

age higher in the longer courses involving the more extensive exercise of judgment; and

That there are unlimited possibilities for redesigning jobs to which older workers can apply their skills, thus contributing substantially to the employer's needs.

The task remains to make these findings and conclusions useful to employers, labor unions, employment agencies, and others interested in older workers.

II

The other central point is whether this situation can be significantly improved by legislative action.

Any exuberant certainty on this score would be an attempt at deception. There is an arthritis of attitudes here that is hard either to identify clearly or to cure.

H.R. 4221 reflects a conservative—but determined—approach to this situation.

The Bill recognizes fully the legitimacy of employment decisions, practices, and arrangements which take account of the facts—where they are facts—of the relationship between age and capacity. If someone cannot perform his or her job, the bill provides no relief simply because the individual is between the ages of 45 and 65. It provides relief only when a qualified person who is ready and willing to work is unfairly denied or deprived of a job.

H.R. 4221 recognizes two distinct types of unfair discrimination based on age: (i) the discrimination which is the result of *misunderstanding* of the relationship of age to usefulness; and (ii) the discrimination which is the result of a *deliberate disregard* of a worker's value solely because of age. The results of the two types of discrimination are the same, but the remedies called for are different. H.R. 4221 is set up with a clear recognition of the need for different remedies.

The obvious remedy for discrimination born of misunderstanding is the use of education, information and research—as provided for in Section 3.

The second type of unfair discrimination is more pernicious. To eliminate this more serious discrimination, H.R. 4221 provides prohibitions against specific practices of arbitrary discrimination. Experience in the administration of some 22 State laws proves the ineffectiveness of legislation which provides only for education and persuasion, and omits prohibitions with effective enforcement and sanctions.

H.R. 4221 accordingly provides:

- in Section 3, for extensive informational and educational programs;
- in Sections 4 and 7, for an enforcement program including conciliation and persuasion, cease and desist orders following the issuance of complaints and the holding of hearings, and judicial review and enforcement; and
- in Section 11, for criminal penalties in the event of willful commission of practices made unlawful by the Act.

The prohibitions in the bill are directed against employers (Sec. 4(a) and Sec. 12(b)), employment agencies (Sec. 4(b) and Sec. 12(c)), and labor organizations (Sec. 4(c), Sec. 12(d) and (e)).

The prohibition against age discrimination is limited, by Section 13, to "individuals who are at least forty-five years of age but less than sixty-five years of age"—with administrative authority to make upward or downward adjustments in those limits where needed.

It is implicit throughout the bill—and explicit in the Section 2(b)—that the prohibitions are aimed only at *arbitrary* age discrimination. This is clearly evident in Section 4(f), which provides that:

It shall not be unlawful for an employer, employment agency or labor organization—

(1) to take any action otherwise prohibited (in the Act) *where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age;*

(2) to separate involuntarily an employee under a retirement policy or system where such policy or system is not merely a subterfuge to evade the purposes of this Act; or

(3) to discharge or otherwise discipline an individual for just cause.

Section 14 provides that the Act's provisions shall not affect the jurisdiction of the States in the field of age discrimination in employment. Thus, there is rec-