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## HEARING

BEFORE THE

### COMMITTEE ON HUMAN RESOURCES

### UNITED STATES SENATE

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

ROBERT J. BROWN, OF COLORADO, TO BE UNDER SECRETARY  
OF LABOR

CARIN ANN CLAUSS, OF VIRGINIA, TO BE SOLICITOR FOR THE  
DEPARTMENT OF LABOR

ERNEST GIDEON GREEN, OF NEW YORK, TO BE ASSISTANT  
SECRETARY OF LABOR FOR EMPLOYMENT AND TRAINING

AND

DONALD ELISBURG, OF MARYLAND, TO BE ASSISTANT SECRE-  
TARY OF LABOR FOR EMPLOYMENT STANDARDS

MARCH 7, 1977

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**COMMITTEE ON HUMAN RESOURCES**

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MARJORIE M. WHITTAKER, *Chief Clerk*

JAY B. CUTLER, *Minority Counsel*

## NOMINATIONS

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MONDAY, MARCH 7, 1977

U.S. SENATE,  
COMMITTEE ON HUMAN RESOURCES,  
Washington, D.C.

The committee met, pursuant to notice, at 2:03 p.m., in room 4232, Dirksen Senate Office Building, Senator Harrison A. Williams, Jr. (chairman) presiding.

Present: Senators Williams, Javits, and Hatch.

The CHAIRMAN. The Committee on Human Resources will come to order.

We have before us four nominations today: Robert J. Brown to be Under Secretary of Labor; Carin Ann Clauss to be Solicitor of Labor; Ernest Green to be Assistant Secretary for Employment and Training; and Donald E. Elisburg to be Assistant Secretary for Employment Standards.

We will invite each of the nominees to make a statement.

First, I would like to recognize Senator Javits, who I know has a conflicting committee demand right now.

Senator JAVITS. Thank you very much, Mr. Chairman.

Obviously, Mr. Chairman, I take almost as much pride as the chairman in Mr. Elisburg being before us today, one of our own staff, who has now earned such outstanding preferment. I know him very well, and certainly am very completely in favor of him.

I would like also to approve the nominations of Robert J. Brown to be Under Secretary—he has had a visit with me, and is entirely satisfactory to me. Similarly, with Carin Ann Clauss, who not only is a fine nominee, but even attended a rather very pleasant off the record dinner at my home, with the Secretary, in connection with important matters of the Secretary.

It is my purpose now, and I am grateful to the Chair for taking me out of turn, to introduce to the committee my fellow New Yorker, Ernest Green. I hope very much Senator Moynihan will be here. If he is not, he has already communicated his approval to me, having a very eminent record, and we look forward to outstanding service by Mr. Green to the Department of Labor, and in working with this committee.

Mr. Green has been nominated by the President to be Assistant Secretary for Employment and Training, and I believe his background and abilities are uniquely suited to that position.

He has most recently been executive director of the Recruitment and Training program, a national employment and career guidance agency which has grown under his leadership from a small operation in the Bedford-Stuyvesant section of Brooklyn to a diversified man-

power program in 18 States. He has written extensively on employment opportunities for the disadvantaged and minorities and apprenticeship programs in the skilled craft occupations.

Mr. Chairman, if confirmed, Ernest Green will have many serious problems to deal with during his tenure as Assistant Secretary for Employment and Training. None of these is more important and more in need of immediate attention than the appalling problem of youth unemployment.

Recent statistics show that 1 of every 2 unemployed persons in this country is under the age of 24, and that the number of unemployed youths is approximately equal to the combined total populations of the cities of Los Angeles and Washington D.C.; that is, 3.5 million.

The statistics indicate further that the unemployment rate of metropolitan poverty area black teenagers approaches an incredible 50 percent—1 of every 2 who want to work is unable to find a job. The National Urban League estimates this rate at over 60 percent, by taking into account discouraged youths who have given up the frustrating effort to obtain employment.

This morning, during this committee's executive session on the budget for fiscal year 1978, I moved that the Human Resources Committee indicate its intention to take up and report comprehensive youth employment legislation in time to obtain funding for the fiscal year beginning October 1, 1977. My amendment—which was accepted by unanimous vote—puts this committee on record as favoring a CETA youth title, with an authorized appropriation of \$2.5 billion in fiscal year 1978.

This committee has therefore recommended that room be left in the first concurrent budget resolution for fiscal year 1978 to accommodate a CETA youth title, the details of which will be developed by the committee in cooperation with the administration.

It is clear that this committee wishes to consider comprehensive youth employment legislation this year and I hope Mr. Green will work closely with us in developing much-needed solutions to this critical national problem.

I would hope that in the course of his statement, or in response to questions, Mr. Green will enlighten us on the plans of the administration respecting a comprehensive youth employment bill in which a number of us, including our chairman, have already conferred with the Secretary, and there is a team working to try to get a bill out which will be satisfactory to the Congress and the administration, and in which the committee this morning, in authorizing its budget request, included an increased amount of \$2.5 billion—that is a billion and a half more than we were originally content with—in order to deal with the opportunity afforded to us by a whole range of bills to target special programs that deal with this crisis in youth unemployment.

The bills before us include Senator Stafford's innovative proposal to employ youths in community rehabilitation projects; Senator Jackson's Young Adult Conservation Corps; the proposal of Senators McClure, Bellmon, and Domenici, to cover the whole youth employment field, including education and training; the Cranston-Kennedy proposal along the same lines; the Mathias proposal, S. 1; Senator Schweiker's proposal to utilize the tax credit approach; and finally

the comprehensive bill utilizing the CETA system introduced by Senator Humphrey and myself, S. 170.

It is our hope, at the earliest time, to work out an amalgam of these ideas into a single, hopefully targeted bill.

Again I would like to reiterate what I said that morning, with the permission of the Chair, Senator Stafford, who certainly had the lead on this—this bill is already incorporated in a reported bill from the Public Works Committee—has been agreeable to staying his hand in order to give an opportunity for a measure which all could agree on in substance to be brought before us.

So when you get to it, Mr. Green, I hope you will enlighten the Chair as to how the Department is proceeding.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Hart, do you want to come up to the table? We have reached the point when you could be recognized to speak to the nomination of the Under Secretary of Labor, Mr. Robert J. Brown.

#### STATEMENT OF HON. GARY HART, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator HART. Mr. Chairman, it is my pleasure to introduce to you and the committee Mr. Robert Brown, who is President Carter's nominee to the position of Under Secretary of Labor.

Mr. Brown has had a long and distinguished record of public service in both State and Federal Government. He served in a variety of posts in the Department of Labor since 1966. In 1974 Mr. Brown came to Colorado to assume the responsibilities of Regional Administrator for the Department of Labor's Employment and Training Administration in Denver.

He was responsible for a full range of Federal training and employment programs in the six-State region, which includes Colorado. His accomplishments as Regional Administrator, and later as Acting Regional Director of the Department of Labor, has clearly established him as an aggressive and competent, and I think compassionate Administrator.

At the regional level, Mr. Brown has taken the initiative in identifying problem areas of employment, and has aggressively offered constructive solutions, many of which have been used as models in the development of national employment policy.

One area which Bob Brown has been particularly innovative in and I may add, an area that has been of particular concern to me, has been the problem of the high unemployment rate of the Vietnam era veteran. Throughout Mr. Brown's leadership, region 8 has established policies which give priority consideration in the employment of veterans in ETA funding programs, and has assured veterans funding laws are enforced.

He led the Nation in a pilot program that insured coordination of the Department's efforts to maximize the effectiveness of the Veterans Employment Service with Regional Office opportunities, and developed a pilot ETA veterans training program which has become the model for the Nation.

Mr. Brown has also worked hard to inform all ETA funding agencies of their responsibilities under Federal statute and regulation, and to assist the unemployed disabled veteran and veterans in the Vietnam area.

Another area of Mr. Brown's concern is the problems faced by migrant and seasonal farm workers. These problems are of particular concern to the people of Colorado. Through Bob Brown's leadership, the Department of Labor region 8 office established policies to provide for maximum and equitable service for migrants and seasonal farmworkers.

Additional regional funds were provided by the Department of Labor to insure that adequate numbers of bilingual staff were available to serve the needs of the Spanish-speaking migrants and farmworkers employed within region 8.

Mr. Brown has established himself, in my judgment, as a strong proponent of equal opportunities for all Americans. Under his leadership region 8 established an affirmative action policy that sets forth goals and objectives that insured equality of opportunity for women, minorities, and veterans. This policy is a model that clearly established Bob Brown's deep, sincere concern with the issue of equal opportunities for all Americans.

Mr. Chairman, in my judgment, Bob Brown will bring to the post of Under Secretary of Labor a wealth of practical experience that ranges from the administration of specific programs, to the development of aggressively designed programs that meet specific employment needs and constituencies that have been too long ignored by this Government.

I believe Bob Brown is an ideal choice for this post, and will prove to be the kind of leader this Nation needs to carry out President Carter's employment policies.

Finally, Mr. Chairman, I may add that if we get one or two more Coloradans back here in Government, we may get it straightened out after all.

It is my pleasure to present Bob Brown.

The CHAIRMAN. He is a Coloradan by assignment.

Senator HART. We claim him.

The CHAIRMAN. Vice President Mondale might claim some bit of ground on that, too.

**STATEMENTS OF ROBERT J. BROWN, TO BE UNDER SECRETARY OF LABOR; CARIN ANN CLAUSS, TO BE SOLICITOR OF LABOR; ERNEST GREEN, TO BE ASSISTANT SECRETARY OF LABOR FOR EMPLOYMENT AND TRAINING; AND DONALD E. ELISBURG, TO BE ASSISTANT SECRETARY OF LABOR FOR EMPLOYMENT STANDARDS**

Mr. BROWN. I have heard that rumor, Mr. Chairman. I am delighted to be sponsored by either Colorado or Minnesota, or both. I am especially honored to have the good Senator's comments in support of my candidacy.

The CHAIRMAN. How many children are you the parent of?

Mr. BROWN. Eight children.

The CHAIRMAN. How many were born in Minnesota, and how many were born in Colorado? [Laughter.]

The other nominees, Donald Elisburg, of course, has been introduced, in part by Senator Javits, and we in this committee of course all associate with Don.

Are there any others that have any sponsors, or any members that will appear?

Ms. CLAUSS. Senator Byrd was unable to come today.

The CHAIRMAN. We are delighted you are here.

I am pleased to introduce today Ms. Carin A. Clauss, who has been nominated to be Solicitor of Labor.

Since joining the Labor Department in 1963, Ms. Clauss has received wide recognition for her successful arguments in precedent-setting court suits under the Equal Pay Act of 1963 and the Age Discrimination in Employment Act of 1967. An expert on equal employment opportunity, Ms. Clauss has authored several publications on civil rights litigation, including a paper on women and economic inequality.

Her career in the Office of the Solicitor has included several top posts. Since 1971 she has been associate solicitor for fair labor standards, supervising all litigation under the Federal minimum wage, overtime pay, equal pay, and age discrimination laws.

Her outstanding performance has earned her many honors, including the Federal Woman's Award and the Labor Department's Distinguished Career Service Award.

I am especially pleased to note that Ms. Clauss' father is a distinguished constituent of mine. Alfred Clauss is a noted New Jersey architect who designed the impressive Meadowlands Stadium.

It is with great pleasure that I present Ms. Carin Clauss to the committee.

We will just have any statements from you for openers, and then we will ask one question that will lead into further questions.

I recognize you, Mr. Brown, for any statement you care to make.

Mr. BROWN. Mr. Chairman, I wish to make a very short statement.

On behalf of my colleagues I wish, of course, to thank you and all the committee members for setting this hearing today, so soon after our nominations have been sent up.

I wish to state, Mr. Chairman, before proceeding, that should my nomination be approved by the Senate, I will appear before the Congress at its request.

I would just like to reiterate what Secretary Marshall said before this committee. His greatest concern, and his primary interest is in helping get this country working again. That is our primary, most important concern.

Second, and perhaps equally as important in terms of its effect is to focus on eliminating all discrimination in the work place in all its forms. Third, we need to focus on the more effective administration of those protective pieces of legislation, such as OSHA and ERISA that have been enacted by the Congress in more recent years, and of course, the traditional protective pieces of legislation that have been on the books for many years.

The protective legislation is very important in term of focusing on administrative improvement within the Department.

With that, sir, we will be delighted to answer any questions you may have.

The CHAIRMAN. All right.

Before we proceed to Ms. Clauss, I see Senator Moynihan is here. I recognize you, Senator Moynihan.

Would you like to take this opportunity to speak to our committee concerning a nominee from your State?

**STATEMENT OF HON. DANIEL P. MOYNIHAN, A U.S. SENATOR  
FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. It is very generous of you, Mr. Chairman. I would obviously just like to take the occasion to welcome Mr. Green to this committee. We are very proud of him in New York. He is a symbol of many things, including the fact that there are still people who come from New York.

I would simply like to speak to the large achievement which is already in a sense behind him in the recruitment and training program of the A. Phillip Randolph Institute.

You have before you, sir, a person who has worked in this field, and has shown that it can succeed. This is so important to the Department of Labor, important to us in New York.

I would like to repeat my welcome to him and other officials, soon to be officials, here today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moynihan.

Ms. CLAUSS, do you have any statement you would like to offer at this time?

Ms. CLAUSS. Mr. Chairman, I have no prepared statement. Having served my entire professional career in the Department of Labor, I am delighted at the chance of serving in a broader and more meaningful role.

I would be happy to answer any questions.

I also, as Mr. Brown stated, I too will be delighted to appear at the request of Congress in any hearings.

The CHAIRMAN. You have submitted all of the records of information for our consideration, and that which is appropriate should be included and will be included in the record, your full biographies, and anything else that is important to the Members of the Senate.

[The following was received for the record:]

## OUTLINE OF INFORMATION REQUESTED OF NOMINEES

## A. BIOGRAPHICAL:

1. Name: (Include any former names used).
2. Address: List current residence address and mailing address.
3. Date and Place of Birth:
4. Marital Status: (Include maiden name of wife or husband's name).
5. Names and Ages of Children:
6. Education: List institution(s), dates attended, degree received and date degree granted.
7. Employment Record: List all positions held since age 21, including the title or description of job, name of employer, location of work, and dates of employment.
8. Government Experience: List any experience in, or association with, federal, state or local governments, including any advisory, consultative, honorary or other part-time service or positions.
9. Memberships: List all memberships and offices held in professional, fraternal, social, scholarly, civic, charitable and other organizations.
10. Honors and Awards: List all scholarships, fellowships, honorary degrees, honorary society memberships, and any other special recognitions for outstanding service or achievement.

11. Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

B. PERSONAL DATA:

1. Have your federal or state tax returns been the subject of any audit or investigation or inquiry at any time?

If 'so, explain.

2. Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities?

If so, give full details.

3. Have you ever been arrested, charged or held by federal, state, or other law enforcement authorities for violation of any federal, state, county or municipal law, regulation or ordinance? If so, please give full details (do not include traffic violations for which a fine of \$25 or less was imposed).

4. Are you currently under federal, state, or local investigation for a possible violation of a criminal statute? If so, please give full details.

5. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please give full details.

6. Have you ever been involved in civil litigation, or administrative or legislative proceedings of any kind, either as plaintiff, defendant, respondent, witness

or party in interest, which may be sufficiently controversial or so intimately related to the area of work for which you are being considered, that your involvement may be appropriate for consideration by the committee of the Senate to which your nomination will be submitted? If so, please give full details.

7. What is the condition of your health?

Have you had a physical examination recently?

8. Have you ever had psychiatric or similar treatment?

9. Without details, is there or has there been anything in your personal life which you feel, if known, may be of embarrassment to the Administration in the event you should be nominated?

What about any near relative?

C. FINANCIAL DATA:

Please note that federal law and regulations governing conflicts of interest require Presidential appointees within 30 days of their entrance on duty to provide reports of specified financial interests as to themselves, their spouses and any other member of their immediate households. The initial four matters listed below are designed to elicit financial information similar to -- although, in some cases, broader in scope than -- that which all Presidential appointees are required to provide by Executive Order of the President. The remaining paragraphs in this section seek elaboration on your financial status beyond that which the existing Executive Order and regulations require. As to all matters, please provide the requested information for yourself, your spouse, minor children and any other member of the immediate household.

1. List the names of all corporations, companies, firms, or other business enterprises, partnerships,

nonprofit organizations, and educational or other institutions --

- (A) with which you are now connected as an employee, officer, owner, director, trustee, partner, advisor, attorney, or consultant. (Attorneys and consultants need list only their major clients, but should include all of those whom you represent on a regular basis or which might give rise to an appearance of bias on your part in connection with your proposed appointment.) Any listed relationship or affiliation that you wish to continue during the term of your appointment should be noted with an asterisk.
  - (B) in which you have any continuing financial interests, through a pension or retirement plan, stock bonus, shared income, severance pay agreement, or otherwise as a result of any current or prior employment or business or professional association. As to each financial arrangement, provide all details necessary for a thorough understanding of the way in which the arrangement operates, including information concerning any renewal right you may have if the arrangement is allowed to lapse and whether lump sum or severance benefits are available in lieu of continuation of the interest.
  - (C) in which you have any financial interest through the ownership of stocks, stock options, bonds, partnership interests, or other securities. Any interests held indirectly through trusts or other arrangements should be included. Any listed interests that you wish to retain during your period of government service should be noted with an asterisk.
2. Provide a complete, current financial net worth statement that itemizes in detail all assets (including,

but not limited to, bank accounts, real estate, securities, trusts, investments, and other financial holdings) and liabilities (including, but not limited to, debts, mortgages, loans and other financial obligations). Assets representing personal or household goods, and liabilities for current and ordinary household and living expenses must be included but but need not be separately itemized.

3. List sources and amounts of all items of value received during calendar year 1975 and the portion of 1976 selected by you ending no earlier than 60 days prior to the date of your reply (including, but not limited to, salaries, wages, fees, dividends, capital gains or losses, interests, rents, royalties, patents, honoraria, and gifts other than those of nominal value). In lieu of such a listing for 1975, you may submit a copy of your federal income tax returns for 1975, although the submission of income tax material is not required under this item.

4. Please provide for review by this office (but not for passing on to Senate Committee staff or to the public) copies of your federal income tax returns for 1973, 1974, and 1975.

D. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Will you sever all connections with your present employer, business firm, association or organization if you are nominated by the President-Elect and confirmed by the Senate?

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

3. Has anybody made a commitment to employ your services in any capacity after you leave government service?

4. If confirmed, do you expect to serve your full term of office?

E. POTENTIAL CONFLICTS OF INTEREST:

1. Describe any business relationship, dealing or financial transaction which you have had during the last five years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

2. Describe any activity during the past five years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

3. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Please provide a copy of any trust or other agreements).

F. LETTER OF COMMITMENT

It is the view of the President-Elect that all officials of government with a substantial policy role in it should agree contractually to certain arrangements beyond the scope of present law and regulations. Please examine the attached letter of commitment. Will you be willing to sign it prior to your formal nomination?

## OUTLINE OF INFORMATION REQUESTED OF NOMINEES

ROBERT JOSEPH BROWN

## A. BIOGRAPHICAL

1. Name: Robert Joseph Brown
2. Address: 20 Belleview Lane  
Littleton, Colorado 80121
3. Date and Place of Birth: September 10, 19  
Seattle, Washing
4. Marital Status: Iolene Cecilia Gau
5. Name and Ages of Children:
 

|                                 |    |                 |    |
|---------------------------------|----|-----------------|----|
| Son Joseph R. Brown             | 25 | Thomas M. Brown | 13 |
| Son Timothy J. Brown            | 23 |                 |    |
| Son Patrick F. Brown            | 21 |                 |    |
| Daughter Mary Ann Smith (Brown) | 26 | Susan M. Brown  | 15 |
| Daughter Barbara L. Brown       | 18 | Brenda K. Brown | 9  |
6. Education:
 

|                           |                 |      |      |
|---------------------------|-----------------|------|------|
| Mechanic Arts High School | St. Paul, Minn. | 1947 | H.S. |
| University of Minnesota   |                 | 1951 | A.A. |
7. Employment Record:
 

|                    |   |  |
|--------------------|---|--|
| 6-30-74 - 1-77     | U.S. Dept. of Labor<br>Denver, Colorado | Regional<br>Administrator              |
| 11-15-66 - 6-30-74 | U.S. Dept. of Labor<br>Washington, D.C. | Associate Manpower<br>Administrator    |
| 2-2-65 - 11-15-66  | State of Minn.<br>St. Paul, Minn.       | Commissioner of<br>Employment Security |
| 7-1-63 - 2-65      | State of Minn.<br>St. Paul, Minn.       | Deputy Commissioner<br>of Conservation |
| 1-57 - 7-63        | State of Minn.<br>St. Paul, Minn.       | Personnel Officer                      |

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|  |  |                                  |
|--|--|----------------------------------|
| 8-55 - 1-57                              | State of Minn.<br>St. Paul, Minn.                | Manual & Reports<br>Writer       |
| 7-1-52 - 11-52<br>and<br>12-1-53 - 11-54 | Minn. State CIO                                  | Education Rep.<br>Education Rep. |
| 1948 - 1954                              | Donaldson Co. 666 Pelham Ave.<br>St. Paul, Minn. | Spinner                          |

## 8. Government Experience:

|                    |   |  |
|--------------------|---|--|
| 6-30-74 - 1-77     | U.S. Dept. of Labor<br>Denver, Colorado | Regional Administrator                 |
| 11-15-66 - 6-30-74 | U.S. Dept. of Labor<br>Washington, D.C. | Associate Manpower<br>Administrator    |
| 2-2-65 - 11-15-66  | State of Minn.<br>St. Paul, Minn.       | Commissioner of<br>Employment Security |
| 7-1-63 - 2-65      | State of Minn.<br>St. Paul, Minn.       | Deputy Commissioner<br>of Conservation |
| 1-57 - 7-63        | State of Minn.<br>St. Paul, Minn.       | Personnel Officer                      |
| 8-55 - 1-57        | State of Minn.<br>St. Paul, Minn.       | Manual & Reports<br>Writer             |

## 9. Memberships:

|  |           |           |
|--|-----------|-----------|
| United Auto Workers Local 41<br>Univ. Ave. St. Paul, Minn. | 1948-1954 | President |
| State Capitol Credit Union<br>St. Paul, Minn.              | 1955-1965 |           |

## 10. Honors and Awards:

|  |         |
|--|---------|
| Award for Outstanding Career Achievement | 6-10-74 |
| USES Distinguished Service Citation      | 6--6-74 |

## 11. Published Writings:

Book - Energy-Employment: The Critical Dependency in  
the U.S. Economy October 14, 1976

Book - Energy/Jobs: Some National and International  
Considerations October 14, 1976

Testimony - December 6, 1976, before Dominic Daniels  
Subcommittee on CETA Oversight

## B. PERSONAL DATA:

1. No
2. No
3. No
4. No
5. No
6. No
7. Excellent  
Complete Physical one year ago
8. No
9. No  
No

## D. FUTURE EMPLOYMENT RELATIONSHIPS:

1. Presently employed with the U.S. Government
2. No
3. No
4. Yes

## E. POTENTIAL CONFLICTS OF INTEREST

1. None

## F. LETTER OF COMMITMENT

Yes

## CARIN ANN CLAUSS

PRESENT POSITION: Associate Solicitor for the Fair Labor Standards Division, United States Department of Labor, GS-17 (Schedule A)

In this position, manages a Division of 40 employees; plans and directs the Department's litigation program (approximately 1800 district court cases and 90 appeals on a yearly basis), rule-making functions and advisory opinion services under the Fair Labor Standards Act, the Equal Pay Act of 1963, and the Age Discrimination in Employment Act of 1967; represents the Department in negotiations involving these statutes (e.g., the \$30 million AT&T consent decree and \$10 million consent decree for New York City office building workers); advises the Solicitor and Secretary of Labor on legislation and policy matters arising under these statutes.

SCHOOLS: Vassar College, A.B., 1960  
Columbia University Law School,  
L.L.B., 1963

PRIOR EXPERIENCE: U.S. Department of Labor  
1963-1965, Attorney  
1966-1968, Special Assistant to  
the Deputy Solicitor of Labor  
1968-1969, Deputy Counsel for  
Appellate Litigation  
1969-1971, Counsel for Appellate  
Litigation

As Special Assistant, had responsibility for employment standards, manpower problems, labor relations, and trade union and pension problems and for assisting in the creation of a Civil Rights Division

PRIOR EXPERIENCE  
CONT'D:

in the Solicitor's Office to handle the Department's then new responsibilities under the Executive Order 11246 and Title VI of the Civil Rights Act.

As Deputy Counsel and Counsel for Appellate Litigation, supervised the Division's appellate activities and personally argued some 60 cases in the 11 Courts of Appeals, including all of the initial cases under the Equal Pay Act and Age Discrimination in Employment Act.

HONORS AND AWARDS:

Federal Woman's Award (1976); Labor Department's Distinguished Career Service Award (1976); Labor Department's Nominee for the Rockefeller Public Service Award (1974); 1970 Younger Federal Lawyer Award, conferred "for outstanding service" upon three lawyers (under age 36) in government; Labor Department's Distinguished Achievement Award (1971); Helen Dwight Reid Fellowship to study law (1960); Catherine Lucretia Blakeley Prize for a study in the field of international economic relations (1960); Ford Grant for a study of Soviet trade unions (1959); 4-year scholarship to Vassar College (1956).

PERSONAL DATA:

Address..... 108 Gibbon Street  
Alexandria, Va. 22314

Date of Birth.... January 24, 1939

Place of Birth... Knoxville, Tennessee

Marital Status... Single

PROFESSIONAL  
AFFILIATIONS:

Member of the New York Bar; Federal Bar Association; Co-Chairman of the FBA Labor Committee (1966-1967); Co-Chairman of the FBA Wage-Hour Subcommittee (1974-1975)

PUBLICATIONS:

Equal Pay and Age Discrimination, Federal Publications 1976

Appeals to Higher Courts in Civil Rights Litigation, Federal Publications 1976

Toward Better Litigation Under the FLSA, Pacific Coast Labor Law Conference Proceedings, 1974

Litigation and Legal Precedents Under the ADEA, Industrial Gerontology, Summer 1973

Women and Economic Inequality: A Discussion of the Problem and its Remedies (a paper delivered to the Link Foundation)

OTHER:

Speaker and lecturer -- For the past 6 years has given speeches and lectures on equal employment opportunity all over the United States, including to ABA and FBA conventions, employer associations, universities, government sponsored programs, Practising Law Institute, Conference Board, American Arbitration Association, Industrial Relations Research Association, the International Association of University Presidents, etc.

Legal member of a delegation sent to Japan to meet with corresponding officials in the Japanese government

Who's Who in Government, 1969 to date

## Biographical Sketch

of

Ernest G. Green

Ernest G. Green is executive director of the Recruitment and Training Program (R-T-P, Inc.), a national employment and career guidance agency which pioneered the apprenticeship outreach movement in the United States.

Green, a member of the "Little Rock Nine" was the first black to graduate from historic Central High School in his native Little Rock. He earned both his B. S. and M. S. degrees from Michigan State University. The first from the School of Divisional Social Science and the latter, the graduate School of Sociology. While at Michigan State, he was a key participant in a comparative study of north-south school systems. The project included extensive research on what effect the closing of schools in Prince Edward's County, Virginia had on black students with reference to education and employment.

This study provided an excellent foundation for his first permanent job in 1964 as field representative for the Joint Apprenticeship Program of the Workers Defense League/A. Philip Randolph Institute, the name by which R-T-P was formerly known. Within three years, he became the director of the organization. Under his leadership and guidance, the program has grown from a one office operation in the Bedford-Stuyvesant section of Brooklyn to a diversified manpower program with offices in 41 communities covering 18 states.

In addition to placing minorities in the skilled crafts of the building and construction industry and unions, R-T-P also provides technical assistance to several public and quasi-public agencies, trade associations, and municipalities.

Further, since 1973, R-T-P has sponsored the Minority Women Employment Program, an eight-city project that places women into technical, professional, and management occupations in private industry.

With increasing national recognition as an expert in employment policy, training, and career development, Mr. Green is often in demand as a lecturer and consultant. He has lectured at Rutgers University, the University of Wisconsin, and the University of Michigan. Green has also testified before the Senate Subcommittee on Economic Growth Joint Economic Committee on Full Employment and the House Committee on Education and Labor Subcommittee on Equal Opportunities.

Biographical Sketch of Ernest G. Green  
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Mr. Green's awards are a testimony to his accomplishments. He was conferred an Outstanding Public Service Award by the Rockefeller Foundation. He is a recipient of: the A. Philip Randolph Award from the Negro Trade Union Leadership Council and the Freedom in America Award from the Workers Defense League. His other national awards and citations have come from sources including, the U. S. Department of Labor Bureau of Apprenticeship and Training; Engineering News-Record Magazine; the American Federation of Teachers, Elks, Ebony Magazine, and the New York Post.

His local and national affiliations as board or committee member include:

The Hudson Guild  
Citizens Housing & Planning Council of New York, Inc.  
New York Urban Coalition  
National Manpower Policy Task Force  
National Urban Coalition  
Federal Committee on Apprenticeship  
National Council on Employment Policy  
National Rural Center  
Manpower Demonstration Research Corporation  
Industrial Relations Research Association  
United States Youth Council

As president of the Youth Council, Mr. Green has toured Germany to assess employment training programs and to observe examples of other apprenticeship systems. He has also traveled to the Mideast. Under the auspices of the U. S. State Department's Agency for International Development (AID), he toured East and West Africa to explore the feasibility of adapting Western training systems to developing nations.

Mr. Green's writings include: An Appraisal of Selected Strategies to Increase Employment Opportunities for Non-Whites in the Skilled Craft Occupations in the Construction Industry-Massachusetts Institute of Technology, January, 1974; Implementation of Manpower Training: A Labor Interpretation-Cornell University; Training of Minorities in the Construction Industry, 29th North American Conference on Labor Statistics, San Juan, Puerto Rico, June, 1971; 20th Century Fund Task Force on the Employment of Black Youth, and Apprenticeship: A Potential Weapon Against Minority Youth Unemployment for the collection of policy papers prepared for the National Commission for Manpower Policy in "From School to Work: Improving the Transition: April, 1976.

A. BIOGRAPHICAL

1. Donald E. Elisburg
2. 11713 Rosalinda Drive  
Potomac, Maryland 20854
3. August 1, 1938; Chicago, Illinois
4. Nancy Meyers Elisburg
5. Andrew: November 9, 1967  
Michelle July 1, 1970
6. Illinois Institute of Technology, 1956-1960 B.S. 1960  
University of Chicago Law School, 1960-1963 J.D. 1963
7. General Counsel and Staff Director, U.S. Senate Committee  
on Labor and Public Welfare, and Counsel, Subcommittee on  
Labor, Washington, D.C., 1974-Present  
Associate Counsel, Subcommittee on Labor, U.S. Senate Com-  
mittee on Labor and Public Welfare, Washington, D.C.,  
1970-1974  
Adjunct lecturer in law, "The Legislative Process," Antioch  
Law School, 1974-1975  
Special Assistant to the Solicitor, and Deputy Solicitor,  
U.S. Department of Labor, Washington, D.C., 1968-1970  
Trial Attorney, Labor Relations and Civil Rights Division  
Office of Solicitor, U.S. Department of Labor, Washington,  
D.C., 1966-1968  
Attorney, Manpower Services Division, Office of the Solici-  
tor, U.S. Department of Labor, Washington, D.C., 1965-1966;  
Assistant Counsel for Manpower, 1970  
Trial Attorney, Chicago Region, Office of the Solicitor,  
U.S. Department of Labor, Washington, D.C., 1963-1965  
Counsel, Roseland Theater Company; Chicago, Illinois, 1963-  
1966  
Intern, Baker, McKenzie & Hightower, Chicago, Illinois,  
Summer, 1961  
Clerk, Union Liquor Company, Chicago, Illinois, 1959-1961  
Precinct Reporter, United Press International, Election  
Day, 1958, 1959, and 1960

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7. Continued

Counselor, Jewish Community Centers, Chicago, Illinois,  
1958-1959

Clerk, Root Brothers Company, Chicago, Illinois, Summers,  
1957-1959

8. Listed above under Item 7.

9. Bar Admissions

Supreme Court of the United States

Supreme Court of Illinois

U.S. Court of Appeals, Seventh Circuit

U.S. Court of Appeals, District of Columbia

U.S. District Courts in various jurisdictions

Committee Chairman, American Bar Association

Committee Chairman, Federal Bar Association

Member of Steering Committee, D.C. Bar Association

Member, Chicago Bar Association

Member, Chicago Bar Association Defense of Prisoners Committee,  
Phi Delta Phi Legal Fraternity

Member of Board, Hinton Moot Court Competition and Mandel  
Legal Aid Clinic, University of Chicago Law School

Tau Epsilon Phi Social Fraternity

Public Co-Chairman, American Bar Association Labor Law Section,  
Committee on Equal Employment Opportunity

Member, School Committee, Temple Micah

Chairman, Finance Committee, Temple Micah (1972-1974)

10. Am Jur Award for seminar paper on the problems of relocation  
in urban renewal, University of Chicago Law School

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11. Lecturer, "Longshore Act Amendments," Practicing Law Institute

"Labor Legislation in the 94th Congress," New York University Labor Law Conference, 1975

Participant, Symposium on Equal Employment Opportunity Commission, American Bar Association, 1974, William and Mary Law Review

Speaker and participant in numerous Bar Association panels and professional meetings relating to labor law and labor relations

B. PERSONAL DATA

1. No

2. No

3. No

4. No

5. No

6. No

7. Excellent

Yes, December, 1976

8. No

9. No

No

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D. FUTURE EMPLOYMENT RELATIONSHIPS

1. Yes
2. No
3. No
4. Yes

E. POTENTIAL CONFLICTS OF INTEREST

1. None
2. See A.7.
3. If necessary or required, I will place my securities in a blind trust or sell them.

F. Yes

The CHAIRMAN. Mr. Green, do you have a statement?

Mr. GREEN. Mr. Chairman, I too have no written statement. But I stand on the record ready to appear before any committee of Congress at any time.

The CHAIRMAN. Mr. Elisburg?

Mr. ELISBURG. Mr. Chairman, if I may make a very brief presentation to the committee.

I could not describe to you fully the emotions that I have in appearing before this committee for this position. My entire career as a lawyer has been spent in Government service, and much of it has been with the programs that form a part of the Employment Standards Administration.

Approximately half of my career has been as a staff member of this committee, under your leadership and direction. Virtually all of these programs have been subject in recent years to legislative change or oversight review by this committee.

I believe that our own recognition of the importance of these programs, together with the special efforts that you have undertaken to have these laws carried out under difficult circumstances sets a standard for my new assignment.

In this task I hope to bring some new guidance and understanding to the administration of these vital programs that have been the foundation of our system of protecting workers.

I would also like to state for the record that if I am confirmed by the Senate, I will be pleased to appear before you, any other committee of the Congress upon request.

Personally, I will always be grateful at having had the opportunity to work with you and for you, and your efforts to improve the working conditions of our citizens. I have often said that the value of insight and experience that is gained from being associated with the legislative process is priceless.

I would underscore that opinion in regard to my opportunity to be associated with you in carrying out your good works in the past.

The CHAIRMAN. Thank you for all the personal references. We, of course, have shared very rewarding times together, as you were in various positions on this committee; I applaud the administration for drawing on your talents, background and experience for this very important post in an area that has given us a great deal of concern. We count on you to relieve some of our anxieties in these areas.

Senator Hatch, do you have any comments before we get into any questioning of the panel?

Senator HATCH. I have met all except Mr. Green, and I have heard very good things about him. I have been very impressed with everybody here, and I do have some questions, Senator, when you start the questioning, but I am very pleased to welcome the nominees to the U.S. Senate, and especially the Human Resources Committee.

I am looking forward to chatting with you for a few minutes this afternoon.

The CHAIRMAN. I wonder if we could open with some more observations from you, who have all been Department watchers, or Department participants for a long time.

Mr. Green, your activities had you on the private side in New York most recently; am I right?

Mr. GREEN. Yes, Senator. I have been involved in training activities for the last 13 years, all of my work life since college.

The CHAIRMAN. You qualify as a close observer of the Department of Labor in its activities; am I right?

Mr. GREEN. That is correct.

The CHAIRMAN. Your colleagues at the table on this panel have all been either part of the Department, or closely associated with the activities of the Department.

Mr. Brown, I just wonder if you would give us your impressions of the things that need your attention in terms of emphasis, the focus of this administration as you see it. You have certainly been at the center of the Labor Department, and one of its regions in very responsible work.

Now, you have an opportunity, and a challenge, and a very important role. You are No. 2 in the Labor Department. What impresses you as the things you would like to see, and bring about right away?

Mr. BROWN. Of course, Mr. Chairman, to reiterate what I said earlier, getting the country back to work again is of primary importance to the country, and of course, the Labor Department is going to play a very major role in President Carter's \$9 billion stimulus package, a responsibility that has been assigned to us over the next 18 months, assuring that those programs reach those that need it most, assuring that those programs do not simply substitute for dollars that exist already, and assuring that those programs are selective in terms of moving into those areas where there is highest unemployment, and where the unemployment is most difficult in terms of its character.

In addition, we are delighted to work with your committee, and with other committees of Congress in terms of developing those youth programs that Senator Javits made reference to earlier in the hearing.

The administration's proposal includes a doubling of the Jobs Corps program, a program that is aimed at the most disadvantaged youth in this country, and in my judgment, solving problems in a very economical way for the most severely disadvantaged, primarily minority youth.

We want to mount a new program in concert with the Department of the Interior and Department of Agriculture that would put some 40,000 to 50,000 youth to work in our parks and in our forests. In addition, we will develop exemplary programs to be mounted by the prime sponsors for disadvantaged youth in the areas of highest unemployment.

Of course we want to focus on the very difficult problem of unemployment among our Vietnam-era veterans, whose unemployment rate is significantly above those that did not serve.

In addition, we want to focus on programs that will help to solve the problems of older workers in connection with title IX of the act. Putting people back to work, good training programs, effective programs that provide good jobs, jobs that need to be done in this country—that is the first priority.

We need to do that, and do it quickly.

The CHAIRMAN. If we could be a little more specific now on the effort to reach the unemployed young people. You mentioned your availability, willingness to work with this committee, and other committees, your Department, in concert with other Departments.

There are problems created with multiple jurisdictions that are trying to reach a certain objective, a common objective, of the meaningful employment of young people. We know what we are doing here in concert with other committees that have objectives they want to reach, as does our present new Interior Committee, its program of jobs in conservation; and the Public Works Committee has already reported, as part of its public works bill—it will come up this week—a program, employment of young people, public works activities.

Now, we recognize here that it is necessary to put this all together comprehensively. We are working with our committees, and have seen demonstrated today a high degree of statesmanship by the author of the public works youth employment program, Senator Stafford, and recognized that that effort should come over and be part of the comprehensive program.

What are you doing over there? You have been over there to work in concert with Interior and Agriculture. How can everybody be focused on one effort, Labor and Interior?

How are you going to do it?

Mr. BROWN. It seems to me that it is imperative that we do it together. Of course, the bill that was reported out by the Public Works Committee provided in title II for a youth program, and it is a rationalization of that program that you have been working with other committees to rationalize.

I think the important thing is that we focus on things that we are interested in.

Interior is very interested in providing for improved parks, and for improved public lands. The Labor Department is interested in putting the youth back to work in developing his employability. That is not at all a conflicting arrangement. What we have to do is be sure that in putting together the package we describe the various responsibilities of the various agencies.

We have been meeting with the Department of Agriculture and the Department of the Interior, so as to develop the kind of coordinated effort in this regard.

Now, Assistant Secretary nominee, Ernie Green, may want to add something to that, but basically we believe there is no inconsistency at all with trying to put these programs together, and for us to work together.

The CHAIRMAN. There is no inconsistency certainly. It is just a matter of administrative—

Mr. BROWN. Compatibility.

The CHAIRMAN. Yes, and working it out. So that somebody is in charge.

How is this going to work, Mr. Green?

Mr. GREEN. Mr. Chairman, before I answer that, I would like to go on the record in thanking both Senator Javits and Senator Moynihan for the introduction of me to this committee.

We are now finalizing an interagency agreement between ourselves, Agriculture and Interior Department, on the operation of the Conservation Corps idea.

The primary focus will be that the supervision and the oversight of the employment will be handled by those agencies—Agriculture and Interior—that are responsible for individual sites or parks or forestry departments that we will be contracting with.

We do have a plan of action that involves areas in the country where there are not high levels of Agriculture or Interior operations, such as in the Northeast. In those cases we will be contracting through State parks operations so that we can maximize our output in areas where there are relatively high targets of unemployment among young people.

We have two devices that we are exploring.

One is, of course, residential camps that will allow young people to live on the sites, and near them, to afford the work.

The other is what we call day centers, and these could be parks, or park sites, or forest areas that are near large concentrations of high unemployment among young people, and that can be reached within a relatively short period of travel time.

We think we are very close to finalizing our interagency agreement. We are involving ourselves now in the finer parameters of the cost per placement of the participants in these programs. We expect to finalize that among ourselves within the next week and a half.

The CHAIRMAN. What will be in these agreements, the interagency agreements, or specifically, let me ask; will the Interior Department, Agriculture Department, be recruiting and finding the young people to be clients, who will be given these job opportunities, or are you being the recruiter of the clients?

Mr. GREEN. The Labor Department, through our CETA prime sponsors, and State Employment Security Agencies, will be the referral agency of the participants in these programs.

The CHAIRMAN. In other words, you will be the finder of those who will be brought in as participants in the program?

Mr. GREEN. That is correct.

The CHAIRMAN. Is that understood with these Departments?

Mr. GREEN. That is.

The CHAIRMAN. They would develop the employment program, and receive—

Mr. GREEN. The applicants.

The CHAIRMAN. The applicants?

Mr. GREEN. They will develop the employment program and proceed with the tasks as they are outlined for their various activities in Agriculture and Interior, and we will, in some cases, have ongoing participation, depending upon the scope of work and the type of work. They will vary—I assume some will be very high, intensive labor programs in forest areas, et cetera, and others may be in park support jobs at various locations.

But we are identifying sites on who is to do selection of applicants, and the supervision and the administering of the worksites will fall within those other agencies.

The CHAIRMAN. Well, just 44 years ago, in the very first months of the first Roosevelt administration, the CCC's were created, and the

young people went to work. How long is your activity going to take once we have legislated, and I believe in this area you will need legislation; am I right?

Mr. GREEN. That is true. We expect that as soon as the legislation is finalized we will be able to move on the streets directly on recruiting.

We have a schedule to try and meet within this fiscal year of some 20,000 young people employed in the first 6 months, which would take us through to the fiscal year, approximately.

The CHAIRMAN. Is that just in this one area of conservation?

Mr. GREEN. Yes.

The CHAIRMAN. There are many other areas, too.

Mr. GREEN. Yes; as Under Secretary Brown indicated, we are doubling the Job Corps. We are now working with members of this committee, and other committees on a final touch on our youth proposal, but that, too, will take on a series of activities, as we see it.

We will be able to define what we call service projects that local prime sponsors will participate in. These projects will be spread across the country, some on a formula basis, and some on an exemplary basis. With this particular program we should really be able to reach somewhere in the neighborhood of an additional 500,000 people.

I think my introduction into the Department of Labor has been a coordinated, comprehensive approach to involve the various bills as they are before the Senate, as well as the Labor Department and the administration in general.

The CHAIRMAN. We sat around the other day, and we suggested that this could be done by the end of April, and the Senate Members in their meetings said, no, it should be done a lot sooner.

I saw a worried look come into your eyes—are you still worried?

Mr. GREEN. I think we will meet your deadline.

The CHAIRMAN. Now you are smiling.

Mr. Brown, I wonder if I could go to Ms. Clauss to see where are the areas that she, based upon her in-house background of knowledge and activity, feels the crying needs are.

Ms. CLAUSS. Certainly, Mr. Chairman, one of our primary concerns in the Solicitor's Office is to maintain a strong and effective enforcement posture of the laws we administer, laws affecting people, and their claims for injury, their unpaid minimum wages, the compensation, the remedies for discrimination.

We need effective enforcement of those laws. So that is always one of our priorities—and to maintain a top legal staff, and to effectively develop those laws and get Presidential decisions on the books.

One of the great frustrations for career people over the last several years has been the failure of the Department to contribute to the legislative process.

I know that certainly myself, and I think the other career people are looking forward to a chance to have greater input into the legislation. We, after all, administer the laws. We know their pitfalls and shortcomings.

I expect that we will be much more active in suggesting legislative changes than we have been in the past two administrations. So I am looking forward to that.

I think that is an important priority for the Department.

Finally, as Solicitor, I am very concerned that we will improve our services in response to the public.

As I said, these are people laws. Our clientele, if you will, are people who have suffered, some very traumatic injury.

If you take the Age Discrimination Act, a person who, after 30 years, has been discharged in his job, there is financial injury, there is psychic injury, and it is important that the Government be able to respond to these needs quickly and effectively, and that people not be frustrated that the Government is unable to respond to their particular needs.

The CHAIRMAN. When you say be contributing to the legislative process, and new ideas in legislation, does anything come right to mind that you would have us move on immediately?

Ms. CLAUSS. Well, of course, the primary concern of the administration in the past month has been in the employment area, but I would hope in the next few months that we will be having some input into minimum wage. We certainly will be appearing to testify on that.

The CHAIRMAN. What will you be recommending?

Ms. CLAUSS. Recommending an increase in the minimum wage.

The CHAIRMAN. You have opened the door, and I will have to move right in now. Mr. Brown, what is going to be your request, what would you say should be the request of this committee initially on minimum wage?

Mr. BROWN. Mr. Chairman, the Department is conducting a careful review of the minimum wage problem, and is working with the administration in terms of trying to pull together administration policy for the committee in the very near future.

Certainly there will be a recommendation to try to remove the inequity that inflation has caused since the last change in the minimum wage, and try to determine whether or not the issue of indexing that was raised by this committee with the Secretary at his last hearing to try to determine whether indexing should be recommended.

The decision has not been made by the administration to date. It will be made very soon. We will be up here just as quickly as we can.

Ms. CLAUSS. It is really unfair to make Mr. Brown answer areas in which I opened, but I also think—

Mr. BROWN. Just do not open any more doors.

[Laughter.]

Ms. CLAUSS. Even on a much more technical level, the Department can be very valuable in terms of many of the laws—I do not want to talk about substantive inequities, but procedural problems.

The CHAIRMAN. What did *Gilbert v. GE* say to you?

Ms. CLAUSS. *Gilbert v. GE* said the Supreme Court did not agree with the lawyers in the Government.

The CHAIRMAN. What should be done about that?

Ms. CLAUSS. There are several task forces, both in the Justice Department and at Labor, and indeed in the communities, who are studying various legislative proposals.

As the Senator knows, we supported the women at GE through a brief filed by the Solicitor General, and that was the consistent view of the EEOC, and the Labor Department, and Justice Department. We were wrong.

The law, according to the Supreme Court, did not protect the women in that respect.

The CHAIRMAN. The specifics can be added to the law. It is not a very involved legislative change that would cover this situation, am I right?

Ms. CLAUSS. That is right.

The CHAIRMAN. To say this will be considered sex discrimination to not include pregnancy in the disability coverage; am I right?

Ms. CLAUSS. That is all it would take, plus a majority vote.

The CHAIRMAN. So you say you are considering alternatives?

Mr. CLAUSS. You could amend title VII, you could amend the Equal Pay Act, you could have a separate law—there are various vehicles you could use.

The CHAIRMAN. From your standpoint, which would be the most efficient and effective way?

Ms. CLAUSS. We are still studying it. I would not want to go on record as favoring one vehicle over another.

The CHAIRMAN. We could start our processes here, and put it into title VII?

Ms. CLAUSS. That is one possibility.

The CHAIRMAN. And see where we go from there?

Are there any other doors you want to open?

Ms. CLAUSS. I really ought to open up something for Don's program.

The CHAIRMAN. What about this Davis-Bacon?

You do not have to limit yourself to that. We have been partners in the concern over the administration of a lot of basic legislation.

What cries out where you will be, Don?

Mr. ELISBURG. I have the distinct pleasure of having Carin Ann Clauss as my lawyer, and I am one of her major clients with respect to the Employment Standards Administration.

The area, for instance, of the general labor standards, which is wage and hour and public contracts division, which is one of the four areas that I have as Assistant Secretary, includes the administration of the Fair Labor Standards Act, includes the Age Discrimination Act, and includes Equal Pay, and includes the Davis-Bacon Act, and service contracts, and all of those protective labor laws.

It is my sense, Senator, that the level of enforcement, and the level of resources that have been devoted to carrying out this kind of protective labor legislation has not been looked at for a very long time.

I think I could characterize it as similar to what you found in your hearings in Bayonne, N.J., a couple of years ago. The law has been on the books for nearly 50 years. It is a complex system involving the determination of prevailing rates. It is a responsibility that lies with both the Secretary of Labor and various contracting agencies.

Frankly, it is not an area that has been given the attention that it needs within the Government in the context of carrying out this kind of legislation.

I am hoping to find out what kinds of problems there are. Wage determinations are still being done on some kind of hand calculation basis. We are just beginning to look at the process of putting this on automatic data processing, of doing the kinds of things in dealing

with a very large program which probably should have been done some time ago.

The CHAIRMAN. I missed the point there. Repeat that.

Mr. ELISBURG. The process of making a wage determination, and finding out what are the wages being paid in a different area.

The CHAIRMAN. Is this under Davis-Bacon prevailing wage?

Mr. ELISBURG. Yes, sir. This has all been done on virtually a hand calculation kind of thing, with long delays, and lack of certainty as to some of the wages, prevailing rates that are being calculated.

There is underway in the Department a pilot program to try to put this in some kind of automatic data processing method to do them faster, and be able to get more information with respect to the wage determination.

The CHAIRMAN. How about the area that will be included in the determination?

Mr. ELISBURG. You mean with respect to the standard metropolitan area, or the State area?

The CHAIRMAN. Yes. This is frequently, as we all know, subject to critical view here, dissimilar regions are within the area for the wage to be set on any given job.

Is there any thinking about changing this?

Mr. ELISBURG. Yes and no. I would not want to suggest that the administration, or even within the Department, there has been a view toward legislative changes. But I think that we have begun the process of trying to define how is this law being carried out, what does it mean when you are making a determination in one State versus another State, how are these things being done, wage determinations being made.

It is not clear to me that there is an identifiable set of standards.

You have got many, many years of work that have been done there, and a lot of people have been doing it, but it is kind of word of mouth passing on. It is a question of whether this thing has been standardized, whether there are procedures and manuals for people to make these determinations.

The CHAIRMAN. How frequently are these regions defined?

Mr. ELISBURG. I am not sure they ever have been.

The CHAIRMAN. Is it possible that you can have a city, a big city, and country area within one region, and having a common wage?

Mr. ELISBURG. I certainly think that is possible.

The CHAIRMAN. You hear this around the legislative body all the time. Is that possible?

Mr. ELISBURG. I think it is. I think you have got shifting patterns of where construction is, and where the construction workers are. As you have had a move to the suburbs, and the suburbs are practically the country now, there is a question of whether the rates follow, and to what extent you can deal with that.

It is really, Senator, just a hodgepodge right now. The areas that have been defined have not been redefined in many, many years.

The CHAIRMAN. The relationship of the Labor Department to the contracting agency, or the department, is another one that sticks around here, and painfully so.

Mr. ELISBURG. The Labor Department sets the rates. It is up to other contracting agencies to carry them out in their contracts, and to police

it. A big problem arises in having the contracting agencies both making sure that the rates are in the contracts, and once they are in the contracts, that they are in fact paid.

The CHAIRMAN. The relationship of the people in the enforcement in the Labor Department, their relationship to the contracting agency is clear, there is no doubt about their authority to move in on another department and correct—

Mr. ELISBURG. Yes, sir, they can move in. It is kind of a dual jurisdiction. It is first instance with the contracting agency, but at any time the Secretary may also conduct his own investigation.

The CHAIRMAN. You mentioned dual jurisdiction, and my mind immediately turns to another area, where we have dual jurisdiction. ERISA, Mr. Brown, is causing a great deal of concern.

There is a great deal of concern here that it is becoming just too costly to meet the demands of ERISA.

I went to a social event Saturday night, the Distinguished Knight Awards dinner at Seton Hall University, and all I heard was how much was being paid in multiemployer pension plans for lawyers and accountants, in order to meet the requirements of the law.

I keep hearing, wherever I go, the smaller plans seem to feel obliged to spend a great deal of their funds, not for reserves against pensions, but to make sure that they are meeting the law.

Has this reached you?

Mr. BROWN. Mr. Chairman, you can be absolutely certain that this has reached us. It reaches us almost every 5 minutes of the day, ever since I have been in Washington, helping Ray Marshall. It is a real problem.

Beyond that, and the other side of that coin, is the tremendous importance of ERISA in terms of protecting the pension funds for workers, and the equal-handed administration of that side of the new law is terribly important.

The whole question of dual jurisdiction between the Labor Department and IRS is a very complicated question, especially as it relates to some of the more complicated issues around what waiver should be granted. The multiemployer plans are in the main collections of small employers that have this kind of almost onerous requirement of paperwork and redtape.

We need to find an ERISA administrator who not only understands the law, and the importance of the protection, but who is a strong administrator, so he can simplify these regulations and at the same time maintain the protection that is inherent in the law.

It is a very complicated and difficult problem.

The CHAIRMAN. I have addressed questions to Secretary Marshall on this.

We are looking for the replies. I guess we do not have a reply yet in this area. I hope that we can put this high on your agenda over there to find a way to not lose the plan by pricing ourselves out of the—

Mr. BROWN. Out of the market.

The CHAIRMAN. With too burdensome requirements that we have put on these plans. Some are perfectly safe and secure. But if you do not have any pension fund left, that is bad.

Mr. BROWN. Mr. Chairman, this is a very high priority item for the Secretary and myself, and for the Department.

The CHAIRMAN. Beyond that, just the opportunity for these plans to find investment opportunity, with this great reservoir of money. I am told that the trustees are so fearful of surcharge and violations, that their managers just have given up any thought of investment management under the principles that will really serve the fund.

Just put it away in some safe place, that is all. They have interpreted the main provisions, and they tell me they have had to interpret them in an extremely conservative way. This does not serve the economy, nor it seems to me is it of maximum service to the beneficiaries.

Mr. BROWN. I fully agree, Mr. Chairman. Of course, the publicity related to some of the plans that are in very serious difficulty has not helped in that regard.

The CHAIRMAN. Well, everybody knows the horrible example of Central States, et cetera. Some people say if it were not for Central States' investment plan, there would not be any Vegas.

I better not go any further. It might get back to Howard Cannon, anything I might say.

But there will be no more of such investment in casinos under this law. This is quite clear.

I will stop for a moment, and let Senator Hatch have an opportunity to question you.

Senator HATCH. Thank you. I appreciate it, Senator Williams.

Mr. Green, I am very much impressed with your background. I am going to vote for you.

I would like to get a commitment from you that you would be willing to come up and meet with me, and with my office staff, because we are extremely concerned about minority unemployment, youth unemployment, Vietnam unemployment, and these problems in our society today, which I consider to be one of the future greatest cancers we can have.

I would like to assist you in any way I can to try solve some of those problems. I have looked over your background. I have talked to a few people who know you quite well, and they think you are a person of great character and great ability, and a person who works hard.

I do have a couple of questions I would like to ask you.

I understand that the Employment and Training Administration is proposing to amend the regulations governing the labor certification process for the temporary employment of aliens in the United States, and agricultural logging operations.

Are you familiar with these new regulations published in the Federal Register on January 25?

Mr. GREEN. I am familiar with the regulations. I am educating myself on the regulations as I came into the Department. But I know that they are being proposed, yes.

Senator HATCH. Do you have enough background right now to describe for us on the committee how the certification process now works, and tell us what effect you think these new regulations will have on agriculture employers, in attempting to find workers?

Mr. GREEN. Generally the process the Department has is to temporarily certify agricultural workers in four general areas, I think. They concern the logging industry, sheep herders, sugar cane, and fruit growers—fruit industry, apples, peaches, other items that fall into that.

Senator HATCH. Can you tell us how the certification works? I am not sure myself.

Mr. GREEN. As I understand it, Senator, it is a temporary process, which the Department agrees to certify when sufficient national workers are not found for particular industries. It is done on a temporary basis, approving visas, or entry of foreign workers to come into the country to perform those particular agriculture tasks.

Senator HATCH. These questions, incidentally, are not limited to Mr. Green, if any of the other candidates care to jump in on this.

Do you have any idea what kind of studies are made to determine economic effects of regulations like these before they are put into the Federal Register?

Mr. GREEN. I think it is fair to say, Senator, that those regulations were written and released before I came in, and I think before the new administration.

So that question, I cannot address myself to it.

Senator HATCH. I am concerned about whether or not you can realistically expect a small farmer to meet the requirements of the regulations and still conduct his business.

Part of the reason I am asking these questions is at the behest of some other Senators in the West who have some real concern about their ability in, say, Idaho and Nevada, just for two illustrations, to put employees, or to get adequate employees to serve in those particular areas on the agricultural farms.

So I am wondering if there are—if any of you others can help me please do—any studies that really take into account the small farmer in our society, rather than corporate farmer, as to whether or not he can be benefited from these regulations, or even meet the requirements.

Do you know, Mr. Brown?

Mr. BROWN. Senator, I am not familiar with the changes that were proposed in the new regulations. The program in the past has operated really quite simply. The small farmer, or the large farmer simply files a request for employees at the local office of employment service. The employment service makes referrals, if they have people available. If they do not have people available, then a determination of whether or not there is adequate wage being offered is made. The employment service really makes two determinations in connection with the Immigration Act: The first is whether or not there will be adverse effect on wages and, second, whether or not there are U.S. citizens available for the referral.

That determination is made at the local office level, and it has really not been a very onerous and difficult problem.

Now, out West we have some fairly significant problems with sheepherders. There has been a special provision of the law which really has allowed for temporary certification of workers to sheepherders. But in fact, the farmers have used that section of the law to bring workers in permanently.

The Department needs to take a very careful look at that problem.

Senator HATCH. Do you have any figures, or have there been any studies to substantiate the success of this interstate clearance system, placing individuals in agricultural jobs, which would make clear whether the regulation changes are necessary at this time?

I am talking about the ones on January 25.

Mr. BROWN. I do not have any response to that. I will be glad to respond for the record.

Senator HATCH. Would you do that, please?

Mr. GREEN. I might point out, Senator, that the period of time for responses on that was extended an additional 30 days from the original 30-day comment period, and the final period of comment will end approximately March 24.

There was a 60-day period for some comments from interested parties on the proposed rules and regulations.

Senator HATCH. Why is it, Mr. Green, do you think, we have such a high unemployment rate, and yet agricultural employers find it very difficult to find American workers to move irrigation pipe, herd sheep, pick fruit, or do other available farmwork?

Mr. GREEN. I have been reading the Secretary's testimony. As you know, he is greatly concerned with rural and agricultural problems.

I regard as one of our tasks in ETA over the next 4 years an attempt to bring some comprehensive overview to infrastructural problems like that in the agricultural industry.

It is my intention that we will be able to meet those requirement of the growers, or the ranchers, by coordinated employment processes that allow us to do adequate recruiting to meet their concerns, and to have workers in place when they need them or whenever there is a period of time for usage of their workers.

Senator HATCH. I appreciate that. I would like to see that done. There are many people in our society that feel unemployment and other welfare benefits make it too attractive not to work in our society today.

I know a lot of people that are very, very concerned about this, and especially in the farm areas, Utah, and elsewhere.

I am sure that you are aware farmers and ranchers in the West rely heavily on foreign labor, especially workers from Mexico, for a good deal of the more menial hand labor especially during harvest season. Sheep growers in Nevada and Idaho have traditionally employed Basque sheepherders.

One reason for this is American workers are basically unwilling to accept this type of employment. The agricultural work force in the United States seems to diminish each year, and yet a certain amount of hand labor is necessary for production.

Would you be willing to consider some form of exemption for certain of these regulations, such as requirement that the employer leave open job offer for 90 days prior to receiving certification to hiring alien workers for agricultural employment during, for example, the peak harvest season?

Mr. BROWN. Senator, the Department will be glad to review any proposal relating to sheepherders, or foreign workers situation. The last legal arrangement with temporary workers in Mexico was several years ago, but it is true farmers throughout the West have used illegal workers, as other employers have.

That problem is a very critical one—and the Secretary, in concert with other agencies in the administration, is in fact looking at the entire question of the undocumented worker.

Senator HATCH. Mr. Elisburg, presumably most Presidential appointees take takes office with a concept of his job in mind, and cer-

tainly I am sure you do, with all your vast experience in the field of labor, and what is your concept of the Assistant Secretary of Labor in your area of concern?

Specifically, are there any interest groups in which you feel you would act as an advocate?

Mr. ELISBURG. I think that the concept of the Employment Standards Administration is to carry out many statutes, which is what I would consider worker protection. I think that is the role traditionally of the Secretary of Labor, and certainly as Assistant Secretary, I view my responsibilities to carry out these programs on behalf of the American worker.

Senator HATCH. Will you advocate programs in your area of responsibilities?

Mr. ELISBURG. I would think so, Senator.

Senator HATCH. Do you have any special interest groups that you would be advocating for, or would you feel you were advocating for the American worker as a whole?

Mr. ELISBURG. I would certainly think the American worker as a whole, that has certainly been my view.

Senator HATCH. As I understand it, Mr. Green, and all four of you, if we needed to sit down and discuss matters here, would you be willing to come up to the Senate and discuss them with us, or do we have to go down and discuss them with you, in your office?

Mr. ELISBURG. I would be delighted to come up here.

Mr. GREEN. I would come up here, sir.

Senator HATCH. I had a bureaucrat here in Washington say if you want to discuss something, you come on down here.

I am not going to vote for anybody that demands that we come down to some bureaucracy. You might as well know that. I do not think you will demand that, Mr. Green, and how about the rest of you?

Mr. GREEN. I think we have already, in many cases, been up here, and I am fully willing to work with your staff, or any other staff.

Senator HATCH. I will be willing to work with you, and I think you will find we might be able to do some things together that might be worthwhile. That is, I do not mean to say I am not willing to come down under certain circumstances. But I sure want you to come up here.

Mr. BROWN. You are welcome at the Labor Department at any time. I want you to know that every appointee or nominee that comes before this committee will be delighted to come here to visit with any Senator, at any time.

Senator HATCH. I appreciate that.

If I have that commitment, I am very pleased to have that.

Mr. ELISBURG, do you contemplate a role for management, in your view, of the problem of structural unemployment?

Mr. ELISBURG. I am not sure I deal with the area of structural unemployment, but to the extent that I have any involvement in any programs, I certainly think that where employers are involved, they have a role, and management would certainly be involved in that.

Senator HATCH. When you say you are not involved in structural unemployment, you are certainly involved in minimum wage.

Mr. ELISBURG. Sure, carrying out the labor standards area, but I was thinking more of Mr. Green's area of employment and training.

Senator HATCH. It seems to me you are involved in many areas that have a great deal to do with structural unemployment, including wages and hours.

Mr. ELISBURG. I certainly feel there is a role for management in dealing with the problems of carrying out the Fair Labor Standards Act.

Senator HATCH. In your advocacy of programs, would you be willing to advocate subminimum wage to help minorities and other chronically unemployed people to get an opportunity to work?

Mr. ELISBURG. Frankly, Senator, I think not.

Senator HATCH. You want a higher minimum wage than we have now, or you want to keep it at the present \$2.30 level?

Mr. ELISBURG. I think I will stand with Ms. Clauss on that. I believe there is a need for an increase in the minimum wage, and I am obviously involved in the administration's efforts to work out some recommendations, both at the level of minimum wage and the question of indexing and coverage, and so forth.

Senator HATCH. Do you have any idea how high that minimum wage would go, or what would you personally recommend? Give us a range, if you cannot give us an exact figure.

Mr. ELISBURG. Well, I think it is hard to give the precise amounts as to where it should go, but I think a good benchmark to look at is where has it eroded.

There is a poverty index, and on the basis of that the \$2.30 an hour minimum wage should now be somewhere around \$2.83 an hour.

If you look at the Consumer Price Index, the \$2.30 an hour minimum wage should be somewhere in the vicinity of \$2.70 an hour. If you look at the relationship to gross average hourly earnings, it comes in excess of \$3 an hour.

All of these are considered varying degrees of where a minimum wage should be paid.

Senator HATCH. Are you going to take into consideration as you ponder this problem the vast number of businesses in our society that would have great difficulties paying a minimum wage, but could employ young people on subminimum wage basis?

Mr. ELISBURG. Senator, the question dealing with subminimum wage has been the subject of discussion before this committee for many years. Just speaking personally as a staff member, I have had some involvement in it.

Senator HATCH. I am sure you have.

Mr. ELISBURG. I believe that the concerns that I look at are what does it take for someone to earn a decent living? What are the problems of using a subminimum wage as a potential for substitution of jobs, that is in the process of employing the youth or teenager who in fact are displacing older workers. There is a fair amount of evidence to show the difficulties of subminimum wage.

Senator HATCH. But I think there are plenty of areas where we might have some constructive or reasonable interpretations or changes that might help get people to work. That might be more important than worrying about replacing a few people, especially when we have all kinds of jobs over our society going vacant.

Mr. ELISBURG. I would point out that the Fair Labor Standards Act does have provisions in one of its sections for employment of youth and handicapped workers, and others through special certificates and special industries, particularly those who are students. That does provide I think in excess of half a million jobs right now.

Senator HATCH. What would you consider about tax credits for business that hire, say, the chronic unemployed and the disadvantaged? How about tax credits, would you advocate something like that?

Mr. BROWN. I think the one example we have is the work incentive program where tax credits have been provided for welfare recipients that are employed by employers. That experience has not been particularly constructive. The 20-percent tax credit apparently has not been enough of an incentive.

On the other hand, to get back to the subminimum wage for just a moment, I think there is one additional consideration that we need to have, and a fairly serious one, and that is the whole question of equal pay for equal work. Most of the jobs that are made available to youth are jobs at the beginning of the occupational ladder where older workers are also working and to provide any kind of disequity for equal work, for equal productivity, is something we need to be concerned about too.

Senator HATCH. I would rather have some disequity and have young people working than to stand by some philosophical system that does not work itself.

The point I am trying to make is that I think we have got to get those kids to work, those young people to work, older people up to 26 years of age, the Vietnam veterans. I do not see that your type of approach really gets them to work.

I commend the good areas of your approach. But I think we have got to start coming up with some programs that allow the small businessman a chance to employ more people.

Let me go on from there. What if we had an approach—I agree 20 percent is not much of a tax incentive to hire somebody you have to totally train that has no background and probably is ill educated and poorly equipped at that, because of the societal problems that have been thrust upon him—what if we gave 100-percent tax credit to business to hire these young people and give them the opportunity? I remember I started in an apprenticeship program. I certainly did not make as much as the journeymen who knew the business when I started and it took me years to get there. I had to earn my way there. It was something I earned. I think we have to take that into consideration, too.

What if we give a tax incentive of, say, 50 to 100 percent, that amount of money we pay these young people during the learning period, so to speak, especially when the employer hires more people in the succeeding year than he hired in the preceding year, and let us say when the majority come off unemployment rolls—would that not be an effective approach? Maybe that would be an innovative approach compared to trying to make everybody equal in society.

Mr. BROWN. Well, Senator, I think there is nothing really inappropriate being equal in society in trying to solve this problem.

Senator HATCH. There is because you are forcing people to not be equal, because they cannot get a job. Fifty percent of our black youth cannot get a job in our society today. I think that is an inequality that

is a lot worse, I think they lack the dignity of work, the opportunity of employment, that is inequality a lot worse than say paying them the same amount of money.

Mr. BROWN. Senator, there is no question but that there is inequality. We agree with that. The entire stimulus package is aimed at trying to get people back to work and trying to get young people back to work. The youth bill we talked about earlier is to focus on those youngsters who have great disadvantage and provide training for them in a setting in the Job Corps, in on the job training, where the employers paid for their extra costs related to training, and related to requirements of having extra supervision and so forth. But it is focused in a very selective way so that we assure that those youth that need it most, where there are real disadvantages, so that those employers can help.

Senator HATCH. We are providing public service jobs in many ways through this stimulus package, but are we providing real jobs that work and last for our young people? I do not think we are. That is one of the complaints I have had. Maybe I am not getting anywhere with this. I do not mean to seem like I am giving you a rough time. I am not trying to.

We must come up with some constructive approaches to get young people to work. I do not think we are in our society now.

Mr. BROWN. I think any of the imaginative ideas that the committee has and you have will be taken into consideration in the development of this program and in the administration of the program.

Senator HATCH. Let me ask you this, Mr. Brown and Mr. Elisburg. What percentage of American workers belong to a union? There are about 90 million workers. How many belong to unions?

Mr. BROWN. About 30 percent.

Senator HATCH. I understand it is considerably less than that. I thought it was around 20 or 25 percent.

Mr. BROWN. I think 25 percent.

Senator HATCH. Where do you stand, Mr. Brown, with regard to repeal of 14(b)?

Mr. BROWN. I am in favor of it.

Senator HATCH. Of repeal?

Mr. BROWN. Yes.

Senator HATCH. Then you are for repeal of right to work laws in now 20 States?

Mr. BROWN. Right to work has always bothered me in terms of that, Senator. Let me expand on that. I would like to answer the question.

Senator HATCH. OK.

Mr. BROWN. I think the unemployment rate would be a heck of a lot higher than it is today if—what do you mean by right to work?

Senator HATCH. The right to choose whether you belong to a union or do not belong to a union.

Mr. BROWN. You have that right in every one of the States.

Senator HATCH. Let me just ask you a number of questions and tell me what you think, and you can chat about what your particular beliefs are with regard to it.

You are for repeal of 14(b).

How about you, Mr. Elisburg?

Mr. ELISBURG. Yes, Senator, I am.

Senator HATCH. What about common situs? Would you be for common situs or against it?

Mr. ELISBURG. I am in favor of it, Senator.

Senator HATCH. How about you, Mr. Brown?

Mr. BROWN. I am in favor of it, Senator.

Senator HATCH. What about mandatory collective bargaining in the public sector, favor or against?

Mr. BROWN. I would be in favor of some system of collective bargaining or some alternative in connection with that.

Senator HATCH. Would you change the present labor practices to provide for mandatory collective bargaining or some system that gives collective bargaining in public service?

Mr. BROWN. Yes, sir.

Senator HATCH. How about you, Mr. Elisburg?

Mr. ELISBURG. Yes, sir.

Senator HATCH. What about compulsory arbitration in the public sector and/or the right to strike?

I think these are valid questions. I think the people of America deserve to know whether you believe these or whether you do not.

Mr. BROWN. I believe just about exactly where the Secretary would come out on this issue. I think you have to be somewhat selective.

Senator HATCH. You would be for compulsory arbitration and the right to strike for public employees?

Mr. BROWN. Yes.

Senator HATCH. What about you, Mr. Elisburg?

Mr. ELISBURG. I am not sure about the use of compulsory arbitration, but I think the use of arbitration—

Senator HATCH. And/or the right to strike?

Mr. ELISBURG. Or bargaining, in lieu of the right to strike, is certainly one viable way to do it. I think I agree with the Secretary's views as expressed in the committee hearings about the whole issue of public sector bargaining and the importance of collective bargaining for public employees.

Senator HATCH. What about the right to strike for public employees if we do not have compulsory arbitration?

Mr. ELISBURG. I think you will have that anyway, and, yes, I do agree with that. I think there are some situations where it will perhaps be useful to have certain controls or limitations, such as notice, mandatory mediation, fact finding, other kinds of alternatives to ameliorate or limit the problems of the public sector labor disputes that lead to strike, including the ultimate question of whether it is a matter of public safety, whether or not the courts should step in.

Senator HATCH. What about the Hatch Act? Would you do away with it or modify it considerably, Mr. Elisburg?

Mr. ELISBURG. I am not sure I could specifically comment on the Hatch Act in any detail. I spent 7 years being covered by it and 7 years not being covered by it.

Senator HATCH. What would be your feelings about it?

Mr. ELISBURG. My personal feelings are that there ought to be a way for the Federal employees to express views and participate in the political process substantially more than they are now permitted to do.

Senator HATCH. Should there be any restriction in your personal view? Would you require any restriction on Federal employees?

Mr. ELISBURG. Probably.

Senator HATCH. You would require some?

Mr. ELISBURG. I do not think I would be able to specify that. I think there are some ways, particularly as civil servants or public servants, that you perhaps ought not get yourself deeply involved with the political process.

Senator HATCH. What about you, Mr. Brown, how do you feel on that?

Mr. BROWN. I have not really looked at the question very closely, Senator. I am generally where Don is in connection with that. I feel there ought to be better opportunity for Federal employees to express their views, and at the same time we need to be concerned about the system, about it being a fair system. I really have not got anything definitive to offer.

The CHAIRMAN. Could I interrupt. I hope you are enjoying all the policy positions. You might not be called upon for a long time to be the center of major policy recommendations for change. So are you enjoying this?

Mr. BROWN. Terrific.

Senator HATCH. I do want to cover these areas. I want to know where you stand and I think the people in this country want to know where you stand. I am concerned about many of these areas as I think many people throughout society are.

What about Davis-Bacon? Dr. Marshall indicated he would make it more stringent than it is right now. What is your feeling?

Mr. BROWN. You mean in connection with the prevailing wage issue? I think it is very important.

Senator HATCH. You would strengthen Davis-Bacon?

Mr. BROWN. I would strengthen it. I think we need to look into the whole question of whether or not it is being administered effectively, especially in connection with contracting agencies.

Senator HATCH. Have you given any consideration as to how much it really cost the American taxpayer to require this—it has been over the last 30 years.

Mr. BROWN. Well, the law itself is to protect workers so that wages are not used in connection with the competitive bidding process, so that wages of workers are not used in connection with getting Government contracts.

The CHAIRMAN. I would like to just give you an example of just what you are saying, Mr. Brown. We saw, as Mr. Elisburg mentioned, Bayonne, N.J., and I can tell you what happened up there, Senator Hatch. There the contract being made by the Government which went for the lowest price. Do you know what the lowest price turned out to be, Senator Hatch? To illegal employees that were not here under any permit. They were hired way below the prevailing wage. They could not stand the light of day because they were illegal entrants into this country. Illegal employees. Where the Labor Department was the ultimate enforcer, and not the contracting agency of Government, this might not have happened.

Senator HATCH. What about where we have legal employees? I admit where you have illegal employees that is a particularly important point. But what about legal employees?

The CHAIRMAN. The same principle applies. You are using substandard wages as the tool for winning competitive bids for Government contracts. Who was it? One of our Senators said that the Federal Government should be the model employer. Believe me it seems to me that when you come into wages, this is one of the fundamentals, and you should not win Federal contracts by substandard wages.

Mr. BROWN. Mr. Chairman, I could not agree with you more.

The CHAIRMAN. It was Senator Bentsen who said that about the model employer. I fully agree with Senator Bentsen.

Senator HATCH. How do you propose to strengthen the Davis-Bacon Act?

Mr. BROWN. By administration.

Senator HATCH. In which way, pay the highest available wage rates in a particular area?

Mr. BROWN. We need to make certain that the contracting agencies have the Davis-Bacon provisions as priority item in terms of administration of those contracts and the administration of the wages in those contracts, so that they are paid in accordance with the schedule laid out in the contract.

Senator HATCH. That is even though in a particular area the people might be willing and the prevailing wage rates might be less than Davis-Bacon ruling requirement?

Mr. BROWN. Well, that is theoretically not possible. The prevailing wage rate is determined on the basis of what is prevailing in the area.

Senator HATCH. The largest metropolitan areas; is that not correct?

Mr. BROWN. Pardon?

Senator HATCH. In the largest metropolitan areas; is that not correct?

Mr. BROWN. In the major SMSA's.

Senator HATCH. Let me ask a couple more questions of you.

What about the secret ballot in union organizing? What would be your position with regard to that?

Would you maintain integrity of the secret ballot?

Mr. BROWN. Well, Senator, I am not familiar with that in terms of the administration of the Department of Labor.

Mr. ELISBURG. I believe that is the Taft-Hartley. I think my understanding is that there is now a secret ballot vote.

Senator HATCH. What would you do with the secret ballot?

Would you do away with it?

Mr. ELISBURG. I frankly, Senator, have not really explored that area. I do not see any problem with the secret ballot.

Senator HATCH. Do you know that there are some people in our society today who want to do away with the secret ballot on the basis that it is good administrative purposes?

Mr. ELISBURG. I cannot comment on that, Senator.

Senator HATCH. You do not find anything wrong with the secret ballot?

Would you say that it is a fair methodology for determining elections?

Mr. ELISBURG. I think I want to defer to the experts at the National Labor Relations Board. I know they have just recently gone through their 30 millionth vote.

Mr. BROWN. Are you referring to the practice of having conventions, international union conventions?

Senator HATCH. No.

I am talking about the determination.

Mr. BROWN. The determination of a bargaining unit?

Senator HATCH. Yes, sir.

Mr. BROWN. We would have no problem with continuing secret ballot there.

Senator HATCH. You would be in favor of the secret ballot?

Mr. BROWN. Yes, in that situation.

Senator HATCH. Let me just ask one last question.

How do you propose to minimize the paperwork burdens on business generated by the Labor Department? That is a pretty tough question, but I wonder if you have given it any consideration?

I think in itself it is a detriment to better employment—

Mr. BROWN. I think in connection with OSHA and some of the provisions of the regulations related to ERISA, that we have to make a determination as to whether the paperwork requirements for all employees, especially small employees, are not too onerous. And that is for the Secretary's discretion.

Senator HATCH. I also would like to comment that my experience has been all bad with ERISA. I am concerned that a lot of us are not going to have pension programs for employees because of the onerous requirements and burdens of ERISA.

I am also concerned about those who do have them, wanting to discontinue them because of the massive paperwork burden and investigatory burden involved.

I think all of us pretty well have to agree that we want to have fairer treatment for those pension funds, too, but again sometimes the rules that we make to encourage that become worse than the problem that existed before the program.

So I am concerned about that, and I hope that you will, as you sit here today, really try to make some changes there.

I hope I have not seemed antagonistic to you today. I have not meant to. I meant to find out where you stand on some of these issues.

I am concerned with our present Labor Department, in that it appears we only have one particular point of view, and I am really concerned about that.

I think that it would be well if we had some people that would really be in there on the side of business, too.

I have admiration for each of you, and I think you are top people in your particular fields. I have met each of you and, as human beings and personal acquaintances, I do think that we have just one point of view far too much in the Labor Department in this country.

I hope that you will give it even more consideration in the future.

Ms. Clauss, I enjoyed meeting you, and I understand that you are one of the top labor lawyers in government, and I compliment you.

Mr. Green, I have met you before, and I hope that you will get over and work with me. I think I might have some ideas that might

help in the area of unemployment, in particular getting businesses to give some of our young people a chance, especially some of our young black people.

I have been working with some problems, and maybe if we can sit down together, we might be able to help these people.

Well, it has been nice seeing all of you, and I want to compliment you on your appointments and wish you the very best as you serve in these capacities.

The CHAIRMAN. Thank you very much.

I have many questions here that have come to me, many Senators that are occupied with other Senate committee meetings right now or on the floor.

Senator Randolph has questions addressed to all of you, and I am just wondering whether if I submitted these to you, you could have an answer to Senator Randolph and our record by the time we hope these nominations will be coming to the floor?

I rather doubt it.

The prospects are good that we will be able to handle these, your nominations by the committee soon, within a day or so.

These questions I will submit, and if we can have replies for the requesting Senators in 24 hours, I think all will be well.

So Senator Randolph has questions for all of you, Senator Stafford has a particular question—it was dealt with in part—about the availability of local workers before certification. And Senator Cranston did want me to say that this is his statement, there have been several meetings with Bob Brown as Under Secretary of Labor-designate.

I am pleased to be able to support fully his nomination for this position. Bob is aware of my special interests in the areas of veterans employment, migrant and seasonal farm-worker programs, the problems of undocumented workers, and the prompt establishment of the National Commission on Employment and Unemployment Statistics. These matters, which I also raised with Secretary Marshal at his confirmation hearing on January 13, have been raised with Bob on a number of occasions. I am impressed with Bob's expertise, commitment, and experience which make him highly qualified to undertake these new and important responsibilities. I look forward to a long and productive working relationship with him, and I urge the committee to report his nomination promptly and favorably.

I believe with that statement and this letter to me from Senator Mathias dealing with the nomination of Don Elisburg—he concludes—and this will be included in the record—"In short, I believe Mr. Elisburg has both the experience and the ability, demonstrated by his distinguished record of public service, to well and faithfully discharge his duties as an Assistant Secretary of Labor."

[The following questions and other information were received for the record:]

QUESTIONS FOR ROBERT J. BROWN FROM SENATOR RANDOLPH

(QUESTION NO. 1 IS COVERED BY RESPONSE TO QUESTION No. 1 ASKED OF DONALD ELISBURG)

Q. 2. What do you see as the primary internal problems in the Department that should receive priority attention?

A. 2. While the primary concern of the Department of Labor during the next year will be the implementation of the stimulus package in an effective and timely way, we are also very concerned about labor-management relations within the Department and about improving our EEO programs. We plan to give priority to each of these areas.

We also believe that much greater attention must be paid to the management of Department programs, especially OSHA, ERISA, the Workers' Compensation Programs, and the Federal Contract Compliance effort. We must make special efforts to reduce the backlog in the Workers' Compensation Programs, especially FECA and Black Lung. We are quite convinced that effective management of government programs is critical if the current distrust of government is to be lessened, and we intend to make every effort in the Department of Labor to improve the Department's performance.

QUESTIONS FOR ERNEST G. GREEN FROM SENATOR RANDOLPH

Mr. Randolph: As Assistant Secretary for Employment and Training, you will have responsibility for overseeing the operation of CETA (Comprehensive Employment and Training Act). Do you believe the administration of this program should be coordinated with the Local Public Works Employment Program and the title X Jobs Opportunities Program under the Economic Development Administration?

Mr. Green: Yes. As the ultimate objective of CETA is the placement of unemployed and economically disadvantaged persons in jobs, I believe it is essential that CETA be closely coordinated with employment-generating programs, such as the Local Public Works Employment Program and the recently amended title X. The Local Public Works Employment Program and title X, as amended, are job-generating programs important to the administration of CETA, not only because of the short-term jobs created in construction projects, but also because of the potential long-term new employment opportunities created as a result of public works activities.

Mr. Randolph: How do you think such coordination should be effected?

Mr. Green: The Employment and Training Administration is currently undertaking a demonstration program--jointly administered with the Department of Housing and Urban Development and the Economic Development Administration of the Department of Commerce--which shows significant promise in effecting local coordination between economic, community and employment development programs. The overall objective of the demonstration is to maintain existing employment opportunities and/or produce new jobs for city residents, including economically disadvantaged, low- and moderate-income residents. One key emphasis of the program is its focus on coordinating existing Federal programs (CETA, HUD's Community Development Block Grant Program and the various programs of the Economic Development Administration) which together represent an important resource and potential for attacking economic development problems. Although the ten cities selected to participate offer a variety of approaches to community economic development, all ten grants evidence commitment of the chief elected and city officials and strong involvement and commitment of the private sector in determining and carrying out joint efforts. This demonstration effort is currently targeted to large cities; however, we firmly believe the lessons learned from this effort can be applied in other

jurisdictions--rural and urban. This represents a long-term approach to effectively coordinate employment and training programs with developmental programs operated by HUD and DDC.

In the short term, CETA's primary point of coordination with the Local Public Works Employment Program and with the amended title X will be to supply workers for local projects under these two programs when needed and to assist and support local employers through the provision of CETA services, principally on-the-job training.

Mr. Randolph: What problems do you foresee in accomplishing such coordination?

Mr. Green: I foresee few problems in accomplishing coordination between CETA and the Local Public Works Employment Program and title X, as amended. At the local level, each of these programs is planned and carried out under the direction of local elected officials. Thus, the mechanism for local coordination is firmly established. At the national level, cooperation between the Economic Development Administration and the Employment and Training Administration is also well established through the joint administration of the community economic development demonstration program noted earlier.

QUESTIONS FOR DONALD E. ELISBURG FROM SENATOR RANDOLPHQUESTION 1.

Since I have asked this question of Mr. Brown, you may be prepared to answer it in somewhat greater detail as the officer nominated to be chiefly responsible for the program. How do you propose to reduce delays in black lung claims processing?

RESPONSE

We have recently completed an in-depth study of the entire nature and administration of the Black Lung Benefits Program. As a result of that study, we have developed a number of recommendations which would make changes in the procedures by which claims are processed and would revamp the organization of the unit responsible for handling black lung claims. At the same time we are studying elements of the legislation which impede the claims development process with the view towards making recommendations, if necessary, to eliminate legislative barriers. Our current time table calls for the implementation of administrative and organizational changes immediately with action to be completed over the next several months. In addition, we are continuing to finance approximately 50 temporary positions to more rapidly process and are evaluating our long-term resource needs. We are confident that the combination of these steps will materially reduce the delays in the black lung program.

QUESTION 2.

As you know, a number of major legislative proposals in the labor area will soon be considered in the Congress. To what extent has the Department been able to formulate positions on these?

RESPONSE

The Department has been conducting intensive studies on possible legislation affecting the minimum wage laws, the black lung benefits program, the Federal Employee's Compensation Act and proposals for Federal standards with regard to State workers' compensation programs. As you know each of these issues is very complex. We have developed a number of options, addressing the legislation, such as the Fair Labor Standards Act amendments, which have already been introduced by members of the Congress. We are in the process of discussions with other Federal agencies and top levels of the executive branch on the merits of these issues. We expect to have formal positions on these various pieces of legislation in the very near future.

QUESTION 3.

Have you had an opportunity to assess the Department's activities in administering Section 503 of the Rehabilitation Act?

If so, do you think the program is on the right track?

What are the problems, and what do you think should be changed?

RESPONSE

I am just beginning my assessment of the affirmative action programs administered by the Employment Standards Administration including Section 503 of the Rehabilitation Act. At the present time, the focus of that program is on the resolution of the complaints alleging discrimination by handicapped workers, and the communication to employers and various interest groups of the requirements of that law as defined by our regulations. As with any new program, we are encountering certain problems, but I would prefer to defer any recommendations for change until I have had sufficient time to further study the operation of the programs.

QUESTIONS FOR CARIN A. CLAUSS FROM SENATOR RANDOLPH

QUESTION 1. IN YOUR CURRENT POSITION YOU ARE RESPONSIBLE FOR LEGAL ACTIVITIES OF THE DEPARTMENT RELATING TO FAIR LABOR STANDARDS. DO YOU HAVE ANY OPINION AS TO THE EFFICACY OF A PROPOSED PROGRAM OF WAGE SUPPLEMENTATION FOR HANDICAPPED INDIVIDUALS IN SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS?

ANSWER

It is my understanding that the Department's Employment Standards Administration is in the final stages of analyzing data collected in a comprehensive survey of sheltered workshops and that a report will be prepared for the Secretary in the near future. Senator Humphrey has also introduced a bill which would amend the Rehabilitation Act to provide on a pilot basis for a program of wage supplements. This bill, and presumably any other proposed legislation, would be the primary responsibility of the Department of Health, Education and Welfare.

Sheltered workshops and work activity centers are non-profit organizations which typically operate at a deficit and obtain supplemental income from the community, from State and Federal funds and elsewhere to remain in operation. Their purpose is to train and provide employment to the severely handicapped who would not otherwise be employed. With certain exceptions, the sheltered workshops must guarantee wages which cannot be less than 50% of the minimum wage. The work activity centers are designed for the more severely handicapped and they can be paid at rates less than 50% of the minimum wage. The Department of Labor has an Advisory Committee which assists in monitoring both the sheltered workshops and work activity centers.

It has been the Department's experience that the training services provided under these programs to the severely handicapped has helped many of them to live independently. For example, our most recent figures show that 12% of those employed in sheltered workshops and work activity centers have been moved from the workshop to jobs in competitive employment.

It is clear that the sheltered workshops and work activity centers could not, on the basis of their clients' production, pay the minimum wage. The average daily number of individuals attending these workshops was 145,442 in 1976. It is equally clear, however, that these individuals must, in some way, be cared for. Until now these individuals have generally not been self-supporting and have lived with family or in institutions. Many of them have been neglected and very few have meaningful lives. I certainly believe that we must take steps to enable the severely handicapped to live in the community as independently as possible. Obviously, if we are to accomplish this, some provision will have to be made to provide the severely handicapped with a sufficient income.

In addition to income maintenance, there is a clear need to supply substantially greater financial and technical assistance to the workshops. Such assistance would enable the workshops to provide the staff and necessary equipment and facilities to do an adequate job of training the severely handicapped who often could become more self-supporting.

QUESTION 2. DO YOU THINK THE SUBMINIMUM WAGE CERTIFICATION FOR HANDICAPPED INDIVIDUALS IS APPROPRIATE, AND IS IT BEING ABUSED?

ANSWER

I am certainly opposed to any expansion of the Act's current subminimum wage provisions. In my view, wage rates should be based on the requirements of a job and not on the particular characteristics (racial, sexual, handicapped) of the individual holding the job.

The handicapped have been particularly vulnerable to stereotyped misconceptions concerning their capabilities. As you know, most handicapped persons are as fully capable of performing specific jobs as are their non-handicapped coworkers. The Act's special subminimum wage provisions in section 14(c) are not directed to these workers but to the more severely handicapped who are generally unable to compete with non-handicapped workers. (I recognize, of course, that even a large number of the severely handicapped can, with special training and accommodation, perform particular jobs at the same level as non-handicapped workers.)

As indicated in my prior answer, most of the severely handicapped are employed in sheltered workshops or work activity centers. There are some 8,500, however, who are employed in private industry on a competitive basis under subminimum wage certificates issued by the Department. Most of these workers are mentally handicapped. Prior to issuing the certificates, the Department obtains information concerning the type of work involved and the mental or physical condition of the worker. These applications are signed by the individual worker or in certain cases, by the worker's guardian.

The Department recognizes that these workers are particularly vulnerable to employer pressure and that they might, in order to obtain employment, sign subminimum wage applications for jobs which they are fully able to perform. We do, therefore, attempt to police this program as carefully as is administratively feasible. We recently filed a series of actions against a parking lot operator who used handicapped workers at establishments in several States which led to the revocation of handicapped certificates. The employment requirements in the Rehabilitation Act of 1973 also provide some assistance. This law requires government contractors to take affirmative action to employ and advance in employment qualified

handicapped individuals and, presumably, handicapped workers aware of this law are less likely to sign false applications. Most of the subminimum wage certificates, however, have been issued to small employers who are not government contractors and who are not subject to the Rehabilitation Act.

The problem of abuse in the subminimum wage program is an area which we shall review very carefully. We will also initiate prompt enforcement action whenever there is evidence of abuse.

QUESTION 3. DOES THE NEW ADMINISTRATION HAVE A POSITION ON THE CHILD LABOR EXEMPTION IN SEASONAL AGRICULTURE?

ANSWER

The Department supports the 1974 amendments which established a minimum age of 14 for the employment of children outside school hours in seasonal agriculture except that 12 and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent or person standing in place of the parent is also employed. Minors under 12 may be employed on their parent's own farm or, with their parent's written consent, on farms which are too small to come within the coverage of the Fair Labor Standards Act.

Several bills were considered in the last session of Congress under which children under 12 would be granted a waiver to work in the harvesting of certain seasonal crops for a 13-week period. The Department opposed these bills and no action was taken on them by the Congress.

## QUESTIONS SUBMITTED BY SENATOR STAFFORD

Mr. Green: I believe you are familiar with the proposed regulations published in the Federal Register of January 25, 1977, concerning the certification of temporary foreign labor for the agricultural harvest season. I would like to know whether these regulations were ever discussed with the U.S. Department of Agriculture, the Immigration and Naturalization Service or any of the State Departments of Agriculture?

ANS: We have invited all interested parties to furnish their comments including government agencies. The Department of Labor is in frequent contact with the U.S. Department of Agriculture and the Immigration and Naturalization Service on matters related to the regulations. These contacts most often involve crop conditions, wages and employment in agriculture.

We are frequently in contact with representative grower groups in the various States, but there has been little or no contact with State Departments of Agriculture. Agricultural contacts made within a State are usually through the Agricultural Extension Service.

Mr. Green: Will you seek in the final regulations to meet the legitimate concerns of the apple growers to get their crops picked if domestic labor is not available?

ANS: The Department of Labor is concerned with growers' labor needs to harvest their crops. Extensive efforts to recruit U.S. workers for these jobs are carried out in various areas of labor supply in the U.S. If it is determined that qualified U.S. workers are not available, the Department of Labor certifies for the use of foreign workers.

Mr. Green: I understand that the Department of Labor is considering holding hearings on these regulations for the apple growers in the mid-Atlantic region (Pa., W.Va.) to present their views on the proposed changes. This being the case, I would suppose that the same courtesy will be extended to the apple growers of Vermont and the Northeast section of this country?

ANS: The Department will conduct hearings on the regulations in various parts of the country. Plans are not final as to hearing sites, but I can assure you that a hearing will be held at a suitable location to receive comments from interested parties, particularly in Vermont and the Northeast section of the country.

SENATOR CRANSTON'S REMARKS FOR NOMINATION HEARING  
OF BOB BROWN TO BE UNDERSECRETARY OF LABOR

Mr. Chairman, I have had several meetings with Bob Brown as Undersecretary of Labor-Designate. I am pleased to be able to support fully his nomination for this position.

Bob is aware of my special interests in the areas of veterans employment, migrant and seasonal farmworker programs, the problems of undocumented workers, and the prompt establishment of the National Commission on Employment and Unemployment statistics. These matters, which I also raised with Secretary Marshall at his confirmation hearing on January 13, have been raised with Bob on a number of occasions.

I am impressed with Bob's expertise, commitment, and experience which make him highly qualified to undertake these new and important responsibilities. I look forward to a long and productive working relationship with him, and I urge the Committee to report his nomination promptly and favorably.

The CHAIRMAN. I think with that we will conclude this hearing—we are confident that the committee will be able to promptly deal with your nominations.

Good luck and best wishes.

I am very impressed with you here this afternoon. Thank you very much.

[Whereupon, at 3:40 p.m., the committee adjourned, subject to the call of the Chair.]



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