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THE NEW YORK STATE LAW AGAINST DISCRIMINATION: OPERATION AND ADMINISTRATION

MORROE BERGER

I. BACKGROUND AND PROVISIONS

There are more than two hundred state laws and constitutional provisions in this country which prohibit discrimination of various types on the basis of race, religion, color, or national origin.¹ Even the Southern states have such provisions. Most of these laws, however, have seldom been rigidly enforced anywhere; the Anti-Defamation League found only five civil rights cases in the *Decennial Digest* for 1926-36 and only 20 for 1936-46, of which a third originated in New York.² In recent years a new series of statutes has been enacted, aimed specifically at the elimination of discrimination in private employment, and these have been enforced more stringently than most previous anti-discrimination acts. Four states, New York, New Jersey, Connecticut and Massachusetts, are the pioneers in this new field; other states³ and municipalities⁴ have passed or debated similar proposals. The New York, New Jersey and Massachusetts acts declare that the opportunity to obtain employment free from discrimination because of race, creed, color or national origin is a civil right.

The New York State "Law Against Discrimination,"⁵ also known as the Ives-Quinn law, is the first of these more recent statutes in the private employment field. It offers the best opportunity for an appraisal of such legislation since it has been in operation longest, has evoked widespread comment, and is administered by an agency with a budget larger than those of similar agencies in other states. This study of the law and its enforcement will summarize its provisions, review its operation from July, 1945 to the end of 1949, examine the rulings and inter-

¹ See the compilations in NEW YORK STATE COMMISSION AGAINST DISCRIMINATION (SCAD), COMPILATION OF LAWS AGAINST DISCRIMINATION BECAUSE OF RACE, CREED, COLOR OR NATIONAL ORIGIN (1948); COMMISSION ON LAW AND SOCIAL ACTION, AMERICAN JEWISH CONGRESS, STATE ANTI-DISCRIMINATION AND ANTI-BIAS LAWS (1948); KONVITZ, THE CONSTITUTION AND CIVIL RIGHTS (1947).

² WEINTRAUB, HOW SECURE THESE RIGHTS? AN ANTI-DEFAMATION LEAGUE SURVEY 33 (1949).

³ American Council on Race Relations, Chicago, Release No. 42, *Evaluation of State FEPC: Experience and Forecasts* 9-11 (1949); and AMERICAN JEWISH CONGRESS and NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, CIVIL RIGHTS IN THE UNITED STATES IN 1949. A BALANCE SHEET OF GROUP RELATIONS 21-22 (1950).

⁴ Elson and Schanfield, *Local Regulation of Discriminatory Employment Practices*, 56 YALE L. J. 431 (1947).

⁵ N. Y. EXEC. LAW §§ 125-136.

pretations of the State Commission Against Discrimination (SCAD) and its relation to the community, and finally assess the work of the Commission and the appropriateness of the law as a means of controlling discriminatory practices in employment.

A. *Background of the Law*

Long before the passage of this law New York had outlawed discrimination in jury service; the right to practice law; admission to public schools; places of public accommodation, resort or amusement; insurance rates and benefits; public employment; employment in utility companies; employment in firms fulfilling public works contracts; admission to tax-exempt non-sectarian educational institutions; civil service; public housing; labor unions; public relief; defense industries; sale or delivery of alcoholic beverages.⁶

In response to increasing evidence of discrimination against members of minority groups who sought jobs in war industries, the Governor in March of 1941 appointed a Committee on Discrimination in Employment as a subcommittee of the New York State Council of Defense (later the War Council). This Committee's task was to study discriminatory practices in war industries and to carry out a program of education and conciliation to eliminate them. It handled over a thousand cases, of which it settled 95 per cent by persuasion, conciliation and hearings before the state's Industrial Commissioner.⁷ Though created during the "defense" emergency, the Committee's functions were broadly conceived. In its last report the Committee pointed out: "The Governor's mandate . . . had stressed the undesirable effects of discrimination in relation to national defense. The primacy of the national defense program in the Committee's task should be recognized. But the solution of urgent problems should contribute toward more extensive and longer run improvement. . . ."⁸ Judging by its operations during ten months in 1942, the Committee did not wait for complaints to come to its attention. More than half of its 304 investigations of employers' practices in this period were started on its own initiative. About a fourth of its cases originated with a complaint by a job applicant, about a tenth with the complaint of a dismissed worker, and another tenth from "miscellaneous sources."⁹

⁶ N. Y. STATE, LEG. DOC. (1945) No. 6, REPORT OF THE NEW YORK STATE TEMPORARY COMMISSION AGAINST DISCRIMINATION 15-20; also SCAD, COMPILATION, *op. cit. supra* note 1.

⁷ REPORT OF TEMPORARY COMMISSION, *op. cit. supra* note 6 at 21.

⁸ NEW YORK STATE WAR COUNCIL, COMMITTEE ON DISCRIMINATION IN EMPLOYMENT, REPORT, MARCH, 1941 TO JULY, 1944 5 (1944).

⁹ *Id.* at 118.

In accordance with its instructions to recommend appropriate legislation, the Committee prepared two bills which were introduced into the legislature in March of 1944; the second of them would have prohibited discrimination in private employment. The Governor, in a message a few days later, told the Legislature that while he supported the intent of both bills, he felt the subject needed more study. Accordingly he suggested the creation of a special commission; on the following day the Legislature enacted this suggestion into law. In protest against what they held was an unnecessary delay, eight members of the Committee resigned. By June, the New York State Temporary Commission Against Discrimination had begun its work.¹⁰

The Temporary Commission, composed of eight members (four Democrats and four Republicans) of the state Legislature and 15 public members, held open hearings in November and December of 1944, in Albany, Syracuse, Rochester, Buffalo, and New York City. In January of 1945, the Commission presented its report. It accepted four propositions: ". . . (1) discriminations on grounds of race, creed, color and national origin are too serious a menace to democracy to be safely neglected; (2) whatever moves are made against them must seek to win a strong supporting public opinion; (3) while wise legislation may assist progress, any attempt forthwith to abolish prejudice by law can do serious harm to the anti-discrimination movement; (4) prejudice is the fruit of ignorance and is subject to the healing influences of education in the broadest sense of the term."¹¹ The advocacy of this combination of compulsion, education and caution has characterized the approach of most official New York agencies that have touched the problem of employment discrimination. The Commission's principal suggestions were introduced as the Ives-Quinn bill, which was enacted by the Assembly on February 28 and by the Senate on March 5. It was signed by the Governor on March 12, and became effective July 1, 1945.¹²

Most civil rights statutes provide that any person who feels that his rights have been violated may bring suit against the violator and obtain damages. This procedure places the burden upon the individual and has not proved effective. The Ives-Quinn law used a different approach, lodging the function of investigation and the power of enforcement in a special administrative agency to which individuals may bring complaints for both investigation and settlement. This procedure appears to be the best for the enforcement of civil rights statutes.

¹⁰ FAIR EMPLOYMENT LEGISLATION IN NEW YORK STATE 8-9 (Association Press, N. Y.) (1946).

¹¹ REPORT OF TEMPORARY COMMISSION, *op. cit. supra* note 6 at 48.

¹² See note 10 *supra* at 14-15.

B. Provisions of the Law

The New York "Law Against Discrimination" registers, in Section 125, the Legislature's finding and declaration that discrimination of any kind on the basis of race, creed, color or national origin is "a matter of state concern", and that it "menaces the institutions and foundation of a free democratic state." It creates a state agency "with power to eliminate and prevent discrimination in employment because of race, creed, color or national origin, either by employers, labor organizations, employment agencies or other persons. . . ." Section 126 asserts that the "opportunity to obtain employment without discrimination" is a civil right. In using the word "creed" the legislators meant only religious belief. Assemblyman Ives told the Legislature: ". . . for the sake of the record, in case any court may sometime want to know what the legislative intent is, let's get it straight—in dealing with the subject today as a Legislature we mean by creed, religious belief and nothing else."¹³ Senator Quinn made the same point to the Senate.¹⁴

Section 127 defines the terms used in the statute and excludes the following classes of employers: social and fraternal clubs, and charitable, educational and religious associations not organized for private profit, and establishments with less than six employees. Section 128 creates the State Commission Against Discrimination, composed of five members appointed by the Governor for five-year terms at a salary of ten thousand dollars annually. Section 129 directs SCAD to "formulate policies to effectuate the purposes" of the law and empowers it to make appropriate recommendations to other state agencies and officials.

Section 130 sets forth the "functions, powers and duties" of SCAD: to announce rules for the execution of its task; to "receive, investigate and pass upon" complaints of unlawful discrimination in employment; to "hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question" before it; to create "advisory agencies and conciliation councils" composed of "representative citizens" to study any kind of discrimination and to help achieve the purposes of the statute and the civil rights section of the state Constitution.

Section 131 declares the following types of discrimination, on the ground of race, creed, color or national origin, to be an "unlawful em-

¹³ N. Y. STATE LEGISLATURE, DEBATES ON PROPOSED LAW AGAINST DISCRIMINATION, February 28, 1945, p. 123.

¹⁴ *Id.* at 26.

ployment practice": an employer's refusal to hire any individual or to discriminate against any one in pay or the terms of employment; a labor union's exclusion of any person, or its discrimination against any of its members or against an employer or any person working for an employer; an employer's or an employment agency's written or oral statement or job application form calling for information from a prospective employee that expresses or shows intent to use any criterion other than "bona fide occupational qualification"; an employer's, labor union's or employment agency's discharge or other discrimination against a person who has opposed these unlawful practices or who has "filed a complaint, testified or assisted in any proceeding" under the statute.

Section 132 prescribes the method for handling complaints. "Any person claiming to be aggrieved" under the act may file a complaint with SCAD. The chairman of SCAD then assigns the case to one of the commissioners, who investigates the matter. If the commissioner finds that "probable cause exists for crediting the allegations of the complaint," he tries to eliminate the unlawful practice by "conference, conciliation and persuasion." "The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors." If these methods fail to accomplish the elimination of the unlawful practice (or before that if the conditions warrant) the commissioner calls for a hearing of the case before three members of SCAD. At this hearing the commissioner who investigated the case may participate only as a witness, and nothing which occurred during the efforts at conciliation may be accepted as evidence. If after the hearing the Commission finds the law has been violated, it states its findings of fact and issues an order to the respondent to cease and desist from the unlawful practice. The respondent may be required to hire, reinstate, upgrade a worker, or to perform any "affirmative action . . . as, in the judgment of the commission, will effectuate the purposes" of the statute.

Section 133 provides for judicial review of an order by SCAD, and SCAD may obtain a court order for the enforcement of its own orders. Section 134 provides a maximum jail sentence of one year and a maximum fine of \$500 for any person, employer, labor union or employment agency wilfully impeding the Commission's work or wilfully violating its order.

Before the passage of the law the executive committee of the New York State Bar Association opposed its enactment on the ground that it was an unconstitutional infringement of freedom of contract; it would cause business firms to leave the state; it tried to legislate morality; it could not be enforced and it would actually intensify group hostility and

cause riots.¹⁵ Even Assemblyman Ives, who sponsored the bill and served as chairman of the Temporary Commission which proposed it, doubted that the problem of employment discrimination could be solved by legislation. It was only after a study of the subject that he became convinced that the law was an appropriate means in this area of group relations.¹⁶

The most important feature of the Ives-Quinn law is its provision for full use of the coercive power of the state in cases where conciliation has failed to eliminate a verified discriminatory practice. The State Commission Against Discrimination thus has a number of techniques by which to achieve the purposes of the statute, ranging from persuasion to court enforcement of its orders. In a sense, of course, there is really no "persuasion" under the statute, for the suspected violator knows, when he talks with SCAD, that the full power of the law can be applied. If, therefore, he appears quite willing to be "persuaded" it is because he knows that he can be forced to do what he might not be persuaded to do. In testifying in 1947 before a U. S. Senate subcommittee on a federal bill similar to the New York law, the first chairman^{16a} of SCAD pointed out that while this reserve power did not mean that conferences were conducted under duress, it did make the respondent "more willing to sit down and realize he had to make certain concessions."¹⁷ Unfortunately the interplay between persuasion and coercion in the enforcement of the law cannot be studied in detail, since the Commission is forbidden, under Section 132, to reveal what transpires in the course of its conferences to settle cases by conciliation.

II. OPERATION AND ENFORCEMENT

It is easier to review the work of the State Commission Against Discrimination than to assess its effects precisely. This is true of almost any agency, but especially of this one because the possible criteria for an assessment are neither clear nor easy to apply. Although it is difficult to measure the Commission's work exactly, it is nevertheless immediately apparent from its reports that the law which it administers has certainly reduced discrimination in employment in New York State. In

¹⁵ Spitz, *The New State Law Against Discrimination*, 20 NEW YORK STATE BAR ASSOCIATION BULLETIN 8 (1948).

¹⁶ Testimony of U. S. Sen. Ives, *Anti-Discrimination in Employment, Hearings Before a Subcommittee of the Committee on Labor and Public Welfare*, U. S. Senate, 80th Cong., 1st Sess., on S. 984, 6 1947.

^{16a} At this writing there have been three chairmen of SCAD: first Henry C. Turner, then Charles Garside and now Edward W. Edwards.

¹⁷ *Id.* at 338.

this section we shall examine SCAD's general approach to the enforcement of the law, and its operations since its effective date, July 1, 1945.

The Commission, following the tone of the Law Against Discrimination, emphasizes that conciliation and education are the chief methods by which employment discrimination is to be eliminated. The first is the technique applied in the cases the Commission handles, and the second, directed at the community as a whole, aims "to create a climate of public opinion which would be favorable to the administration of the Law."¹⁸ SCAD fully appreciates the danger involved in applying punitive measures to long-standing patterns of behavior based upon human attitudes. It therefore seeks a type of compliance with the law which is voluntary in some degree. "It would be of little avail if compulsive action on the basis of individual complaints resulted in temporary compliance which could only be maintained by a policing operation that in the end would assume formidable proportions."¹⁹

The Commission has energetically adhered to this view of its tasks and has, according to its 1948 report,²⁰ resisted "alike the pressure of those who would attain the objectives of the Law by the quick resort to its punitive features and those who stubbornly oppose any governmental intervention in the conduct of their business affairs." SCAD, seeing only two methods of administering the law, has tried to do its job "in an atmosphere of cooperation. The alternative to this is to administer the Law in an atmosphere of conflict."²¹ It is doubtful that these are the only alternatives. As we shall see later, minority groups which have criticized SCAD as too "lenient" have not stressed the "punitive features" of the law, but rather those sanctions in it which lie somewhere between the conciliation process and the punitive features. Such sanctions are the holding of a hearing and the issuance of a cease-and-desist order. Neither of these is a resort to the punitive features of the law (presumably administering the act in "an atmosphere of conflict"), and yet both are somewhat more harsh than efforts at conciliation and compromise ("an atmosphere of cooperation"). As of the end of 1949, SCAD had found it necessary upon only one occasion to invoke its powers beyond the conciliation process.²²

¹⁸ SCAD, ANNUAL REPORT, JANUARY 1, 1948-DECEMBER 31, 1948 7. See also ANNUAL REPORT, JANUARY 1, 1946-DECEMBER 31, 1946, LEG. DOC. (1947) No. 53, 7; and ANNUAL REPORT, JANUARY 1, 1947-DECEMBER 31, 1947 22. Hereafter these annual reports are cited according to the periods they cover: e.g., 1946 ANNUAL REPORT, 1947 ANNUAL REPORT, etc.

¹⁹ 1948 ANNUAL REPORT 9.

²⁰ *Id.* at 8.

²¹ *Id.* at 12.

²² *Id.* at 83; also 1949 ANNUAL REPORT 2. (All references to the 1949 Annual Report of SCAD are to the mimeographed edition.)

To assess the effects of the law and the Commission's work is especially difficult. How, for example, is one to answer such questions as these: (1) How many employers, employment agencies and labor unions reduced or eliminated discriminatory practices merely because the law had been enacted? (2) How many employers have voluntarily gone far beyond the law's requirements in eliminating employment discrimination and how far have they gone? (3) How many employers have eliminated discrimination as a result of their knowledge of the Commission's work, without ever becoming parties to a case? (4) How many employers, once in contact with the Commission, manage to continue to discriminate illegally? Some of these questions can be given approximate answers, but only after a lengthy field study using data which SCAD regards as confidential, while others are hardly answerable at all in the present state of social science.

A. *Criteria for Evaluation*

The basic difficulty in assessing the separate roles of the law and the agency in the elimination of discrimination is that decisive criteria are not available. If we measure the effect of the law by the number of Negroes or Jews employed compared to the rest of the population, we may be overlooking the fact that other influences are at work here too, such as the federal wartime FEPC and the sustained high rate of employment since 1941. If we were to judge by public attitudes and opinions, how could we separate out the influence of this particular law in New York State? If we judge by the reduction in the number of discriminatory want-ads in the newspapers, we would overlook the possibility that discrimination can be practiced at the next stage, in the employer's office, by those who hire. If we judge by the number of complaints received by the Commission, we must then realize that not all persons who are discriminated against know that they can appeal to a state agency, and not all who know of the law go so far as to complain to the Commission.

The best measure is the degree to which members of minority groups, through action by the Commission, are admitted to jobs and into industries from which they were previously barred. Such a measure would be compounded of two elements: 1) the number of persons who have actually obtained jobs in firms or industries and at levels from which the groups to which they belong had been excluded; 2) the number of industries, firms and types of work, with the number of jobs they include, from which members of minority groups had been barred, but which have been opened to them by SCAD action.

This is actually the criterion which the Commission itself uses (though unsystematically), as it indicated in its 1948 annual report: "By far the greatest number of complaints are filed charging discrimination by reason of race and color and in some measure the gauge of progress may be determined by the extent of opportunity of employment, hitherto denied, which has been created for this group."²³ But the Commission has not attempted to apply this test systematically. It objects to the compiling of data on "the number of proscribed individuals who are now employed as compared to those employed prior to the passage of the Law." Though this is not really a valid criterion anyway, the Commission's objection to it is somehow based on its rejection of the "quota system of employment" of minority groups.²⁴

By excluding the method of evaluation described above the Commission makes it impossible for others to use it, since it alone possesses the necessary data, which it now considers confidential. (This policy is discussed at greater length in Section IV). Having neglected the problem of scientific self-evaluation, SCAD falls back upon such spotty, generalized and impressionistic statements as the following:

Even to the casual observer it is evident that significant progress in employment opportunities has been made in the State of New York since the enactment of the Law Against Discrimination. Negro girls, for instance, are now employed in the telephone exchanges as operators or clerks or both in all the cities in the metropolitan area and in eleven cities upstate, and Negro men have for the first time been enrolled in classes in telephone installation. The community is aware of the changing picture in the department store field as evidenced by the increasing number of Negro girls employed in clerical capacities in administrative and executive offices and on the selling staffs. Nor is the community unmindful of the expanding opportunities for employment of Negro men and women in banking and life insurance institutions. . . .²⁵

The Commission is aware of the difficulties involved in the evaluation of the law's accomplishments.²⁶ It is constantly impressing upon employers that they must not think in terms of group membership, but only in terms of individual ability. SCAD hesitates to conduct a census of the hiring of members of minority groups because that would entail requesting employers to ask for the information which the Commission asked them to ignore. Some firms have replied, in answer to the Commission's request for such data, by repeating all the strictures first ut-

²³ 1948 ANNUAL REPORT 11; also 1946 ANNUAL REPORT 7, 1947 ANNUAL REPORT 8, and SCAD, MEMORANDUM REPORT OF STATE COMMISSION AGAINST DISCRIMINATION REGARDING RECOMMENDATIONS OF COMMITTEE TO SUPPORT THE IVES-QUINN LAW 7 (1948).

²⁴ 1948 ANNUAL REPORT 10-11.

²⁵ *Id.* at 11.

²⁶ Interview with a commissioner, June 8, 1949.

tered by the Commission itself. A second difficulty is that in evaluating the effects of the law, one tends to think in terms of quotas—how many Negro clerks have been hired in proportion to the total population of the Negro community? Yet SCAD constantly reiterates that quota employment is not compliance with the law. How many members of a minority group must an employer hire, then, to comply? No specific amount, the Commission answers, merely all those who best qualify for each opening.

These are genuine problems the Commission faces in assessing its work, yet they do not appear to be insoluble. It is hardly conceivable that its own preachments should be an effective barrier to self-evaluation. In the present stage of the law's operation it does not seem to be necessary to judge its effectiveness by measuring its achievements according to some standard of what is the "proper" number of members of minority groups for each type of job in each firm or industry. A more simple test, the increase in the jobs held by and the openings available to such employees from year to year, should be adequate for the present and well into the future.

There is still another aspect to the problem of evaluating the Law Against Discrimination and SCAD's administration of it, and to evaluating any piece of legislation in the area of group relations. To what extent, it may be asked, does the law succeed in eliminating prejudice, not merely discrimination? It is an explicit or unstated assumption of most advocates of this kind of legislation that the removal of intergroup barriers by law will eventually lead to the reduction of the prejudice which is said to be the motivation for discriminatory practices. The Lavanburg Foundation is sponsoring a study of a biracial housing project in Pittsburgh which shows, according to one of the directors of the study, that "under appropriate institutional and administrative conditions, the experience of interracial amity can supplant the fear of interracial conflict."²⁷ Are the "institutional and administrative conditions" which result from the Ives-Quim law likewise the appropriate ones to bring about such a change? The answer to this question can be obtained only with the sponsorship of SCAD. The procedure would be to test a group of workers for racial prejudice in an establishment which the Commission finds has excluded members of minority groups. After the company has complied with the law, and previously barred persons are employed, another test can be administered to the same group of workers at certain intervals of time. Such a series of tests would permit some definite con-

²⁷ Merton, *The Self-Fulfilling Prophecy*, 8 ANTIOCH REV. 210 (1948).

clusions as to the role of law and coercion in the elimination of inter-group hostility; it would show where the coercion and the sanctions are effective and where this feature of a legal system must not be applied. It is doubtful, however, that such tests would reveal much except after an interval of some years.

This limitation, indeed, applies to many of the statements in this discussion, especially to the "trends" reported in the next section. This study deals with only four and a half years of a new type of law, and this fact must be taken into account throughout.

B. *Statistical Summary*

Most of the complaints filed with SCAD charge discrimination because of race and color, that is, they charge anti-Negro employment policies. The proportion of such charges to the total number of complaints is rising. (See Table 1.) During 1945-46, covering the first eighteen months of the law, 63 per cent of the complaints charged discrimination because of race and color. During 1947 this category was 75 per cent of the total, in 1948 it was 73 per cent, and in 1949 it rose again to 75 per cent. Meanwhile complaints charging discrimination because of creed, involving mainly Jews, have been declining both relatively and absolutely. During the first 18 months of the law such cases were 21 per cent of the total; they were 12 per cent of the total in 1947, rose to 18 per cent in 1948, and declined to 15 per cent in 1949.

Employers are the main objects of charges in complaints filed with SCAD. (See Table 2.) From the inception of the law until the end of 1949 employers were the respondents in 81 per cent of all complaint cases. The proportion of employment agencies as respondents has been rising slowly, although the absolute number from July 1945 through July 1949 is only 113. During the first 18 months of the law agencies were the respondents in only three per cent of all cases, but this proportion rose to six per cent during 1947, to ten per cent in 1948 and to 13 per cent in 1949.

A NOTE ON THE TABLES

The tables which follow have been prepared from data in the text and tables of SCAD's annual reports. Beginning with the annual report for 1947 SCAD has presented the data for the year just ended and for the cumulative period since July 1, 1945. To obtain the annual data for the earlier periods, given in the tables which follow, it has been necessary to subtract the annual data for the later periods from the cumulative totals since July 1, 1945. SCAD from time to time reclassifies cases closed in previous years. The result is that adding the annual totals across a table does not always yield the exact cumulative total given in the last column; the discrepancy in Table 1 ranges from one to 12 cases, in Table 2 from one to two cases, in Table 3 from one to 14 cases, in Table 4 from one to 17 cases and in Tables 5 from one to four cases.

TABLE 1. BASIS OF DISCRIMINATION ALLEGED IN VERIFIED COMPLAINTS,
JULY 1, 1945-DECEMBER 31, 1949

Basis of Discrimination	Number and Per Cent Distribution of Complaints Filed During											
	July 1, 1945 To June 27, 1946		July 1, 1945 To Dec. 31, 1946		Jan. 1, 1947 To Dec. 31, 1947		Jan. 1, 1948 To Dec. 31, 1948		Jan. 1, 1949 To Dec. 31, 1949		July 1, 1945 To Dec. 31, 1949	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Race	207	56%	365	63%	322	75%	198	73%	235	75%	1120	70%
Creed	89	24	121	21	51	12	49	18	48	15	258	16
National Origin	60	16	68	12	3	1	9	3	15	5	95	6
Other	14	4	24	4	51	12	17	6	17	5	124	8
Totals	370	100%	578	100%	427	100%	273	100%	315	100%	1597	100%

TABLE 2. TYPE OF RESPONDENT IN VERIFIED COMPLAINTS,
JULY 1, 1945-DECEMBER 31, 1949

Type of Respondent	Number and Per Cent Distribution of Complaints Filed During											
	July 1, 1945		July 1, 1945 To June 27, 1946		Jan. 1, 1947 To Dec. 31, 1947		Jan. 1, 1948 To Dec. 31, 1948		Jan. 1, 1949 To Dec. 31, 1949		July 1, 1945 To Dec. 31, 1949	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Employer	313	85%	455	85%	381	80%	235	86%	226	72%	1295	81%
Employment Agency	8	2	14	3	30	6	26	10	42	13	113	7
Labor Union	32	9	40	7	66	14	12	4	42	13	160	10
Other	17	5	28	5	—	—	—	—	5	2	29	2
Totals	370	101%	537	100%	477	100%	273	100%	315	100%	1597	100%

TABLE 3. TYPE OF DISCRIMINATION ALLEGED IN VERIFIED COMPLAINTS,
JULY 1, 1945-DECEMBER 31, 1949

Type of Discrimination	Number and Per Cent Distribution of Complaints Filed During							
	July 1, 1945 To Dec. 31, 1947*		Jan. 1, 1948 To Dec. 31, 1948		Jan. 1, 1949 To Dec. 31, 1949		July 1, 1945 To Dec. 31, 1949	
	No.	%	No.	%	No.	%	No.	%
Application for Employment Denied	445	44%	142	52%	141	45%	712	45%
Dismissal from Employment	210	21	64	23	50	16	325	20
Conditions of Employment	148	15	18	7	23	7	192	12
Employment Agency Referral Withheld	35	4	23	8	38	12	96	6
Union Membership Withheld	38	4	1	—	9	3	48	3
Conditions of Union Membership	67	7	10	4	33	10	112	7
Other	62	6	15	6	21	7	112**	7
Totals	1005	101%	273	100%	315	100%	1597	100%

*Data for shorter period not available.

**Includes 20 complaints not related to employment.

TABLE 4. VERIFIED COMPLAINTS AND COMMISSION-INITIATED INVESTIGATIONS
OPENED AND CLOSED, JULY 1, 1945-DECEMBER 31, 1949

Type of Proceeding	July 1, 1945		Jan. 1, 1947		Jan. 1, 1948		Jan. 1, 1949		July 1, 1945	
	To	Dec. 31, 1946	To	Dec. 31, 1947	To	Dec. 31, 1948	To	Dec. 31, 1949	To	Dec. 31, 1949
<i>Verified Complaints</i>										
Opened	536		472		273		315		1597	
Closed	421		297		453		282		1449	
<i>Commission-Initiated Investigations</i>										
Opened	174		137		80		90		493	
Closed	146		110		98		88		449	
<i>Totals—Complaints and Investigations</i>										
Opened	710		609		353		405		2090	
Closed	567		407		551		370		1888	

TABLE 5. DISPOSITION OF CLOSED CASES OF VERIFIED COMPLAINTS,
JULY 1, 1945-DECEMBER 31, 1949

Disposition of Closed Cases	Number and Per Cent Distribution of Cases Closed											
	July 1, 1945 To June 27, 1946		July 1, 1945 To Dec. 31, 1946		Jan. 1, 1947 To Dec. 31, 1947		Jan. 1, 1948 To Dec. 31, 1948		Jan. 1, 1949 To Dec. 31, 1949		July 1, 1945 To Dec. 31, 1949	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Lack of Jurisdiction	69	24%	71	17%	20	7%	13	3%	15	5%	117	8%
Withdrawn	15	5	14	3	7	2	5	1	9	3	34	2
Dismissed, Lack of Evi- dence of Discrimination	77	27	131	31	114	39	242	53	109	39	596	41
Dismissed, Lack of Evidence, But Other Discrimination Found and Eliminated	122*	43*	109	26	67	23	85	19	67	24	328	24
Sustained, Discrimination Eliminated	-	-	96	23	87	29	108	24	82	29	374	25
Totals	283	99%	421	100%	295	100%	453	100%	282	100%	1449	100%

*Only one figure given for these two categories.

There have been no significant changes in the kind of discrimination charged in complaints filed with the Commission since 1945. For the entire period to the end of 1949, 45 per cent of the complaints charged denial of application for employment, 20 per cent charged dismissal from employment, 12 per cent charged discrimination in the conditions of employment, and 23 per cent made other charges. (See Table 3.)

The data on the number of complaints filed annually are obtainable only since 1947. (See Table 4.) During 1947 SCAD received 376 complaints, in 1948 only 273; in 1949 the number rose to 315. The Commission was able to close 297 complaint cases in 1947, 453 in 1948 and 282 in 1949. In 1947 SCAD opened 137 investigations of its own, without complaints, and closed 110; in 1948 it opened 80 and closed 98; in 1949 it opened 90 and closed 88. From its inception to the end of 1949 the Commission received 1597 verified complaints, of which it disposed of 1223. During the same period the Commission opened 493 investigations independently, of which it closed 449.

During 1949 SCAD reviewed the practices of 222 employers, employment agencies and labor unions who were respondents in cases previously closed but which came up for reexamination during the year.²⁸ In addition, SCAD completed in 1949 examinations of the application forms used by 173 establishments.²⁹ It was during 1945-46 that the Commission appears to have accomplished the bulk of the task of eliminating pre-employment discrimination inquiries, for its 1946 report asserted they were "now the rarity, rather than the rule."³⁰

From July 1945 to the end of 1949 two per cent of the complaints filed were withdrawn and eight per cent were discontinued because SCAD lacked jurisdiction over them. About two-fifths of the complaints, 41 per cent, were dismissed for lack of evidence of the discriminatory practice charged. In another 24 per cent of the complaints SCAD did not find the respondent guilty of the charge specified in the complaint but did find and eliminate through conciliation some form of employment discrimination. And in 25 per cent of the complaints the Commission upheld the complainant and eliminated the illegal practice by conciliation. (See Table 5.) Thus in about two-thirds (64.8 per cent) of the complaints SCAD did not find sufficient evidence to uphold the specific charge of discrimination. This proportion increased until 1949. In the first 18 months of the law's operation SCAD found insufficient evidence to uphold 57 per cent of the complaints filed; in 1947 this pro-

²⁸ 1948 ANNUAL REPORT 25, 1949 ANNUAL REPORT App. A, Table 1.

²⁹ *Id.*

³⁰ 1946 ANNUAL REPORT 7.

portion rose to 62 per cent; in 1948, it rose again to 72 per cent; in 1949, however, it declined to 63 per cent of the cases decided by SCAD. Meanwhile the proportion of complaint cases in which the Commission found evidence of other discrimination, though not of the specific charge, declined until 1949. In its first 18 months SCAD found and eliminated such discrimination in 26 per cent of the complaint cases it received; in 1947, in 23 per cent of the cases; in 1948, in 19 per cent, but in 1949 the proportion rose to 24 per cent. The proportion of complaints which SCAD has upheld has fluctuated from 23 per cent in its first 18 months, to 29 per cent in 1947, to 24 per cent in 1948 and again to 29 per cent in 1949.

The Commission itself does not present the data in precisely this way and has not commented on the large proportion of complaints (64.8 per cent) in which it found insufficient evidence to support the specific charge of discrimination, and the small proportion of cases (25 per cent) in which it did sustain the complainant's claim. Two Commissioners, asked about these data, denied that the difficulty of proving discrimination is the reason for the small proportion of cases in which the specific complaint was sustained.³¹ Apparently, then, the explanation is that the complaints filed with SCAD are weak ones, or that SCAD's standards of evidence of proof of discrimination by a respondent are rather high.

The Commission presents its data in another way. From July 1945 to the end of 1949 SCAD dealt with 787 different respondents, of whom 511, or about 65 per cent, were found to have practiced some form of discrimination forbidden by the law. All of these respondents eliminated the discriminatory practice through conciliation.³²

SCAD, as has been indicated, does not consider only the specific charges in a complaint it receives, but uses the occasion to inquire into the respondent's general employment policies. While it sustained only about a quarter of the complaints it received to the end of 1949, the Commission found, in almost as many cases (23.6 per cent of all complaint cases), some form of employment discrimination which it proceeded to eliminate by conference and conciliation. By this practice SCAD makes each case yield the utmost results.

C. *Compliance by Employers*

When they face a statute like the Law Against Discrimination employers are subject to contradictory impulses. On the one hand they tend to resent further governmental jurisdiction over their business

³¹ Interviews, January 11, 17, 1949.

³² 1948 ANNUAL REPORT 19, 1949 ANNUAL REPORT 10.

affairs, and especially so where personal attitudes toward other groups are involved. On the other hand, it would seem that the Ives-Quinn law should be welcomed by employers since it expands their sources of labor supply. Of course, before the enactment of minimum wage and hour laws and the tremendous growth of trade unionism during the late 1930's, the usual result of larger labor supply was the possibility of reducing wages and increasing the work-day. Even though such results are almost entirely precluded now, an increase in labor supply should theoretically be welcomed by employers, who could select more efficient workers from a larger group.

While employers as a group have not looked upon the law as a boon, most of them reached by the Commission have apparently abandoned their early opposition. SCAD's first chairman, testifying in 1947 before a Senate subcommittee on a federal fair employment practices bill, stated: "We were confronted with the fact that when the [New York State] bill was considered before the legislature there was strong opposition, particularly on the part of management."³³ At the joint legislative committee hearing on the Ives-Quinn bill in February of 1945, the following business groups spoke against its enactment: Broadway Association, Bronx Board of Trade, Brooklyn Chamber of Commerce, Buffalo Chamber of Commerce, Chamber of Commerce of the Borough of Queens, Chamber of Commerce of the State of New York, a group of employment agencies, New York Board of Trade, Real Estate Board of New York, West Side Association of Commerce, Associated Industries of New York State, N. Y. State Laundry Owners Association.³⁴ In a resolution sent to the Governor of New York State, the State Chamber of Commerce opposed the bill on the grounds that it would make New York less desirable for employers and workers, might attract unwelcome persons from outside the state, and might lead to race riots and pogroms.³⁵ Once the initial lack of knowledge was remedied by the Commission and the provisions of the law explained, according to SCAD's first chairman,

a great deal of the opposition which had been apparent during the legislative consideration was gradually broken down, and we were—frankly, I was myself amazed, not at the opposition which developed but at the extent of the cooperation which we got from management and from the

³³ Testimony of Henry C. Turner, *supra* note 16 at 324.

³⁴ N. Y. STATE ASSEMBLY, HEARINGS ON A. I. 883, ASSEMBLY PRINT 1138, BY MR. IVES BEFORE THE ASSEMBLY WAYS AND MEANS COMMITTEE AND SENATE FINANCE COMMITTEE 2, 14, 58 (1945). (Copy in N. Y. City office of SCAD.)

³⁵ N. Y. Times, February 2, 1945, p. 32, col. 5.

large industrial groups, such as Associated Industries of the State of New York and merchants' associations. . . .³⁶

That opposition on the part of employers should decline after the enactment of the law is not surprising. If we assume that employers want as little governmental regulation of their hiring policies as possible, it is to be expected that they would make at least the minimum compliance with the law in order to avoid dealing with the enforcing agency. Interviews with the personnel managers of 32 companies in N. Y., New Jersey and Connecticut, and the experience of the field staff of the Commission on Discrimination in Employment of the N. Y. State War Council with 175 companies, supports this expectation:

Once confronted with the legal necessity of hiring the Negro, many managers, supervisors and foremen have exhibited the same earnest desire to make a success of it as they have in tackling any other problem of production and management. And they have succeeded.³⁷

In dealing with management SCAD, according to one Commissioner,³⁸ has found that top-level executives are more conciliatory than those at the middle levels. There are good reasons for this difference. Top executives have the authority to make whatever concessions the firm will make, whereas those lower in the hierarchy must await the decisions made above. Top executives do not deal so directly with the workers as do middle level executives, and hence their decision is less likely to be affected by their own personal attitudes towards minority groups. The relationship between workers and top-level management is as purely economic and devoid of sentiment as any relationship can be. To the middle level executives the employment of minority group members is a social as well as an economic decision, involving interpersonal relations more intimate than those between workers and the highest levels of management.

The early fears of opponents of the law have not been realized: industries have not been driven from the state by the law; there have been only a few cases in which individual workers refused to work alongside members of minority groups employed as a result of the law; there has been no unfavorable response from department store customers since the employment of Negro salesgirls. "The experiences of the commission, therefore," according to a joint statement by its first two chairmen, "lead to the conclusion that the bogies and phantoms urged

³⁶ Testimony of Henry C. Turner, *supra* note 16 at 324.

³⁷ DAVIS, HOW MANAGEMENT CAN INTEGRATE NEGROES IN WAR INDUSTRIES 3 (1942). (Committee on Discrimination in Employment, N. Y. State War Council).

³⁸ Interview, January 14, 1949.

in opposition to the passage of the law have vanished in the light of experience."³⁹

Opponents of the proposed legislation feared that a flood of cases would follow its enactment. This has not occurred. Indeed, minority groups which want to strengthen the law's operation have argued that SCAD handles a small number of cases. A 1948 report of the Committee to Support the Ives-Quinn Law (sponsored by representatives from the Urban League of Greater New York, the National Association for the Advancement of Colored People and the American Jewish Congress) asserted that this situation is the result of negligence on the part of SCAD and the civic and social agencies who favor the law, and is not an indication that there is little employment discrimination.⁴⁰

With regard to the number of complaints it receives the Commission is caught between two fires. If it receives or initiates a large number of cases the law may be said to be creating a "nuisance" for business. If there are few cases the law may be said to be unnecessary or the Commission lax. While there is no "correct" number of cases that should arise in a given period of time, it is probably true that changes in SCAD's methods of case settlement and publicity would bring complaints to it at a greater rate, and would give it a case load more nearly equal to that of similar agencies. The Committee to Support the Ives-Quinn Law prepared data which show that SCAD during 1947 had a case load of 485, a staff of 22 and a budget of \$420,000; the New York State office of the federal FEPC during the year ending June 30, 1944, had a case load of 820, a staff of four and a budget of about \$50,000; the N. Y. State Labor Relations Board during 1946 had a case load of 2,024, a staff of 12 to 14, and a budget of about \$450,000. From these data the Committee concluded that SCAD, for its budget and staff, carries a small case load and takes too long to settle complaints.⁴¹

There are several possible explanations for the small number of complaints filed with SCAD. First, as SCAD itself has pointed out,⁴² the high level of employment has meant that workers have not felt the same need for protection from discrimination which they might feel if

³⁹ Statement of Henry C. Turner and Charles Garside, *supra* note 16 at 327.

⁴⁰ MATHER, REPORT ON THE EXPERIENCE OF THE URBAN LEAGUE, NAACP, AND AMERICAN JEWISH CONGRESS WITH THE STATE COMMISSION AGAINST DISCRIMINATION 6 (1948). (Mimeographed, Urban League of Greater N. Y.)

⁴¹ The Committee's report does not indicate how the figure of 485 was obtained for 1947. Our data in Table 4 show that SCAD received during 1947 a total of 376 complaints and opened 137 investigations on its own initiative, and that it closed 297 complaint cases and 110 investigations.

⁴²1947 ANNUAL REPORT 10, 1948 ANNUAL REPORT 83.

jobs were scarcer. Second, workers who identify themselves with minority groups learn which types of jobs, firms and industries are closed to them, hence avoid applying and have no occasion to file a complaint. In 1948 the Research Committee on Intergroup Relations and the Commission on Community Interrelations of the American Jewish Congress sponsored a study of the attitudes, with respect to employment discrimination, of 504 New York City residents.^{42a} The study showed that Jews believe their freest occupational opportunities are in small business and the professions, and that Negroes see their freest opportunities in manual labor and domestic service.⁴³ These judgments seem to correspond to the facts of economic life.

Third, it takes time for workers to learn about the law. SCAD has an educational and a publicity program, but only a small part of it appears to have as its purpose the dissemination of information in such a way as would substantially increase the number of cases.⁴⁴ The New York City study just referred to revealed that only eight per cent of those asked knew that New York State has a law against discrimination in employment which is enforced by an official agency to which complaints may be brought. Thirty-nine per cent did not know the law exists; 30 per cent knew it exists but could give no details about it, and 23 per cent knew that it exists and that it deals with employment discrimination.⁴⁵ Thus only one person in 12 knew more about the law than was actually revealed in the circumstances of the interview (about employment discrimination) and in the question itself: "Do you know about the New York State Law against Discrimination?"

Fourth, the small amount of evidence available indicates that minority groups as well as the public in general are skeptical about the efficiency of the Ives-Quinn law. Of the 504 New York City residents interviewed in the aforementioned study, 56 per cent said they did not believe the law is "efficient", 19 per cent said they did not know or were undecided, and only 25 per cent said they believed the law efficient.

^{42a} This sample of 504 New York City residents does not appear to be a representative one. This fact, however, is irrelevant here since the study's results are not interpreted as reporting the views of the entire population of the city, but only as a rough indication of opinion.

⁴³ SAENGER AND GORDON, *THE INFLUENCE OF DISCRIMINATION ON MINORITY GROUP MEMBERS IN ITS RELATION TO ATTEMPTS TO COMBAT DISCRIMINATION* 3, Table 5, 6 (1948). (American Jewish Congress, Commission on Community Interrelations.)

⁴⁴ SCAD's educational and publicity programs are discussed in each Annual Report: 1945-46 at 13, 1946 at 14, 1947 at 18-21, 1948 at 68-74, 1949 at 48-68.

⁴⁵ SAENGER AND GORDON, *op. cit. supra* note 43 at 11, Table 11.

Of the Jewish respondents 69 per cent said they did not believe the law efficient, while 52 per cent of the Negroes asked took the same position.⁴⁶ The accuracy of and the foundation for these opinions are irrelevant to the fact that a law in which so large a proportion of the population lacks faith is not likely to be invoked as frequently as one which people believe efficient.

Fifth, if we judge by SCAD's disposition of complaint cases (already discussed earlier in this section), then we must conclude that complainants are not likely to encourage others to file complaints. As we have already seen, to the end of 1949 SCAD found that 64.8 per cent of the complaints it received could not be sustained after investigation, and only about 25 per cent were sustained. (See Table 5.) Regardless of whether or not SCAD could do nothing else but decide each complaint case as it did, when two out of three complainants find their charges not sustained (though SCAD finds evidence of *other* discrimination in about a third of these cases) it is probable that few workers come away from an experience with SCAD in a mood to recommend the same procedure to their friends among the minority groups.

Sixth, the length of time SCAD takes to settle complaint cases, too, probably discourages potential complainants who know of this situation. To the end of 1947, covering two and a half years, SCAD has stated, "the average time required to dispose of a complaint case . . . was three months."⁴⁷ This is obviously too long a period to be effective for a worker who has experienced discrimination, since it is not likely that he can afford to remain unemployed for more than a few weeks while his complaint is being handled. If many weeks go by and the Commission has not yet come to a decision, the worker probably has to get another job. When he does, the chances are he is no longer interested in the one where he experienced the discrimination. There is another clue to the length of time SCAD devotes to each complaint case. In 1948 the Commission closed 453 complaint cases. (See Table 4.) In 1948, too, it received 273 new complaints, of which 93 were still open on December 31. Thus of the 453 cases SCAD closed in 1948, 180 (or 40 per cent) had been opened during 1948, whereas 273 cases (or 60 per cent) had been opened before 1948. In 1949 the Commission closed 282 complaint cases of which 183 (or 65 per cent) had been opened during that year and 99 (or 35 per cent) in earlier years.⁴⁸ The Commission, as we shall see in a later section, is aware of this problem.

⁴⁶ *Id.* at 13, Table 13.

⁴⁷ SCAD, MEMORANDUM REPORT, *op. cit. supra* note 23 at 3.

⁴⁸ 1948 ANNUAL REPORT App. A, Table 5, 1949 ANNUAL REPORT 9.

Much of the delay in the settlement of complaint cases is unavoidable. A field investigator must make one or more trips to the respondent's place of business. The commissioner assigned to a case has to hold one or more conferences with the respondent or his representative and with the complainant. Many persons are often involved, and visits, schedules, and so on, must be synchronized. Three months is probably too long for the complainant, but some delay seems inevitable.

Since SCAD does not make public the provisions of its settlement of complaint cases, it is impossible to assess this aspect of the Commission's work. But its first chairman told a U. S. Senate subcommittee that fewer than 243 persons had actually obtained jobs as a result of filing complaints with the Commission from its inception in July of 1945 to June 1, 1947.⁴⁹ Such a record, it must be noted, is not one to encourage the filing of complaints. The Commission, however, has noted that

in a substantial proportion of the complaints . . . the complainant has taken the position that it is not his desire to obtain action which will affect him directly, but only that the Commission proceed to eliminate the unlawful employment practice or policy which resulted in the incident of which he complains.⁵⁰

It is apparent that the mere opportunity to report discrimination to a state agency empowered to eliminate it is a genuine source of satisfaction to persons who feel they are victims of discrimination.

It would be interesting to learn systematically what is the reaction of complainants to their experiences with SCAD; it would be equally interesting to learn the attitudes of employer-respondents. Such studies, of course, could be undertaken only with the Commission's sponsorship. Here again one of the Commission's preachment seems to block reliable self-evaluation, for it assures all parties to its cases that their names will not be made public or used in any way not relevant to a proceeding, without their permission. Again it appears odd that SCAD should be effectively barred in this way. Probably it could undertake or sponsor this kind of study, and still not violate its assurances, by explaining the purposes the study would serve and by guaranteeing anonymity as when the interviewees were parties to a case.

Since the Commission had not yet found it necessary to bring a single complaint case to a hearing before 1949,⁵¹ the three minority groups which sponsored the Committee to Support the Ives-Quinn Law,

⁴⁹ Testimony of Henry C. Turner, *supra* note 16 at 329, 331.

⁵⁰ 1948 ANNUAL REPORT 21.

⁵¹ *Id.* at 83.

asserting that this situation "hardly seems to be the result of chance," have claimed that SCAD may be "willing to settle for less than full compliance with the letter and spirit of the law, in order to avoid the public hearing stage."⁵² In response to the Committee's request that SCAD set forth its standards for adjustment of complaint cases,⁵³ the second chairman of SCAD described certain "minimum" and "variant" bases of conciliation.⁵⁴

The minimum bases call for a commitment by the respondent that: 1) his employment policies will conform to the law and that he will make this known to all persons in his organization who deal with employment matters; 2) the SCAD poster stating the rights and obligations of persons affected by the law will be displayed in such a way that employees and applicants can see it; 3) no oral or written inquiries will be made that may reveal an applicant's race, creed, color or national origin; 4) his employment pattern will in the future, dependent upon job openings and the qualifications of those who apply for them, show the inclusion of members of all minority groups. Some of the "variant" bases of conciliation are a commitment by the respondent to: 1) hire the complainant; 2) offer the complainant the next opening; 3) give the complainant back pay; 4) upgrade the complainant; 5) use employment agencies which will refer workers on a non-discriminatory basis; 6) investigate the attitudes of his personnel workers and to take steps to eliminate any prejudices they have which may hinder them from meeting the requirements of the law; 7) to make periodic reports to SCAD showing those applicants selected and rejected, and the basis for each type of action. In summary, the chairman stated, the Commission may during a conciliation "require a respondent to do anything which the Law says the Commission may require him to do after the conduct of a formal public hearing." This general statement and most of the foregoing "minimum" and "variant" bases for adjustment of complaints were set forth by SCAD in its 1948 report.⁵⁵

Two features about employers' compliance with the law are of

⁵² MATHER, *op. cit. supra* note 40 at 8.

⁵³ COMMITTEE TO SUPPORT THE IVES-QUINN LAW, RECOMMENDATIONS FOR THE CONSIDERATION OF THE NEW YORK STATE COMMISSION AGAINST DISCRIMINATION 2 (1948), and memorandum to SCAD, REASONS IN SUPPORT OF THE PROPOSALS SUBMITTED BY OUR COMMITTEE TO THE STATE COMMISSION AGAINST DISCRIMINATION 2 (1948).

⁵⁴ SCAD RELEASE, May 11, 1948, ADDRESS BY CHARLES GARSIDE . . . BEFORE . . . COMMITTEE TO SUPPORT THE IVES-QUINN LAW, . . . MAY 11, 1948 4-5; and SCAD, MEMORANDUM REPORT, *op. cit. supra* note 23 at 3-5.

⁵⁵ 1948 ANNUAL REPORT 19-25.

special importance. First, as the Commission points out, "the successful treatment of each case, although reflecting statistically only one complainant and one respondent, may and does in many cases affect thousands of persons in this State."⁵⁶ The N. Y. Telephone Company and Montgomery Ward are each one case, but the significance of their genuine compliance with the law is considerable, since they themselves not only employ thousands of workers but their employment practices are likely to influence those of other large firms in similar fields of business. Second, SCAD constantly watches out for mere token compliance, the hiring of one or a few Negroes or Jews, for example, primarily for the purpose of claiming compliance with the law. SCAD does not tell an employer how many members of a minority group he must have; it only asserts that he must employ such persons on the same basis he uses in hiring other workers. The Commission can determine whether or not compliance is genuine and continuing by examining the application blanks filled out by the prospective employees. If they reveal discrimination even after the employer has once complied with the law, the Commission may reopen proceedings against the firm.⁵⁷

Just as it is difficult to measure precisely the effect of the Ives-Quinn law and the success of the Commission in administering it, so it is difficult to determine exactly to what extent employers comply with the law. We have reviewed SCAD's data on compliance, but there remains one other important source, the reports of discriminatory job orders received by the New York State Employment Service (N. Y. S. E. S.). When the N. Y. S. E. S. receives a discriminatory request from an employer, the rules of the agency provide that a record must be made of it and that the employer must be asked to amend his request in accordance with the Ives-Quinn law.⁵⁸ Despite the law, the official state employment agency continues to receive hundreds of illegal requests each year. Though the number declined considerably after the passage of the act, there are still a surprising number of requests of this kind, and an equally surprising number which cannot be relaxed by the state employment agency officials. The N. Y. S. E. S. sends this information to SCAD, but the latter has not, to the knowledge

⁵⁶ 1947 ANNUAL REPORT 9.

⁵⁷ Interview with a commissioner, January 17, 1949.

⁵⁸ All data on these discriminatory job orders were obtained either in personal interviews on January 17, 1949 and March 30, 1950 with the liaison officer, State Director's Office of the New York State Employment Service, or from N. Y. S. E. S., SUMMARY OF DISCRIMINATORY REPORTS (quarterly), 1945-49.

of this writer, commented on this matter in its annual reports or in its literature. About 80 to 90 per cent of these requests discriminate against Negroes and less than ten per cent against Jews. The probability is, further, that the number of such discriminatory job orders is under-reported. During 1948 one of the community councils created by SCAD claimed that the N. Y. S. E. S. offices in one county were not reporting to that agency's headquarters the discriminatory job orders they received. After a conference with N. Y. S. E. S. officials the local offices were directed to make the reports in conformity with N. Y. S. E. S. policy.⁵⁹

During 1944 the N. Y. S. E. S. received 999 discriminatory job orders, of which it was able to change 591, leaving 408 requests which employers refused to amend. In 1945, during half of which the Ives-Quinn law was in effect, the number of requests fell to 697, of which 554 were amended, leaving 143 unchanged with regard to their discriminatory features. Since 1945 the total number of requests received has declined, but the proportion of employers who are willing to amend their discriminatory requests has also declined except for 1949. Thus 79 per cent of the discriminatory requests made in 1945 were amended, 72 per cent in 1946, 58 per cent in 1947, 54 per cent in 1948 and 57 per cent in 1949. In 1949, three and a half to four and a half years after the passage of the Ives-Quinn law, 410 discriminatory requests from employers were reported by the state's employment agency, of which 233 were amended. This seems like a large number of illegal requests, but it is small compared to the 565,569 nonagricultural placements the N. Y. S. E. S. made in 1949.⁶⁰

Of the employers who make these discriminatory requests about 15 per cent, according to an official estimate, are fully subject to the Ives-Quinn law and are probably aware of that fact.

D. *Compliance by Employment Agencies*

Private employment agencies have not very often appeared before SCAD as respondents in complaint cases or investigations initiated by the Commission. From July 1945 to the end of 1949 agencies were named as respondents in 113 complaint cases⁶¹ and in 45 investigations begun on the Commission's own initiative.⁶² SCAD has found dis-

⁵⁹ 1948 ANNUAL REPORT 78.

⁶⁰ N. Y. STATE DEPARTMENT OF LABOR, BUREAU OF RESEARCH AND STATISTICS OF THE DIVISION OF PLACEMENT AND UNEMPLOYMENT INSURANCE, OPERATIONS, EMPLOYMENT SERVICE AND UNEMPLOYMENT INSURANCE (monthly), 1949.

⁶¹ 1949 ANNUAL REPORT App. A, Table 4.

⁶² *Id.* at App. A, Table 7.

criminy practices among agencies in higher proportion than among employers and labor unions. Of 95 complaint cases against employment agencies closed to the end of 1949, the specific charge of the complainant was upheld in 45 per cent, but only in 30 per cent of the cases in which a complaint was lodged against an employer, and in seven per cent of the 115 complaints against a labor union.⁶³ In the Commission-initiated cases, discrimination was found in 74 per cent of the 335 cases closed to the end of 1949 involving employers, in 58 per cent of the 38 cases involving unions, but in 90 per cent of the 41 cases involving private employment agencies.⁶⁴

It would seem reasonable to expect that employers who want to circumvent the Ives-Quinn law would resort to private employment agencies willing to help them. Such a claim was made, in extreme form, by Representative John E. Rankin of Mississippi, testifying before a Senate subcommittee in 1947 on a federal fair employment practices bill. Mr. Rankin stated: "The businessmen in New York tell me that they had to resort to employment agencies to get around this thing [the Ives-Quinn law], and in those employment agencies they have a string of questions . . . that get around these regulations, and they tell me that there is hardly a Negro in New York can get by them."⁶⁵

The Commission has been aware of the challenge employment agencies represent to the full enforcement of the law. Commenting in its 1946 annual report that the private agencies present a "real difficulty," the Commission stated: "There can be little doubt that some employers have sought to evade the provisions of the Law Against Discrimination by job orders placed with these agencies in which limitations as to race, color, creed, and national origin are openly or tacitly conveyed to the agency." In attempting to eliminate such practices, SCAD has studied the work of the agencies, conferred with them and their legal advisers, and has observed that improper questions have been excluded from their application blanks. The Commission also noted progress in its efforts to get the agencies to reject discriminatory job orders. In addition it has developed, with the New York City Commissioner of Licenses, a procedure for invoking the latter's regulatory powers where conciliation fails to eliminate unlawful practices.⁶⁶

That the Commission has as yet not achieved much success in this area is shown by the fact that private employment agencies are willing

⁶³ *Id.* at App. A, Table 6.

⁶⁴ Computed from *id.* at App. A, Table 7.

⁶⁵ Testimony of John E. Rankin, *supra* note 16 at 697.

⁶⁶ 1946 ANNUAL REPORT 24-25, 1949 ANNUAL REPORT 21-22.

to accept discriminatory job orders even on the telephone from persons who have not identified themselves or their firms, according to three studies conducted by the Commission on Law and Social Action of the American Jewish Congress. In 1945, soon after the enactment of the Law Against Discrimination, 102 employment agencies, of which 92 specialized in white collar jobs, were personally called upon. Of these 102, 30 were "not openly hostile to the law but were set upon circumventing it"; "35 were not even willing to give it lip service"; and "only 37 or one-third had a friendly, cooperative attitude toward the policy expressed in the law."⁶⁷ Unfortunately, the survey does not indicate the criteria used to classify the attitudes of the employment agencies. The following year the same organization made a telephone survey of 121 agencies in Manhattan, Brooklyn and Queens which supply white collar workers, including 65 agencies covered in the 1945 study. Of the 121 agencies telephoned anonymously, 107 (88 per cent) said they would fill the request for a "white Protestant stenographer," and only 14 refused.⁶⁸ Early in 1949 the American Jewish Congress made a third survey, this time covering 255 Manhattan agencies supplying stenographers and other office personnel. Nine gave replies too uncertain to be classified. Of the 246 agencies giving definite replies, 158, or 64.2 per cent, said they would fill the discriminatory request, whereas 88, or 35.8 per cent, refused it. These figures show a substantial change in the policy of private employment agencies, but indicate, nevertheless, that they still engage in a good deal of illegal discrimination. If such a large proportion are willing to accept a discriminatory order from an anonymous telephone caller, it is safe to assume that even more would do so when contact is more personal.⁶⁹

Employment agencies have shown some measure of opposition to the work of SCAD. In November of 1946 the Commission adopted a General Regulation requiring that all employers, employment agencies and labor unions covered by the law post in their establishments a notice prepared by the Commission setting forth the main provisions of the Ives-Quinn law. Some employment agencies in New York City, the Commission reports, "have refused to comply with the regulation on the ground that the Commission is without power to adopt a regulation requiring the posting of a notice." Though the Commission be-

⁶⁷ AMERICAN JEWISH CONGRESS, COMMISSION ON LAW AND SOCIAL ACTION, SURVEY OF PRIVATE EMPLOYMENT AGENCIES 2-3 (1947) (in file at office of the Congress, N. Y.). See also, 2 LAW AND SOCIAL ACTION 48 (1947) (pub. by the Congress).

⁶⁸ *Id.* at 3.

⁶⁹ 4 LAW AND SOCIAL ACTION 104 (1949).

heves it does have this power, it sought in 1949 an amendment to the Law Against Discrimination requiring the posting of such a notice. Two bills (S. I. 1817, Print 1968 and A. I. 1869, Print 1958) were introduced, one in each state legislative body, but both died in committee. As a result, the Commission decided to "proceed against the recalcitrant employment agencies by way of criminal proceedings." By agreement with New York City's Chief Magistrate, all cases involving charges of wilful interference with SCAD in the performance of its duty or violation of its orders will be handled by a court especially created to deal with violations of orders of New York City and State departments and commissions.⁷⁰

The Commission has sponsored an amendment to the General Business Law of New York State to help solve another problem regarding employment agencies. The names of some agencies, the Jewish-American Employment Agency, for example, immediately suggest that they will accept job orders from employers and will make referrals on the basis of race, creed, color or national origin. Recognizing that an agency's name may be a business asset, SCAD does not intend to order any changes of name, but is asking such agencies to add to their advertising copy a phrase to remove the implication of their names. The Jewish-American Employment Agency uses the term "Non-Sectarian" under its name. Apparently the Commission could not obtain the cooperation it wanted from employment agencies; hence it asked for the legislation.⁷¹

During 1949, also, SCAD began an investigation into the practices of fee-charging employment agencies to "ascertain the facts and, if necessary, to provide a basis for remedial action." One of the commissioners has taken sworn testimony from representatives of several group relations agencies and this year the employment agencies are testifying.⁷²

E. *Compliance by Labor Unions*

In dealing with illegal discrimination by labor unions SCAD's chief success has come not as a result of complaint cases but through investigations it has begun on its own initiative. To the end of 1949 the Commission received a total of 160 complaints against unions,⁷³ of which it had closed 115. In only eight of these 115 cases did SCAD

⁷⁰ 1949 ANNUAL REPORT 87-88.

⁷¹ *Id.* at 91-92, and 1948 ANNUAL REPORT 37-38.

⁷² 1949 ANNUAL REPORT 70.

⁷³ *Id.* at App. A, Table 4.

sustain the complainant's charge of illegal discrimination.⁷⁴ To the end of 1949 the Commission initiated 47 investigations of union practices, of which it had completed 38. Of these 38, SCAD found discrimination in 22 cases and eliminated the illegal practices through conciliation.⁷⁵

Probably the Commission's most substantial achievement with respect to discrimination by unions has been the elimination of provisions in union constitutions and by-laws excluding Negroes entirely or denying them the full privileges of membership. In 1948 SCAD concluded a survey of 38 unions to determine the extent of such discriminatory rules, and succeeded in getting the following eight unions to remove discriminatory provisions from their constitutions or by-laws:⁷⁶ Air Line Dispatchers; Blacksmiths, Drop Forgers and Helpers; International Association of Machinists; Maintenance of Way Employes; R. R. Yardmasters; Railway and Steamship Clerks, Freight Handlers, Express and Station Employes; Sheet Metal Workers; Switchmen's Union.

The following nine unions have made such discriminatory provisions inoperative in New York State: National Association of Letter Carriers; Locomotive Engineers; Locomotive Firemen and Enginemen; R. R. Telegraphers; R. R. Trainmen; Railway Carmen; Railway Conductors; Railway Mail Association; Rural Letter Carriers' Association.

Some of these unions, the Commission has reported,⁷⁷ complied with the law on their own initiative, some "complied readily" upon the Commission's request and some "complied only after the exertion of strenuous effort." SCAD pointed out that it is not convinced, merely because the survey has been concluded, that unions' discriminatory admissions practices have been entirely eliminated, nor even that all discriminatory provisions have been removed from union constitutions and by-laws. "Pending and future cases involving such clauses or practices," it stated early in 1949, "will, however, be handled on an individual case basis."⁷⁸

F. *Seniority Rules and Vocational Training*

In its efforts to break up long-standing discriminatory patterns in

⁷⁴ *Id.* at App. A, Table 6.

⁷⁵ *Id.* at App. A, Table 7.

⁷⁶ 1948 ANNUAL REPORT 33, 35-36.

⁷⁷ *Id.* at 35.

⁷⁸ *Id.* at 36.

employment the Commission meets problems that it can do little to solve directly or immediately. Two such problems are seniority and the need for expanded job training programs. While the Law Against Discrimination aims to open all job levels to all groups in the state, it also has the effect of breaking up the traditional pattern of "Negro jobs." Just as Negroes may not be excluded from jobs merely on account of race or color, so no class of jobs may be reserved exclusively for Negroes. Thus it is illegal to exclude white waiters in restaurants where all the waiters have been traditionally Negroes, or to exclude whites from holding bus-boy jobs where these have been held traditionally by Filipinos. While this type of breakup of customary employment patterns is not nearly so important as opening up new opportunities to members of minority groups, both processes, if carried out over a period of years, will accomplish the law's aim to make employment a matter of ability and not of race, color, creed or national origin.

Seniority achieved through company policy or contracts with trade unions often perpetuates past employment discrimination. How to deal with this problem, which runs into an issue on which unions are very touchy, has been under informal discussion in the Commission.⁷⁹ In its annual report for 1948 SCAD noted that the railroad brotherhoods, for example, have extensive seniority arrangements which continue past discriminatory practices: ". . . in every category of employment there exist formidable lists of furloughed employees with prior claims on job vacancies which militate against an immediate visible change in the pattern of employment save by assault on the principle of seniority."⁸⁰

The second chairman of the Commission, testifying in 1947 before a Senate subcommittee on a federal fair employment practices bill, described, in the course of proving a different point, how a minority group is discriminated against because of previous unfair employment patterns perpetuated through seniority arrangements. In a large industrial city in up-state New York members of the Italian community felt they were being discriminated against in postwar discharges, and "a good deal of racial bitterness" resulted. But investigation "disclosed that the Italians had been discharged solely on the basis of seniority, that there was no racial discrimination whatsoever."⁸¹

Industrial training, especially for Negroes and Puerto Ricans, is

⁷⁹ Interview with a commissioner, January 17, 1949.

⁸⁰ 1948 ANNUAL REPORT 82.

⁸¹ Testimony of Charles Garside, *supra* note 16 at 344.

essential if the purposes of the Ives-Quinn law are to be realized to the full. Much potential discrimination in skilled trades and white collar jobs is probably concealed, since so few Negroes and Puerto Ricans are qualified for them by training and experience. As these and other groups develop the skills which will enable them to hold better jobs, they can further test the law and enter new occupations. The Commission has considered this problem from the start of its work, and it reported last year: "Plans for close cooperation between the New York State Apprenticeship Council and the Commission are presently being formulated in order to insure that opportunity for training shall not be restricted by reason of race, creed, color or national origin."⁸² The second chairman of the Commission pointed out to minority group leaders at a meeting sponsored in 1948 by the Committee to Support the Ives-Quinn Law that they could aid in strengthening the enforcement of the law if they helped "to prepare the members of minority groups to become skilled and qualified to take their places on a competitive basis in this industrial society."⁸³

When training schools are open to all minorities and when they qualify for the higher-paying jobs the Ives-Quinn law can then operate at greater strength to raise their occupational and income level.

III. SCAD'S RULINGS AND POLICIES

In administering the Law Against Discrimination SCAD, of course, works in a legal area that has not been fully charted, and is anxious to proceed cautiously and upon the basis of principles that have been verified to the greatest possible extent. The administration of such laws so clearly affects their efficacy that a detailed examination of SCAD's rulings, policies and procedures becomes necessary if we are to understand the role of the Ives-Quinn law in the elimination of discrimination.

A. *Rulings*

On three occasions SCAD has made public a comprehensive set of rulings dealing with one or more phases of the Law Against Discrimination. The first set was presented June 1, 1946 and dealt only with pre-employment inquiries.⁸⁴ More comprehensive collections of rulings on this subject and other matters were included in the annual reports for 1948 and 1949.⁸⁵ In its rulings, as a whole, the Commission has

⁸² 1948 ANNUAL REPORT 83.

⁸³ SCAD, ADDRESS BY CHARLES GARSIDE, *supra* note 54 at 9.

⁸⁴ SCAD, RULINGS, June 1, 1946.

⁸⁵ 1948 ANNUAL REPORT chap. III, 1949 ANNUAL REPORT 14-47.

strengthened the law considerably, and, as it points out, "has followed the statutory mandate of liberal construction."⁸⁶ With respect to pre-employment inquiries, especially, SCAD has done a thorough job. It has proscribed inquiries as to race, religion, color and national origin, as well as other inquiries from which it is possible to determine these characteristics. Thus an applicant may be asked whether he is a citizen of the United States, but not whether he is a native-born or naturalized citizen. Questions about the applicant's place of birth, or that of his parents or close relatives, are likewise forbidden. The statute, SCAD points out, "does not restrict an employer's right to fix the qualifications necessary for satisfactory job performance. It merely requires that the same standards of qualification be applied equally to all persons."⁸⁷

In its 1948 annual report the Commission published a large number of rulings referring to the meaning, under the law, of employers, employees, labor organizations, employment agencies, verified complaints, services of governmental agencies, exclusiveness of remedy under the act, pre-employment inquiries, bona fide occupational qualifications, and help-wanted and situations-wanted advertisements. The following paragraphs summarize a number of the more important rulings SCAD has made.

Employers. 1) SCAD has jurisdiction over state and municipal agencies and other subdivisions of the state, but not over the United States Government, its subdivisions, agencies and instrumentalities.⁸⁸ 2) SCAD has jurisdiction over a maritime company when an unlawful practice is alleged to have been committed in the state, even if the company is engaged in interstate or foreign commerce.⁸⁹ 3) SCAD has jurisdiction over railroad employment within the state.⁹⁰ 4) SCAD has jurisdiction over an employer who has a total of six or more employees even if they are so distributed among several establishments that each has fewer than six.⁹¹

Employees. A "maid" employed regularly in a business establishment is *not* in "domestic service" excluded from the law's coverage.⁹²

Labor Organizations may not exclude persons on the basis of race, creed, color or national origin, maintain auxiliary unions for persons

⁸⁶ 1948 ANNUAL REPORT 42.

⁸⁷ SCAD, *op. cit. supra* note 84 at 1.

⁸⁸ 1948 ANNUAL REPORT at 42.

⁸⁹ *Id.* at 43.

⁹⁰ *Id.* at 44.

⁹¹ *Id.* at 45.

⁹² *Id.* at 46.

of a particular race, creed, or national origin, or deny any privilege to members on such a basis.⁹³

Employment agencies come within SCAD's jurisdiction even if they are non-profit agencies, or are operated in conjunction with an educational institution otherwise exempt from the law.⁹⁴

Verified complaints 1) may be filed by employers whose employees "refuse or threaten to refuse to cooperate with the provisions of the Law."⁹⁵ 2) A membership corporation whose purposes are embraced by the law may file a verified complaint under section 131.3, which forbids pre-employment inquiries that reveal race, creed, color or national origin.⁹⁶ 3) An employer who places a discriminatory job order with an employment agency is violating the law no matter what action the agency takes.⁹⁷ 4) An employment agency that accepts a discriminatory job order is violating the law.⁹⁸ 5) A person who is required to fill out an application form, in order to obtain employment, which contains unlawful questions, may file a complaint even if he does not complete the form or does not submit it to the employer.⁹⁹

Pre-employment inquiries. 1) Discrimination because of political creed is not covered by the law, which forbids discrimination on the basis of religious creed.¹⁰⁰

B. Policies

1. *Expediting Settlement of Complaints*

As we saw in an earlier Section, SCAD has been criticized by minority groups for taking too much time in settling complaint cases. During 1948 SCAD attempted to reduce the time per case by determining as quickly as possible the merits of the complaint, notifying the complainant and respondent of the decision, and then conducting the ancillary investigation into the latter's whole employment record, although it denied that this policy results in any appreciable delay.¹⁰¹ In its 1948 annual report, nevertheless, the Commission reaffirmed its policy of studying a respondent's overall employment pattern, even though the result may be a delay in disposing of the specific com-

⁹³ *Id.*

⁹⁴ *Id.* at 47.

⁹⁵ *Id.*

⁹⁶ *Id.* at 48.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 54.

¹⁰¹ MEMORANDUM REPORT, *op. cit. supra* note 23 at 2-3, and 1948 ANNUAL REPORT 18.

plaint, because: 1) the specific complaint frequently cannot be decided without such a larger study, 2) the larger study proceeds simultaneously with the investigation of the specific complaint, and 3) the individual complaint cannot be fully remedied unless the respondent's overall employment policy is corrected if it is discriminatory. This statement suggests that the Commission does not intend to apply this technique more widely in the immediate future unless "the exceptional case proves to be the normal case."¹⁰² The annual report for 1949 makes no reference to this matter.

2. *Hearings*

Until late in 1949 SCAD frequently pointed out that it had not yet found it necessary to bring any case to a hearing, that it had adjusted all its cases by conciliation while adhering to the letter and spirit of the law. No employer, one commissioner wrote,¹⁰³ "has elected to hazard the stigma of discrimination by going to a hearing." The implication is that the dislike of exposure has made respondents so conciliatory that no hearings had to be called. The wartime federal FEPC, too, found this dislike of exposure,¹⁰⁴ yet that agency nevertheless found it necessary to hold hearings from time to time. SCAD does not disclose enough of its records to enable others to determine whether hearings have been avoided at the expense of the spirit of the law.

3. *Disclosure of Data*

Following its interpretation of that part of Section 132 of the Law Against Discrimination which prohibits the Commission and its staff from disclosing what transpires during the conciliation of complaint cases, SCAD has withheld certain information from the public. It is not clear, however, just what SCAD withholds on this statutory ground, and what it withholds merely as a matter of policy. It would be helpful, in evaluating the Commission's work, if there were available a description of the *results* of the conciliations it achieves with each respondent, but it does not prepare such information for the public. What the law forbids, it would seem, is the disclosure of what occurs *during* negotiations in the conciliation process, and not the *results* of that process. In its annual reports since 1946, SCAD has presented summaries of selected cases; there would seem to be no legal restric-

¹⁰² 1948 ANNUAL REPORT 18.

¹⁰³ Carter, *The New York Commission Succeeds*, 20 *INTERRACIAL REVIEW* 167 (1947).

¹⁰⁴ U. S. FAIR EMPLOYMENT PRACTICE COMMITTEE, *FINAL REPORT*, June 28, 1946 ix (1947).

tion against its publication of a summary of the adjustment provisions in all its cases.

SCAD has shifted the ground upon which it has based at least one of its non-disclosure policies, that regarding the names of complainants and respondents. The Commission has steadily adhered to the rule of not revealing such names except upon the consent of both parties to a case. In its first annual report SCAD held that it was forbidden by law to reveal names.¹⁰⁵ In its 1947 annual report the Commission implied, without expressly stating, the same notion.¹⁰⁶ But in its reply of November 5, 1948 to the Committee to Support the Ives-Quinn Law the Commission referred to non-disclosure of names as a "policy" it has "adopted", and which is subject to change.¹⁰⁷ And in its 1948 annual report SCAD likewise called its non-disclosure of names a policy.¹⁰⁸

Finally, SCAD appears to withhold data merely on the ground that it might be misinterpreted. Thus it rejected a recommendation that it make public the length of time elapsing between the opening and closing dates of complaint cases apparently because such data "would be conducive to misinterpretation."¹⁰⁹ It would seem to be a fairer procedure for SCAD to reveal all significant facts, release of which the Law Against Discrimination does not prohibit, present its own interpretation and warnings if necessary, and permit others to analyze the data as they see fit.

IV. SCAD'S RELATIONS WITH THE COMMUNITY

The educational features of the Law Against Discrimination put the Commission into contact with the community through its relations with civic groups working in the same field, and through the community councils which the law empowers it to create. Since the success of the law is admittedly¹¹⁰ dependent upon its reception by the people of New York State, it is appropriate to examine the relations between SCAD and those community agencies.

Administrative law in the federal and New York State governments has recognized the value of civic agencies in the enforcement of law. Trade unions have played a highly important role in the enforcement of the National Labor Relations Act, and the New York Society for

¹⁰⁵ 1945-46 ANNUAL REPORT 13.

¹⁰⁶ 1947 ANNUAL REPORT 18-19.

¹⁰⁷ MEMORANDUM REPORT, *op. cit. supra* note 23 at 8-9.

¹⁰⁸ 1948 ANNUAL REPORT 10.

¹⁰⁹ MEMORANDUM REPORT, *op. cit. supra* note 23 at 7.

¹¹⁰ 1948 ANNUAL REPORT at 84.

the Maintenance of Public Decency (formerly the New York Society for the Suppression of Vice) was chartered by New York State in 1873 to aid in enforcing state and federal laws against obscenity.

A. *The Critics*

Very early in its career SCAD was vigorously criticized by those minority and civic groups that had most earnestly supported the bill which became the New York State Law Against Discrimination. The American Civil Liberties Union, in February of 1946, held a meeting to decide how to "make the work of the State Commission Against Discrimination more effective."¹¹¹ The following month the chairman of the Citywide Citizens Committee on Harlem asserted that the Commission "must be persuaded or forced to change its attitude toward its job. It must see itself as a dynamic agency . . . abandon secrecy and an excess of caution . . . work in both the higher and lower levels of employment . . . speed up its timid approaches to publicity and education."¹¹² Early in 1947 the Citizens Union urged an amendment to the law to enable organizations to file charges of discrimination.¹¹³ In April the Welfare Council of New York City pointed out that the Commission had made a good beginning but must publicize its work more widely if it was to achieve maximum effectiveness.¹¹⁴

Such civic groups face a dilemma when they want to act on their beliefs that the Commission can vastly improve its administration of the law. They want to put pressure on SCAD to alter certain practices, yet they do not want to give the general impression that the principle behind the law is being questioned. In an unpublished letter to the editor of a now defunct newspaper, a vice-president of one civic group has said: "We have been exceedingly loath to criticize SCAD publicly because the public does not distinguish between criticism of the enforcement of the law and of the law itself. We are also fearful that widespread publicity about SCAD's ineffectiveness might slow down the drive for FEPC laws in other states. . . ."¹¹⁵

The Commission is aware of this dilemma. Two members, in April of 1946, publicly chided critics of SCAD who "borrow the arguments of those who oppose this type of legislation in fact and principle." As-

¹¹¹ N. Y. Times, February 27, 1946, p. 6, col. 3.

¹¹² N. Y. Post, March 26, 1946, p. 20, col. 1.

¹¹³ N. Y. Times, February 2, 1947, p. 44, col. 3.

¹¹⁴ *Id.*, April 11, 1947, p. 19, col. 7.

¹¹⁵ Unpublished letter of Shad Polier, Vice-Pres. of American Jewish Congress, to Joseph Barnes, ed. of N. Y. Star (defunct); October 19, 1948. (In file at office of the Congress.)

serting that SCAD welcomed constructive criticism, they expressed the hope that in the future its critics would not "provide ammunition and comfort to those who oppose anti-discrimination laws everywhere. . ."¹¹⁶

An interesting conjuncture of criticisms from those who oppose anti-discrimination laws and those who favor them occurs in regard to the unexpectedly small number of complaints SCAD has received. Those who oppose the Ives-Quinn law argue that the small number of complaints proves there is really no need for the law. One such critic asserted in January of 1947 that advocates of the law had claimed, before its enactment, that 15,000 complaints were ready for filing before it went into effect on July 1, 1945, and that the small number of complaints actually received to the end of 1946 refuted the charges of widespread employment discrimination.¹¹⁷ During a Senate subcommittee hearing in 1947 on a federal fair employment practices bill Senator Ellender (Dem., La.) asked the first chairman of SCAD whether he had expected more complaints than were received. "Frankly," he answered, "we expected more cases." And Senator Ellender observed: "Which of course, leads me to believe that there is more talk about the matter [widespread employment discrimination] than truth. . ."¹¹⁸ Later in the same day the second chairman of the Commission remarked that "we have always lived well within our budget and we will not spend more than 75 per cent of our budget this year." To which Senator Ellender replied, "There are so few cases I wonder why you do not cut it in half?"¹¹⁹

Criticism of SCAD for the small number of complaints it has received has been levelled also by groups who want to strengthen the Ives-Quinn law. Thus the Committee to Support the Ives-Quinn Law, formed by the Urban League of Greater New York, the National Association for the Advancement of Colored People and the American Jewish Congress, has protested that "very little use is made of the law" and that SCAD is in part responsible for the small number of complaints filed with it.¹²⁰

The Committee to Support the Ives-Quinn Law during 1948 persistently prodded SCAD to take a more "militant" view of its tasks. The Committee was formed early in 1948 to help "dispel . . . civic inertia

¹¹⁶ N. Y. Times, April 5, 1946, p. 19, col. 4.

¹¹⁷ *Id.*, January 15, 1947, p. 34, col. 1.

¹¹⁸ Testimony of Henry C. Turner, *supra* note 16 at 333.

¹¹⁹ Testimony of Charles Garside, *supra* note 16 at 339.

¹²⁰ COMMITTEE TO SUPPORT THE IVES-QUINN LAW, NEW YORK STATE LAW AGAINST DISCRIMINATION—AN APPRAISAL AND A PROGRAM 2 (1948); also, MATHER, *op. cit. supra* note 40.

and individual apathy" in group relations and to influence SCAD's policies and procedures.¹²¹ In a memorandum to SCAD, dated April 20, 1948, the Committee made recommendations on the disposition of individual complaints, publicity for SCAD's work, and investigations on an industry-wide scale.¹²² To these recommendations SCAD replied in a lengthy memorandum dated November 5, 1948, in which it found the Committee's suggestions already in effect or unacceptable in the best interests of the enforcement of the law.¹²³ Dissatisfied with this response and the work of SCAD, Committee representatives, early in 1949, presented their criticisms of SCAD before the Governor in Albany.¹²⁴ Thus far the Committee to Support the Ives-Quinn Law does not appear to have moved SCAD in any direction.

Yet minority-group agencies can exert a salutary influence upon the Commission. For example, it was after the American Jewish Congress had asked for a ruling that the Commission outlawed discriminatory situations-wanted advertisements.¹²⁵ In addition, it was in cases initiated by the Congress that SCAD brought the employment bureaus of educational institutions within the law's coverage,¹²⁶ announced that a civic agency could file complaints under Section 131.3 of the law,¹²⁷ and held, on the basis of a statistical study of a firm's employment practices and of the neighborhood population, that minorities as a group and not merely certain individuals were at a disadvantage in applying for employment.¹²⁸

SCAD, however, for a time, at least, made it clear that it did not wholeheartedly welcome the activity of agencies like the American Jewish Congress and the Committee to Support the Ives-Quinn Law. The second chairman of the Commission last year charged the latter group with "drumming up" many complaints that could not be sustained.¹²⁹ In May of 1948 he told representatives of the Committee and of other groups that SCAD wanted "the benefit of advice from any

¹²¹ RECOMMENDATIONS FOR THE CONSIDERATION, *supra* note 53 at 1.

¹²² See note 53 *supra*.

¹²³ MEMORANDUM REPORT, *supra* note 23.

¹²⁴ N. Y. Times, February 20, 1949, p. 48, col. 1.

¹²⁵ 1948 ANNUAL REPORT 63; also, 1 LAW AND SOCIAL ACTION 20, 24 (1946).

¹²⁶ 1948 ANNUAL REPORT 47; 1 LAW AND SOCIAL ACTION 23 (1946), 2 LAW AND SOCIAL ACTION 49 (1947); Note, *Application of the Anti-Discrimination Law to University Employment Agencies*, 47 COL. L. REV. 674-675 (1947).

¹²⁷ 1948 ANNUAL REPORT 48; 1 LAW AND SOCIAL ACTION 8, 20, 33 (1946).

¹²⁸ 1 LAW AND SOCIAL ACTION 35 (1946), 2 LAW AND SOCIAL ACTION 68 (1947); SCAD, Press Release, September 23, 1946.

¹²⁹ N. Y. Times, February 20, 1949, p. 48, col. 1.

group of citizens of this State.”¹³⁰ Yet in describing six means by which these groups could help in “strengthening the administration of the law,” he did not mention the value of suggestions to the Commission itself on its own policies and procedures.

B. *Publicity*

Since the law which SCAD administers is a pioneering effort, one would expect that the agency would seek the widest publicity for its accomplishments, both to encourage persons who might benefit from the law and to discourage those who might violate it. A pioneering law, in a new field of such profound concern to a very large proportion of New York State’s multigroup population, should be making stirring news more often than it does, according to critics of the Commission. From its inception in July 1945 until the end of 1948 SCAD issued only about 20 publicity releases, excluding those announcing addresses by its members and staff, which reported facts about the law’s accomplishments.¹³¹

C. *Local Community Councils*

Under the terms of Section 130.8 of the Ives-Quinn law the State Commission Against Discrimination is brought into contact with the community in a rather direct way. This provision empowers SCAD to “create such advisory agencies and conciliation councils . . . as in its judgment will aid in effectuating the purposes of this article [the “Law Against Discrimination”] and of section eleven of article one of the constitution of this state [the civil rights section].” These agencies and councils, the statute continues, may, under the direction of SCAD, study discrimination in any field; promote cooperation among the state’s various national, religious and racial groups; and make recommendations to SCAD on policy, procedure and educational programs. Members of these agencies and councils serve without pay, but certain expenses they may have are met by the state. In 1945 SCAD established a council in Buffalo; in 1946, in Syracuse and Onondaga County, Albany, and Westchester County; in 1947, in New York City, Broome County, and Troy. The annual report for 1948 mentioned no new councils added to these seven. The 1949 report likewise mentions no new councils but indicates the replacement of the New York City Council by four sepa-

¹³⁰ ADDRESS BY CHARLES GARSIDE, *supra* note 54 at 9-10; MEMORANDUM REPORT, *supra* note 23 at 10-11.

¹³¹ Determined by examination of file of publicity releases, N. Y. City office of SCAD, January 25, 1949.

rate county councils for Kings, Manhattan, Queens and Richmond.¹³²

The wording of the statute makes it clear that two different types of boards were intended by Section 130.8, "advisory agencies" and "conciliatory councils." But their functions are then described jointly, so that there is no indication that each type is to carry on separate activities. It appears that the "advisory agencies" were intended to study discrimination and make recommendations as to SCAD's policies and procedures, while the "conciliation councils" were meant "to foster . . . cooperation and conciliation among the groups and elements of the population of the state. . . ." The Commission, in establishing these boards, has at least formally, though not in practice, combined in them all the functions outlined in the statute, even to the extent of assisting, upon request "in the process of conciliation on pending cases of alleged discrimination."¹³³ Thus far, however, the Commission has not made such a request of any of its advisory councils in a case in which SCAD has had enforcement jurisdiction. In 1949 SCAD sponsored informal discussions with representatives of the hotel industry as the first step in the establishment of industry advisory councils. The Commission has authorized councils in the fields of banking, insurance and public utilities. This program, instituted in 1948, may, if expedited and carried through consistently, lead to much more effective application of SCAD's powers to the tasks assigned it by the Ives-Quinn law.¹³⁴

To illustrate the relations between the Commission and the community through these advisory councils we shall consider the record of the New York City Council of SCAD until its dissolution at the end of 1948. New York City is, of course, the Commission's most important area of operation. Of 1005 complaints filed with the Commission from its inception until the end of 1947, 862, or 86 per cent, originated in New York City. Since the commissioners find most of their case work in New York City, they have had more direct contact with the council there than with any other council in the state. Finally, the New York City Council had many national figures of great influence in industry, politics and education.¹³⁵ The work and record of this council, however, is not discussed here as necessarily representative of the other councils.

The level on which the New York City Council of SCAD could operate is indicated in its attempt to persuade the Metropolitan Life Insur-

¹³² 1945-46 ANNUAL REPORT 10-12, 1946 ANNUAL REPORT 27, 1947 ANNUAL REPORT 20, 1949 ANNUAL REPORT 50.

¹³³ 1945-46 ANNUAL REPORT 9.

¹³⁴ 1948 ANNUAL REPORT 40, 1949 ANNUAL REPORT 76-77.

¹³⁵ 1948 ANNUAL REPORT 94, 1947 ANNUAL REPORT 32.

ance Company to reconsider its policy of excluding Negroes from its "Stuyvesant Town" housing project for 8,000 families. Mr. James G. Blaine, president of the Marine Midland Trust Company, was authorized by the Council to confer with executives of the company. At a Council meeting in September of 1947 Mr. Blaine reported that he was studying the evidence on inter-racial housing communities preparatory to asking for such a conference. At the same meeting, Mr. Winthrop Rockefeller, stating that he had already talked with Mr. Frederick H. Ecker, chairman of the board of the Metropolitan Life Insurance Company, advised against pressing the issue at that time. At the November meeting of the Council, Mr. Blaine reported that he had conferred with Mr. Ecker. The Council agreed that another such meeting would be advisable in the spring of 1948, but the minutes of the Council's sessions do not indicate that it was held.¹³⁶

Much of the Council's work, however, was undertaken in a more formal manner, on less difficult problems, and with more success or promise of success. One of the more active groups in the Council was the committee on discrimination in medical institutions, which carried out two significant projects. In the fall of 1947 its chairman met with the Mayor of New York City, the commissioner of hospitals and two members of the Mayor's Committee on Unity to press for the admission of Negroes to the professional staffs of city hospitals. The commissioner of hospitals accepted the responsibility for providing such opportunities for Negroes and it was agreed to hold another conference in six months or a year to determine what progress had been made.¹³⁷ The Council's committee on discrimination in medical institutions in June of 1948 brought SCAD's attention to the fact that the New York State Joint Hospital Survey and Planning Commission was contemplating a substantial increase in hospital facilities in New York City. The Council resolved that the planning commission be urged to establish non-discriminatory standards of appointment and employment in the new facilities, and that other SCAD councils take up the matter in their own localities.¹³⁸ SCAD itself thanked the Council for bringing this matter to its attention.¹³⁹ A few months later a letter from the chairman of SCAD was read at the regular meeting of the Council, stating that he had conferred with the chairman of the planning com-

¹³⁶ N. Y. CITY COUNCIL OF SCAD, MINUTES, June 12, September 11, October 9, November 13, 1947.

¹³⁷ *Id.*, December 11, 1947.

¹³⁸ *Id.*, June 10, 1948.

¹³⁹ *Id.*, September 16, 1948.

mission, who asserted that "insofar as the Joint Commission has to do with the erection and operation of any of the hospitals proposed by the Joint Commission, the hospitals will be operated under a non-discriminatory policy."¹⁴⁰

The New York City Council of SCAD functioned under several limitations. Perhaps because of the prominence of its members, and their involvement in many activities, attendance at Council meetings was poor. In its report for 1947¹⁴¹ SCAD listed 31 members of the Council (reduced by a few resignations), yet only an average of 14 attended the ten meetings in 1947 and an average of nine members attended the ten meetings in 1948.¹⁴² The Council, too, has had to function within the narrow lane marked out by the Commission. At a public meeting sponsored in May of 1948 by the Committee to Support the Ives-Quinn Law one of the most active Council members complained of the restraints imposed by the second chairman of SCAD:

He has constantly urged concentration upon the problems of discrimination in employment, to the exclusion, so far as he has been able to influence our Council, of other phases of discrimination. This attitude, I believe, is not in accord with the stated purposes of the Ives-Quinn Act.¹⁴³

At the Council meeting in January of 1948, one of the members suggested that a monthly newsletter be circulated to keep the members better informed of the Commission's work. The second chairman of SCAD, according to the minutes,¹⁴⁴ "expressed approval of the suggestion and agreed to prepare and distribute among all Council members throughout the state a brief monthly digest of interesting and significant accomplishments of the Commission and of the various Councils of the Commission." This material was not circulated up to the end of 1948, when the New York City Council was dissolved by the Commission. It does not appear, from the minutes of the Council meetings, interviews with council members and from the literature distributed by SCAD, that the councils were given any more details of the work of the Commission than were made public to any interested person or group.

The statute, in Section 130.8, gives SCAD a considerable degree of control over the councils it establishes. 1) The Commission is

¹⁴⁰ *Id.*, October 14, 1948.

¹⁴¹ 1947 ANNUAL REPORT 32.

¹⁴² N. Y. CITY COUNCIL OF SCAD, MINUTES, 1947, 1948.

¹⁴³ STEPHENS, THE FUNCTIONS OF COUNCILS UNDER THE PROVISIONS OF THE IVES-QUINN ACT (1948) (typewritten ms. in file at office of Roderick Stephens, N. Y. City).

¹⁴⁴ N. Y. CITY COUNCIL OF SCAD, MINUTES, January 8, 1948.

empowered to "create" the councils. 2) The Commission may authorize a council to carry on certain studies, to foster good-will among the various groups in the state and to make recommendations to the Commission itself. SCAD has interpreted these powers to mean that, 1) in general, the councils must obtain the Commission's approval before they may make public their views and findings, 2) the Commission alone appoints council members, and chairmen and vice-chairmen of council committees,¹⁴⁵ and 3) the Commission may dissolve councils.¹⁴⁶ The manner of its dissolution of the N. Y. City Council reveals the Commission's interpretation of its total power with respect to the councils. At the Council's December 1948 meeting, attended by ten members, the chairman, according to the minutes, "outlined a suggested plan for the dissolution of the present New York City Council and the establishment of councils in each of the five counties of New York City with an overall greater New York Council. After some discussion the members present expressed approval of the plan." The second chairman of SCAD, the minutes conclude, "then stated that the Commission would act on the matter at its next regular meeting."¹⁴⁷ The plan for the creation of five county councils was not a new one, for SCAD's first annual report¹⁴⁸ mentioned that the New York City Council would be "followed by the establishment of Borough Councils throughout the city." The minutes of the Council's last meeting, however, give no intimation as to how its dissolution was to be effected, nor any hint as to the action which soon followed. On December 16, a week after this Council meeting, the Commission unanimously passed a series of resolutions dissolving the Council as of December 31, 1948, and establishing a council for each county of New York City and a Greater New York City Council, of which the Commission would name all the members, chairmen and vice-chairmen. Membership in the Council was terminated by letter from the chairman of SCAD.¹⁴⁹

V. THE IVES-QUINN LAW AND ITS SIGNIFICANCE

An evaluation of the way in which the New York State Law Against Discrimination has functioned to control discriminatory employment patterns should include two elements: first, an assessment of the actual

¹⁴⁵ 1945-46 ANNUAL REPORT 9; see also *supra* note 142.

¹⁴⁶ Letter from second chairman of SCAD, dated December 28, 1948, to Mr. Roderick Stephens, member of N. Y. City Council of SCAD.

¹⁴⁷ MINUTES, December 9, 1948.

¹⁴⁸ 1945-46 ANNUAL REPORT 12.

¹⁴⁹ See *supra* note 146.

operation of the law and the way it is enforced by the State Commission Against Discrimination; and second, a conclusion as to whether or not law is an appropriate means by which to control discrimination in employment, and if so, precisely in what way it is appropriate.

Undoubtedly, as the foregoing sections have shown, the Ives-Quinn law has reduced the amount of discrimination in employment and has opened new job opportunities to members of minority groups. A study which the U. S. Bureau of the Census made for the Urban League of Greater New York shows that, whereas in 1940, 64 per cent of the employed Negro women in New York City were in domestic service and 40 per cent of the employed Negro men were in service occupations, by 1947 these proportions had declined to 36 per cent and 23 per cent, respectively. In 1940 only three per cent of Negro women workers held clerical sales jobs, but in 1947, 13 per cent held such jobs. In 1940 20 per cent of employed Negro men held semi-skilled jobs, but by 1947 this proportion had increased to 30 per cent. The Urban League asserted that these gains were the result of its own efforts, the New York State Commission Against Discrimination and the federal wartime FEPC.¹⁵⁰ Here again we face the problem of how to evaluate the results of the N. Y. State law where other influences, such as the wartime labor shortage and the activities of private and federal agencies, are working in the same direction.

Although it is easy to show that the Ives-Quinn law has broadened employment opportunities for minorities, it is more difficult to appraise SCAD's role precisely. The Commission, enforcing an act with "educational" features as well as sanctions, has stressed the former. In its report for 1946 SCAD stated that its experience confirmed "the contention of the framers of the law that legislation devised to change discriminatory attitudes and behavior must be rooted in educational processes, supplemented and complemented by legal sanctions. . . ."¹⁵¹ In its 1947 report SCAD observed that the sanctions in the Ives-Quinn law enable it "to do a thorough educational job."¹⁵² The Commission's educational functions, apparently, are carried out not only in its public speeches by commissioners and the staff, distribution of literature, cooperation with community groups and programs in the schools, but also in the very process of conciliation in settling cases. The law presupposes that its sanctions and punitive features are also "educational" influences, but the Commission has only once brought in-

¹⁵⁰ URBAN LEAGUE OF GREATER NEW YORK, RELEASE, October 4, 1948, pp. 2-4.

¹⁵¹ 1946 ANNUAL REPORT 7.

¹⁵² 1947 ANNUAL REPORT 10.

to action this potential educational force. This stress on the cautious use of compulsory powers goes far back into the early history of the Ives-Quinn law even before its enactment. The Temporary Commission Against Discrimination, whose work led to the framing of the law, in its report to the Governor and the Legislature in 1945, called upon the people of the state to fulfill the objective of the proposed legislation voluntarily, so that there would be no "need for frequent invocation of the compulsory powers contained therein."¹⁵³ The chief legislative sponsor of the bill, Assemblyman Ives, likewise emphasized the importance of "education".¹⁵⁴ SCAD's emphasis in part flows directly from the law itself, which requires that conferences be held to conciliate cases before sanctions are applied. In these conferences the Commission, of course, is bound by law to try to educate and persuade the respondent.

The legal sanctions in the Ives-Quinn law, the hearing and the cease-and-desist order, which are still short of the law's punitive provisions, are nevertheless themselves excellent means for "educating" violators, potential violators and the community in general. The Commission's emphasis on "education" in the sense of sheer persuasion short of the use of the law's sanctions deters it from using its full powers, all of which likewise serve an educational function. It is a waste of time and money for the Commission, a state agency with the force of law back of it, to engage in the same kind of education and persuasion which has been the main activity of so many ineffectual private agencies trying to improve intergroup relations. It was precisely the realization that such efforts are hardly effective that impelled the New York State Legislature to enact the Ives-Quinn law.¹⁵⁵

It was largely because of widespread skepticism of the efficacy of legislation in the elimination of employment discrimination that the state officials emphasized the "educational" features of the law rather than its sanctions and punitive measures, and warned against enforcement by presumably "visionary" social reformers who would resort to compulsion too easily. Governor Dewey wrote to a Congressman from New Jersey in December of 1945: "If it [the Law Against Discrimination] were left to a collection of reformers and social dreamers it would

¹⁵³ REPORT OF TEMPORARY COMMISSION, *op. cit. supra* note 6 at 30, 31.

¹⁵⁴ DEBATES, *op. cit. supra* note 13 at 124.

¹⁵⁵ For a brief explanation and bibliography of the failure of anti-discrimination "educational" propaganda, see MERTON, *Discrimination and the American Creed* in MACIVER, *DISCRIMINATION AND NATIONAL WELFARE* 118 (1949), and WILLIAMS, *THE REDUCTION OF INTERGROUP TENSIONS* 64, 65 (1947).

crash with a mighty bang and perhaps take down a good segment of our economy with it. In New York I appointed a group of very sound high-minded people who made it a living reality. . . ."¹⁵⁶ And the second chairman of the Commission told a U. S. Senate subcommittee in 1947: "If a law of this sort were turned over, let us say, to pressure groups, it would not last very long."¹⁵⁷

If we judge the Commission by its disposition of cases and general approach, it appears that it defines its own role as a broadly educational one. SCAD's main function seems to be to reach as many employers as possible, and to get across to them its "educational" message, rather than to obtain a satisfactory settlement for the individual complainant. This judgment is consistent with the fact that (as we saw earlier) SCAD has sustained only one-quarter of all the complaints brought to it to the end of 1949, and has denied the validity of the specific claims of discrimination made in two-thirds of all complaints it has received in the same period. It is consistent, also, with the fact that SCAD does not make a greater effort to increase its complaint caseload, and (to the end of 1948, at least) took an average of three months to settle complaints. This definition of its own role, it must be stressed, is not explicitly stated by the Commission, but it follows from its work. It was, however, almost stated plainly in 1947 by the first chairman, when he said:

. . . the mere passing on an individual complaint and the restoration to service, to employment, of the individual complainant means nothing unless we can get a conversion on the part of the employer, and a change in the pattern; *therefore we have deemed it more important to effect a conciliation whereby an employment pattern will be changed and a number of John Does employed, rather than merely to make a finding in a specific instance.*¹⁵⁸

Nothing the Commission has done since the resignation of its first chairman in April of 1947 has indicated that it has substantially altered this viewpoint.

In its first four and a half years the Commission seems to have relied too much upon individual complaints and the unsystematic initiation of cases it learns about in various other ways. Ultimately the Commission will probably have to go out and systematically select areas for study and correction instead of relying so heavily upon individual complaints, which is at best a slow and haphazard way of getting at

¹⁵⁶ Letter from Governor Thomas E. Dewey to Representative H. Alexander Smith of New Jersey, dated December 21, 1945, quoted in 1 LAW AND SOCIAL ACTION 8 (1946).

¹⁵⁷ Testimony of Charles Garside, *supra* note 16 at 344.

¹⁵⁸ Testimony of Henry C. Turner, *supra* note 16 at 332, 333. (Emphasis not in original.)

the discriminators. It might be wiser for SCAD to recognize explicitly what it seems to feel implicitly—that the most important matter is not the settlement of individual cases but the opening of new job opportunities for members of minority groups. If it drew this conclusion directly, the Commission would initiate its own cases in a planned, systematic way, and use the individual complaints as a supplement and as a means of satisfying the worker who feels he has been discriminated against. Such a program would represent full appreciation of the implications of the Ives-Quinn law and the new type of statute it fathered—that is, that employment discrimination is a danger to the entire community best neutralized by an agency of the community especially designated for this purpose. The Commission has stressed the importance of action with respect to whole industries, but, as we saw above, it has thus far hardly moved to implement this stated policy.

Although the State Commission Against Discrimination has administered the law cautiously, there is no doubt by now that a measure such as the Ives-Quinn act is appropriate to achieve its end, the reduction of employment discrimination. It has become evident that the relationship of employer to worker is so devoid of personal sentiment under present conditions of large commercial and manufacturing enterprises, has become so purely an economic tie, that it becomes a fit subject for legal control. The employer-worker relationship in the United States has for more than a generation been regulated as to sanitation, accidents on the job, child and female labor, wages, hours, unionism, and so on. It is not surprising, therefore, to see that the community insists, through its government, that employment be based solely upon ability, that considerations of race, color, creed and national origin are irrelevant to employment in an age when it has become almost purely an economic bond.

The relationship among workers is less purely an economic one than that between worker and employer, yet even this one, under present work arrangements, is losing its non-economic aspects. That is why, for example, the New York State War Council found that a forthright statement by management generally prevented workers who said they wouldn't work alongside Negroes from actually refusing to do so once the change was made.¹⁵⁹ The federal wartime FEPC made the same finding.¹⁶⁰ SCAD's experience with the reaction of workers to the opening of job opportunities to previously barred members of minority

¹⁵⁹ DAVIS, *op. cit. supra* note 37 *passim*.

¹⁶⁰ U. S. FAIR EMPLOYMENT PRACTICE COMMITTEE, FIRST REPORT, July 1943-December 1944 77 (1945), and FINAL REPORT xv, 4.

groups confirms the conclusions of these earlier agencies.¹⁶¹ Still another kind of evidence of the willingness of workers to accept minority group members as fellow employees, even if less willing to accept them as neighbors or guests, appears in a 1948 public opinion poll. Of 2508 respondents, 67 per cent said they preferred not to have minority group members move into their neighborhoods, 60 per cent preferred not to have them in their homes as guests, but only 46 per cent preferred not to work with them side by side at equal jobs. To 48 per cent of the respondents it made "no difference" if they worked under such conditions.¹⁶²

If law cannot reach private tastes and inclinations, that is no longer proof that law cannot reduce employment discrimination, for under present conditions employment is not a matter of private taste. As an economic, relatively impersonal relationship, it is a fit subject for legal control, as the experience reviewed in this paper clearly shows.

¹⁶¹ Statement of Henry C. Turner and Charles Garside, *supra* note 16 at 327.

¹⁶² ROPER, A STUDY OF ANTI-MINORITY SENTIMENT IN THE UNITED STATES 17 (1948), quoted in WEINTRAUB, *op. cit. supra* note 2 at 42.