Statement of Clarence Mitchell, Director of the Washington Bureau of the National Association for the Advancement of Colored People before the Senate Subcommittee on Departments of Labor and Health, Education and Welfare and Related Agencies - Monday, August 11, 1969

Mr. Chairman and members of the sub-committee, I am Clarence Mitchell, director of the Washington Bureau of the NAACP, and legislative chairman of the Leadership Conference on Civil Rights. The NAACP and the organizations which constitute the Leadership Conference on Civil Rights urge passage of S.2453, a bill to further promote equal employment opportunities for American workers. At this fateful hour in the Nation's history, we hope that Congress will not bow to expediency by whittling away the coverage that S.2453 would provide in the field of employment discrimination.

The basic purpose of S.2453 is to give enforcement powers to the Equal Employment Opportunity Commission established by Title VII of the Civil Rights Act of 1964 and to expand certain functions of that agency. Other witnesses will address themselves to various parts of the proposed legislation. I wish to comment on Section 715, which would expand the functions of EEOC to cover discrimination in employment by government contractors and sub-contractors and in federally assisted construction contracts. Also, I shall comment on Sec. 717 which would give the EEOC jurisdiction over discrimination problems in the Federal Government and in the Government of the District of Columbia.

In order that the sub-committee may have a pertinent reference on the historical background of these sections, I offer the following excerpts from the First Report of the Fair Employment Practice Committee published by the United States Government Printing Office in 1945. This Committee was established by Executive Orders 8802, issued June 25, 1941, and 9346, issued May 27, 1943. The orders issued by President Franklin D. Roosevelt were the first major attempts of the Government of the United States to make a coordinated attack on employment discrimination in government and in industry. On page seven of the Committee's report we find the following statement of its jurisdiction:

> Executive Order 9346, as limited by the congressional amendments confers jurisdiction upon the Committee to receive, investigate, and dispose to three categories of complaints alleging discriminatory employment practices:
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> 1. Complaints against all departments, agencies, and independent establishments of the Federal Government over whose employment relationships the President is authorized by the Constitution or the statutes of Congress, made pursuant thereto, to exercise directly or indirectly general supervision and control.
> 2. Complaints against all employers, and the unions of their employees, having contractual relations with the Federal Government which contain a nondiscrimination clause regardless of whether such contracts pertain to the war effort, and
> 3. Complaints against all employers, and the unions of their employees, engaged in the production of war materials or in activities necessary for the maintenance of such production or for the utilization of war materials, whether or not these employers have contractual relations with the Government.

In addition the Committee has ruled that its jurisdiction extends to all war training programs financed with Federal funds even though operated by private educational institutions.

The FEPC was established by executive order and its existence was terminated by a parliamentary device known as the Russell amendment. In order to keep the national commitment to fair employment alive, pending the establishment of a statutory agency, civil rights organizations worked successfully for the issuance of Presidential orders establishing special agencies to handle complaints of discrimination involving government contractors and agencies of the executive branch of the national government. Those of us who urged the creation of these interim federal fair employment agencies did not advocate that they would continue to exist after Congress passed a national fair employment law. It was obvious in the 1940's and it is equally clear now in the 1960's that confusion, delay and frustration result when the determination of fair employment policies of the government are scattered among a number of agencies that regard the elimination of discrimination as a minor and troublesome part of their total program.

The most flagrant example of the indifference with which the non-discrimination clause of government contracts is handled may be found in the action of Deputy Secretary of Defense David Packard dealing with the Textile Industry. On February 7, 1969, he awarded contracts totalling $9.4 million to three companies on the basis of so called verbal assurances of compliance that he said he had received from the heads of these companies. Apparently Mr. Packard at that time

either had not heard of or chose to ignore the Office of Contract Compliance in the U.S. Department of Labor which is supposed to police the non-discrimination clause in government contracts.

After the Packard action received wide publicity, there was a frantic scramble to repair the damage, but the basic problem remains. The Equal Employment Opportunity Commission does not assume any real responsibility for enforcing the non-discrimination clause in government contracts and the Office of Contract Compliance moves only as fast and as comprehensively as the Secretary of Labor thinks proper. Needless to say, the victims of discrimination must wade through a virtual sea of uncertainty when they seek redress. Even the parties who are charged with discrimination cannot be sure of what course of action they should follow because there is always the possibility of overlapping jurisdiction between EEOC and OFCC.

Unfortunately, there has been a considerable amount of selfish activity by those who want to keep the OFCC functions separate from the EEOC. The principle arguments they use are: (1) The OFCC has power to concel contracts and this permits it to obtain better compliance with non-discrimination requirements and (2) the existing EEOC agency has such a large backlog of cases that it should not be burdened with the contract compliance function. Both of these argument have only microscopic importance. Throughout the history of the non-discrimination clause in government contracts the agencies which let such contracts have ignored the clause wherever possible. They usually act only when prodded by outside pressures. The right

to cancel a contract for failure to comply with the non-discrimination clause is like the weather--everyone talks about it but no one seems to be able to do anything about it. When there is the possibility of work disruption caused by the victims of discrimination or the filing of a law suit by a private civil rights agency the government gets busy in this area, but to say that the power to cancel contracts is more important than the orderly system proposed in S.2453 is at best a grossly misleading argument and at worst a thinly disguised effort-by those in office to hold on to a function for purely selfish reasons.

Of course it should be clear to all that it would be a mockery to transfer the functions of OFC to the Equal Employment Opportunity Commission without also transferring the staff of OFC and all of its funds. It would also be shortchanging the victims of discrimination for Congress to continue to give grossly inadequate appropriations to EEOC. Congress has the power to make certain that there is adequate staff and adequate money to do the job. If that is not clear in this bill it should be made clear by the addition of appropriate language. If Congress does not grant sufficient funds in the appropriations committees then there should be action on the floor of the House and the Senate to see that enough money is provided.

In the field of government employment the record of discrimination is nothing short of fantastic. One of the most easily checked examples of foot dragging, double dealing and evasion by using technical ties is the Bureau of Printing and Engraving. For

many years that agency refused to permit Negroes to be trained as plate printers. Finally, Secretary of Treasury Humphrey, made a decision during the Eisenhower Administration that the discrimination could not be continued. However, it was not until seven years later under the Johnson Administration that this decision was implemented. Meanwhile, of course, a number of the parties who were entitled to redress were no longer available although some have benefited.

The type of delay and frustration evidenced by the Bureau of Printing and Engraving case is caused by the system now in effect. Under this system each agency investigates itself with the result that if by some miracle there is a finding of discrimination, its implementation is delayed by various obstructionists. Needless to say, such findings of discrimination are few and far between. In fairness, it must be said that some members of the Civil Service Commission itself and a few of the top officers of the Commission have made valiant attempts to establish workable fair employment policies. Unfortunately, the lower levels of bureaucracy in the Commission itself and in the government agencies usually nullify these policies by using cumbersome procedures that are weighted in favor of those who discriminate and by tolerating supervisory personnel with known recordsof discrimination. Paradoxically, some of the most extensive discrimination takes place in the largest establishments where volume of employment is high but promotions are low. There is special irony in the fact that even the Office of Economic Opportunity, which is supposed to be trying to

correct problems that affect the deprived of our country, has followed employment policies that have kept the top levels of the agency as white as a college fraternity with a color clause barring Negroes from initiation.

It is safe to predict that we will never really correct the entrenched discrimination that exists in the federal service until there are uniform, fair and strongly enforced policies of non-discrimination that apply to government as well as to private industry. The present law and the statute proposed in S.2453 do not permit industry and labor organizations to be the judges of their own conduct in the area of employment discrimination. There is no reason why government agencies should not be bound by the same rule. Indeed, the government itself should set the example by being willing to have its action reviewed by an impartial tribunal in a forum where all parties have equal rights to a fair hearing and meaningful redress.

In closing, I wish to state that I am aware of the fact that the Administration, speaking through the chairman of the EEOC, is seeking to obtain passage of a severely restricted bill instead of S.2453. Unfortunately, this is another example of why a great many of the Negroes of the United States are suspicious of the motives of those in and out of the White House who advise the President. All too often, the end product bears the taint of compromise. I am personally aware of the high character, great ability and skill of Chairman William Brown of EEOC and those who have worked with him to evolve what

we now see as the Administration's program. However, not even their great persuasive powers can cover the stark fact that the Administration is offering a bill which has only about one tenth of the constructive features that are in S.2453. If we are to prevent "do it yourself" types of settlements that cost time, money, personal injury, property loss and sometimes even the loss of life, we must have the means of giving speedy effective and fair redress in the employment field. Even with the best of programs we cannot always be certain that we can make reason prevail over unleashed anger. However, we are in a better position to reach the angry and frustrated when we can appeal to reasonable men and women by showing that there is an orderly way to right wrongs and to end injustice. S.2453 is the kind of program that reasonable men and women of goodwill can rely upon. I hope and urge that it be approved by the sub-committee, the full committee, the Congress and the President.