Ken Cole, October 24, 1972, in Graham, Civil Rights During the Nixon Administration, reel 19, pp. 257-261; and "Minority Journeymen and Apprentices Admitted to Unions Under the Revised Philadelphia Plan," November 21, 1972. Frymer, in "Acting When Elected Officials Won't," conflated the timing of the Hometown Plans and saw them as a Nixonian response to the "failure" of the RPP; he viewed activist judicial decisions (including *Contractors' Association*!) as responsible for the integration of the unions.

[505] "Minority Group Youths Account for 11 Percent of New Apprentices," *AFL-CIO News*, March 21, 1970; Shabecoff, "Blacks Making Few Gains in the Construction Trades," *New York Times*, June 27, 1971.

[506] Herbert Hammerman, "Minority Workers in Construction Referral Unions," *Monthly Labor Review*, May 1972, pp. 17-26; Hammerman, "Minorities in Construction Referral Unions—Revisited," *Monthly Labor Review*, May 1973, pp. 43-46.

Indeed, these predictions gained traction when the EEOC released a 1972 study which compared non-white representation in the skilled trades in that year with comparable figures for 1969. As Figure 3 demonstrates, of the four non-white groups considered, only Asians declined as a group, and the fastest increase was among African-Americans:

Figure 3:
Changes in Percentage of Non-White Representation
In Skilled Building Trades Membership, 1969-1972[507]



The study covered boilermakers, electrical workers, elevator constructors, ironworkers, plumbers/pipefitters, and sheet metal workers. Total non-white representation in these trades increased from 6.2% in 1969 to 6.9% in 1972. The increase was small but significant. Non-white representation among the skilled trades was slowly increasing, and the Philadelphia Plan and other such programs were meant to ensure that the percentages

[507] "Blacks Made Slight Progress Between 1969 and 1972 In Entering Building Trades," *Construction Labor Report* No. 978, July 10, 1974.

of non-whites on building sites—if not actual numbers, because of a decrease in construction starts during the 1970s—would increase.

As the unions were forced to integrate, they gave up one of their most important prerogatives—control over the hiring process. Illegal under the Taft-Hartley Act, this vestige of the closed shop had been a convenient practice for contractors and a cherished right for unions. But during the 1970s, one local at a time, building trades union members voted to cede control over hiring to jobsite foremen. The unions would maintain a bench which would make referrals and from which the contractors would draw, but the hiring hall as such ceased to exist.[508] Individual union members decided that their job prospects would be better served by foremen they knew, who could reasonably claim to hire based on previous knowledge of skill and talent, than a hiring hall required to dole jobs out fairly to a membership that increasingly included members of non-white groups and even newer faces on the job—those of women.[509] This proved ominous for the employment prospects of new Black union members, for the compliance activities of the government were more zealous against unions under the Nixon and Ford administrations than against contractors.[510]

The decrease in construction starts too proved ominous. As Black and Hispanic apprenticeships increased very quickly and journeyman membership increased more slowly, a longtime EEOC consultant worried that equal employment, freed by the 1964 act and sympathetic court decisions, would nevertheless face bureaucratic hurdles from

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[508] Louis Uchitelle, "Union Goal of Equality Fails the Test of Time," *New York Times*, July 9, 1995.
[509] Indeed, a plausible case might be made that the major cause of this change was the integration of women, not Blacks—but such would be the subject of another dissertation.
[510] Linder sees the end of the closed shop as having less to do with a desire to avoid integrated workshops than a stronger desire on the part of the Business Roundtable to bring down wages, which they accomplished by pitting union and non-union contractors against one another and thanks to a decline in the political power of Big Labor during the 1970s. Wars of Attrition, pp. 216-217, 331-396.

problems at the OFCC. Indeed, the agency was losing its vision and cohesion, with the Nixon administration having gutted its staff and forced a reorganization which resulted in stunted leadership and poor field communication. Although non-white membership in the skilled trades did reach 15% during the 1970s—largely as a result of the Philadelphia and other mandatory Plans—reduced construction employment and a weakening of union control over the hiring process meant that many Blacks found that union membership alone was no guarantee of steady or even fair employment.[511]

What the OFCC needed was an advocate in the upper levels of the administration, and if anyone in the administration was on the civil rights offensive it was Arthur Fletcher. The problem was that the policies he was pursuing no longer had any political advantage to the White House. And while the Philadelphia Plan was not technically anti-union, Fletcher's personal politics were. When Fletcher insinuated, in a speech at the annual convention of the Associated General Contractors in the spring of 1971, that integration would serve to weaken the power of the unions over construction wages, the president of the Sheetmetal Workers publicly called for his resignation, and a high-ranking White House aide concurred, noting that Fletcher's continued presence in the DOL would "antagonize millions of union members and George Meany."[512]

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[511] Hill, *Speech to the Annual NAACP Convention*, July 6, 1972 (NAACP VI A10 *Speeches*); Alfred W. Blumrosen, "The Crossroads for Equal Employment Opportunity: Incisive Administration or Indecisive Bureaucracy?" April 5, 1973 (Nixon Patterson 30 *Equal Employment Opportunity*). MacLean, in Freedom Is Not Enough, correctly labels federal construction cutbacks in the face of the RPP "White House cynicism" (p. 100), but ultimately draws the wrong conclusion on the relative success of the RPP, using the program as an example of the failure to integrate unions in the North (in contrast to the success found in integrating the textile industry in the South). As we have seen, the RPP and other mandatory programs succeeded in integrating the unions, if not the job sites.

[512] Fletcher, "Address at Annual Convention of Associated General Contractors," *Construction Labor Report* No. 808, March 17, 1971; "Union Leader Urges Labor Aide's Ouster," *New York Times*, and "Union Chief Asks Nixon to Fire Labor Official," *Philadelphia Bulletin*, April 5, 1971; Donald F. Rodgers to Henry C. Cashen, April 5, 1971 (Nixon Colson 69 *Hardhats*); "Washington, D.C.," *New York Amsterdam News*, April 10, 1971; Rustin, "Anti-Union and Anti-Black," column, *New York Amsterdam*

Here again Nixon was faced with what another president would have seen as a tough choice. Since the defeat of the Byrd Rider, Fletcher's aggressive implementation of the mandatory plans and Hometown Solutions had made him something of a star among civil rights advocates. And again, as in 1969, the Philadelphia Plan and its satellite programs represented Nixon's sole civil rights policy of any merit. The NAACP's Roy Wilkins postulated that Nixon could actually win the Black vote in 1972 if he could provide significant new jobs for Blacks, and as a start, he and others recommended Fletcher be appointed to head the Office of Economic Opportunity.[513] But Nixon was not any other president, and for him, the question was merely one of political expediency. Nixon played to his growing support in Big Labor. By the end of the summer of 1971, Fletcher was out. The president transferred him to the United Nations delegation, and in November Fletcher returned to the private sector, accepting the post of Executive Director of the United Negro College Fund (UNCF).[514] He went on to coin the phrase "A Mind is a Terrible Thing to Waste" for UNCF, returned briefly to government service during the Ford administration, and ran unsuccessfully for the 1992 Republican presidential nomination.

As the RPP entered its fourth and final scheduled year of operation, the OFCC should have undertaken a systemic evaluation of the program's successes, failures, and projections in anticipation of possible extension or modification. This was especially important in light of the election-year debate over quotas. Strong, positive leadership

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News, April 17, 1971; and Colson to Ehrlichman, May 14, 1971 (Nixon Colson 40 *Building Construction Trades*).

[513] Robert C. Maynard, "Jobs Could Win Black Votes," *Wall Street Journal*, July 10, 1971; "High Negro Official Is Cast as Administration Defender," *Philadelphia Bulletin*, August 25, 1971.

[514] "U.N. Post Expected for High Nixon Black," *Philadelphia Bulletin*, August 27, 1971. Fletcher replaced Vernon Jordan at UNCF, who had left to head the NUL after the untimely death of Whitney Young.

could have used the successes of the RPP in support of a public-relations campaign differentiating between goals and quotas and making the moral argument that mandatory compliance programs like the RPP remained necessary to achieve integration and equal employment opportunity.[515]

Instead, Peter Brennan made it clear early in his tenure as Labor Secretary that he saw the RPP as a failure, at least in comparison with his own voluntary New York Plan (which only covered training—and segregated training, to boot). Throughout 1973, Brennan increased funding for the New York and other remaining Hometown plans to the detriment of the RPP and other mandatory plans, eventually going so far as to instruct contractors to disregard any elements of mandatory plans that weren't otherwise found in the voluntary Hometown plans.[516]

Nonetheless, Brennan's antipathy to the RPP did not fully dislodge it or even prevent its titular extension; as President Nixon's only successful civil rights initiative and the subject, at the end of 1973, of a concerted campaign by civil rights leaders, the program was extended for an additional four years.[517] But without dynamic cabinet-level leadership, the RPP stagnated, and the goal ranges plateaued at 1973 levels. No innovations were made, the training component never fully took off, and contractors sensed that cancellations and debarments could be avoided with "good faith" lip-service.

The decline in construction—caused by an economic downturn as well as Nixon administration cuts to such programs as Model Cities—was also resulting in an increase

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[515] "The Philadelphia Dilemma," editorial, *Washington Star*, September 13, 1972.
[516] Brennan to James H. Washington, November 28, 1973, in Graham, Civil Rights During the Nixon Administration, reel 20, p. 498; "Labor: The Snags in Trying to Get Minorities Hired," *Business Week*, December 1, 1973; and William Chapman, "NAACP to Sue on Hiring Plan," *Washington Post*, December 16, 1973.
[517] Chapman, *ibid*.

in overall unemployment, and as usual, this unemployment was felt most acutely by the Black community. Whereas the overall unemployment rate increased between 1970 and 1972 from 4.5% to 5.2%, for Blacks the number of jobless rose from 8.2% to 10.2% in those same years. This represented an increase in the overall unemployment rate of less than one percentage point over those two years, but the Black unemployment rate—already double that of whites—was increasing twice as fast. And as the 1970s progressed, Black joblessness went from bad to worse, reaching 10.9% by 1975, with the NUL figuring that as many as three million Blacks—more than one in four—were likely out of work, (when one included those who had given up the job search).[518]

Congress attempted to alleviate unemployment by passing an emergency housing bill to fund more construction work. Meany pleaded with President Ford (who had succeeded Nixon in 1974 after the latter's resignation over the Watergate scandal) to sign the bill, to no avail.[519] Ford, who would later that year veto a school lunch bill and ignore the pleas of an insolvent New York City out of an antipathy to federal social spending, remained true to form, using a slight uptick in the housing market as an excuse to veto the measure.[520] Continuing a precedent set by Nixon, the Ford administration would intervene in theoretical fair employment matters, stepping in to address complaints of discrimination or push affirmative action programs, but not in actual employment, not in

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[518] "Jobless Rate for Negroes Dips in 1969," *AFL-CIO News*, April 18, 1970; NUL Research Department, "Black Unemployment: A Crisis Situation," July 31, 1972, "Black Unemployment Reaches Record Level During 4th Quarter, 1974," "Unemployed Blacks Soar to 3 Million," May 1975, and "Black Jobless Holds at 26%," July 1975 (NUL III 40 *Research Department, 2*).
[519] Meany to Gerald Ford, June 11, 1975 (Meany RG1-038 76 *21*).
[520] "Housing: A Bit Better," *Time Magazine*, June 30, 1975; Naughton, "President Vetoes $1.2-Billion Bill For Aid to Housing; Asserts Economy Would be Damaged but Frees Funds for Buying Mortgages," *New York Times*, June 25, 1975; Naughton, "President Vetoes School Lunch Bill That Widened Aid; Says $2.7-Billion Measure Would Expand Programs for 'Nonneedy' Pupils; Overriding Predicted; Vote is Scheduled Tuesday—McGovern Calls Ford's Act 'Mindless Exercise,'" *New York Times*, October 4, 1975; "Ford to City: Drop Dead; Vows He'll Veto Any Bail-Out," *New York Daily News*, October 30, 1975.

the creation of jobs. The gains that had been made by federally-imposed affirmative action plans were derailed by the economic downturn and federal refusals to help.[521] A receding tide grounds all boats.

In 1976 the U.S. Civil Rights Commission announced that all the federal laws and programs had failed to fully integrate employment in the building trades.[522] Fifteen years later, economists Roger Waldinger and Thomas Bailey showed that the picture was no less bleak:

> Though 30 years of protest over discrimination in construction have produced progress, the gains are disappointing and severe barriers remain in place…the history of affirmative action policies in construction bears witness to the unions' ability to control those policies to meet their ultimate ends.[523]

By releasing control of employment from the hiring hall to the contractor's foreman, the unions had again circumvented responsibility for integration. Now integrated, locals themselves did what contractors had done thirty years before: they passed the buck.[524]

When the skilled unions abandoned hiring to jobsite foremen who preferred to disproportionately hire white friends and relatives, the growing ranks of trained Black Philadelphia construction workers found their hard-won union membership but an empty promise. In 1978, after another four years in operation, the RPP was abolished in name, but the goal ranges continued as part of nationwide DOL regulations.[525] Seventeen years

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[521] Stein, in Running Steel, Running America, notes that "[i]t was Nixon's slowing of the economy, more than any single measure going under the name of civil rights, that most affected Blacks" (pp. 148-53).
[522] "Race, Sex Bias Linked to Teamsters, Trades," *Detroit News*, May 11, 1976.
[523] Roger Waldinger and Thomas Bailey, "The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction," *Politics and Society*, September 1991, pp. 316-317.
[524] Uchitelle, "Union Goal of Equality Fails the Test of Time," July 9, 1995.
[525] John R. Hunting, John C. Haas, and Henry H. Nichols to Nixon, September 20, 1973; A. William Hill and Andrew G, Freeman to Nixon, September 25, 1973; James H. Washington and Elvin P. Pierce to Nixon, October 5, 1973; and Brennan to James H. Washington, November 28, 1973, in Graham (Ed.), Civil Rights During the Nixon Administration,, reel 20, pp. 480-503; "Labor: The Snags in Trying to Get Minorities Hired," *Business Week*, December 1, 1973; Chapman, "NAACP to Sue," December 16, 1973; Martin J. Herman, "Blacks Ask Retention of Hiring Goals," *Philadelphia Bulletin*, October 23, 1980.

later, when the *New York Times* examined the Philadelphia Plan as part of a 1995 series on affirmative action, membership in the skilled unions remained steady at an average of 15% Black and Hispanic and 85% white, but Black workers spent significantly fewer days on the job than their white counterparts. "I have often wondered whether I don't last on jobs because I don't work hard enough or I lack skill," said one Philadelphia ironworker. "I have concluded that the problem is I am Black."[526]

The Philadelphia Plan, an experiment in racial integration of one of the most lily-white and publicly visible areas of the American economy, was successful when implemented by dynamic, active leaders with little external (read: political) interference. The original plan, under the leadership of Warren Phelan, Vincent Macaluso, and Edward Sylvester, showed signs of incipient success before being scotched by a comptroller general more interested in the prerogatives of his own office than fairness in hiring, and the unwillingness of a lame duck Labor secretary and president to fight for it.

On the other hand, the revised plan appeared to have much more promise, earning White House support in a critical moment when challenged by Congress, and quickly winning the support of the federal courts. But its support from the White House was always thin, based on the president's political need to demonstrate a minimal commitment to civil rights and a political desire to split two traditionally Democratic constituencies, Big Labor and mainstream civil rights organizations. When Nixon discovered that he could gain the political support of the larger of those two constituencies simply by continuing to rattle the anti-communist saber—even though

[526] Uchitelle, "Union Goal of Equality Fails the Test of Time," July 9, 1995.

federal spending in Vietnam contravened the interests of both—he abandoned the Philadelphia Plan and embraced building trades leaders like Peter Brennan. Mandatory plans like the Philadelphia Plan were de-emphasized in favor of union- and contractor-supported "Hometown Solutions," which quickly failed.

Nevertheless, under the guidance and leadership of John Wilks, Arthur Fletcher, and James Hodgson, the Philadelphia Plan and other mandatory plans succeeded in integrating unions and jobsites alike—permanently, in the case of unions. But here again, politics intervened. Fletcher was fired for publicly declaring his anti-union sentiments and Brennan rewarded for political loyalty, leaving an effective program essentially leaderless. When the unions abrogated their control over hiring, and contractors realized they could keep the federal dollars flowing with mere lip-service about "good faith" efforts at affirmative action, foremen were left to make the hiring decisions on their own. And with few Black foremen, white workers continued to get more work than their Black counterparts. Like a car with a driver asleep at the wheel, the Philadelphia Plan pushed forward. But it couldn't avoid the bumps, the curves, or the other traffic.

CONCLUSION:
Affirmative Action and Equal Opportunity

Merriam-Webster's online dictionary defines "Affirmative Action" as "an active effort to improve the employment or educational opportunities of members of minority groups and women."[527] Noteworthy in that definition is the word "opportunities." In the context of the racism that has pervaded the educational, employment, and social institutions of the United States since colonial times, "equal opportunity" cannot be achieved without such "active effort." As employers, government officials, and union leaders found during the 1960s, the act of establishing "color-blind" employment policies alone did not result in a significantly integrated workforce. Such policies tended to result in token integration, with employers quickly snapping up the few African-Americans who had previously managed to obtain specialized training in the hostile environment. For these exceptional Blacks, the "Ralph Bunches and Lena Hornes," as another, the NUL's Whitney Young, put it, this meant a sudden increase in available employment opportunities. But for most, color-blind employment policies did not translate quickly into better jobs.

For most Blacks, the arrival at the interview meant competition with whites who had benefited from generations of Jim Crow—from superior educational and social training and continued family and social connections. Decades of assimilation—as well as federal programs from the New Deal into the Cold War—had done much to eradicate the class and status differences between the various white ethnicities, but Blacks continued to be socially and financially marginalized. As Moreno, Sugrue, and Katznelson tell us, such programs, including the G.I. Bill, had little impact when it came

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[527] *Merriam-Webster's Online Dictionary*, http://www.m-w.com/dictionary/affirmative%20action, accessed November 17, 2007.

to benefits for Blacks.[528] In such a context, color-blind employment policies could never translate into equal employment opportunity. At his seminal statement to the NUL, on September 7, 1961, Young said "I contend, over many protests, that as the Negro for over 300 years has been given the special consideration of exclusion, he must now be given by society special treatment, through services and opportunities, that will ensure his inclusion as a citizen able to compete equally with all others."[529]

In his November 25, 1964, "To Be Equal" column, which appeared in many Black newspapers throughout the nation, the NUL's Whitney Young said "it's beginning to look like the sky's the limit for qualified Negro youth, at least in most states." Young postulated that the increased job opportunities for Blacks had not resulted in white job displacement. Rather, by increasing Black spending power, such opportunities were "creating more demand for goods and services, more jobs and higher prosperity."[530] In short, Young was arguing that by enhancing the economy, employing more Blacks would result in more jobs for whites. A society that made use of the potential of all its citizens would result in an economy that would provide for all its citizens.

President Johnson, at his commencement address at Howard University in 1965, said "[y]ou do not take a person who…has been hobbled by chains, and then…bring him up to the starting line [and] say, 'You are free to compete with all the others,' and still justly believe that you have been completely fair."[531] For truly equal opportunity,

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[528] Thomas J. Sugrue, The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit (Princeton: Princeton University Press, 1996); Paul D. Moreno, From Direct Action to Affirmative Action: Fair Employment Law and Policy in America, 1933-1972 (Baton Rouge: Louisiana State University Press, 1997); and Ira Katznelson, When Affirmative Action Was White (NY: W.W. Norton, 2005).
[529] NUL Press Release, September 7, 1961 (NUL II E29 *1961, 1*).
[530] Whitney Young, "To Be Equal" column, November 25, 1964 (NUL II E47 *To Be Equal*).
[531] LBJ Howard University Commencement Address, June 4, 1965 (LBJ Aides McPherson 21 *McPherson, Civil Rights, 1965*).

employers, government officials, and union leaders needed to find other methods of leveling the playing field. They needed affirmative action.

Affirmative action, as the concept has become known, seems to mean "preference" and "diversity." In other words, when many Americans hear the phrase "affirmative action" today they imagine unqualified Blacks getting hired or promoted at the expense of better-qualified whites, or Black students being admitted into elite colleges for the sake of campus diversity. As such, a cleavage has formed between proponents of compensatory policies and diversity on the one hand and opponents of so-called "reverse discrimination" on the other. Valid points have been made by both sides in this argument, but neither is arguing in the right context.

Affirmative action was never intended to result in preference for Blacks at the expense of standards, but it did comport with the Great Society ethic that the government should provide for the rehabilitation of the poor and alleviation of poverty. W. Willard Wirtz, Secretary of Labor during the Kennedy and Johnson administrations, stated

> …[A]n affirmative responsibility to counteract the effect of that previous policy…does not mean hiring or admitting unqualified applicants. It does mean (i) making it effectively clear that the old policy has been changed, (ii) participating in the training and preparation of people who would have been ready if it had not been for that discrimination, and (iii) accepting, when they are ready, those who would have been accepted earlier if there had not been a discriminatory policy.[532]

In short, affirmative action means defining a section of the population as economically handicapped, usually for historical reasons, and taking positive steps to end that handicap as quickly as possible. Affirmative action means taking responsibility for making that change.[533]

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[532] DOL Press Release, June 8, 1964 (NUL II A17 *3*).

[533] One recent historian agrees with my assessment of the definition of affirmative action: "Among the possible components were active recruitment of potential employees through institutions and media in

One example of affirmative action as it was originally intended was the integration plan of the Lycoming Division of AVCO, Inc., in Stratford Connecticut. This United States Air Force contractor took six concrete steps in 1962 to meet Wirtz's criteria for affirmative action. As the Chief of the Equal Opportunity Office of the Air Force's New York Contract Management District put it:

> Lycoming…has initiatied a positive program to recruit qualified minority group employees. Among the most recent activities of Lycoming are:
>
> a. Conferring with the Apprenticeship Training Division of the Department of Labor, the Employment Division of the Commonwealth of Puerto Rico, the Human Relations Advisor to the Mayor of New Haven and others requesting their assistance in referring potential employees.
> b. Mailings to Negro and Puerto Rican leaders in the Bridgeport area, citing AVCO's Equal Employment Opportunity Policy and seeking their help to locate potential employees with needed skills.
> c. Employing three nonwhite engineers.
> d. Participating in a pilot program with Community Progress, Inc., of New Haven to train minority group members for job openings. Community Progress, Inc., a new agency financed primarily by a Ford Foundation Grant, will establish programs with educational institutions to qualify trainees for various technical and semi-technical positions.
> e. Transferring a Negro employee from the factory force to the employment information window.
> f. Hiring an employment recruiter who is a native of the Negro community in Bridgeport. Part of his time is devoted to contacting schools, churches, social groups and civil organizations to stimulate the referral of potential employees.
>
> In the past four or five months, as a result of these activities, Lycoming has hired three times the number of minority group workers it ordinarily would have employed, if the company had relied solely upon its customary recruitment and referral services.[534]

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black neighborhoods (as opposed to reliance of word of mouth or walk-ins), training to give otherwise qualified workers the specific skills they would need on the job, eliminating requirements and hiring tests that had no bearing on job performance, job posting and personnel counseling to encourage existing employees to prepare for and seek better jobs, restructuring of job ladders to make mobility from lower grades possible, and sometimes, as in the Philadelphia Plan, hiring preferences for hitherto excluded workers." MacLean, Freedom Is Not Enough, p. 107, and drawn largely from *Report of the White House Conference on Equal Opportunity*, Panel 7: "Affirmative Action," August 19-20, 1965 (LBJ WHCF HU2 *1*).

[534] Harold Hunton, "Implementing 'Affirmative Action' With Air Force Contractors," *Interracial Review*, February, 1963.

Lycoming had not given preference to unqualified Blacks over qualified whites; rather, the company had invested time and money into attracting qualified Blacks (and other nonwhites) who otherwise would not have applied, and training unqualified Blacks so that they would qualify later. They did this by reaching out to the local Black community, placing qualified Black employees in the personnel department, and participating in local training programs that primarily benefited Blacks. The result of this affirmative action program was an increase in qualified Black applicants which, coupled with non-discriminatory hiring practices, led to a more rapidly integrating workforce.

Part of Lycoming's strategy included diversity, when the company transferred a Black worker to the personnel window. In that case, diversity was used not as an end but as a means; not to give the white employees a "diverse" experience—one recent justification for affirmative action policies in higher education—but to show potential Black employees that their applications would not go directly to the "circular file." As a side benefit, the visibility of qualified Blacks in new positions schooled the white employees on the equal capabilities of Blacks.

Diversity in this application was important in popular culture as well. Nichelle Nichols, co-star of the popular *Star Trek* television series, recounted her own experience with affirmative action. As an African-American woman, her presence on the series was groundbreaking: her character served as a senior officer of the fictional starship *Enterprise*. (The series was also diverse in its inclusion of a Russian, a Japanese, and even an extra-terrestrial as protagonists, but the moment that best typified the spirit of the show was the first inter-racial kiss on American television: when Nichols, as Lieutenant Uhura, shared an intimate moment with the swashbuckling Captain Kirk, played by

William Shatner.) When Nichols considered quitting the series in 1966, she was dissuaded by Martin Luther King, Jr. Although the actress had been hired as a result of affirmative action—that is, the producers saw the social benefit of a casting a Black actress in a forward-thinking dramatic series—the character, Uhura, had not.

> [King] said to me, 'Think for a moment why Uhura was chosen above and beyond anyone else to go on this mission where no man or woman has gone before—because she was the most qualified and was chosen on that basis alone. And so it says something—you're saying something for women, you're saying something for African Americans, you're saying something for the whole race—for all of humankind.' And he said 'I am very proud of the manner in which—the dignity with which—you have created your character. You must stay.' And so I had to stay.[535]

Affirmative action in the present had resulted in a true meritocracy in the imaginary future, and, by extension, the real future. Thanks to King's encouragement, Nichols remained on the show for its four-season run and went on to reprise her role in six feature films. And a generation of viewers was taught each week that Blacks (and women) could handle complex, technical tasks—including leadership—just as well as whites (and men).

A popular movement in Philadelphia brought similar results to those of Lycoming, but prompted by a different source than earnest company morality or fear of the loss of a federal contract. In 1959, Reverend Leon Sullivan organized 400 Black Philadelphia ministers in a campaign called "selective patronage."[536] The campaign was run by a coordinating committee, meeting in secret in one of the churches in the middle of the night to select employers who didn't hire Blacks at all or who didn't promote Blacks into more desirable positions. When the committee chose a company for selective

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[535] Nichelle Nichols production interview for the feature film "Star Trek VI: The Undiscovered Country," 1991.

[536] Sullivan claimed the Selective Patronage campaign had no real leadership, so that the various ministers—charismatic personalities all—would not waste precious time arguing over it. Nevertheless his organizational stamp was seen throughout the campaign, and his name appears in all records of it.

patronage, they would list a concrete set of demands, set a deadline for the company to meet those demands, and then request a meeting with personnel managers or other appropriate company authorities. The deadlines would be set with sufficient time for the company to meet with the ministers but would not be pushed back, so that companies that stalled on meeting the ministers would not gain any additional time by doing so. At these meetings, the ministers from the coordinating committee would politely present the company officials with their demands, apprise them of their deadline, and inform them that if the demands weren't met by the deadline, the parishioners of 400 Black churches would stop patronizing their company and stop buying their product. The demands were not open to negotiation, and so the ministers kept them modest, reflective of a careful, sober analysis of each company's situation.[537]

The Tasty Baking Company "had hundreds of Negro employees" but "did not have any Negroes driving trucks or working in its office." In the summer of 1960, the coordinating committee demanded "the company hire two Negro driver-salesmen, two Negro clerical workers, and three or four Negro girls in the icing department," and gave them two weeks to comply. Tasty officials refused, stating that they didn't currently have a need for additional employees in those areas. As the deadline passed, 400 Black ministers told their congregants during their Sunday-morning sermons that Tasty was practicing discrimination and that the purchase of Tasty products was, by extension, an act of discrimination. As many as 500,000 Blacks boycotted Tasty products for two months, and the ministers only called off the boycott after the company had hired "two Negro driver-salesmen, two Negro clerical workers and some half-dozen Negro icers."

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[537] Leon Sullivan, Build, Brother, Build (Philadelphia: Macrae Smith Co., 1969), pp. 70-84.

Tasty was the second of twenty-nine companies approached by the coordinating committee between 1959 and 1963, and the first to require a boycott. Most companies approached after the Tasty boycott gave in to the ministers' demands without an argument, although many tried to negotiate.[538]

How did these companies comply with the ministers' demands? That is to say, the critic of affirmative action will ask if any white workers were laid off or demoted as a result of these boycotts. The answer to the latter question is probably yes. Tasty had protested that it didn't need any additional drivers or clerical workers before the boycott, and yet, to end it, they hired exactly as many Blacks as the ministers demanded. Doubtless the company either hired more such workers than they needed; demoted several whites but maintained their previous level of pay, at a cost to the company; or demoted or terminated several white workers outright.

But the aforementioned hypothetical critic would be wrong to cite this as evidence against the morality of affirmative action, since selective patronage and the targeted companies' responses are not affirmative action at all, but rather a *laissez-faire* response to the demands of the market (or at least a racially-based component of the market). The Black boycotters exercised their rights as customers to not patronize where fellow Blacks couldn't work (or couldn't be promoted to more desirable positions) because of the color of their skin (Tasty and the other companies never argued that they couldn't find qualified Blacks, only that Black promotions would breed racist resentment among white employees and that Black driver-salesmen would be at a disadvantage trying to sell in white neighborhoods). And the companies exercised their right to implement new hiring

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[538] Hannah Lees, "The Not-Buying Power of Philadelphia's Negroes," *The Reporter*, May 11, 1961; Sullivan, *ibid*.

and promotion policies based on the changing demands of the market. Tasty and the other companies did not engage in affirmative action as a result of selective patronage, because they did not take actions to promote equality of opportunity; they merely acceded to the ministers' demands in order to avoid the loss of a significant portion of the market.

Although initially satisfying to their proponents, the danger of activities like "Selective Patronage" is that they rely on market forces to achieve integration. Selective Patronage cut the market demand for particular products through boycotting, and the producers responded by meeting the new demands of the market. But market forces can easily be turned against minority groups for the simple fact that minority groups do not constitute a majority of the market, or population. After the Tasty boycott, it is conceivable that the whites of Philadelphia and environs could have organized a 4,000-church/synagogue boycott of their own, ten times the size of the Black ministers' boycott, to get Tasty to fire or demote the new Black driver-salesmen, clerical workers, and icers—based simply on the number of whites in the Philadelphia area at the time. Without the component of morality or government regulation, Tasty would have been forced to comply, sacrificing the Black workers as well as the Black consumers.

Self-regulation by companies like Lycoming and Tasty jibed with the opinions of conservative economist Milton Friedman, who believed that laws securing equal employment opportunity were unnecessary; he felt that the market would, over time, correct any such deficiency:

> It is a striking historical fact that the development of capitalism has been accompanied by a major reduction in the extent to which particular religious, racial, or social groups have operated under special handicaps in respect to their economic activities; have, as the saying goes, been discriminated against…there is

> an economic incentive in a free market to separate economic efficiency from other characteristics of the individual.[539]

Equal Employment legislation, Friedman wrote, "clearly involves interference with the freedom of individuals to enter into voluntary contracts with one another."[540] The problem with such over-reliance on market forces, of course, is that when a majority of the community is content with discriminatory business practices, as, for instance, in the Jim Crow South, such practices are correct—at least as far as the market is concerned. In short, market protections work best for the majority, but should not be depended upon by a minority. Such practices, in an unfettered capitalist market, could only be changed in the long run with moral suasion—a tactic that the NUL had by then been trying for fifty years, with very limited success. The relative brevity of most advances made by Blacks under Jim Crow proved that the market is but a fickle friend.

Conservatives like Friedman saw employment discrimination as a "freedom" for employers choosing to engage in it, seeing discrimination as an individual right rather than something that causes harm to a group. But even in the context of individual rights, the argument breaks down under scrutiny. Murderers and rapists might see an individual right to murder or rape as their own "freedom." More succinctly, energy explorers like to see the destruction of natural resources as their right to do as they wish with "their" land; factory owners might see a decision to refuse safety equipment to workers afraid of termination as their freedom to take full advantage of the labor market. In all of these cases it is the responsibility of government to weigh the desires for individual freedom—

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[539] Milton Friedman, Capitalism and Freedom (Chicago: University of Chicago Press, 1962), pp. 108-109.
[540] Friedman, Capitalism and Freedom, p. 111. Ray Marshall, in "The Job Problems of Negroes" (Herbert R. Northrup and Richard L. Rowan, Eds., The Negro and Employment Opportunity [Ann Arbor: University of Michigan Press, 1965], p. 18), rebuts Friedman by saying that a) the market often moves too slowly, and b) the market responds to the boycotts of racists. Such boycotts would be impossible if all employers—rather than just individual employers—were mandated to practice equal employment opportunity.

on the part of racists, murderers and rapists, energy explorers, and factory owners—against the group rights of nonwhites, victims of violent crimes, environmentalists, and factory workers—in other words, the collective good of the society. In 1964 the government decided, on behalf of that society, that it had an interest in ensuring equal employment opportunity just as it did in preventing murder and rape, avoiding the destruction of natural resources, and ensuring the safety of workers.

The problem is that the government too can be a fickle friend, changing with the whims of the majority. The historian Nancy MacLean cites studies showing a decrease of Americans expressing confidence that the federal government will "do what is right all or most of the time," from 80% in 1964 to 20% in 1994. She postulates that this cynicism is the result of "the war in Vietnam and the exposures of Watergate."[541] I would argue that it was in fact the work of mid-level federal bureaucrats like Vincent Macaluso and Bennett Stalvey, who put good government to the purpose of good changes, which ultimately undermined public confidence in the federal government. When Watts, Hough, Newark, and Detroit exploded, President Johnson resolved to fight racial violence with a long-term plan to create jobs, and set agencies like the OFCC to the task. A significant number of the nation's whites, however—as Davies tells us—instinctively saw a military crackdown as the solution to the violence, and viewed Johnson's program as an unjust reward for misbehavior.[542] Just as whites had sympathized with Blacks when Birmingham authorities attacked children with fire hoses, now they sympathized with police and store-owners in riot-torn inner-cities. As agencies like the OFCC did their

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[541] MacLean, Freedom Is Not Enough, p. 61. The studies cited are a Gallup poll cited in Dan T. Carter, The Politics of Rage: George Wallace, The Origins of the New Conservatism, and the Transformation of American Politics, (Baton Rouge: Louisiana State University Press, 2000), p.466, and James T. Patterson, Grand Expectations: The United States, 1945-1974 (NY: Oxford University Press, 1996).
[542] Davies, From Opportunity to Entitlement.

jobs, and did them well, and the White House refused to meet the threat of urban violence with massive force, the critical mass for the civil rights movement—at least in the area of employment—was lost, as was national faith in the honesty of the federal government. Politicians have been winning the White House with veiled racist appeals ever since, and the critical mass behind affirmative action has crumbled.

So what then is the best solution for ensuring equal employment opportunity? Which of these fickle friends—the market or the government—can best be trusted to make the moral choice and effect positive change? What we have seen is that the government, when the mid-level bureaucrats are inclined to produce a positive change, is a far more effective and reliable mechanism for ensuring the rights of members of minority groups. It is fortunate that at a few crucial moments in its history, the American people have produced a government willing—indeed eager—to effect positive change. For equal employment opportunity, the civil rights era was one such moment.

The real affirmative action discussion should not be about compensatory hiring, preference, or diversity. Affirmative action comprises the series of needed activities, to be undertaken as quickly as possible, to implement real equal opportunity. In higher education, affirmative action might mean elite colleges investing money in inner-city schools, or hiring non-white guidance counselors to help Black and Hispanic youngsters succeed. It might mean organizing tutoring programs to help targeted youngsters score better on tests (but not assigning additional test points to such youngsters). In employment, affirmative action might mean employers and government agencies investing in community outreach and on-the-job training programs, again targeted at

specific communities identified as requiring such action in order to implement a level playing field.

The activities of the federal government in its attempts to integrate the building construction trades were an example of coercion, mostly intended to force construction contractors to engage in affirmative action activities (manning tables notwithstanding). Sylvester's equal opportunity program of 1966 was the first example, and the Cleveland, Philadelphia, and Washington, D.C., Plans carried the concept to its ultimate development. Armed with the power to revoke and debar, the OFCC required contractors to attend pre-award meetings with the equal employment officer of the contracting agency and the area coordinator to discuss methods of affirmative action to be employed on the project. Given the availability of skilled and aspiring Blacks in most cities, it was assumed by these federal officials that if the contractor engaged in affirmative action, and the affected unions understood that fighting integration would result in lost jobs, federally-funded and federally-assisted construction sites would integrate and the unions would be forced to accept more qualified Blacks as journeymen and more aspiring Blacks as apprentices. The methods and details for implementing these programs differed from city to city, based mainly on local unemployment levels, the availability of federal contracts, and degree of union recalcitrance.

What is ironic about the mandatory plans was not *how* they succeeded in integrating the building trades, but rather *where* they succeeded: the unions. The plans were aimed at unions only obliquely; by their own language, they were directed only at the contractors. But the unions now found themselves caught in a vise. On the one hand, if they failed to integrate, contractors would be forced to look elsewhere for Black

employees, and Labor's control of the hiring process would be weakened. On the other, frustrated Black applicants for apprenticeship and journeyman membership were increasingly seeking redress in the courts under Title VII of the Civil Rights Act of 1964.

But as unions integrated, white workers increasingly found their privileges as union members eroding, and one by one the skilled trades voted to cede hiring to jobsite foremen. In the end, the RPP and subsequent regulations succeeded in integrating the skilled trades at the union hall but not satisfactorily at the jobsites.

Coupled with the failure of the RPP to fully integrate jobsites was the decline of the government-sponsored economy. Presidents Nixon and Ford presided over a major retrenchment in domestic spending, including federal and federally-assisted construction. This resulted in a decimation of construction jobs just as affirmative action programs like the RPP were beginning to work. As jobs became scarce, the whites who held them due to historical privilege became even more concerned with keeping them, and qualified Blacks who were admitted to skilled unions as a result of government or court pressure were labeled unqualified. Contractors relied on manning tables to get contracts, and when they filled their non-white quotas, this bred resentment among white workers and their advocates, who now equated affirmative action with reverse racism. The resultant backlash—combined with the leaderless follow-through of Peter Brennan's tenure as Labor Secretary—led to the ultimate failure of affirmative action to achieve its goals during the first post-civil rights generation.

During the 1970s, the impetus for enforcing equal employment opportunity passed from mid-level bureaucrats like Vincent Macaluso and Warren Phelan to the courts. But the courts, notwithstanding the universality of case law, can only rule on

individual cases. Whereas Sylvester, Stalvey, and their colleagues proactively developed comprehensive programs to address historical inequality, the courts could only award and punish individuals, unions, and companies. Further, courts don't revisit cases without an appeal. In short, while the OFCC was proactive, the courts are reactive, and this system has not served the long-term needs of the non-white population as a whole.

Writing in opposition to affirmative action in 1975, Nathan Glazer saw the imposition of state-run programs to implement equal employment opportunity as the betrayal of a national consensus in favor of the color-blind ethos. The American people throughout their history, he said, were overwhelmingly open and egalitarian. Slavery, anti-immigrant sentiment, and Jim Crow were aberrations to be eventually overcome.[543] But the civil rights movement, as we have seen, never adhered to a color-blind ethos, but rather saw the achievement of equal opportunity as impossible without being "color-conscious." And the default attitude of our society, despite moments of overwhelming horror at the excesses of racism and discrimination, too often defaults to an almost tribal distrust of the "other."

Affirmative action, then, remains necessary. The need for comprehensive programs to address inequality based on historical (and continuing) discrimination is no less necessary today that it was in 1967, largely because it has not been enthusiastically implemented by the only people capable of implementing it. That affirmative action is still necessary to achieve equal opportunity four decades after its inception is evidence not of a fault in the concept but rather of a failure in the implementation.

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[543] Nathan Glazer, Affirmative Discrimination: Ethnic Inequality and Public Policy, 2nd Ed. (Cambridge, MA: Harvard University Press, 1987).

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