THE REPORTER'S NOTES

Rights in Conflict

On September 13, by a vote of 79 to 4, the Senate passed a bill that had been introduced by Sam J. Ervin, Jr. (D., North Carolina), to protect "the privacy and the rights of Federal employees." The bill, which faces an uncertain future in the House, is intended to eliminate some of the more outrageous practices of the Federal government so far as psychological testing, political pressures, and abusive interrogations are concerned. "When was the first time you had intercourse with your wife?" an applicant for a National Security Agency job was asked. "Did you have intercourse with her before you were married? How many times?" One issue that may complicate the fate of the bill in the House is the same as that which led to its being amended in the Senate, namely, whether or not certain of its restrictions on the Federal government as a whole should be waived in the case of the CIA and the NSA. This cloak-and-dagger element, combined with the more lurid aspects of the problem as they were developed in subcommittee hearings, has quite naturally taken attention away from another provision of the bill—that which would forbid the government to ask its employees to disclose their race, religion, or national origin.

Until fairly recently, questions about race on applications or other government forms—or requests for photographs which made such questions unnecessary—were taken by civil-rights organizations as prima facie evidence of intention to discriminate. Indeed, some of the more important civil-rights victories in the past were those which resulted in the elimination of any identification of individuals by their race, and it was in this spirit during the 1940's that the Civil Service Commission enjoined the government from further use of employee forms that had required the Federal workers to identify themselves by race.

Thus, in the past few years as Washington set about encouraging its far-flung departments to hire more Negroes—a project requiring at least some racial breakdown of its present employees—it faced some rather tricky problems. And although it has been able to minimize these through its special skill at obfuscation by bureaucratese ("Each inspection should be characterized by: 1) *In-depth factfinding* which probes deeply into all phases of equal employment opportunity . . . 2) *Meaningful* evaluations which zero in on specific problem areas and recognize program achievements . . ."), the question remained of the legitimacy of the government's making any racial classification whatever of its employees.

In 1962 the Civil Service Commission, at the Kennedy administration's request, did its first government-wide racial census. For this project, which it repeated annually, the Commission used a technique known at the time as the "supervisory head count" and since renamed, more delicately, the "visual survey." It entailed agency officials' filing reports on the number of members of various racial and national groups they employed at different civil-service grades.

The trouble came when the Commission decided to change its technique. In 1966 it sent out a card called the "minority status questionnaire" to some 1.7 million Federal workers asking them to identify themselves as "Negro," "Spanish American," "Oriental," "American Indian," or "none of these." The hullabaloo was immediate. From the outset, the Army refused to permit the new system to be used with its employees. In Hawaii there was outrage and refusal to respond.

Even though the response was supposed to be voluntary, Federal workers complained of coercion and intimidation; and even though the results were incarcerated in the anonymity of a gigantic locked computer, it was apparent that the Commission had crossed a line and that it was now not only requesting identification of *individuals* by race but was also asking them to attest to information about themselves that many, for whatever reason, preferred to withhold. White government workers began to complain to Ervin's subcommittee that they suspected quotas were going to be enforced and they would be the victims; Negro government workers complained to the subcommittee that the reintroduction of the questionnaire was discriminatory. The American Civil Liberties Union testified that it even had doubts about the propriety of the "head count" method, let alone the questionnaire, "except only where rigorous justification is required for such action." And people began to make merry in filling it out: white workers called themselves Negroes, Negroes claimed to be "none of these," and a suspiciously high percentage of American Indians began turning up in unlikely places. It was testimony to how well the earlier efforts of civil-rights groups had worked.

A few months ago the Commission announced that it was abandoning its card and going back to its "visual survey." Nonetheless, there was some objection that Ervin's provision in the rights-and-privacy bill would make it inordinately difficult for any administration to pursue its Equal Employment Opportunity program. If the House fails to act on the bill, the question will become academic, but at this point the line-up on the race provision gives some measure of how confused all the old and new pieties have become.