

ROUGH DRAFT

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Mr. Victor Risel
Publishers-Hall Syndicate
30 East 42nd Street
New York, New York 10017

Dear Mr. Risel:

I received a copy of your recent article in which you analyze President Nixon's stand on behalf of the Philadelphia Plan. In this article you draw certain conclusions which might well have been different if all of the facts were before you at the time of publication and if the total picture were viewed in its proper perspective.

At the outset, I think it is important to place the responsibility for any future confrontation as you envision in your article upon the shoulders of those who are primarily responsible. The construction craft unions in the better paying, more skilled trades have consistently practiced discrimination which you indicate the unions themselves admit. Most of these discriminatory activities would not have been successful if the contractors had not either actively or tacitly gone along with them. The contractors for the most part are not as you suggest, innocent bystanders who have been put in the middle between the Federal Government and the unions.

These long standing discriminatory practices have built up substantial frustrations within the minority community. They have contributed directly to the urban unrest which has plagued our cities and which has left a tinder box that might well result in a national conflagration.

Faced with this immediate problem, the challenge was and still is to find meaningful solutions. As your article points out there were various alternatives. The Equal Employment Opportunity Commission, the Department of Justice, and the Office of Federal Contract Compliance all have authority to combat discrimination. The initial distinction between these agencies is the source of their respective powers -- the Office of Federal Contract Compliance's stems from Executive Order 11246 and the other two from the Civil Rights Act of 1964.

The Equal Employment Opportunity Commission has usually operated on an individual complaint-by-individual complaint basis which is an approach that is unsuitable to city or area wide problems of discrimination. In addition, the Commission has limited enforcement authority. It may conciliate a discrimination complaint and it may recommend to the Department of Justice that appropriate legal action be taken, but the Commission does not have the same power as does the Office of Federal Contract Compliance to cancel contracts or to debar contractors.

The Department of Justice has had some measure of success in its "patterns and practices" suits brought pursuant to Title VII of the Civil Rights Act of 1964. The leading case and the one which has proved to be most fruitful is U. S. vs Local 189, Papermakers et al (the Crown Zellerbach Case). However, a few courts have rendered decisions that are less than helpful and that have not aided the goal of equal employment opportunity.

As you may well know, litigation is a protracted undertaking and ~~is~~ many times ^{it} takes years to reach a final determination. When the Philadelphia Plan ^{was} announced in June, the situation in Philadelphia required immediate attention. A vacuum had been created by the Comptroller General's Opinion which held that the original Philadelphia Plan was illegal because it failed to contain definite standards. The original Plan had been a key program vital to the Office of Federal Contract Compliance's campaign against discrimination in the construction industry and it had been symbolic in the minority community of the Federal Government's concern for the problems of equal employment opportunity.

Furthermore, there was no certainty such as your article seems to imply, that judicial rather than administrative action would avert a possible confrontation between the unions and the Federal Government. There seems to be little logic in concluding that the unions would obey a court decree opening jobs and union

membership to Blacks but that they would not obey an order issued by the Executive branch of government aimed at accomplishing the same result. If the unions intend to defy the Federal Government, it would make little difference which of the three branches was involved.

It is hoped that a confrontation such as you describe will not take place and the present indications are that Philadelphia Plan is operating smoothly. The first contract has already been ~~worked~~^{awarded} and all four bids by eight contractors contained acceptable commitments for minority employment within the established ranges.

From the time the revised Philadelphia Plan was conceived in ~~May and~~ June ^{unt.} ~~to~~ the date ^{it} ~~2~~ was issued, my office was in constant contact with the Solicitor of Labor, the Department of Justice and the White House. ~~A special committee was organized July to coordinate the equal employment activities of the Department of Labor, the Department of Justice and the Equal Employment Opportunity Commission as well as to determine the most appropriate course of action in handling particular problems of discrimination.~~

Thus as early as June, the White House and the Department of Justice were well aware of the revised Philadelphia Plan. In light of this fact alone, it is difficult to join in your conclusion that the "White House ~~T~~acticians" did not do their home work and had ~~pecipitously~~^{itously} supported the Plan rather than advocating a series of suits brought by the Department of Justice under Title VII of the

Civil Rights Act of 1964.

Moreover, in September the Attorney General issued an official opinion upholding the legality of the Plan. The basis of the decision was Title VII of the Civil Rights Act of 1964, the very provisions with which you claim the Attorney was unfamiliar. Also in November, the Department of Justice brought five Title VII actions against construction unions in the city of Seattle. This again strongly indicates that the Department of Justice and the Attorney General were aware of the availability of this specific remedy.

The use of one remedy does not mutually exclude the use of others. The fact that the Philadelphia Plan was instituted in that city does not preclude the Department of Justice from bringing Title VII actions nor does it bar the Equal Employment Opportunity Commission from hearing and conciliating individual complaints. The option to bring Title VII actions is still open to the administration and such actions might well be instituted if the conditions so warrant.

Lastly, as to the observation that the Nixon Administration has promised more than it can deliver, I suggest that the only true criterion on this ^{score} ~~same~~ is the number of jobs that the Office of Federal Contract Compliance makes available to Blacks and other minorities through its enforcement of Executive Order 11246. We will have to tally up this score when the returns are all in.



Mr. Riesel

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In the interim, you may rest assured that I will do everything I can to make equal employment opportunity a meaningful phrase for all Americans.