Public Policy and Discrimination in Apprenticeship

George Strauss

Sidney Ingerman

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NEGRO action groups have given high priority to the elimination of
discrimination in apprenticeship.¹ Sharp declines in the number of un-
skilled jobs which Negroes have traditionally filled, the high percent-
age of Negro youth unable to find work, and the often publicized
forecast of shortages of skilled tradesmen provide an important part of
the motivation for making the responsible well-paying jobs of the
apprenticeable trades available to Negro youth. A. Philip Randolph,
international president of the Brotherhood of Sleeping Car Porters has
declared: "It is an understatement to observe that the elimination of
racial discrimination from all apprenticeship training programs in-
volves the economic life and death of the black laboring masses."²

There is little question that Negroes are badly represented in ap-
prenticeship. According to the 1960 census, only 3.3 per cent of all
apprentices are Negro, while in the two largest and often considered
the most progressive states in the Union, California and New York, the
percentage falls to 1.9 and 2.0 respectively.³ Even where government

¹ The research reported here is part of a larger study of apprenticeship which has
been supported by a Ford Foundation grant to the Institute of Industrial Relations,
University of California, Berkeley, for Research on Unemployment and the American
Economy. Research methodology includes interviewing, observation, and examination
of relevant documents. Uncited quotations are from the authors' confidential interviews.
For an early report of this research see Strauss, Apprenticeship: An Evaluation of the
Need in Employment Policy and the Labor Market 299-332 (Ross ed. 1965). This
report is based also on previous research in upstate New York; see STRAuss,
Unions in the Building Trades (1958). The authors wish to thank Barry Silverman for re-
search assistance.

² Hearings on H. R. 8219 Before the Special Subcommittee on Labor of the House
cited as House Hearings].

³ California Division of Apprenticeship Standards, Survey of Active Apprentices
5 (1962); NEW YORK STATE COMMISSION AGAINST DISCRIMINATION, APPRENTICES,
SKILLED CRAFTSMEN, AND THE NEGRO 15 (1960) [hereinafter cited as APPRENTICES,
SKILLED CRAFTSMEN, AND THE NEGRO]. The California study was based on a sample
which is probably not representative.
agencies have a maximum amount of leverage available to implement equal employment policies, evidence of discrimination in the training of Negro apprentices persists. A spot survey of 47 federal construction projects indicated that of 303 apprentices, only 16 were Negro.⁴

At first glance, such imbalance may seem incongruous. George Meany, the Executive Council of the AFL-CIO, and the AFL-CIO Building Trades Department have all taken positions against continued discrimination in apprentice training programs. Discrimination in apprenticeship, as in all forms of employment, is now contrary to public policy and would seem to be particularly susceptible to governmental remedy, since government agencies are especially charged with promoting and regulating apprenticeship, and since “related training” classes necessary for the programs are typically conducted in public school systems. Furthermore, there is no a priori reason why Negroes should not make good apprentices. Over one hundred years ago substantial numbers of Negro slaves and freemen were trained as skilled tradesmen in the ante-bellum South.

Why, then, are there so few Negro apprentices? What explains the relatively limited success of governmental anti-discrimination efforts to date? Can we prescribe more effective regulatory mechanisms? These are the questions which this paper will attempt to answer.

Our emphasis will be primarily in the building trades, since this is the field where the largest amount of current apprentice training occurs (as of January 1, 1963, out of 158,616 registered apprentices in the United States, 103,046 were in construction).⁵ Our discussion of governmental regulatory activities will be focused on the efforts of the federal government and of our two largest states, California and New York.

We will first discuss the present pattern of racial imbalance in apprenticeship. We then seek to explain why there are so few Negro apprentices. Next we examine why Negro action groups place so high a priority on opening apprenticeships to Negroes, and why the building trade unions (the ones primarily involved) resist outside intervention so strongly. Finally, we seek to appraise the effectiveness of governmental efforts, and suggest the major problems of legal engineering involved in developing a meaningful public policy in this area.

DISCRIMINATION IN APPRENTICESHIP

Patterns of Imbalance

The South

The South has traditionally been the training ground for Negro craftsmen, and the bulk of Negro journeymen in the building trades are still employed in that region. It is therefore appropriate to begin by stressing that events in the South have had and continue to have an important bearing on the skilled craft employment pattern of Negroes throughout the nation.

Paradoxically, in view of the difficulties Negroes now face in entering the skilled trades, Negro slaves and freemen provided a significant source of trained artisans in the ante-bellum South. “Although occupational census data were not tabulated by race until 1890, it is generally believed that in the ante-bellum South, the bulk of the building work was performed by Negroes.” Negroes were frequently trained as apprentices.

The city of Charleston, South Carolina, with about half its population Negro in 1848, used, employed, and trained Negro craftsmen in what we would now consider “racially balanced” proportions. Table 1 shows that more than half of the city’s carpenters, masons and bricklayers, painters and plasterers, ship carpenters and joiners, and blacksmiths and horseshoers were Negroes, as were 57 of 112 apprentices.

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6 Individual histories suggest that a high percentage of Negro building tradesmen in New York City have obtained their training in the South. A study dealing with Detroit explains, “Generally speaking, the majority of Negro building artisans have been trained in the lower Southern border States. In an interview in 1941, Mr. Joseph Meyer, Secretary of Detroit Local No. 2 of the Brick Masons and Plasterers’ International Union, stated that ‘practically all’ of the Negro members in his local organization had been trained in the South. He said that the practice in Detroit was to admit ‘the cream of the crop’ of the highly skilled bricklayers migrating from the southern areas. This was said to work out ‘better’ for the union and the trade than training Negro apprentices locally. Mr. Meyer also said that southern-trained mechanics in the trowel trades tended to be superior to those who enter the trade in the North because the southern recruit had a somewhat better chance to gain valuable experience through steady employment at his trade.” Meyers, The Building Workers, A Study of Industrial Sub-Culture 118-119 (1945) (unpublished Ph.D thesis in University of Michigan Library).

7 In 1960, 75% of all Negro carpenters, 72% of Negro brickmasons, tile layers and stone cutters, 68% of Negro plasterers and cement finishers, and 56% of Negro painters were employed in what the census defines as the South. U. S. CENSUS OF POPULATION 1960, U. S. SUMMARY, DETAILED CHARACTERISTICS, 1-544, 1-717.

8 MYRDAL, STERNER & ROSE, AN AMERICAN DILEMMA 1100-01 (1944).

9 For a good discussion of ante-bellum Negro apprenticeship see APPRENTICES, SKILLED CRAFTSMEN AND THE NEGRO ch. 2. See also Kelsey, The Evolution of Negro Labor, 21 ANNALS 55 (1903).

10 With a Negro population of about 20,000 the city of Charlotte, South Carolina, had 57 Negro apprentices in training in 1848. The 1960 Census of Population reports...
TABLE 1
SELECTED CRAFTSMEN AND APPRENTICES IN CHARLESTON, SOUTH CAROLINA, 1848

<table>
<thead>
<tr>
<th>Occupations</th>
<th>Male Slaves</th>
<th>Free Negroes</th>
<th>White Males</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apprentices</td>
<td>43</td>
<td>14</td>
<td>55</td>
</tr>
<tr>
<td>Carpenters</td>
<td>120</td>
<td>27</td>
<td>119</td>
</tr>
<tr>
<td>Masons &amp; Bricklayers</td>
<td>68</td>
<td>10</td>
<td>60</td>
</tr>
<tr>
<td>Painters &amp; Plasterers</td>
<td>16</td>
<td>4</td>
<td>18</td>
</tr>
<tr>
<td>Tinners</td>
<td>3</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Ship’s Carpenters &amp; Joiners</td>
<td>51</td>
<td>6</td>
<td>52</td>
</tr>
<tr>
<td>Printers</td>
<td>5</td>
<td>0</td>
<td>65</td>
</tr>
<tr>
<td>Coachmakers &amp; Wheelwrights</td>
<td>3</td>
<td>1</td>
<td>26</td>
</tr>
<tr>
<td>Cabinetmakers</td>
<td>8</td>
<td>0</td>
<td>26</td>
</tr>
<tr>
<td>Upholsterers</td>
<td>1</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>Blacksmiths &amp; Horseshoers</td>
<td>40</td>
<td>4</td>
<td>51</td>
</tr>
<tr>
<td>Millwrights</td>
<td>0</td>
<td>5</td>
<td>4</td>
</tr>
</tbody>
</table>


Following reconstruction, southern Negro craftsmen were excluded from some positions they had previously held and were prevented from developing skills in the newly emerging electrical, pipe, and metal trades, or from obtaining training in the newer aspects of traditional trades. Although census data on apprenticeship is notoriously unreliable because of the difficulty in defining an apprentice, Table 2 illustrates both the relative and absolute downward trend of apprenticeship openings for Negroes in the South.

At present, we find Negro apprentices are relatively scarcer than Negro journeymen in the South. For example, as of the spring of 1963, there were no Negro apprentices in Dade County (Miami), while there are at most 30 in the whole State of Tennessee. Of these, 4 were on AEC sponsored projects and the rest were being trained in carpenter, roofers and trowel trades locals.

One reason for the small number of Negro apprentices is the existence of segregated schools. There were no related training classes for Negroes in Dade County and only one (a roofing class) in Memphis. Another reason is that Negro journeymen, already faced with restricted

829,991 Negroes in the State of South Carolina and a total of 61 Negro apprentices in training.

11 In Maryland it is reported that the Negroes controlled the skilled trades in 1860. By 1890 they had been largely reduced to the status of hod carrier.” Meyers, op. cit. supra note 6, at 107.

12 COMM’N ON CIVIL RIGHTS, REPORTS ON APPRENTICESHIP 57, 127, 128 (1964) [hereinafter cited as REPORTS ON APPRENTICESHIP].
work opportunities throughout the South.\textsuperscript{13} are rarely willing to train Negro apprentices. Practically all Negro apprenticeship in the South is restricted to carpentry and the trowel trades, and is so-called “family apprenticeship,” conducted on an extremely informal basis and in many ways inferior to the more formalized union-sponsored training which normally includes related instruction in the schools.\textsuperscript{14}

**Outside the Deep South**

It has been easier for Negro journeymen to gain building trade training and union membership in some Southern States than in most Northern Cities.\textsuperscript{15} Outside the deep South, Negroes have never been able to penetrate apprentice training programs in any significant numbers. This situation has as yet not changed markedly. In early 1963, of 2,400 apprentices in Maryland, only 20 at most were Negro, and of these, 9 were carpenter apprentices in a Jim Crow local.\textsuperscript{16} In Montgomery County, Maryland, outside of Washington, there was not a single Negro among 122 apprentices in related training. Even token integration on government construction was not obtained in Baltimore

\textsuperscript{13} Northrup, Organized Labor and the Negro 20 (1944).
\textsuperscript{14} Wheeler, The Impact of Race Relations on Industrial Relations in the South, 15 Lab. L.J. 474 (1964).
\textsuperscript{16} Reports on Apprenticeship 67-68.

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### TABLE 2

**Total Apprentices, Negro Apprentices, and Percentage of Negro Apprentices in Four Selected Southern States for the Years 1890, 1920, 1950, and 1960**

<table>
<thead>
<tr>
<th></th>
<th>1890</th>
<th>1920</th>
<th>1950</th>
<th>1960</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Alabama</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>331</td>
<td>817</td>
<td>1,090</td>
<td>913</td>
</tr>
<tr>
<td>Negro</td>
<td>73</td>
<td>118</td>
<td>115</td>
<td>48</td>
</tr>
<tr>
<td>Percent Negro</td>
<td>22.1</td>
<td>14.4</td>
<td>10.6</td>
<td>5.3</td>
</tr>
<tr>
<td><strong>Florida</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>237</td>
<td>420</td>
<td>1,851</td>
<td>2,386</td>
</tr>
<tr>
<td>Negro</td>
<td>67</td>
<td>43</td>
<td>54</td>
<td>103</td>
</tr>
<tr>
<td>Percent Negro</td>
<td>28.3</td>
<td>10.2</td>
<td>2.9</td>
<td>4.3</td>
</tr>
<tr>
<td><strong>Georgia</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>779</td>
<td>952</td>
<td>1,087</td>
<td>1,248</td>
</tr>
<tr>
<td>Negro</td>
<td>247</td>
<td>130</td>
<td>113</td>
<td>75</td>
</tr>
<tr>
<td>Percent Negro</td>
<td>31.7</td>
<td>13.7</td>
<td>10.4</td>
<td>6.0</td>
</tr>
<tr>
<td><strong>Virginia</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>964</td>
<td>1,397</td>
<td>2,118</td>
<td>1,705</td>
</tr>
<tr>
<td>Negro</td>
<td>186</td>
<td>107</td>
<td>94</td>
<td>76</td>
</tr>
<tr>
<td>Percent Negro</td>
<td>19.3</td>
<td>7.7</td>
<td>4.4</td>
<td>4.4</td>
</tr>
</tbody>
</table>

Source: U. S. Census of Population.
until Negro demonstrations took place in the summer of 1963. The situation in Washington D.C. was little different and has only recently improved somewhat as a result of strenuous pressure by the federal government.

As we have seen, reports indicate that in California only 1.9 per cent of the apprentices were Negro, in New York 2 per cent. In Connecticut and New Jersey there were less than 0.5 per cent. (The starkness of the racial imbalance in New Jersey can be appreciated when we note that at the same time, 30 per cent of vocational school enrollment was non-white.) A recent report indicates that there are no Negro apprentices in the building or printing trades of Milwaukee. Herbert Hill, labor secretary of the National Association for the Advancement of Colored People, testified in 1961 that roughly similar conditions existed in St. Louis, Minneapolis, and Newark, New Jersey, while in Philadelphia less than four per cent of the apprenticeable trades were open to qualified Negroes.

Since 1960 breakthroughs have been made in Jim Crow apprentice programs in many major cities, but even in these cities many apprenticeships are still effectively closed to Negroes. For example, let us look at New York City: Plumbers Local 2 (Manhattan and the Bronx), George Meany's home local, was lily-white until forced by picketing and political pressure to admit a token number of Negro apprentices in the summer of 1964. Ironworkers Local 40 (Manhattan) admitted its first and, up to September 1964, only Negro apprentice in 1963; it had no Negro journeymen, while its Brooklyn sister Local 361, had no Negroes in either category. Sheet Metal Workers Local 28 remained adamant until the summer of 1964, refusing to admit any Negro apprentices or journeymen, even in the face of a formal order by the State Human Relations Commission. In 1961 Electricians Local 3 had but eight Negroes in construction work, but in 1962 it lived up to its reputation for being different: after winning its twenty-five hour week, unprecedented in the construction industry, Local 3 recruited 1,000 new apprentices, 140 of whom were Negro and 60 Puerto Rican. "This

17 Id. at 78.
19 REPORTS ON APPRENTICESHIP 92.
20 Id. at 91.
21 Id. at 145.
22 House Hearings 91.
dramatic result and Local 3’s broad recruiting effort is, so far as we know, without parallel in any building trades union in the country.”

Somewhat equivalent patterns of imbalance exist outside the building trades. Two studies of General Motors, for example, reported there was but 1 nonwhite among 289 apprentices in the Detroit area in 1960 and but 2 nonwhites out of 171 apprentices in the Central Atlantic area in 1963. A 1958 report indicates that the 19 railroads operating in New York and New Jersey employed a total of 594 apprentices, and only 4 were Negro.

**Overall Picture**

The South has historically been the primary training area for Negro building craftsmen. The long-term decline in training opportunities in the South, coupled with the fact that young Negro workers are not being trained in significant numbers in any part of the country, tends to have a deleterious effect on overall Negro participation rates in skilled-craft employment. Negro apprentices and craftsmen have for the most part been excluded from the expanding electrical, pipe, and metal trades, and have found work mainly in the trowel trades, carpentry, and painting, where employment has been either growing slowly or contracting during the past decade.

Pressure from the civil rights movement, governmental agencies, and the AFL-CIO national leadership has resulted in a few major steps toward equal employment opportunities in apprentice training, but for the most part, only a token number of Negroes have been able to penetrate traditionally Jim Crow apprentice training programs.

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26 Reports on Apprenticeship 117. Another study suggests the possibility that these new apprentices “are not apprentices in the ordinary sense of the word but in fact are a special force to do heavy work and are not expected to advance through the apprenticeship program to full membership, become ‘A’ card holders, and receive full pay and benefits.” Shaughnessy, A Survey of Discrimination in the Building Trades Industry 35 (1963) (unpublished ms. in Columbia University Library).

27 Bloch, The Employment Status of the New York Negro, 1920-60, at 10 (1964) (typescript). These studies report 67 nonwhites out of 11,125 skilled tradesmen in the Detroit area and 230 nonwhites out of 11,314 skilled tradesmen in the Central Atlantic area. See also Stieber, Governing the UAW 125 (1962).

28 Cited in Apprentices, Skilled Craftsmen, and the Negro, passim.

29 Of 7 major building trades in only 4 were there more than 4% Negro in 1960. In 3 of these, the carpenters, plasterers, and painters, employment declined from 1950 to 1960. Only in the bricklayers did employment rise. On the other hand, the 3 “mechanical trades,” the electricians, plumbers, and sheetmetal workers, all had rising employment and a Negro representation of less than 4%. See U. S. Census of Occupations, 1950 & 1960.
Why Negroes Don't Become Apprentices

We have already indicated the pervasive national pattern of Negro exclusion from the skilled trades and especially from apprentice training opportunities. There is little doubt that this pattern is to a considerable extent the result of outright racial discrimination.\textsuperscript{30} Little more will be said about it here. However, in a subsequent section we will examine the specific motivations and mechanisms that make this problem a particularly difficult one in the building trades.

Other factors are also at work. These include environmental and educational influences primarily affecting Negroes and barriers that obstruct Negroes in the same manner as all potential craftsmen who do not have relatives, friends or "connections" in the trades. At least five barriers to Negro participation may be noted: (1) qualified Negroes rarely perceive the skilled trades as a potential occupation; (2) Negroes have little information as to how to apply for apprenticeship openings; (3) Negroes often cannot meet the formal qualifications required for entry into apprenticeship; (4) even where they meet the formal qualifications, they do not have the proper "connections" or "sponsors"; (5) even after winning formal acceptance into the program, they find it difficult to win social acceptance on the job.

Not Perceived as a Potential Occupation

Youths usually become interested in apprenticeship and skilled-craft employment because a parent, relative, friend, or neighbor provides the necessary encouragement and aid that makes such a choice seem desirable and feasible. Adults frequently provide "role models" which influence youths to enter an occupation; a high percentage of white apprentices report that they entered apprenticeship upon the advice of friends or relatives already in the trade.\textsuperscript{31} The chances of Negroes receiving this kind of encouragement are slight.

To be sure, Negroes working as laborers and helpers in and around the building trades are well aware of the desirability of skilled-craft jobs. However, because of their first hand experience with discrimination in these trades, this knowledge is seldom converted into positive

\textsuperscript{30} House Hearings \textit{passim}; \textit{Apprentices, Skilled Craftsmen, and the Negro} 91-96.

efforts to encourage youngsters to prepare for apprentice programs. Vocational-guidance counsellors often tend to steer Negro and other nonwhite youths away from training for occupations known or believed to be racially restricted. Negro adults also discourage these tendencies because of their own employment experiences and pessimistic view of the present occupational environment. Thus, because an early interest in apprenticeship is not normally a part of a Negro youth's background, relatively few consider applying for apprentice positions.

Negro students with better than average grades and high motivation are more likely to prepare for the professions and white collar work than are their white counterparts. "Over the years, Negroes have not been able to rationally plan their life work and usually have badly skewed occupational goals. 'As a result of his background, the ambitious young Negro is even more likely than the white youth to scorn skilled work and to overestimate the importance of achieving status through white-collar or professional employment.’" A report on high school graduates in Milwaukee concludes that "Negro students with better grades overwhelmingly chose academic courses, while Negroes who chose vocational training had grade averages so low as to indicate no potential for the apprenticeable trades. The brighter youths understandably seek training in employment they know to be open without regard to race.”

Lack of Information

Negroes are often at a disadvantage because they do not know how to apply for apprenticeship. White applicants normally learn about

32 Babow & Howden, A CIVIL RIGHTS INVENTORY OF SAN FRANCISCO (Part I, Employment) 89 (1958).
33 "The Negro child, moreover, is also likely to respond to the attitudes of the dominant white population toward the work role of his race. Seeing his elders holding down poor jobs and sensing that the white community takes this for granted, the Negro child is not likely to develop high aspirations for himself." Ginzberg, THE NEGRO POTENTIAL 99 (1956). It is also suggested that since Negro youths rarely have families able to support them during the early periods of apprenticeship, when wages may be half that of journeymen (and often are themselves primary sources of support for their families), Negroes just cannot afford to enter apprenticeship. Cf. APPRENTICES, SKILLED CRAFTSMEN AND THE NEGRO 72-74. However, apprentice starting wages of $2.00-$2.25 (and sometimes much more) per hour are somewhat higher than the wages on jobs the average Negro youth can get. Consequently, this is probably not an important factor.
34 Id. at 72 citing Ginzberg, THE NEGRO POTENTIAL 108 (1956); see also Antrobusky & Lerner, Negro and White Youth in Elimina, in DISCRIMINATION AND LOW INCOMES 134 passim (New York State Commission Against Discrimination ed. 1959).
35 REPORTS ON APPRENTICESHIP 147.
vacancies from relatives or friends working in the trade. "Since Negroes have been excluded from many unions and trades over a period of time, there is no one on whom the young Negro may rely for information about apprentice openings . . . ." 

Union after union reports that few if any Negroes apply for apprenticeship. For example, the business agents of the Washington, D.C. locals of the Plumbers and Ironworkers both ascribed the lily-white conditions of their locals at least in part to the fact that they had never received a Negro application. The business agent of the Ironworkers in New York testified that only two Negroes had ever applied for membership in his local. Until the summer of 1963, Sheet Metal Workers Local 28 had never received a Negro applicant. The New York State Commission Against Discrimination asked 170 representatives of firms or joint committees indenturing apprentices why they did not have any or many Negro apprentices. Of the 142 who answered, 58 explained in terms of "no Negro applicants; few or none apply." And many other examples might be cited.

Roughly the same story was told us during our interviews. One business agent, for example, made the following comment:

I know you have a question you haven't asked yet. We don't have any Negroes in our local. During my time as business agent I have never had one apply. Well, there was a fellow who called over the phone; his voice sounded like a Negro's. I told him the truth—that we weren't accepting any applications and I told him to call again next month and maybe we would have different news for him. That's all.

Certainly, unions make little effort to publicize their openings. It is assumed that those who are "around" the trade will know the proper procedure and there is apparently little concern about anyone else. Outsiders are often given the cold shoulder.

The Wisconsin Advisory Committee to the United States Commission on Civil Rights describes this problem vividly.

It was difficult even for our Advisory Committee in a day-long session with experts in the apprenticeship field to get a clear picture of how one actually does apply for an apprenticeship. One fact emerged, however: a youngster trying to break into the field without expert assistance would find it discouragingly difficult to get the necessary information.

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36 Id. at 146.
37 House Hearings 140, 148.
40 Apprentices, Skilled Craftsmen and the Negro 64.
The Wisconsin Industrial Commission publishes a guide for school counselors on apprenticeship, which lists seven sources of further information on opportunities. Among these are three government agencies, the Industrial Commission itself, the State Employment Service, and the Federal Bureau of Apprenticeship and Training. . . . [But] none of these agencies engage in . . . hiring. [Nor do the schools.] . . . The local trade union is also suggested, but the union officials told us that employers do the hiring. Employers are suggested, but if there is a trade association, it is suggested that it be contacted. If there is a joint apprenticeship committee, it is suggested as a source of information. From the testimony we did get the idea that if the applicant succeeds in locating the joint apprenticeship committee (the committees are not listed in the telephone directory) he would at least have found the place where the actual selection is made. The final suggestion . . . is "Friends and/or relatives already engaged in the trade." This seemed to the Committee to be the contact most likely to produce results. But since this means is open only to those having friends or relatives in the skilled trades, it is obvious that the practical result is to exclude most nonwhites.

There exist no means by which the Negro youth or the general public may receive notice of specific apprenticeship openings.41

Lack of Qualifications

To be eligible for the better apprentice programs an applicant must now have a high school diploma and pass a formal screening examination that typically stresses knowledge of elementary mathematics. High school dropouts,42 students educated in second-rate segregated Southern schools, and de facto segregated schools outside of the South often cannot meet these educational requirements.43 We checked examination records and verified the claim by one union that none of the few Negroes who had applied for its apprentice program had received a passing score on the school-administered admissions examination, even though a number of these applicants had satisfactory grades in Southern high schools.

Indeed, civil rights organizations sometimes find it difficult to
recruit qualified applicants when apprenticeship vacancies are made available to Negroes.

When one of the [New York] locals in the pipe trades did agree to accept a Negro apprentice at the request of the Civil Rights Bureau, it proved difficult to locate a qualified, interested Negro youth. In the summer of 1960, when Local 2 indicated to the Civil Rights Bureau [of the State Department of Law] that it would make two places available to Negro boys, it was only after great difficulty that the Bureau obtained the names of two interested and qualified youths, and one of these resigned from the program before he was inducted.44

A report from Las Vegas, Nevada tells of a Negro official of the Bureau of Apprenticeship and Training interviewing 50 Negro applicants in that city and determining that only 7 met the minimum educational requirements for apprenticeship. One factor that ruled out Las Vegas Negro applicants educated in the South was that they had no training in mathematics.

**Lack of "Connections"**

Apprentices are selected in the building trades normally by a joint union-management Joint Apprenticeship Committee (JAC), though sometimes by the union acting alone. JAC's are usually dominated by their union members; in any case, the question of whom to admit to apprenticeship is rarely one about which union and employer members split. In many cases there is implicit or explicit agreement that preference should be shown to friends and relatives. Thus, "discrimination for" is as important a problem as "discrimination against."

Not having a relative, friend, or "connection" already implanted in an apprenticeable craft is most likely the most serious barrier to any potential applicant for apprentice training—whether he be Negro or white (though the extent of preference will differ from one community or trade to another and is probably stronger in construction than outside it). "It has been historic over the years," C. J. Haggerty, president of the AFL-CIO Building and Construction Trades Department, told a Congressional Committee, "that you become an apprentice

44 Shaughnessy, *op. cit. supra*, note 26, at 23. Members of this same local walked off a New York City construction site recently when three nonunion Negro plumbers and a nonunion Puerto Rican plumber were hired onto the job as a result of efforts by the New York City Commission on Human Rights. After great pressure was exerted by the Mayor, the NAACP, and George Meany, President of the AFL-CIO, Local 2 agreed to accept these men into membership if they passed the standard journeyman's test. Three of the four men took the test. All failed the written examination that is a prerequisite to taking the examination on practical applications. *N.Y. Times*, May 1, 1964, p. 1; May 20, 1964, p. 33.
boy in a given trade... by being a brother or a son or a cousin of a member, or of the employer or management...." Haggerty estimated that at least fifty per cent of apprentices fell into this class.46

In a number of cases apprentices to a given training program must be "sponsored," thus guarantying that "outsiders" are excluded. As a result, some building trades locals are dominated by one nationality. Sometimes being non-Italian or non-Irish is almost as sufficient cause for exclusion as being Negro. Of course, the general pattern of exclusion of Negroes, especially from the more desirable trades, makes the possibility of sponsorship for a Negro apprentice quite poor.47

Members of some minorities (such as the Irish and the Italian) have been provided jobs by members of their own group who have become entrepreneurs. However, there are relatively few Negro business concerns and even fewer Negro contractors who can provide apprenticeship openings.48

Apprenticeship openings are scarce compared to the number of workers desiring them.49 Most apprenticeship programs have long waiting lists, and in some areas applicants must wait more than a year from the time they have been approved for a program until they actually begin training. The reason for this is simple: apprentice training can lead to relatively high economic rewards for the worker with only a high school education. A 1961 survey of California journeymen who had completed apprentice training in 1955 showed that 52.4 per cent earned more than $8,000 per year; another 19.6 per cent earned between $7,000-$8,000 per year, and 84.5 per cent of these men reported buying or already owning their own homes.50 If we couple

45 House Hearings 138.
46 Id. at 133.
47 An exception that proves the "rule" is Local 134 of the I.B.E.W. in Chicago which "opened its ranks to Negroes 35 years ago to protect itself from nonunion labor. About 200 of its 8,000 journeymen electricians are Negroes and it has 20 Negro apprentices. 'They are the sons of journeymen,' Mr. Murray [the local's president] points out. "That's how they got there." N.Y. Times, Aug. 26, 1963, p. 16.
49 There are presently fewer than 160,000 apprentices in training in programs registered with state apprenticeship agencies or the Federal Bureau of Apprenticeship and Training, and there were an estimated 225,000-250,000 apprentices in all programs during 1962. In that year there were only 55,321 new registrants in all registered programs, and of these 36,994 were in the construction trades. § 3 Subcomm. on Employment and Manpower, Senate Comm. on Labor and Public Welfare, Selected Readings in Employment and Manpower, 88th Cong., 2d Sess. 1216, 1233 (1964).
the scarcity of these apprentice openings and the economic prize they represent with the fact that unemployment has become a principal problem facing high school graduates entering the labor force, we can readily understand why union members and contractors often give preference to sons, relatives, and friends when apprentice trainees are chosen.

**Discrimination on the Job**

Finally, even when a Negro is able to overcome all the hurdles thus far described, his troubles are hardly over. How fast an apprentice learns on the job depends to a large extent on the social relations he is able to develop. If other men ignore him, he learns little.\(^1\) Thus, discrimination on the part of his co-workers may seriously hamper the Negro apprentice's training progress.

To sum up: all of the above barriers to Negro admission into apprentice training are directly or indirectly related to discrimination. The fact that there are few Negro sons of members is caused by the fact that there are few Negro members. Lack of knowledge of how to apply, lack of experience, lack of education—all are due largely to discrimination.

In view of the formidable complex of barriers to Negro entrance into apprentice training, and thereby the skilled trades, and considering the relatively small number of potential openings in existing apprenticeship programs even if racial discrimination were nonexistent, it is now relevant to consider why abolition of discrimination in apprenticeship has been given such high priority by civil rights action groups throughout the country.

**Civil Rights Pressures**

Racial discrimination in apprentice training became an issue for the civil rights movement during the late 1950's.\(^2\) At that time the

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\(^1\) "It is so easy to deep-freeze an apprentice out, in view of the relationship that exists between him and his journeymen mentors, and the master-pupil situation, which should give encouragement to the apprentice and help him over his troubles . . . . There is a hostility which the Negro apprentice encounters, which is an added handicap when he is finally admitted to achieving journeyman status." Testimony of Francis A. Gregory, Assistant Superintendent of Education, Public Schools System, Washington, D. C., in House Hearings 119.

\(^2\) As late as April 1960 the New York State Commission Against Discrimination was able to report that in regard to apprenticeship there was "an apparent sense of apathy on the part of the minority community. With one exception, no Negro group in New York State has raised the apprenticeship issue with the Commission Against Discrimination. Indeed, it appears that the efforts of these groups are aimed primarily
National Association for the Advancement of Colored People tried to convince governmental agencies and union officials of the importance of eliminating Jim Crow apprentice training programs. Other activities by civil rights leaders during this period included efforts to influence federal and state legislation in the area of apprentice training, and attempts by the Urban League to make placements of Negroes into apprentice programs. All of these efforts produced, at best, only a few token openings for Negro apprentices in trades that had previously barred them.

By the spring and summer of 1963, deep-seated resentment against racial bias in the construction industry that had been smoldering in many Negro communities merged with employment demands of diverse civil rights groups to produce mass demonstrations at building sites throughout the country. The first major demonstration appears to have occurred in Philadelphia, in May of 1963, when pickets closed down an 18 million dollar project because of the longstanding Jim Crow policies of the electricians, plumbers, and steamfitters in that city. Sit-ins, lie-ins, and picket lines soon became the order of the day at construction sites in Harlem, Brooklyn, Elizabeth, Patterson, Newark, Cleveland, Detroit, Chicago, and Washington, D.C. In each of these actions the fundamental demand was for jobs for Negroes in the skilled crafts; and since, in theory at least, apprenticeship is the port of entry into these trades, the virtual exclusion of Negroes from apprenticeship in some trades soon became a central issue in these struggles.

Why have civil rights groups been especially concerned with racial barriers to skilled-craft opportunities? Negroes have been militant all through the 1960's, and the tragically high unemployment rate for Negro youth has made the need for jobs desperate. Yet given the

at eliminating discriminatory employment policies and practices in white-collar occupations." Apprentices, Skilled Craftsmen, and the Negro 102.


64 Testimony of Herbert Hill, labor secretary of the National Association for the Advancement of Colored People, House Hearings 88; Testimony of A. Philip Randolph, president of the Negro American Labor Council, House Hearings 121; Testimony of Richard C. Wells, director of job development, Washington Urban League, House Hearings 159.


pervasive patterns of job discrimination that have existed in all desirable areas of employment, why did the construction industry receive such particularly heavy emphasis from Negro protestors?\(^\text{57}\)

1. The traditional sources of Negro employment in manual occupations seem to be drying up—particularly the relatively well paying jobs in the mass production industries and on the railroads. White-collar occupations are largely closed to Negroes because, among other reasons, of their poor education. On the other hand, educational attainments have been less frequently required for the skilled trades.\(^\text{58}\)

2. Thousands of Negroes work as construction laborers; to move into the skilled trades seems like a promotion one step into a world they already know, not a jump into a world which is completely foreign. Many of these men have picked up a smattering of construction skills working as helpers, handymen, or on non-union jobs, and they feel capable of mastering a trade. In addition, significant numbers of northern Negro youth study subjects such as plumbing or electricity in vocational schools and have expectations of entering the skilled trades, expectations which are frequently frustrated.\(^\text{59}\)

3. With a great deal of construction taking place in central sections of cities, in or near Negro communities, the high visibility of all-white crews of skilled tradesmen provides an open irritant to the Negro community. The antagonism is accentuated when these crews work on urban renewal projects which displace present Negro slums for middle and upper income white housing.

4. Discrimination in construction has been ascribed largely to unions, and yet unions are presumably more democratic and more representative of the underdog than is management. The failure of many unions to meet these expectations has been particularly frustrating to Negro leaders.

5. Since a high percentage of new construction is supported by

\(^{57}\)According to civil rights leaders to whom we have talked, the 1963 construction protests aroused greater support from the Negro masses than has any other activity previously or since.

\(^{58}\)But the last few years have seen such requirements become considerably more prevalent.

\(^{59}\)In Baltimore, 74% of the graduates from the predominantly white vocational high school found jobs in trades at least closely related to their field of study, while only 15% of the graduates from the all Negro vocational high school went into such trades. REPORTS ON APPRENTICESHIP 74-75. Five vocational high schools in New York City provide training in construction skills, yet “their better graduates, year after year, [are] forced to take low-paying, non-union jobs or else abandon the skills for which they are trained.” Shaughnessy, op. cit. supra note 26, at 9.
the government, and apprentice training programs often use public school facilities, there are obvious political possibilities here.  

6. Finally, Negro unemployment is particularly concentrated among youth, and Negro action groups look upon the apprenticeship programs as an opportunity to find work for thousands of unemployed Negro teenagers.

All these factors, and possibly others we are unaware of, combined to produce picketing, violence, and civil disobedience aimed at winning jobs for Negroes in the apprenticeable construction trades. In addition, as we shall discuss, the general level of governmental pressure for equal opportunity for Negroes in apprenticeships has markedly increased. With a few notable exceptions, the results of this pressure have been largely symbolic. In most instances a few Negro journeymen were hired onto disputed projects, and pledges were made to open apprenticeships in hitherto lily-white programs.  

Only time will tell whether these minimal breakthroughs will be enlarged.

For an explanation of why the cumulative pressures of the Government, civil rights groups, and AFL-CIO leaders have produced so little payoff to date, we must look at some of the attitudes and characteristics of the building trades unions and the construction industry.

Craft Resistance

Building tradesmen have reacted strongly against the efforts of civil rights groups and the government to force them to change their traditional selection practices. Although racial prejudice is involved, the problem is more complicated than this. Building tradesmen have traditionally resisted all forms of outside control of the collective bargaining relationship; they look upon apprenticeship as a form of job protection; and they feel that nepotism is both moral and proper. These attitudes make them especially resistant to pressures for change.

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60 During the 1963 demonstrations, related sit-ins took place at the New York Governor’s office and the mayor’s office in New York City and Newark, New Jersey. Many of the action groups made demands directed at local government.

61 Token breakthroughs were made in New York in the plumbers, lathers, iron-workers and elevator constructors. N.Y. Times, Nov. 15, 1963, p. 22; Sept. 3, 1964, p. 22. Data as to the numbers admitted are hard to get. In September 1963 the Acting City Labor Commissioner said that as yet not a single Puerto Rican or Negro had been hired as a result of the demonstrations. N.Y. Times, Sept. 30, 1963, p. 1. Yet in December the union-management Referral Committee of the Building Industry, established as a consequence of the summer’s demonstrations, reported that 111 minority group applicants referred by them had been accepted by New York construction unions. (The committee had received 3121 applications of which 849 met minimum standards.) N.Y. Times, Dec. 19, 1963, p. 22.
Resistance to Outsiders

The building trades form a tight-knit social group. They have a strong sense of pride and identification with their craft and with the construction industry as a whole. The rough, dirty, dangerous nature of their job tends to draw them together and, in a way, to isolate them from the rest of the community. They have a sense of being different which is perhaps accentuated by the fact that the rest of the community tends to look down on them as "rough and dirty" and to treat them as "lower class," while their income is unquestionably middle class.

In any case, over the years, the construction community (both employees and contractors) have developed a tradition of self-regulation, particularly in regard to labor relations; they feel proud of their apprenticeship programs as institutions which they have developed by themselves; and they resent any outsiders meddling in what they feel to be a matter of purely private concern. Under the circumstances, union members are as likely to be motivated to win the battle against outside interference as they are by racial prejudice.62

Certainly many building tradesmen feel that the outside world has treated them unfairly. "The school counselors don’t know our needs; they think any dumbbell can be an apprentice," a business agent charged. "They send us the trash and then charge us with discrimination if we don’t take them." There is a great deal of resentment against outsiders who give unwanted advice. "The bullets are flying fast and furious," exclaimed a union official. "There are people coming out of the woodwork who you’ve never seen before; and they all set off pot shots at you." Discrimination is a fact of life, they argue, and other groups discriminate as well.

President Peter Schoemann of the Plumbers Union is an eloquent spokesman for one wing in the building trades which wishes to resist new regulations strongly. Though the temptation to quote him at length is great, we will cite but three passages:

There comes a time when free citizens must stand up against government pressures and dictation, or succumb. So far as our apprenticeship program is concerned, that time has now arrived.

We are convinced that our program is fair and just and successful. It is endangered today from one source—those who in public or private life, no matter how well intentioned, who want to use our program [for purposes] completely foreign to its reason for existence.

To these theorists, to these social experimenters, to these im-

62 See MARSHALL, op. cit. supra note 15, at 129.
practical reformers, we say as to a child reaching toward a buzzsaw: “Hands Off.”

We resent the use of the equal employment campaign as a reason for a federal takeover in an area where the federal government does not belong. Our apprenticeship programs are private enterprises . . . [T]he committee members . . . are not agents of the federal government, for we do have a free enterprise economy. . . . [T]hey must be allowed free scope in choosing the young men they want in their apprenticeship program . . . If the federal government wishes to run its employee selection process on the civil service merit system, that is the business of the federal government . . . but . . . trade unions . . . are not part of the government—at least not as yet.

Protection of Job Control

Government efforts to regulate apprenticeship strike at “job control,” the right to restrict entry into the trade which has traditionally been the heart of the craft unions’ power. These unions have always been acutely conscious of the real or potential scarcity of job opportunities, particularly in an industry as subject to cyclical and seasonal fluctuations as construction. They have based their strength on controlling both the number of workers in a craft and access to available work. “The Government’s assertion that it should have a voice in who gets into the craft undercuts the traditional basis of union strength, in the eyes of union officials,” and unions object to government regulations “mainly on the ground that they make the Government the final judge of who is qualified for apprenticeship.” Indeed, the Government’s action threatens what are viewed as property rights in the job, rights which “have been won through years of training and fighting to build and strengthen unions.”

Building tradesmen in general exhibit a tendency to underestimate the long-run demand for their trade. As a consequence they resist outsiders’ efforts to expand the size of their apprenticeship programs. Great pressure was placed on New York union leaders during the summer of 1963, at the height of the civil rights demonstrations designed to open their unions’ doors to all qualified Negro journeymen and to begin an active program to recruit Negro apprentices. Union

63 Pipe Lines, April 1964, p. 2 (publication of Plumbers’ Local 38, San Francisco).
65 Id. at 57.
leaders argued at the time (the peak of the summer construction season) that there were over 12,000 unemployed construction workers in the city and building permits were sharply declining.69

The building trades unions reacted violently to a portion of President Kennedy’s *Manpower Report* for 1963 which included a Department of Labor forecast of manpower needs in construction and called for a substantial increase in apprenticeship. This report, President Haggerty of the AFL-CIO Building Trades Department charged, can only “succeed in raising the hopes of and causing disillusionment in thousands of young boys. . . .”70 The apprenticeship program has been turning out an adequate number of journeymen, Haggerty added, “and will continue, without government domination, to do it on schedule in the years ahead.”71

**Belief in Nepotism**

Building tradesmen do not feel that family favoritism is immoral. Quite the contrary. They believe that the right to work in a trade is a property right that a man should be able to pass on to his children as part of his estate. The point has been aptly made in a number of building trades journals72 by coupling a quotation from the Talmud, “Any father who does not give his son a trade steals from him,” with a quotation from Ben Franklin, “He that hath a trade hath an estate.”

“The father-son tradition is no invention by us,” a business agent wrote.

The father-son tradition is just about as old as the country and . . . has been carried on by all classes, in every . . . aspect of American life . . . .

Civil War General Arthur McArthur saw to it that his son, the late General Douglas McArthur, got into West Point, likewise Ex-President Eisenhower, a West Pointer, saw to it that his son got there too . . . . And yet, when a craftsman wants to do the same thing and help his son, he gets the business . . . .

What really bugs me about this beefing against the father-son tradition, in the building trades, is the fact that because of this tradi-

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69 N.Y. Times, August 1, 1963, p. 12. At the same time the New York Advisory Commission to the U.S. Commission on Civil Rights was suggesting that the long run prospects for construction employment were good.
71 Id. at 1159.
72 Pipe Lines, April 1964, p. 2.
tion, the skill developed by craftsmen was passed down through the years, all, of course, to the great benefit of the country.\textsuperscript{73}

The attitudes of employers in the building trades reflect the attitudes of small business generally. It should be noted that the values of professional management, which dominate large corporations, are very different from those of small businessmen.\textsuperscript{74} Though nepotism, apple polishing, and office politics undoubtedly continue to exist in a big business, these are universally condemned as unethical. The small businessman, on the other hand, typically feels under a moral obligation to do special favors for his friends; to him it is only right and proper that the better jobs be reserved for sons. And so employers tend to support the system of nepotism just as strongly as do the unions.\textsuperscript{75}

For the above reasons, the bulk of the skilled trades have been antagonistic to efforts by the government and civil rights groups to open their ranks to outsiders, and particularly to Negro youth.

AFL-CIO policy is now unequivocally opposed to discrimination in employment,\textsuperscript{76} and President George Meany has urged that racial discrimination in apprentice selection be made illegal.\textsuperscript{77} In two critical cases where the Cleveland and Washington locals of the Electricians defied strong governmental and union pressures to permit qualified Negroes to work in their jurisdiction, President Meany threatened to remove these locals’ charters and in the Washington case personally to recruit non-union Negroes to work on government projects.\textsuperscript{78}

As these two cases illustrate, “local unions do resist and, sometimes, even reject policies laid down by the parent organization. If the action of the local union arises from the determined conviction of its membership, it is not easy for a democratic organization, like a trade union, to reverse that action—even if it is wrong.”\textsuperscript{79}

There is reason to believe that the rank and file feel more strongly about barring Negroes from apprenticeship than do local leaders, and

\begin{footnotes}
\item[\textsuperscript{73}] Mazzola, \textit{Memo to the Members}, Pipe Lines, April 1964, p. 1.
\item[\textsuperscript{75}] According to an employers’ association, the right of an electrician to train his own son is “the most basic of human rights.” CASCADE EMPLOYERS ASSOCIATION, \textit{WHAT'S WRONG WITH APPRENTICESHIP TRAINING} 5 (1964p).
\item[\textsuperscript{76}] Testimony of George Meany, \textit{House Hearings} 6.
\item[\textsuperscript{77}] Ibid.
\item[\textsuperscript{78}] Marshall, \textit{op. cit. supra} note 15, at 113-114.
\item[\textsuperscript{79}] Testimony of George Meany, \textit{House Hearings} 6.
\end{footnotes}
that local leaders feel more strongly than do those on the state and national level. Rank and file leadership led the 1964 strike in New York when a contractor hired four Negro plumbers, upset an agreement reached to hire Negro plumbers in Cleveland in 1963, and made it difficult for the Detroit Electricians leadership to comply with an FEPC integration order in 1957. And, as we shall discuss, local leadership revolted against the moderate leadership of state officers at the 1964 meeting of the California Conference on Apprenticeship.

The bitterness of the feelings expressed by building tradesmen should help us understand the difficulties from which government regulation of apprenticeship suffers.

**Governmental Regulatory Measures**

In their efforts to reduce discrimination in apprenticeship, government agencies have made use of four major weapons: (1) fair employment practice laws, applicable to all forms of employment; (2) regulations adopted by governmental agencies charged with promoting apprenticeship; (3) non-discrimination clauses inserted into government contracts; and (4) apprenticeship information centers. Let us examine each weapon in turn. We shall discover that none is really effective.

**Fair Employment Practice Laws**

State fair employment practice laws are designed to prohibit discrimination in all areas of employment. These laws operate primarily to discourage discrimination on the part of employers. But in the case of apprenticeship, employers must share responsibility for discrimination with unions; in fact, one of the problems in this area is the difficulty in fixing responsibility at all.

Since the end of World War II enforceable fair employment laws have been passed in twenty-four states and many municipalities. Most of the laws cover unions as well as management, though relatively few mention apprenticeship specifically. There is no reference to apprenticeship in the California law, while the relevant New York law is through criminal law. Thus, in a case involving the teamsters, a former union official and a lawyer were indicted for “discrimination against a Negro working man by depriving him because of his race and color of his civil right to obtain employment.” N.Y. Times, Nov. 25, 1964, p. 38. This case involved a journeyman, not an apprentice.

81 See **CAL. LABOR CODE**, §§ 1410-32.
section\textsuperscript{82} was not added until 1962. Nevertheless, since apprenticeship is a form of employment, the ban on discrimination in employment by employers could be construed to cover apprenticeship.

Though there is considerable debate as to the effectiveness of fair employment practice laws in general,\textsuperscript{83} it seems clear that their impact, however weak, has been greater in manufacturing and public service industries than it has been in construction. Indeed, it is fair to say that at least until 1964, state fair employment practice laws have had almost no impact on apprenticeship. Why have these laws been so ineffective in eliminating what would seem to be an obvious pocket of discrimination? The fault seems to lie with the procedures available to enforce these laws (as well as in the social and educational factors which explain why many Negroes are not qualified for entry into apprenticeship in the first place).

At least three factors seem involved: (1) commissions normally rely on individual complaints, and few complaints are filed; (2) the informal enforcement procedures normally employed by commissions are less effective in construction than they are in most other industries; and (3) the informal and diffuse nature of apprenticeship selection procedures makes discrimination particularly difficult to prove.\textsuperscript{84}

\textsuperscript{82} N.Y. EXECUTIVE LAW, § 296 (1-a)(b), which makes it unlawful "to deny . . . any person because of his race, creed, color, or national origin the right to be admitted to . . . an apprenticeship training program . . . ." Of the other state laws, only Colorado, Colo. STAT. \textbf{ch.} 177, at 625, and Illinois, ILL. REV. STAT. \textbf{ch.} 48, § 853 (1961) mention apprenticeship. Nevada law, Nev. REV. STAT., § 610.150 (8) (Supp. 1960), requires that apprenticeship agreements contain a no-discrimination clause, and provides for suspension of rights to participate in apprenticeship programs if discrimination is practiced, Nev. REV. STAT. § 610.185 (Supp. 1960).

\textsuperscript{83} See \textit{e.g.}, the symposium \textit{Toward Equal Opportunity in Employment}, \textit{14 BUFFALO L. REV.} 1 (1964), especially Hill, \textit{Twenty Years of State Fair Employment Practice Commissions}, \textit{id.} at 22.

\textsuperscript{84} In addition, it may be argued that since commissions rely on union for political support, they may be reluctant to enter an area in which unions are the primary cause of discrimination—and that since commissions have limited budgets, they prefer to handle cases where the return is greater. Hill, \textit{op. cit. supra} note 83, argues, too, that commissions are ineffective in all fields because they (1) place over-reliance on educational techniques, (2) are too slow in processing cases, (3) show excessive caution in finding "probable cause" for action, (4) fail to recognize that preference for relatives is prima facie evidence of discrimination, and (5) are too often satisfied to see an individual complainant hired, even though the pattern of discrimination itself continues.

Delay in processing cases may be particularly serious in the building trades, since a construction project may be completed long before the decision is rendered. See \textit{Todd v. Joint Apprenticeship Comm.}, 332 F.2d 243 (7th Cir. 1964), in which the court held that a preliminary injunction directing a contractor to employ and a JAC to admit Negro applicants should be vacated on the grounds that the case was moot, since the construction project was completed.
Few Complaints

Fair employment practice commissions normally cannot proceed until an aggrieved individual has filed a complaint, although in New York the attorney-general may initiate proceedings on his own motion, and the California commission is given similar powers under its act.

To date there have been relatively few discrimination complaints affecting the skilled trades, and very few relating to apprenticeship. "Out of more than 6,500 complaints" filed with the New York Commission up to 1960, "only a minute fraction have raised the question of discrimination in apprenticeship, either directly or indirectly. The same general situation obtains for skilled-craft positions." Informal inquiry indicates that the California experience is about the same.

This situation is understandable. Since relatively few Negroes apply for apprenticeship, relatively few are turned down. Further, few of those who are turned down are familiar with the commissions' procedures. "[T]hose who have the strongest cases frequently will not file complaints for reasons of apathy, fear of retaliation, or desire to avoid embarrassment."

Informal Procedures

Commissions generally place great emphasis on persuasion, conciliation, and other informal educational procedures. The commissions normally seek to do more than eliminate discrimination in the particular case; they seek to change the practices which lead to discrimination, and often use the initial complaint as an opening wedge for a general discussion of respondents' personnel policies. Only a few cases reach the stage of formal hearing. Instead, there is great reliance on the average firm's desire to do the "right thing" and to avoid unfavorable publicity.

Unions dominate apprenticeship in the building trades, and unions are far less susceptible to informal pressures of this sort than are

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85 N.Y. EXECUTIVE LAW § 297.
86 CAL. LABOR CODE § 1421.
87 APPRENTICES, SKILLED CRAFTSMEN, AND THE NEGRO 104.
88 Shaughnessy interviewed more than 100 New York City Negroes who had applied for apprenticeship but had not been accepted. Of these youths, who presumably were fairly ambitious and civil-rights-conscious (since they were seeking to enter a program previously closed to Negroes), "only twelve had any knowledge of the existence of the State Commission for Human Rights. Less than half of these knew anything about the functions or powers of the Commission and none had ever filed a complaint." Shaughnessy, op. cit. supra note 26, at 12.
89 MARSHALL, op. cit. supra note 15, at 276.
employers. Union officers are much more concerned with the opinion of the members who elect them than they are with external public opinion. Not only must union leaders be persuaded of the desirability of nondiscrimination, but they must sell it to their membership. Since building tradesmen in general are anxious to preserve job opportunities for themselves and their relatives when jobs are short, job protection is an extremely sensitive area for union leaders. They have far less "give" or freedom to bargain in this area than they have about wages, for example. Thus, "union politics was an important factor" in a case involving IBEW Local 58 (Detroit), "because the local business agent was afraid that he would be voted out if he agreed to admit Negroes, even under pressure from the FEPC; the Commission therefore granted his request for a ninety-day delay until after the local's forthcoming elections."90 Similarly, in New York City, "it was stated by a representative of Local 2 [plumbers] that if 20 or 25 of these available apprenticeships were 'given' to Negroes each year, it would create a difficult internal political problem." However, two or three would not create an "insurmountable problem."91

Union leaders are hesitant to appear "soft" on this issue. It is politically safer to take an adamant position. And so cases are harder to settle and much more likely to be fought to the bitter end; for example, IBEW Local 35 (Hartford) fought a Commission order to admit Negroes, lost its case before the supreme court of errors,92 and gave in only after being fined 2,000 dollars and 500 dollars for each week it remained in contempt.93

Difficulty of Proof

It seems to be settled construction that absence of Negroes is not per se proof of discrimination.94 Since discriminatory clauses in union constitutions have now been largely eliminated,95 the commission must prove the fact of discrimination in each individual case. This is

90 Id. at 282.
91 Shaughnessy, op. cit. supra note 26, at 23.
95 Prior to November, 1946, the constitution of the Sheet Metal Workers restricted Negro members to auxiliary locals which were subordinate to white locals. The Locomotive Firemen did not eliminate their discriminatory clause until the summer of 1963, at a time when their members were fighting a last-ditch fight to preserve their jobs.
hard to do, since selection decisions are made behind closed doors, the procedures themselves are highly informal, few records are kept, and rejected applicants are rarely given the reasons for their being turned down.

Until recent regulations were promulgated, many unions had no explicit requirements for admission to apprenticeship and no explicit procedures by which applicants were to be evaluated. Even where such explicit requirements and procedures did exist, they were rarely made public.

Furthermore, rules are often ignored in the building trades. Collective bargaining and employment problems are normally handled pragmatically; flexibility, informality and exchange of favors characterize relations within unions and between unions and employers. Legalistic precedents and general rules of procedure, which are so important in other industrial relations contexts, are largely absent here. Each case of disagreement is adjusted separately, not so much on its merits (for this implies some agreed principle as to what is proper), but on the basis of the relative strength and interests of the parties. Personal ties and friendships are normally considered more important than abstract principles.

Since selection procedures are rarely formalized, it is much harder to prove discrimination in the building trades than in large companies where there are formal rules and written records. It is easy to give the run around to outside applicants (whether they are Negroes or just non-sons), while sponsored candidates are permitted to short-cut the more labyrinthine procedures.

Exercising some literary license, Shaughnessy identifies three maneuvers which can be used to protect apprenticeship programs from outside intrusion. He calls these the "volleyball," the "G-plan," and the "full house."

For a union to engage in the "volleyball" technique, it helps to have two offices. Then the Negro applicant for apprenticeship can be sent from one office to the other, on some pretext, until he becomes discouraged or cannot afford any more time. If two offices are not available, he can be called to appear at the one office on repeated occasions until the same effect is achieved. The "G-plan" technique is somewhat simpler. After the Negro applicant has filled out an application for the apprenticeship program, it is immediately disposed of ("G" for garbage) and no reply ever sent. If the applicant has the temerity to call or make further inquiry about his applica-

97 See Glaser & Moynihan, op. cit. supra note 48, at 40.
tion, he can be required to come down to the office and fill out another application form. Several such trips usually discourage even the most persistent applicant. The only requirement for the successful use of the “full house” technique is a thick pile of papers resembling application forms on one’s desk. They can be pointed to or waved in the face of any applicant, indicating there are at least several hundred, if not thousand, applications already on file. If he nevertheless insists upon filling out a form, the “G-plan” technique can be put into effect.98

It should be emphasized that admission decisions are not made by the union alone. JAC’s (joint apprenticeship committees) include equal numbers of labor and management members. Employers in most cases possess some power to oppose unacceptable apprentices. And in the trades where a man is expected to find a job on his own, it is all too easy for an employer to say that he has no vacancies when a Negro applicant applies.

For these reasons, even though discrimination may seem obvious in a particular union, it may be almost impossible to prove. (Over the years unions have become skilled in circumventing the anti-closed-shop provisions of the Taft-Hartley Act, and roughly the same skills can be applied in the apprenticeship area.)

The Ballard Case

The difficulties involved in proving discrimination and in developing good test cases are illustrated by the Ballard case.99 In March 1962, James Ballard, a Negro who had learned sheet metal work while in the Air Force, applied for admission to the apprenticeship program of the New York City Sheet Metal Local 28. (He was the first Negro ever to apply, according to the union.) In June 1962 he passed the qualification test administered by the New York State Department of Labor; yet the union did not admit him to their July program, giving as its reason that there were many persons ahead of him on the waiting list. In fact, among those who were selected for this class were some applicants who had filed in 1959, 1960, and 1961, and others who had waited from 7 to 10 months.

When Ballard was also denied admission to the January 1963 class, he filed a complaint with the New York State Commission. The union listed a number of defenses, among others that no applicant was designated for the July 1962 and the January 1963 classes who had waited from 7 to 10 months.

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filed later than Ballard, and that the union adhered to the chronology of applications in making selections. The commission found that, in fact, the union had often departed from chronological order in making selections. True, no one had been admitted who had applied later than Ballard.

But the commission found "the failure to choose applicants subsequent in time appears to be attributable to the union's endeavors to safeguard its position in the impeding hearing."\(^\text{100}\) In effect, the commission decided that, since the union had made exceptions in favor of other applicants in the past, it could also have made an exception in favor of Ballard in the present. But this would seem to be a rather weak foundation on which to base a decision which the commission chairman, George H. Fowler, called "revolutionary."\(^\text{101}\)

What made the decision "revolutionary" in Chairman Fowler's words was the fact that "it takes into account a historical pattern of exclusion and not merely a specific complaint,"\(^\text{102}\) for the decision rests largely on an analysis of "the historical background of the craft union and . . . the cultural and economic setting in which Local 28 was formed and grew."\(^\text{103}\) The commission found that Local 28 had historically excluded Negroes, that until 1946 the Constitution of the International had denied Negroes full union membership privileges and limited them to auxiliary lodges, that "over 80% of the July 1962 designees are relatives of Local 28 members, and that this preference for relatives of union members predominated throughout the union's seventy-five year history."\(^\text{104}\)

"Since admission to apprenticeship is conducted largely on a nepotic basis involving sponsorship by incumbent union members, it follows that where there is an all-white union, the exclusion of Negroes will tend to be perpetuated,"\(^\text{105}\) the commission argued.

It is no defense to say that selection based on family ties affects whites and non-whites alike, and therefore does not discriminate against Negroes specifically. . . . The fact that its practices may work against some white persons at some times does not alter the fact that they work against all Negro applicants at all times.

The fact that a white person may be barred because there is no

\(^{101}\) N.Y. Times, March 5, 1964, p. 1.
\(^{102}\) Ibid.
\(^{104}\) Id. at 10.
\(^{105}\) Id. at 14.
union member to sponsor him is evidence only that he was barred because he lacked such union sponsorship, not because he is white. In the case of the Negro, however, his preclusion is due to the fact that he is a Negro.\textsuperscript{106}

Thus, though there was no solid evidence that Ballard himself was discriminated against (other than that the local failed to make an exception in his favor) the commission held the past pattern of selection inevitably led to present discrimination. Although it did not hold that nepotism was discriminatory per se, it did hold it to be discriminatory in a situation where there were in fact no Negroes selected.

The commission ordered a drastic change in the union's selection procedure which went well beyond the mere elimination of nepotism. The union was directed to select apprentices solely on the basis of objective standards, tests, etc., which met the approval of the New York State Industrial Commissioner. Any rejected applicant who felt himself discriminated against was to be permitted "review of the evaluation of his qualifications by a competent authority to be designated by the Commissioner of Education of the State of New York."\textsuperscript{107} Thus, under commission's order, the State was to be heavily involved in apprentice selection.

The Ballard case illustrates all the major difficulties faced by fair employment practice commissions in seeking to eliminate discrimination in apprenticeship: (1) Ballard was the first Negro to apply for this program, and it is fair to assume that without the support of the New York Attorney General's office his case would never have been pushed;\textsuperscript{108} (2) the union was not receptive to informal conciliation and fought the case through a hearing into the courts;\textsuperscript{109} and (3) there was no direct proof of discrimination.

\textsuperscript{106} Id. at 15, 16. The commission cited Meredith v. Fair, 305 F.2d 343 (1962), \textit{cert. denied}, 371 U.S. 828 (1962), which held that a requirement that all applicants for admission to the University of Mississippi have alumni sponsorship was "an unconstitutional discrimination against Negroes," 305 F.2d at 352, since there were no Negro alumni. The commission also cited as analogous the cases in which the Supreme Court struck down "Grandfather Clauses" in state legislation on the grounds that these clauses in effect prevented all Negroes from voting. See also Guinn v. United States, 238 U.S. 347 (1915); Lane v. Wilson, 307 U.S. 268 (1939).


\textsuperscript{108} Ballard's whereabouts were uncertain at the time the decision was made in his favor, and he had been reluctant to attend hearings throughout the case on the grounds that he could not afford to lose time from work. \textit{N.Y. Times}, March 5, 1964, p. 27. Interestingly, the commission order omitted any specific requirement that Ballard be admitted to the program.

\textsuperscript{109} The case was eventually settled by agreement. The union specifically agreed
Instead, the commission apparently reached the conclusion that as long as union selection techniques remain informal, it will be difficult to enforce a non-discrimination policy. In this the commission was not alone; for as we shall see, the efforts of government agencies and Negro action groups have been in the direction of greater formality in (and incidentally, greater government influence into) the selection procedure.

The New York Legislature seemed to endorse the commission's conclusion, for a few days after the commission's order was issued, the legislature added a new section to the New York fair employment practices law,\textsuperscript{110} a section applying only to apprenticeship, which makes it illegal to select apprentices "on any other basis than their qualifications, as determined by objective criteria which permit review." The wording of this section reflected the new federal apprenticeship regulations.

The new Federal Civil Rights Act of 1964 specifically prohibits discrimination in apprenticeship programs.\textsuperscript{111} The Equal Employment Opportunity Commission is directed to require each JAC to keep records of the chronological order of applicants and to supply the Commission with data on selection methods.\textsuperscript{112} The relevant title (Title VII), however, does not become operational until July 2, 1965, and it may be years before its effectiveness can be fairly evaluated. Nevertheless, there is no reason to believe the federal law will be any more effective than have been similar state laws, unless it is construed as the New York Commission construed its law in the \textit{Ballard} case. Indeed, since the federal law contains many procedural barriers to enforcement, we may well expect it to be less effective.

\textbf{Apprenticeship Agencies}

The primary responsibility for implementing public policy in the area of apprenticeship rests with governmental apprenticeship agencies, such as the Bureau of Apprenticeship and Training of the Department of Labor, on the federal level, and California Division of

\textsuperscript{110} N.Y. \textsc{Executive Law} § 296 (1-a)(a). This bill was originally defeated, largely because of opposition by the New York State Federation of Labor. Widespread criticism of the official federation position, including criticism by many union leaders, led the federation to withdraw its opposition, and paved the way for the bill's passage. \textsc{N.Y. Times}, March 24, 1964, p. 25; March 25, 1964, p. 1; March 26, 1964, p. 31.

\textsuperscript{111} \textsc{42 U.S.C.A.} § 2000e-2(d) (1964).

\textsuperscript{112} \textsc{42 U.S.C.A.} § 2000e-8(c) (1964).
Apprenticeship Standards and the New York Apprenticeship Council. Thirty states and the federal government have laws dealing with apprenticeship; thirteen states and the federal government have established apprenticeship agencies with paid staffs of "consultants" (as apprenticeship field men are known). Since these agencies prescribe the "standards" under which most apprenticeship programs operate, at first glance it would seem that these agencies should be able to deal with discrimination in an effective way.

The primary function of these agencies is to promote apprenticeship through the establishment of new programs and the provision of advice and service for those already in existence. The agencies' power of control extends only to the granting of "registered" status to programs which meet certain minimum standards. In the past these standards have been quite easily met, and so the regulatory functions of the government agencies have been minimal.

These agencies have been traditionally quite reluctant to assume enforcement functions. One reason is that they have very little leverage, their chief weapon being the threat to withdraw a program's registration. Apprenticeship programs, of course, are completely voluntary. Employers are under neither legal nor (in most cases) contractual obligation to take on apprentices. JAC's are not required to register their programs (and according to various estimates, from one-quarter to one-half of all apprentices are in unregistered programs).

Perhaps the chief value of registration is symbolic—it is an indication that the apprenticeship program has met minimum standards. The chief practical value is for contractors who work on federal construction jobs. The Davis-Bacon Act permits contractors to pay registered apprentices less than the "prevailing" (union) rate. If a program is deregistered, the employer would be required to pay all his employees the full journeyman rate. In addition, in many states once a program is deregistered, the school system may no longer provide after-work related training classes for its apprentices. (In California, however, unregistered programs are able to get around this provision by calling

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114 Where state agencies exist, state-approved programs automatically receive federal registration where the state standards meet the federal minimum.

115 Typically, the standards provide that the apprenticeship program be at least two years in length, that no apprentice be less than seventeen years of age, that apprentices take at least 144 hours a year of "related training" in the school system, and that wages be raised periodically as the apprentice accumulates greater skill.

116 Some states have similar laws.
their classes "trade extension" rather than "apprenticeship" courses.)
As the New York Times reported, "The widespread opinion in the construction industry is that this penalty [loss of registration] is not very meaningful . . . other than attaching moral stigma to the offending program."117

In any case, government apprenticeship officials look on their job as that of promoting apprenticeship, not discouraging it. They prefer to educate rather than to punish. They fear that if they push JAC's too hard the JAC's would decide that registration was not worth the cost.

Though it is now official government policy to eliminate discrimination, and most apprenticeship officials consider it their job to carry out this policy, it would be unrealistic to expect consultants to give this policy overwhelming priority. Apprenticeship "policy" is made in many states by a committee, the bulk of whose members represent labor and management (with only a small public or governmental representation); thus, it is institutionally difficult for apprenticeship agencies to take strong action regulating the organizations they "service." Most consultants are former union officials and over the years, many have learned to share the views of the people with whom they work. One consultant advised a JAC to be "very careful . . . do everything by the book . . . the Negro organizations are trying to plant troublemakers . . . and unless you watch your step, they'll claim you have discriminated." The typical consultant recognizes that it is his duty to implement the anti-discrimination policy, but his personal attitude toward discrimination is probably not a great deal different from that of the population as a whole.118

Further, there has been reason to suspect some discrimination among apprenticeship agencies themselves. Thus, as late as August 1961, of 499 employees of the Federal Bureau of Apprenticeship and Training, but 16 were Negro, and all of these were in low level clerical jobs.119 The entire field staff was white, as were all other employees in classification GS-7 and higher (a total of 275 in all).120

This background material may help explain the reactions of ap-

118 A federal district judge characterized the attitude of Alvin Dost, Regional Director in Chicago of the Bureau of Apprenticeship and Training, as that of "apathy," and found that he "sat idly by and through his course of non-action fed and encouraged the discriminators." Todd v. Joint Apprenticeship Comm., 223 F. Supp. 12, 21 (N. D. Ill. 1963), vacated, 343 F.2d 243 (7th Cir. 1964).
119 House Hearings 54.
120 Ibid. In addition, the President's Committee on Equal Employment Opportunity found, in the case of Louis Nemerofsky, that the Federal Bureau had engaged in religious discrimination. REPORTS ON APPRENTICESHIP 7.
prenticeship promotional agencies to civil rights pressures. Let us look at the evolving policies in the New York, California, and federal agencies.

New York

Though New York's fair employment practice act was passed in 1946, the Apprenticeship Council at various times refused to add an anti-discriminatory section to apprenticeship standards on the grounds that "it did not want to become involved in the enforcement of any law other than its own," since "all apprenticeship agreements are voluntary and . . . the Council wanted to promote apprenticeship, not raise additional barriers to its growth."121

With pressure from civil rights groups mounting, the legislature in 1957 finally passed a law including among suggested standards for apprenticeship agreements a statement that selection would be on a non-discriminatory basis.122 The council still refused to permit its representatives to answer questionnaires dealing with discrimination prepared by the Commission Against Discrimination.

Seven years later, in 1964, after the passage of the previously mentioned act requiring "objective standards," the New York Industrial Commissioner (to whom the Apprenticeship Council reports) promulgated a regulation against discrimination123 which was somewhat tighter than the 1963 federal regulations (to be discussed). The New York regulation requires, for example, that there be "a written formulation of the objective criteria" by which applicants are to be judged in interviews and that where work experience is a requirement, applicants be permitted to substitute practical tests. Each qualified applicant is to be told "whether or not he has been appointed and if not, the basis for non-appointment." All those who are turned down are to be informed in writing of their right to file a complaint with the State Commission on Human Rights if they believe they were discriminated against on ethnic grounds.

California

California did not pass its Fair Employment Practices Act124 until 1959, thirteen years after New York. But through the years the policy of its apprenticeship agency has in general been considerably more liberal than New York's. In 1954 the California Apprenticeship Coun-

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121 APPRENTICES, SKILLED CRAFTSMEN, AND THE NEGRO 99.
122 N.Y. LABOR LAWS § 815(5).
124 CAL. LABOR CODE §§ 1410-32.
cil adopted a policy statement that "apprenticeship should be made available to qualified youths regardless of sex, race, creed or color." In 1961 it anticipated federal rules by requiring that all new apprenticeship standards include "uniform procedures for fair and impartial treatment of applicants for apprenticeship, selected through uniform selection procedures." In the same year there was established a State-wide Committee for Equal Opportunity in Apprenticeship and Training for Minority Groups, consisting of representatives of labor and management as well as those from a number of minority organizations such as the NAACP, the Urban League, the Chinese-American Citizens Alliance and the Jewish Labor Committee. While the functions of the State-wide Committee are advisory and promotional (it calls its program "The California Plan"), the fact of its existence indicates that the California agency is willing to grant institutional representation to minority group interests.

The committee's efforts have been ignored or resisted by many of the trades. For example, a number of JAC's refused to cooperate with an attempt by the committee and the division to obtain information as to the distribution of apprentices by ethnic background. A management representative expressed what is probably a common position: "Then there is this State-wide Committee on Equal Opportunity. There is no place for this in apprenticeship. Frankly, of course, the building trades have always had a color bar. We are not going to change this very fast . . . . I refused to let our committee answer the questionnaire as to ethnic background. I think this is an invasion of people's privacy."

The California Division of Apprenticeship Standards and most other apprenticeship agencies have taken the position that the best way to increase Negro opportunities is through expanding the size of the apprenticeship program generally. To this end, the division has urged that federal contractors and the federal, state and local governments all be required to establish apprenticeship programs. However, resentment against government interference boiled over at the May 1964 meeting of the California Conference on Apprenticeship (a biannual convention of JAC's from all over the state) and resolutions supporting the foregoing proposals (which had been endorsed by the official leadership of the AFL-CIO) were voted down by the JAC-level representatives. Even a proposal for a government survey of manpower needs in the various trades was defeated (as was a constitutional amendment permitting token representation in the conference

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125 CAL. ADM. CODE, Title 8, § 18007 (c).
126 CAL. ADM. CODE, Title 8, § 18014 (b) (13).
by civil rights groups). It was clear from this meeting that the rank and file leadership was prepared for massive resistance to government interference.

**Bureau of Apprenticeship and Training**

As with the New York agency, the policy of the federal BAT prior to 1961 seemed to be that it had no responsibility in the race relations area. This position was soon to change.

The existence of discrimination in apprenticeship was highlighted by a series of reports\(^\text{227}\) which culminated in a recommendation by the U.S. Commission on Civil Rights that “appropriate measures” be taken to insure that all federally assisted programs be administered on a “nondiscriminatory, nonsegregated basis,”\(^\text{128}\) and in the introduction by Representative Adam Clayton Powell of a bill\(^\text{129}\) to “withdraw federal support and approval” from programs which discriminate. Testifying on this bill, BAT Director Edward E. Goshen expressed the traditional agency view that the Bureau:

> has no regulatory authority. It can establish standards designed to protect the interests of apprentices but it cannot require that they be accepted. . . .\(^\text{130}\) I do not know whether we would want anything to give us authority to enforce on the type of work that we are in. We are in a promotional program. . . . other agencies enforce the law . . . .\(^\text{131}\)

George Meany testified along roughly the same lines:

> Preventing the Secretary of Labor from cooperating with training programs that practice discrimination might well undermine the effectiveness of the programs—but we do not see that it would eliminate discrimination itself. . . . A flat bar to Federal relationship with these programs would deny to the Secretary of Labor his only contact with them, and thus would cut off the opportunity for reform through leadership and persuasion.\(^\text{132}\)

At the “periodic behest of the Secretary of Labor,”\(^\text{133}\) and prodded by pressure from civil rights groups, the BAT began slowly to move toward a new policy. By direction of Labor Secretary Goldberg,

\(^{227}\) Apprentices, Skilled Craftsmen, and the Negro, passim; Labor Department, National Association for the Advancement of Colored People, *op. cit.* supra note 53.


\(^{130}\) *House Hearings* 44.

\(^{131}\) *Id.* at 62.

\(^{132}\) *Id.* at 7-8.

\(^{133}\) Reports on Apprenticeship 7.
BAT Circular No. 62.5 was issued, which required that all new apprenticeship standards registered after September 1, 1961, should include a provision for apprenticeship selection to be "made from those qualified without regard to race...."

Almost a year later, in June 1962, the BAT announced the policy of appointing Industrial Training Advisors. The individuals holding this strange title presumably are Negroes, and their function is to fight discrimination. In February 1963 a national Advisory Committee on Equal Opportunity in Apprenticeship was created.

The civil rights demonstrations against construction firms, which occurred during the summer of 1963, focused national attention on the apprenticeship question and resulted in a directive by President Kennedy "that the admission of young workers to apprenticeship programs [under the federal act] be on a completely nondiscriminatory basis." Shortly after this directive was issued, Labor Secretary Wirtz also announced proposed new standards to guide state apprenticeship councils and others in carrying out a non-discrimination policy. In contrast to previous general prohibitions against discrimination, these standards were quite specific. They called for:

1. The selection of apprentices on the basis of merit alone, in accordance with objective standards which permit review, after full and fair opportunity for application; provided that where there are established special applicant preference practices, arrangements will be made which will permit the selection of a significant number of any qualified applicants who would otherwise be improperly discriminated against;

2. The taking of whatever steps are necessary, in acting upon application lists developed prior to this time, to offset the effects of previous practices under which discriminatory patterns of employment have resulted; and

3. Nondiscrimination in all phases of apprenticeship and employment during apprenticeship after selections are made.

As explained in an interpretive circular, three alternative methods of selecting apprentices were to be permitted:

1. in accordance with "fair tests, occupationally essential physical requirements or other merit standards,"

2. "where the selections made include a significant number of members of minority groups"; or,

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134 Doubt has been raised as to the effectiveness of this program, Id. at 9—doubt which is shared by the authors.
135 Id. at 12.
136 Id. at 11-12.
137 BUREAU OF APPRENTICESHIP AND TRAINING, NON-DISCRIMINATION IN APPRENTICESHIP AND TRAINING POLICY, Circular 64-7 (July 17, 1963). (Emphasis added.)
3. where a “significant number of apprentice positions” have been left open for qualified members of minority groups and good faith efforts have been made to fill them.

In addition, when waiting lists for admission to apprenticeship had been developed prior to the introduction of the program and these lists reflected discrimination, then it would be necessary to “offset” this discrimination by providing opportunities for a “significant number” of minority group members.

These proposals “provoked a storm of protest among labor and management leaders in the construction industry. . . . They said the [new] regulation threatened existence of the apprenticeship system.”

Opposition centered around the previously emphasized phrases calling for “a significant number” of minority group members. These provisions, it was charged, smacked of a quota system. “We will accept no dictation,” the plumbers declared. “We reject any imposition of quotas based on racial or population percentages by any Government agency or private pressure groups . . . We consider quotas undemocratic, unreasonable, unwarranted and unworkable. . . . We do not believe in rejecting an applicant because of his race, color, or creed . . . and we likewise cannot be expected to admit an applicant because of his race, color or creed.” Objections were also raised to government entry into an area traditionally subject to sole control by labor and management and to the implication that efforts should be made to recruit minority youths at a time when the industry was plagued by unemployment and applicants already far exceeded vacancies.

Faced with threats that apprenticeship programs would “go it alone” without registration, the government’s “rules were modified to avoid a revolt.” Nevertheless, the regulations which were finally put into effect on January 17, 1964, differed from the original proposals in wording far more than in substance. There had been opposition to offsetting discrimination in old application lists; the word “offset” was changed to “remove.” The objectional term “substantial number,” which suggested a quota, was eliminated; instead, exemption from “objective standards” is permitted whenever apprentices are “selected in any manner in which the selections themselves demonstrate equality

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139 Statement by the United Association of Plumbers and Pipefitters, two plumbing industry employers’ groups, and two joint apprentice committees, N.Y. Times, Aug. 20, 1963, pp. 1, 18.
140 REPORTS ON APPRENTICESHIP 17.
of opportunity.” A new section (30.15) was added which expressly stated that no quotas would be required.\textsuperscript{142}

The new regulations require substantial changes in the previous highly informal procedures by which apprentices were selected in most crafts. JAC’s and other apprenticeship sponsors are now required to state in advance the criteria on the basis of which selection is to be made. “Examples of standards by which comparative qualifications may be determined are fair aptitude tests, school diplomas, age requirements, occupationally essential physical requirements, fair interviews, school grades and previous work experience.”\textsuperscript{143} JAC’s must keep complete records of applications, and must put in writing the grounds on which decisions are made. For example, “Adequate records of the selection process must be kept and made available to the Bureau upon request. These must include a brief summary of each interview and the conclusions on each of the specific factors, e.g., motivation, ambition, willingness to accept direction, which are part of the total judgment. Such records must be retained for at least two years.”\textsuperscript{144}

\textbf{The Impact of 29 C.F.R. 30}

It is too early to predict the eventual impact of this new regulation. An immediate impact was to create confusion: just as immediately following the passage of the Landrum-Griffen Act, all sorts of distorted interpretations of the new regulations were disseminated and many unions ran to their attorneys, who seemed equally confused. Certainly there has been a great deal of effort to comply with (or circumvent) the regulation.

So far its chief impact has been to make apprenticeship programs more bureaucratic, to increase the amount of paper work, and to add to the labyrinth of steps through which an apprentice applicant must pass before he is admitted. In compliance with the regulations, apprenticeship regulations have been put in writing and made more formal. “We now have our boys fill out their applications with the [state department of apprenticeship standards] . . . representative and they take their tests at the school,” a business agent said. “We don’t want to be charged with discrimination.” Again and again staff people warned

\textsuperscript{142} The new regulations are directly binding only on programs registered with the Federal Bureau. State agencies are expected, however, to adopt regulations consistent with the federal ones—or else lose federal recognition and cooperation. “A number of State agencies have already indicated their intention to adopt standards consistent with the Federal requirements; the issue remains in doubt in a few other States.” Christian, \textit{op. cit. supra} note 113, at 630.

\textsuperscript{143} 29 C.F.R. § 30.4(a)(1).

\textsuperscript{144} 29 C.F.R. § 30.4(a)3.
JAC's to "be sure to keep records." As one put it, "Civil rights people will check on you and you're in trouble if you don't." An official told his committee that it must keep paperwork religiously.

If you tell a man that there is a waiting list and there are 100 applicants on that list, there darn well better be 100 applicants, and if he asks to see the applications you got to show them... You should announce well in advance when you are accepting applicants and when you aren't, and for God's sake, keep this posted. Otherwise a member of a minority group is going to come to you some day and you will tell him that you closed applications yesterday. He will scream that you did this just because you knew he was coming.

As discussed earlier, recent developments have made building tradesmen suspicious and given some a sense of being unfairly persecuted. "With the government today you are guilty until you can prove yourself innocent," one business agent commented. In the cases observed, the attitude toward Negro apprentice applicants has normally been tense but highly correct. In appearance before JAC's, Negroes have been asked almost the same questions as white applicants, but without the jocular informality which often makes white boys feel more comfortable. Many JAC members suspect every Negro applicant as a "plant." "You can sure tell he was sent by the FEPC," a business agent commented regarding one such applicant, "Why would a fellow with a college degree be applying for apprenticeship? He was so smooth, so well dressed, he knew all the answers.... You've got to watch your step all the time."

The trend even before 29 C.F.R. 30 had been to raise admission standards. For example, most trades now require high school diplomas, an increasing number are asking for courses in mathematics, and the cut-off scores on the entrance examinations are being raised. The effect of this, of course, is to weed out a certain number of white applicants; but since Negroes, on the whole, are more poorly educated than whites, even larger numbers of Negroes are disqualified.

Of course these standards sometimes are, as one contractor put it, "just for FEPC purposes. Exceptions can be made when the govern-

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145 Few applicants, either black or white, have had much experience in being interviewed by large committees and most are demonstrably ill at ease—at least until the committee makes them feel at home (or unless they have a relative on the committee).

146 Negro action groups and the government have begun to attack allegedly excessively high test cut-off scores in manufacturing, even when the cut-off scores are applied impartially to whites and Negroes, on the grounds that the cultural deprivation and poor education of Negroes makes this type of procedure a form of de facto discrimination. Similar arguments may be expected in the apprenticeship field.
ment is not looking.” Exceptions have been made to the standards which existed in the past. The effect of 29 C.F.R. 30 doubtless will be to reduce the number of exceptions. However, as previously discussed, the practice of interpreting rules “flexibly” is so strong in the building trades that it would be visionary to expect a radical change in behavior. After the promulgation of the new regulations, an apprenticeship official was describing how his committee was making formal its requirement of a high school diploma. “What will you do in the case of a boy who couldn’t stand high school, but who has got a lot of experience and good grades on his aptitude tests?” we asked. “Well, we have to be flexible,” was the reply.

There is still a certain amount of petty favoritism: thus, a school official told how he coached boys to help them pass the mathematics examination and to help them know what to say when they were questioned by members of the JAC. In context, it was clear that he confined his coaching to sons of members. In most trades the same aptitude test is given over and over again. In some cases after the boys have taken the test they pass what they remember of the questions on to their friends.

The new regulations permit JAC’s to exercise wide discretion in evaluating the experience and attitude of the applicants who appear before them. The indefiniteness of these criteria permit unconscious prejudice even on the part of committees which conscientiously try not to discriminate.

On balance, however, it is fair to say that the new regulations (combined with other pressures) should make it easier for Negroes to enter apprenticeship. Perhaps even to a greater extent, they should reduce the preference given to sons. Selection procedures have become more formal, fewer exceptions are being made, and more care is being given to the selection process. Standards have been raised, hurting high school dropouts of all colors. “The greatest improvement,” an experienced observer summarized, “has been in the change in attitude. The people in the trade say that the government is forcing our hand. Hence

147 Shaughnessy, op. cit. supra note 26, at 18, 21, states that exceptions are made in New York by Plumbers Local 2 and Sheet Metal Workers Local 28. Our own research prior to the promulgation of 29 C.F.R. 30 suggests that many locals look upon the published “minimum standards” of education and age as merely two of the criteria to be considered in deciding whether to admit the candidate. The candidate who is exceptionally well qualified on other grounds may well be admitted to the program even though he is overage or undereducated.

148 Thus, regardless of their effect with respect to Negroes, the new regulations have had a generally beneficial impact on apprenticeship.
we are going to have to take some Negroes on. So we might as well look for the best; the best will probably be OK."

As suggested earlier, the combination of forces has had a definite impact. In a number of cases, previously lily-white unions are admitting token numbers of Negroes, while those which had only token representation are enlarging it. Whether this trend will continue is still in doubt. Since registration of apprenticeship programs is entirely voluntary, a rigorous government enforcement effort might lead some trades to deregister their programs. The Plumbers once threatened, "Deregistration of apprenticeship programs is something we can live with; BAT Circular 64-7 is something we cannot live with." Though 29 C.F.R. 30 differs little from Circular 64-7, the Plumbers still have not deregistered. The unions and the government have so far avoided a showdown.

**Government Contract Enforcement**

Since a great deal of construction work is done for various levels of government, the government is in a position to use the power of the purse to stimulate integration, and withdrawal of a contract may be a more effective weapon than deregistration. For some years federal purchasing orders have included a clause to the effect that the vendor will not discriminate. An increasingly effective enforcement policy on the part of government agencies has resulted in the opening of a substantial number of jobs to Negroes in manufacturing.

The results have been substantially less satisfactory in construction. One reason for this is that manufacturing firms are largely responsible for setting their own hiring policies, and so are free to change them. In construction, entry into employment is largely controlled by the union. The government is able to put pressures on the union only indirectly, through the employer; an individual company's contract may be cancelled, but unless the construction work is to be moved, abandoned, or run on a non-union basis, the union has little to fear from contract cancellation.

Since 1941 there has been a procession of federal anti-discrimination committees—the Fair Employment Practices Committee (1941-1946), the Committee on Government Contract Compliance (1951-1953), the President's Committee on Government Contracts (1953-1961), and the President's Committee on Equal Employment Opportunity (1961 to date). The powers of the post-war committees were

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confined to enforcement of the non-discrimination clauses in Government contracts and, since September 1963, to discrimination on federally assisted construction projects. The committees' effectiveness was further reduced by the necessity of working through the governmental contracting agencies, rather than enforcing the clauses directly.

The various committees' efforts have not been altogether unsuccessful: in a few cases they were able to induce unions to agree to the employment of a limited number of Negroes. Perhaps the two best publicized cases involved the Cleveland and Washington locals of the electricians, and here, as we have seen, the government committee played only a subsidiary role to President George Meany of the AFL-CIO.

The facts disclosed by *Todd v. Joint Apprenticeship Comm.* illustrate the problems faced by government agencies in enforcing the non-discrimination policy. This case involved the construction of a federal court house in Chicago. In accordance with the equal opportunity regulations, the contractor and Bethlehem, subcontractor, submitted reports that there were no Negroes among the six apprentices and seventy-three ironworker journeymen employed on the project, and further that there were no Negroes in the local ironworkers union.

To relieve this problem "an initial attempt was made by governmental agencies to locate Negro journeymen who were union members." When none were found, six non-union Negroes were referred to the union and to Bethlehem. These six were disqualified on the grounds of age or lack of experience. Next, "three young Negroes, after being tested as to aptitude, potential ability and suitability, were encouraged" to apply for admission as apprentices. The three applied to the ironworkers JAC; Bethlehem agreed to employ two, provided they were "indentured and presented by the Union," but none were accepted or even examined by the JAC. The union further refused a request by Bethlehem that it grant written assurance that it would comply with the non-discrimination policies of Presidential Order 10925 and insisted that "it would not accept Negro structural ironworkers or apprentices for work on this construction project."

Faced with this defiance, the Regional Director of the General

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151 See note 78 supra and accompanying text.
153 Id. at 14.
154 Ibid.
155 Id. at 15.
156 *Todd v. Joint Apprenticeship Comm.*, 332 F.2d 243, 245 (7th Cir. 1964).
Services Administration unsuccessfully attempted to persuade the union to change its mind, and then referred the matter to the President's Committee, which refused to take action—probably because it lacked sufficient leverage to enforce its policies.\footnote{Subsequently the three Negroes brought suit in federal district court against Bethlehem, the prime contractor, and three governmental agencies. The court found that a pattern of discrimination existed which was sanctioned by the governmental agencies and ordered the three men admitted to the apprenticeship programs. Todd v. Joint Apprenticeship Comm., 223 F. Supp. 12 (N.D. Ill. 1963). On appeal, the circuit court of appeals vacated the order on the grounds that the completion of the project had rendered the case moot. 332 F.2d 243 (7th Cir. 1964). In a somewhat similar case, the Appellate Division of the New York Supreme Court refused to enjoin the expenditure of government funds on projects where discrimination exists. Gaynor v. Rockefeller, 21 App. Div. 2d 92, 248 N.Y.S.2d 792 (1964). The court distinguished its ruling from that of the district court in Todd on the ground that in Todd the governmental agencies “were fully informed [of the discrimination] and failed to take any corrective action.” Id. at 98, 248 N.Y.S.2d at 801. Failure to show that the proper public officials failed “to act in accordance with applicable law,” (Ibid.) was held to bar the injunction.}

Though this case illustrates the committee's weakness, it also illustrates its vigorous efforts to induce cooperation. In this case, the committee was successful in inducing all the trades, except the ironworkers, to hire Negroes.

The committee's efforts continue, however. In May, 1964, it proposed new standards which would provide that all contractors who failed to comply with 29 C.F.R. 30 in both their registered and unregistered apprenticeship programs on federal or federally-supported projects would be blacklisted from further work of such nature. And in July 1964 it announced a forty-man team, drawn from a number of governmental agencies, which would work on a coordinated basis to reduce discrimination on federally financed projects.

In February 1965 the committee, for the first time, ordered the General Services Administration not to award construction contracts to a group of construction firms without first getting the committee's approval, on the grounds that "the cited contractors were not able to obtain workers from non-discriminatory sources . . . . The Government's action was aimed at stepping up pressure on the Plumbers', Sheet Metal Workers' and Electrical Workers' locals to make changes in the operation of their apprenticeship programs."\footnote{N.Y. Times, Feb. 3, 1965, p. 23 (city ed.).}

Information Centers

Since among the barriers to Negro participation in apprenticeship programs is lack of information as to where and how to apply for
admission, Negro action groups have urged the establishment of "information centers," which would centralize such information and make it available to youths seeking admission into such programs. During 1963 and early 1964, such centers were established in Washington, Boston, Chicago, Cincinnati, San Francisco, Los Angeles, and Fresno, California. Each California center is operated by the State Department of Employment (the public employment service) with an advisory committee consisting of representatives of that department, and of the Divisions of Vocational Education and of Apprenticeship Standards.

Some union people look upon these centers as poorly-disguised attempts to force the employment of unwanted Negroes, and as a first step toward government control of admission into the trades. Employers sometimes feel likewise. "These government people dream up programs," the director of an employers' association told us.

For instance, the Department of Employment wants to enter our program. They want to set up apprentice information centers. That may be all right for some of the trades which have lousy programs. They don't devote any time to training, have low standards, and so have trouble getting applicants. They are too willing to let the State of California do their recruiting for them. We are perfectly able to recruit our own people. We don't need anybody to tell us what to do... [With information centers] we get kids who are counseled by the Department of Employment. They take the tests and the Department says they are qualified. So the state says they are good, and they come here and they say, "just because I am colored you have to give me a job."

Though the Washington center has been reported to be successful, there is reason to believe that some other centers have run into trouble. "[T]here is some mass resentment among both labor and management toward opening their records on apprenticeship and making available their vacancies," it was reported from Chicago. Similar opposition was reported in Philadelphia, while other obstacles slowed down the development of the Cincinnati and Baltimore centers.

The California situation was summarized by a knowledgeable official, "We are supposed to tell you that the centers are working well, but actually they are not. They don't have the right to make referrals

159 Christian, op. cit. supra note 113, at 630.
161 Id. at 1996.
162 Id. at 1996-97.
to JAC's and the JAC's don't give them any information." "One center barely got off the ground because of poor planning on the part of the [local] employment people and complete lack of cooperation on the part of local unions," another official put it (perhaps with exaggeration). The other two centers had some success at first, but recently have been somewhat inactive. A bill establishing such centers on a permanent basis was defeated by the 1963 session of the California legislature, in part because of lack of strong union support and even some union opposition. The 1964 session did pass a resolution which endorsed the principle of information centers, but which provided no funds for their operation.

Conclusions

Though apprenticeship would seem to provide a natural opportunity for Negro youth who are unable to find jobs, Negroes are seriously underrepresented in all but the least desirable trades, while the three most desirable ones are almost entirely white. Contrary to what we might expect, the imbalance of employment in the building trades (where most apprenticeship exists) is roughly the same, North and South, and over the last seventy years the overall pattern of exclusion has gotten worse, if anything, rather than better. Unless this pattern changes, Negro employment is likely to decline still further, since the trades in which Negroes are best represented are contracting, while those in which they are poorly represented are expanding. Underrepresentation is due not so much to discrimination against Negroes as it is to discrimination for relatives and friends. In addition, lack of motivation to enter apprenticeship, lack of knowledge of how to apply, and inadequate training and education all contribute to the present imbalance. All this suggests that simple remedies cannot do the job.

State fair employment practice laws have been generally ineffective in this area because of the difficulties of fixing responsibility and proving discrimination in each particular case. The state experience suggests that discrimination cannot be prevented until JAC's are required to establish objective standards for selection, standards which are susceptible of review. Since the promulgation of 29 C.F.R. 30, the federal apprenticeship agency has required that such standards be established. The problem here is one of enforcement, since the agency's only weapon, deregistration, is hardly a convincing deterrent. Government purchasing agencies may withdraw contracts where discrimination exists, but this means little in a situation where the union controls
the labor market. Apprenticeship information centers cannot perform their function as long as JAC's refuse to cooperate.

Nevertheless, there has been some progress over the last two years. The combined impact of government regulations, Negro demonstrations, unofficial political pressures, and the efforts of AFL-CIO leaders has forced apprenticeship officials to be significantly more objective and formalistic in making selection, and has led to a significant number of previously lily-white unions opening their doors to at least token Negro representation. Precedents have been set which probably will not be broken.

One should view this problem in perspective, however. Understandably, Negro action groups have given high priority to the elimination of all barriers to employment. One wonders, however, whether their efforts may be somewhat misplaced. Though apprenticeship is the traditional means of entry into the building trades, particularly for the better jobs, it should be emphasized that only a small proportion of building tradesmen have ever completed apprenticeship. 163 Approximately 30,000 registered apprentices complete their training each year. 164 Were 12 per cent of these apprentices Negro, the proportion of Negroes to the population as a whole, 3,600 jobs per year would be available—only a drop in the bucket in terms of total Negro unemployment.

The advantages of apprenticeship to the industry as a whole are quite substantial, but from the point of view of the individual employer, these advantages barely outweigh the disadvantages—and it is the individual employer who does the hiring. Within the union there are always strong pressures for restricting the size of membership and therefore for keeping apprenticeship programs small. Fear of government control is so great that were the government to attempt strict enforcement of anti-discrimination rules, the trades might well decide to restrict or abandon apprenticeship altogether rather than admit more Negroes.

Successful governmental action to eliminate discrimination in the building trades requires control over more than apprenticeship. It requires control over all forms of entry. An effective law would require that admission to closed-shop unions and dispatch to jobs be entirely on the basis of the non-discriminatory application of objective stan-

164 Statistics as to non-registered apprentices are not reliable, in part because of difficulties in defining who is an apprentice. The best estimate is that two-thirds of all apprentices are registered.
And since the trades would undoubtedly try to evade the law—as they have done with regard to the closed-shop and secondary boycott provisions of the Taft-Hartley Act—effective regulation would require a government enforcement agency with the power to regulate every step of the selection procedure. It would practically require a government take-over in this area, and would drastically change the nature of collective bargaining in construction.

Over the years building tradesmen (both union and management) have developed a private government which has set regulations governing entry into a significant number of occupations. Though this arrangement has tended to exclude outsiders, it has worked reasonably well in terms of supplying adequately trained skilled craftsmen. The law suggested would substitute government regulation for grass roots participation. In a pluralistic society this would be a substantial loss. The choice is not easy to make. One can only hope that self-interest and an expanding economy may motivate the trades to take the initiative in eliminating unjustifiable barriers to entry.

165 It might also be sound public policy to consider expanding vocational training programs in the school system.

166 The New York State Advisory Commission to the U.S. Commission on Civil Rights recommends that if other forms of regulation fail, “Congress enact legislation declaring that admission to apprenticeship in the construction trades is a matter affecting interstate commerce and that such admission be vested in a suitable agency empowered to adopt and enforce procedures analogous to those employed by the Civil Service Commission.” REPORTS ON APPRENTICESHIP 123.