our civil rights principles—does not vary with the age of the victim. If such conduct is wrong, it is as wrong when practiced against a 35-year-old stewardess as by a 45-year-old businessman or woman. To exclude a large group of employes from congressional protection against admittedly wrongful conduct on the basis of such an unreliable projection is, in effect, to establish a means test for equal protection of the laws, and to license the continuation of unlawful conduct against one group of citizens, while prohibiting its practice against others.

There should be only one test used to define the reach of the legislation which you are considering; is age a bona fide occupational qualification for a position of employment? If yes, then the employer's decision may properly be based upon age alone; if no, then age may not lawfully be used as the basis for inflicting economic injury upon any citizen. It would be unfair and indeed anomalous for Congress itself to carve out a group of citizens solely on the basis of their age and, on that basis alone, to deny them the protection of a law against age discrimination.

Those who disagree with this view argue that the measure now under consideration should be deemed to be "older worker" legislation; they pretend that age discrimination against flight attendants doesn't exist, and argue, as they have argued to the Congress, that there is "* * * no significant age discrimination problem affecting younger workers requiring remedial legislation." They ignore the fact that the practice of terminating stewardess careers by reason of age alone has been described by a Member of Congress, speaking on the floor of the House of Representatives, as "one of the most flagrant cases of age discrimination to be found anywhere in the labor market."

Congress has, in the Civil Rights Act of 1964, broadly outlawed discrimination based upon race and color; it has prohibited such discrimination not only against Negroes, the largest and most directly affected group, but also against Indians, Orientals, as well as all other races, as to some of which there have been no significant racial discrimination problem. Congress recognized then that the practice was invidious and inconsistent with fundamental precepts of civil rights, and banned such conduct against all citizens; no reason exists to change that approach here. To exclude persons below age 45 from the protection of this legislation is no different in principle than a law which would outlaw racial discrimination except when practiced against American Indians. Neither is rationally or morally defensible.

An assertion that there is no significant age discrimination problem affecting female flight attendants is inaccurate and misleading. The matter of age discrimination has been the subject of controversy and dispute in the airline industry for some years, and has been explored, but not resolved, in several forums to date. I shall now address this discussion to a specific consideration of the problem as it now exists, and the efforts, largely frustrated to date, to fashion a remedy for it elsewhere than in Congress.

A. THE DIMENSIONS OF THE PROBLEM

The airlines themselves are divided on this issue. Some of them apply a compulsory retirement age to female flight attendants, most often at