THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DURING THE ADMINISTRATION OF PRESIDENT LYNDON B. JOHNSON

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VOLUME I: ADMINISTRATIVE HISTORY

FOREWORD

An extremely important chapter in the history of the realization of human rights in the United States was written during the years of the Johnson Administration. When he signed the Civil Rights Act of 1964, President Johnson was well aware that the passage of the Act was only the first step toward securing, for every citizen, the rights embodied in the statute. In his historic Commencement Address at Howard University on June 4, 1965, the President described, simply but eloquently, the Nation's responsibility when he said:

> "...We seek not just freedom but opportunity; we seek not just legal equality but human ability; not just equality as a right and a theory but equality as a fact and equality as a result.
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> "For the task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities; physical, mental and spiritual, and to pursue their individual happiness."

Title VII of the Civil Rights Act of 1964 took more time in its formulation and in its ultimate preparation than any other part of the Act. In a very real sense, however, it can be considered the heart of the Act; nothing is more important or basic to a member of a minority group than the opportunity to have and hold a good job.

The Equal Employment Opportunity Commission, created by Title VII as the administrative body responsible for assuring equal employment opportunities regardless of race, color, religion, sex or national origin,

has the formidable task of investing the law with reality. Because Title VII is phrased in broad concepts and general terms, its full effect cannot be felt until the Commission and the Courts make clear the reach of the statute with respect to everyday personnel policies and practices.

As the prime movers toward the realization of equality of employment opportunity, we pridefully submit, for the use of future historians, the story of the Equal Employment Opportunity Commission during the Johnson Administration. Although we are sincerely humble at how much more needs to be done, we, nevertheless, are honestly proud of what the Commission has been able to accomplish during its brief existence.

The Departmental Histories Project, under the direction of Vice Chairman Holcomb, was researched and written by Ruby Y. Weinbrecht with the assistance of Linda F. Blumenfeld, A. Lafayette Grisby, and Martha P. Rogers.

Clifford L. Alexander, Jr.
Chairman
Equal Employment Opportunity Commission

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CHAPTER I

TITLE VII: ITS BACKGROUND, ORIGIN AND PROVISIONS

Antecedents of the Law

After many years and numerous battles, the efforts to enact Federal equal employment legislation were rewarded with the passage of Title VII of the Civil Rights Act of 1964. Although Title VII is the first generally applicable Federal fair employment practice statute, there were several antecedents to it, particularly in the forms of peripheral legislation and limited executive orders.

The first act to deal with fair employment practices was the Civil Service Act of 1883. This statute, more popularly known as the Pendleton Act, established the principle of merit employment for Federal Government employees. The act was extended to include a ban on discrimination because of religion and later, in 1940, because of "race, creed, or color."

Limited strides were made toward equal employment opportunity during the New Deal era. Many public relief acts had clauses in them prohibiting discrimination. Regulations issued pursuant to the National Industrial Relations Administration codes forbade discrimination. However, no standards were developed to define discrimination, nor was enforcement machinery established.

More affirmative steps to end discrimination in employment were taken during World War II. Executive Order 8802 established a five-man Fair Employment Practice Committee (FEPC) whose purpose was to end discrimination in the national defense program. The first FEPC, given no enforcement powers, was ineffectual and suspended operations early in 1943. It was replaced by a new FEPC set up by Executive Order 9346. The jurisdiction of this committee was extended to include all employment by government contractors (not merely those in defense industries) and all recruitment and training for war production. However, like its predecessor, it was not granted effective enforcement powers; and it expired in June 1946.

During the Truman years, government contractors were under the jurisdiction of the Committee on Government

Contract Compliance established in December 1951. The Committee, after studying existing programs, concluded that the extant programs to foster equal employment opportunity were ineffective.

Reliance on inefficacious committees to police government contractors was continued during the Eisenhower years. Executive Order 10479, dated August 13, 1953, established the fifteen-member President's Committee on Government Contracts. Like its predecessors, this Committee had no power to enforce its recommendations.

President Kennedy promulgated more effective measures regarding government contractors when in March 1961 he issued Executive Order 10925 which authorized the establishment of the President's Committee on Equal Employment Opportunity (PCEEO). This Order, unlike prior ones, required contractors to take affirmative action to actualize anti-discrimination policy. If companies did not comply, the Committee could either recommend suits to the Justice Department or take action to terminate the contract. The jurisdiction of the PCEEO was extended twice during its duration to include all federally assisted construction contracts, and to bar discrimination on the basis of age.

President Johnson, who as Vice President chaired the President's Committee on Equal Employment Opportunity, ordered it abolished in 1965. Its functions were transferred to the Department of Labor which established the Office of Federal Contract Compliance (OFCC) to deal with Federal Contractors.

Although not a direct antecedent, the National Labor Relations Board (NLRB), through the adoption of its "fair representation doctrine," has been able to combat union discrimination to a limited degree. For example, the NLRB can cause a union to lose its certification if it is found to be discriminatory and not to represent all members on an equal basis.

Unfortunately, the Federal Committees which preceded the Equal Employment Opportunity Commission were not able to reduce the widespread discrimination against minority groups in employment primarily because of their lack of enforcement powers and the limited scope of their jurisdiction.

Legislative History of Title VII[1]

From 1941 until 1963, more than 200 fair employment practice proposals were brought before the United States Congress. Prior to the historic passage of the 1964 Civil Rights Act, all the previous attempts were blocked either in the committees of the House or by Senate filibusters.

On June 19, 1963, President Kennedy sent to the Congress a draft proposal on civil rights legislation. The administration bill, H.R. 7152, was reported by the House Judiciary Committee on November 20, 1963, as an omnibus bill, incorporating as Title VII a fair employment practice proposal. After the assassination of President Kennedy, President Johnson gave a high priority to the passage of civil rights legislation; and the House Rules Committee cleared H.R. 7152 for action early in 1964.

The 1964 Civil Rights Act had a tortuous background. Several Congressional precedents were broken during the course of the bill's passage. Hearings on Title VII, for example, were never held by the House Judiciary Committee, a fact alluded to numerous times by the opposition. Hearings

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[1]For a definitive discussion, see U.S., Equal Employment Opportunity Commission, Legislative History of Titles VII and XI of Civil Rights Act of 1964 (Washington, D.C.: Government Printing Office, 1968).

by the House Committee on Education and Labor over the previous twenty years detailed the need for such legislation, however; and that committee had reported an equal employment opportunity bill (H.R. 405) to the House on July 22, 1963. Thus it was the House Committee on Education and Labor rather than Judiciary that worked out the compromise on the method of enforcing the equal employment opportunity provisions: a bipartisan Equal Employment Opportunity Commission without enforcement powers and enforcement in the Federal district courts through suits brought either by the Commission or by the aggrieved parties. Other precedents broken were the bypassing of the Senate Judiciary Committee, engineered by the bill's supporters, and the acceptance of the Senate version of the bill by the House without a House-Senate Conference. As a result of the circuitous manner in which the bill was handled, it is often difficult to determine Congressional intent, particularly as it applies to Title VII.

H.R. 7152, was steered through the House by Representatives Emanuel Celler (D-New York) and William McCulloch (R-Ohio), thus making passage of the bill a bipartisan effort. Similar strategy was used in the Senate where support for the bill was led by Senators Hubert Humphrey (D-Minnesota)

and Thomas Kuchel (R-California). Senators Joseph Clark (D-Pennsylvania) and Clifford Case (R-New Jersey) were in charge of the floor fight for Title VII.

During the course of the House debates, eighteen amendments were added to Title VII by the opposition. These amendments generally had the effect of weakening the Title. One of the most significant amendments for the future operation of the Commission was the one put forth by Congressman Howard Smith (D-Virginia) which forbade discrimination because of sex. Other amendments required the Commission to hold a public hearing in order to prescribe new regulations; exempted religious affiliated schools from the provisions of the Act; and stated that it would not be discriminatory to refuse to hire a Communist or an atheist (the latter was deleted by the Senate).

When H.R. 7152 was sent to the Senate, it underwent further metamorphosis with 87 amendments made in 83 days. The Dirksen-Mansfield substitute that was finally adopted differed significantly from the bill passed by the House. (This substitute bill was developed by Senators Dirksen, Mansfield, Humphrey, and Kuchel, in consultation with the Justice Department.)

According to the then Senator Humphrey's evaluation, the three major changes made in the bill by the Senate were the following:

(1) State FEP agencies were given precedent over the Equal Employment Opportunity Commission to handle complaints of discrimination unless the former signed an agreement to defer to the EEOC;
(2) The EEOC could not bring suit on behalf of an aggrieved party--the person had to initiate the suit on his own behalf; and the right to bring suit, if a pattern of discrimination was discovered, was vested in the Justice Department, not in the Commission;
(3) The authority to prescribe recordkeeping requirements was limited in the substitute version to preventing duplication of record-keeping requirements.

The substitute bill was accepted by the House of Representatives on July 2, 1964. On that same day, President Johnson appeared on national television and radio to sign the historic legislation. In his speech to the American Nation President Johnson said, "The purpose of the law is simple....It /assures every American that/ the only limit to a man's hope for happiness, and for the future of his children, shall be his own ability....Those who are equal before God shall now be equal in the polling booth, in the classrooms, in the factories, and in hotels,

restaurants, movie theaters, and other places that provide service to the public."[2]

Provisions

Title VII of the 1964 Civil Rights Act prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. The statute's coverage applies to the following classes of organizations:

(1) Employers with 25 or more employees (initially 100 or more employees, reduced by 25 for three consecutive years);
(2) Labor unions which employ 25 or more persons or whose membership exceeds 25 (initially 100 or more employees or members, reduced by 25 for three consecutive years) or which operate a hiring hall;
(3) Employment agencies (regardless of size, the determinating factor here being the nature of their customers).

Types of organizations exempt from the law by the exclusion of certain categories from the definition of "employer" in Section 701(b) are:

(1) The Federal Government and corporations wholly owned by it;
(2) States and their local political subdivisions;
(3) Indian tribes;
(4) Bona fide private membership clubs.

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[2]U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1963-), Lyndon B. Johnson, 1965, pp.842, 843.

In addition, explicit exemptions are provided in Section 702 for the following:

(1) Employers with respect to the employment of aliens outside of the United States;
(2) Religious corporations, associations, or societies, with respect to individuals whose work involves the religious aspects of the employing organization; and
(3) Educational institutions, with respect to individuals whose work involves educational activities.

The obligations imposed on employers, labor organizations, and employment agencies by Title VII are essentially prohibitions. Specified discriminatory employment practices are outlawed; but, as Section 703(j) makes explicit, quota hiring and preferential treatment can not be required under Title VII to rectify existing imbalances. However, when discrimination is practiced, enforcement procedures are available to the aggrieved party if attempts at voluntary compliance fail.

The act makes it unlawful for employers to discriminate on the basis of race, color, religion, sex, or national origin in the hiring, firing, promoting, compensating, or working conditions of employees, apprentices, or trainees. Discriminatory advertising is also made illegal.

Employment agencies may not refuse to refer for

employment or otherwise discriminate against individuals on any of the bases provided for in the law; nor may they classify or refer for employment any individual on the basis of these attributes. This applies to private employment agencies, to the United States Employment Service, and to state and local employment services that receive Federal assistance.

For labor organizations unlawful discrimination constitutes excluding or expelling from membership because of race, color, religion, sex, or national origin; segregating or classifying members on these bases; or causing or attempting to cause an employer to discriminate on any of these bases. These prohibitions also apply to trainees or apprentices in programs operated by labor unions or under joint labor-management jurisdiction.

In addition to the above prohibitions, employers, employment agencies, and labor organizations may not discriminate against anyone who invokes Title VII or participates in an investigation, hearing, or other action pursuant to the statute.

There are several broad exceptions to the prohibitions just outlined. These are to be found in Section 703 of Title

VII. An employer would not be guilty of discriminatory practices in the following cases:

(1) Where sex, religion, or national origin is a bona fide occupational qualification;
(2) Where the employer is subject to a government security program and the individual cannot obtain security clearance;
(3) Where the person involved is a member of the Communist Party or a Communist-front organization;
(4) When seniority or merit systems are in operation or where geographic locations are different, as long as these differences are not based on race, color, religion, sex, or national origin.

Specific exceptions to Title VII include employment by an educational institution owned or supported by a religion or religious corporation of members of that religion; preferential treatment to Indians by a business operating on or near an Indian reservation; reliance by an employer on the results of a professionally developed ability test that is not designed or intended to discriminate; and pay differentials based on sex that are authorized by the Equal Pay Act of 1963.

To administer Title VII of the 1964 Civil Rights Act, Congress provided for a permanent five-member bipartisan body, the Equal Employment Opportunity Commission. The five members, not more than three of whom can be members

of the same political party, are appointed for five-year terms by the President with the consent of the Senate. (Initially, the Commissioners were appointed to serve staggered terms.) The President designates the Chairman and Vice Chairman of the Commission.

The major function assigned to the Commission by Title VII is investigation of alleged discriminatory practices followed by attempts at conciliation. The Commission must investigate when an individual or a Commissioner charge is filed. If investigation reveals the use of discriminatory practices, conciliation efforts are undertaken to effectuate compliance with the law.

If the alleged discriminatory act has occurred in a state or one of its political subdivisions that has a fair employment practice law and an agency to enforce that law, the Commission must allow the state or local agency a specified number of days to process the charge. When that time has elapsed the Commission has, at most, 60 days in which to obtain voluntary compliance. If the respondent will not conciliate, EEOC must notify the complainant that he may institute a civil suit against the alleged discriminator. In these private cases, the

court may appoint an attorney for the complainant and may grant the Attorney General permission to intervene on behalf of the aggrieved party. If the court finds that the charge is warranted, the court can enjoin the practice and award reinstatement, back pay, or whatever remedy is deemed appropriate.

In addition to private cases, the Attorney General is empowered by Section 707 of the Act to institute suits if he believes there is a "pattern or practice of intentional resistance to the full enjoyment" of equal employment opportunity rights. The case may be brought before a single judge or, if it is of general importance, a three-judge court.

Another aspect of EEOC's administrative and enforcement function is the authority to require employers, labor organizations, joint apprenticeship committees, and employment agencies to file reports on the minority and sexual composition of their work force. In addition, the Commission can authorize the keeping of records by these groups; but a public hearing must be held before reporting or record-keeping requirements take effect. Those who keep records pursuant to a state or local fair employment practice

law can not be required to keep additional records for the Commission although extra notations on these records can be authorized.

With regard to the contents of the records (as well as to results of investigations and conciliations), the staff of the Commission must adhere to strict rules of confidentiality, subject to criminal penalties.

Finally, the Commission may, in an effort to promote equal employment opportunity, furnish technical assistance to those who request it; work with state and local agencies, both public and private; make technical studies; and refer matters to the Attorney General with recommendations for intervention in private civil actions or for institution of 707 suits.

Congressional Intent

Since many of the customary guidelines to Congressional intent are not available for Title VII (e.g., a Senate committee report, a House-Senate conference report), the best sources of legislative intent are Senator Humphrey's opening statements in the Senate debate, Senator Dirksen's opening comments, a comparative analysis of the two bills by Congressman McCulloch, and the statement in support of

the amended bill by Congressman Celler. The Senate debates are also useful.

An examination of every section of Title VII to determine legislative intent is beyond the scope of this paper. Instead, the highlights of Congressional intent will be outlined by alluding to those matters most frequently referred to in the course of the debates. For an excellent discussion of legislative intent, see Richard K. Berg's article entitled "Equal Employment Opportunity under the Civil Rights Act of 1964."[3]

The debates and records of Congress make clear that the Equal Employment Opportunity Commission was not to usurp the role of the state and local fair employment practice agencies. This was emphasized on numerous occasions by the bill's supporters. The issue of seniority was also raised several times in the course of Senate debate. Several Senators affirmed that seniority rights were not to be disturbed by Title VII. Another issue debated was recordkeeping requirements. The requirements were

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[3] Richard K. Berg, "Equal Employment under the Civil Rights Act of 1964," Brooklyn Law Review (December, 1964), 62-97.

explained in terms of preventing duplication of obligations.

The controversy over testing caused much discussion. Many members of Congress were concerned about this issue because the court order against Motorola was handed down during the debates. The record establishes that the use of professionally developed ability tests would not be considered discriminatory.

Another matter of concern to the Senate was that of keeping reports and cases confidential. It was made clear, however, that the confidentiality provisions were not to hinder the Commission's operations.

Although many questions concerning sex discrimination have become controversial, little mention of bona fide occupational qualifications was made during the course of the debates. It is therefore difficult to ascertain Congressional intent on this matter or on the issue of state protective laws. Only one or two statements on these issues were made.

Initial Commission Interpretation

Before the Commission became operative, the task force, set up to write the procedural regulations, was also asked

to determine the meaning of the various sections of Title VII. These interpretations helped to establish Commission policy during the initial period of operation. The memoranda were directed to areas where controversy was expected or where interpretations were required. In many instances, there was no record of legislative intent to guide the members of the task force.

One issue raised concerned employment agencies. It involved the question of which agencies were to be under Commission jurisdiction, as the Title did not specify coverage in terms of number of employees or members as it did for employers and labor unions. It was the opinion of the task force that Title VII covered only those agencies which dealt with employers affected by Title VII. However, if an agency dealt with employers both covered and uncovered, the task force believed that the agency should come under Title VII to avoid complexities.

Another area that was explored by the task force was the meaning of Title VII sections pertaining to confidentiality. Section 706 of the Act calls for confidentiality on charges and on conciliation endeavors. The law reads that the charge may not be made public. The task force

interpreted this to mean that the name of the respondent could not be revealed to the public. However, this did not preclude the Commission from revealing it to witnesses being interviewed, Federal and state agencies, courts during pleading, and others of like nature.

The proceedings of conciliation efforts were also covered by the confidentiality provisions. The task force held that this would not obstruct the Commission's operations because it would be possible to refer a case to the Attorney General without disclosing the transactions of the conciliation sessions. The task force was of the opinion that the confidentiality provision did not apply in reports to Congress, although the annual report could be complete without revealing the contents of the conciliation efforts. Also, the task force advised the Commission to make it general policy to get written consent of the parties to disclose a conciliation agreement.

Sections 709 and 710 of the statute impose the same publicity ban on records and investigations. This was construed to allow the disclosure of information for preparation of litigation or to Federal, state or local agencies when necessary. The task force also held that

once a proceeding was instituted, either by an individual or the Attorney General, the ban on disclosure was no longer applicable.

Section 709(b) calls for payment to state agencies for their services in enforcing Title VII. It does not mention reimbursement for executing state laws. This might have the effect of encouraging states toward inactivity on cases first brought to their agencies; by waiting until the case became a Federal one, they could collect funds from EEOC. To overcome this problem so that states would not be given a bounty for inactivity, Section 709(b) was interpreted to mean that a state was aiding in the execution of Title VII when it was processing a complaint pursuant to a state or local FEP law, i.e., a case need not be an EEOC case for a state to be reimbursed. (This paved the way for the state grant programs since it meant that state agencies could receive funds other than pursuant to a complaint filed with the Commission.)

According to Section 713(b) a respondent may not be found guilty of discrimination if he can prove that he was acting in good faith in accordance with a written interpretation or opinion of the Commission. The task force

advised that the "good faith defense" should be applicable only to Opinion Letters signed by the General Counsel and to material published in the Federal Register. Statements by field personnel, home office staff, or even Commissioners would not grant immunity under 713(b). The task force warned the Commission to be very circumspect in this matter and to avoid giving advice that the Commission could not stand behind.

One of the major interpretations concerned which states were entitled to deferment under Section 706(b) of the Act. The task force advised that the section be construed to require a state to have a specific FEP-type agency with either independent enforcement powers or the power to institute litigation to enforce rights. An agency with no enforcement powers or one that could only rely on informal settlements should not be considered within the scope of 706(b). Problems in determining deference would arise in instances where Federal and state law differed in defining discriminatory acts. It was recommended that deference be accorded in those cases in which the applicable provisions of state or local and Federal law were substantially similar.

On the basis of these criteria, the task force suggested that the Commission defer to the following states initially:

Alaska	Kansas	New Jersey	Rhode Island
California	Maryland	New Mexico	Utah
Colorado	Massachusetts	New York	Washington
Connecticut	Michigan	Ohio	Wisconsin
Hawaii	Minnesota	Oregon	Wyoming
Illinois	Missouri	Pennsylvania	
Iowa	Nevada	Puerto Rico	

It was necessary to determine the scope of "industry affecting commerce" as used in Sections 701(g) and (h) in defining such terms as "employer" and "labor organization." According to the task force, the meaning of "industry affecting commerce" had been so broadened by the National Labor Relations Board that the Commission's jurisdiction would not be challenged on the basis that a certain business did not qualify as an "industry affecting commerce." The principle limit on EEOC's jurisdiction would be the statutory provisions of Title VII exempting employers and others who employed less than the specified number of persons.

On the issue of who could claim to be aggrieved persons, the Commission did not initially accept the task force's interpretation. (At a later time, the Commission changed its position.) The question concerned Section 706(a)

of the statute which stated that a charge must be filed by a "person": Did "person" mean solely an individual? According to the task force, it was clear that a "person" could be an organization. Support for this interpretation came from Section 701, in which "person" is defined as "associations" and "other organizations" and from the fact that "individual" is used throughout Title VII to designate a human being (as opposed to an organization) while "person" is purposely used in Section 706(a). For example, organizations such as the American Jewish Congress and the NAACP could file as "aggrieved" in the statutory sense since it was a "public right" that was being aggrieved. The task force also pointed out that the Commission would have to determine the different ways in which a person could be aggrieved.

Sections 703(e) and 704(b) allow for exceptions in employment practices and advertising in cases where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. A strict interpretation would be consonant with the principle that exceptions in remedial laws should be strictly construed.

Regarding religious bona fide occupational qualifications, the task force held that the exemption would apply only if the occupation involved the performance of significant duties that relate to the carrying out of religious activities and can reasonably be expected to be performed more skillfully or with most enthusiasm by a member of that religion, (e.g., a salesman of religious articles but not a secretary for that company).

Exemptions for bona fide occupational qualifications based on sex should apply only if: (1) sex were a natural correlative of the job (e.g., a model of clothes); (2) it were necessary to conform to national mores (e.g., attendant in a locker room); or (3) a woman could not legally qualify. The exceptions were not to apply as a matter of convenience for the employer.

In determining bona fide occupational qualifications for national origin, the task force advised that the Commission should require that there be a relationship between the duties required and the attributes of an employee having a specific national origin (e.g., a pizzeria could insist on hiring a chef of Italian national origin).

Very much involved with the question of bona fide occupational qualifications based on sex was the whole issue of state regulation of the employment of women. The relation between Title VII and state laws was not defined by Congress; and, thus, the Commission was faced with the broad issue of determining whether Title VII's prohibition of discrimination on account of sex was in conflict with these state laws.

The task force was of the opinion that, because of legislative history and Congressional intent that state action be given deference, state protective laws for women were not to be set aside. It suggested that state legislation, regarded over the years as special protection to women on the proposition that they are different from men, cannot be regarded, generically, as "discriminatory." It did recommend, however, that EEOC investigate cases to determine if the protective laws were being used solely as an excuse not to hire women.

In determining what constituted an educational institution, the task force recommended that the term be used as in "constitutional provisions exempting institutions of education from taxation." That is an educational

institution should be defined as a place where systematic instruction in any and all useful branches of learning is given by methods common to schools and institutions of learning. Under this definition, established by court precedent, institutes handling trade or apprentice programs would not qualify for exemption.

CHAPTER II

CHAPTER II

ESTABLISHMENT AND ADMINISTRATION

Personnel and Staffing

On May 10, 1965, President Johnson announced the appointment of Franklin D. Roosevelt, Jr., as the first Chairman of the Equal Employment Opportunity Commission. Mr. Roosevelt and the other members of the Commission, Dr. Luther Holcomb, Vice Chairman, Aileen C. Hernandez, Samuel Jackson, and Richard A. Graham, were confirmed by the Senate on May 26, 1965, and took office on June 1.

The swearing-in ceremony took place on June 1 at 12:47 p.m., in the Rose Garden, at the White House. Justice Hugo Black, Associate Justice of the Supreme Court, administered the oath of office. Addressing the guests who had assembled for the occasion the President stated: "These men and women under the leadership of Chairman Roosevelt will represent a broad cross-section of America. They reflect, I believe, a strong and sure cross-section support of the nation's dedication to the simple justice of equal opportunity.

The task they undertake, the work they shall do, ranks at the top of our national priorities."[4] President Johnson was later to describe his idea of total success for a Chairman of EEOC: "He will have succeeded in his job when he, or one of his successors, can come to the White House and recommend to the President that the Equal Employment Opportunity Commission be disbanded -- because there is nothing left for him to do -- discrimination has been banished from our land. And that is the day we all look forward to."[5]

Beginning early in February 1965 (prior to the appointment of the Commissioners) several persons in the Department of Labor had begun to concern themselves with the staffing problems that were to face the Commission. On April 6, 1965, after much discussions among interested persons at Labor, Mr. Edward J. McVeigh, Assistant Administrative Assistant Secretary, Department of Labor,

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[4] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Record Service, 1963-), Lyndon B. Johnson, 1965, p. 604.

[5] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Record Service, 1963-), Lyndon B. Johnson, 1966, p. 1053.

in a letter to the Civil Service Commission, requested exemption from the competitive service of "all non-clerical positions engaged in the substantive operations of the Commission."[7] The flexibility of Schedule B authority was requested for a temporary period. The request was approved by letter dated May 27, 1965, and this authority did not expire until August 1, 1966.

In June, after Mrs. Mary P. Valentino had assumed the role of Personnel Director for the Commission, she requested further exemption from competitive service for positions at the Commission; for Schedule C, 18 positions were requested; for Schedule B, an additional three.[8] With the exception of two positions, that of Secretary, Congressional Liaison Staff (GS-9) and Secretary to the Commission (GS-11), all positions requested as Schedule C were approved. Only one of the Schedule B positions, that of Deputy General Counsel (GS-16), was disallowed.

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[7] Letter, Edward J. McVeigh to Warren B. Irons, April 6, 1965.

[8] Letter (with attached organization chart), Mary P. Valentino to Chairman John W. Macy, Jr. June 29, 1965.

The 22 supergrade positions as shown on the chart accompanying the letter were approved with one exception: the position of the New York Regional Director was reduced from a GS-17 to a GS-16.[9]

Chairman Roosevelt set up the following employment procedures in order to facilitate the staffing process.[10]

> "All appointments to positions at GS-14 and above are to be recommended to Commissioner Holcomb by the Executive Director, who shall attach appropriate papers prepared by the Personnel Director and approved by the Administrative Officer. It is Commissioner Holcomb's present intention to interview personally as many of these applicants as his time permits. Commissioner Holcomb will then recommend appointments in this group to the Chairman for final approval.
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> "All appointments to positions at grades below GS-14 are to be recommended by the Executive Director to Commissioner Holcomb with attachments similar to those described in paragraph one above. The Chairman hereby delegates authority to Commissioner Holcomb to give final approval of all such employees without further reference to the Chairman, although it is requested that Mr. Royer be kept informed of all such appointments."

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[9] The supergrade count was reduced to 21 on August 11, 1967, when Chairman Alexander requested that the position of Special Assistant to the Chairman be reduced to a GS-15.

[10] Memorandum on employment procedures, Chairman Franklin D. Roosevelt, Jr. to Dr. Luther Holcomb, July 22, 1965.

The Commission received and screened some 7,500 applications for employment, directed to numerous persons in the Commission. In a memorandum of August 31, 1965,[11] the Deputy Executive Director requested that "the original or a copy of any application which should be considered for possible appointments" be forwarded to the Personnel Officer in order that the hiring process could be handled more efficiently.

As of July 20, 1965, the Commission had 48 employees on the rolls, 24 employees on detail and actively employed, and 56 intermittent field representatives on standby. Many persons hired were originally on detail or on consultant status with the Commission. The monthly personnel charts beginning July 1965 and going through the current month (See Appendix A) detail in numbers the employee growth of the Commission.

A number of dedicated and well qualified persons have served the Commission well. A brief biography of each Commissioner and of those persons holding senior staff

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[11] Memorandum on personnel, Walter Davis, August 31, 1965.

positions may be found in Appendix B. A roster of Commissioners and senior personnel showing dates of service (See Appendix C) will serve to identify the names which appear throughout the paper.

The Commission thus far has had three permanent Chairman. Chairman Roosevelt was succeeded by Stephen N. Shulman, former General Counsel of the Air Force. Following Mr. Roosevelt's resignation in May, 1966, Vice Chairman Holcomb became Acting Chairman until the swearing in of Mr. Shulman at the White House on September 21, 1966.

Chairman Shulman was appointed to fill the remainder of Chairman Roosevelt's term, which expired on July 1, 1967. Upon completion of his service, Vice Chairman Holcomb once again became Acting Chairman, this time until August 4, 1967, when Clifford L. Alexander, Jr. was sworn in as Chairman. In the White House ceremony, President Johnson praised his appointee: "I do not believe there is anyone in the United States who is better qualified to achieve that goal /equal employment opportunity/ for this government than Clifford Alexander. He knows what prejudice is. He has endured it

himself -- and he has fought it with every resource at his command." [12]

The composition of the members of the Commission has changed several times. Mrs. Aileen Hernandez whose term was filled by Miss Elizabeth Jane Kuck, who was sworn into office on March 15, 1968, at EEOC headquarters by Judge Warren E. Burger of the U.S. Court of Appeals. Commissioner Graham's term of one year expired in July, 1966. Mr. Vicente T. Ximenes was appointed for a term expiring July 1, 1971. He was described by the President at the swearing-in ceremony on June 9, 1967 as a "distinguished public servant, a teacher, a war hero; a leader of the Mexican-American community." [13] Commissioner Jackson's term expired June 30, 1968. On October 11, the President nominated William H. Brown, III

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[12] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Record Service, 1963-), Lyndon B. Johnson, 1967, p. 1101

[13] Ibid. p. 840.

of Philadelphia to fill the vacancy left by Commissioner Jackson. The Senate failed to take final action on the appointment of Commissioner Brown before adjournment, however.

Early Development

Until the Commissioners took office, in June 1965, there could be no formal implementation of most of the provisions of Title VII which came into effect upon enactment of the Civil Rights Act of 1964. During the period between the passage of the Act and the appointment of the Commissioners, however, an ad hoc task force drawn from several agencies began studying the problems to be faced. Personnel from these agencies also cooperated with bar associations, civil rights organizations, and other private groups in conferences, seminars, and other means in disseminating information regarding Title VII. Of

particular importance were the speaking engagements conducted by personnel from the Civil Rights Division of the Justice Department including Burke Marshall, Richard Berg and Howard Glickstein. The Department of Labor also was very much involved prior to the activation of the Commission. The original budget and the one for fiscal year 1966 were drawn up in the Department, as was the original personnel request to the Civil Service Commission on April 6, 1965.

Upon taking office, the Commission had approximately one month before July 2, 1965, the date enforcement provisions of the Act were to become effective, to organize and prepare for operation.

In order to get the Commission functioning, Chairman Roosevelt assigned an area of responsibility to each Commissioner. Mrs. Hernandez, charged with the responsibility for working out the liaison with state FEP agencies, worked with Alfred Blumrosen who drew up the details for the state deferral system. Commissioner Graham was assigned to the technical assistance and the educational programs for the Commission, and Dr. Holcomb as noted earlier was charged with the responsibility for personnel.

A pressing area of responsibility was that of setting up the rules of procedure for the Commission. Commissioner Jackson was given this assignment and chaired the task force which was brought in to draft the rules and regulations for the Commission.

The task force was composed of six highly qualified persons, some of whom later joined the staff of the Commission: Richard Berg and Howard Glickstein from the Justice Department; Eric Feirtag of the Department of Labor; Bruce Hunt from the National Labor Relations Board; Alfred Blumrosen from Rutgers Law School and Frank Reeves from Howard Law School. With the exception of the latter two members, the task force was made up of personnel detailed temporarily from other Federal agencies.

Once the rules and regulations were completed, the task force was assigned subject areas on which to write substantive interpretations of Title VII. Many of these interpretations were adopted as Commission policy, while others were held in abeyance until the issue arose in a specific case.

Also, during the month of June, the Potomac Institute was working on an accelerated basis to comply with a request from Chairman Roosevelt to make recommendations for the staffing, function, and operational structure of the Equal Employment Opportunity Commission. The Institute, established in March 1961, provides consultative and research services to the government and private agencies involved in the development of programs to achieve equal treatment of all Americans. Financed by foundation grants, the Institute in the person of Harold C. Fleming and Arthur J. Levin (who was the one individual primarily responsible for the report) undertook the considerable task of structuring a staff organization in support of the five Commissioners, the body to which the statute assigns administrative functions under Title VII.

At the request of the Institute, Miss Hazel Guffey of the Bureau of the Budget was assigned to work with personnel from the Institute for the purpose of advising on grade classification and of relating jobs to grades in order that the descriptions and grade structures would conform to that of the Civil Service Commission.

Many recommendations were made by state and local FEP agencies who had hopes of being designated to carry out portions of EEOC's functions through grants for research and complaint investigation, thus receiving some functional money to aid their individual growth.

Daily contact was maintained between the Institute and with Chairman Roosevelt's office, and many discussions and exchanges took place while the recommendations were being assembled. Thus the report was submitted in final form only.[14]

The dispatch with which the report was prepared can be attributed to several factors. The Institute took the job out of concern for the subject matter. No contract negotiations were involved because the Commission incurred no financial obligations for the report. Perhaps the

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[14]Potomac Institute, "Staffing Functions and Operational Structure of EEOC," Washington, D. C., 1965. (Mimeographed.)

factor contributing most to speed was the large number of basic resources and background materials readily available at the Institute.

Organizational Structure

In structuring the organization of the Commission many recommendations of the Potomac Institute were adopted. The organizational plan (as mentioned earlier) that went forward to the Civil Service Commission on June 29, 1965 was approved and remained in effect until July 12, 1968, when a new organization with functional statements was approved (See Appendix D) by the Civil Service Commission.

Field offices play an increasingly critical role in the functioning of the Commission. In the early organizational stages of the Commission much of the activity necessarily centered around headquarters. There has been, however, a gradual but definite shift of operations to the field. Investigations was the first activity to be decentralized, followed by conciliations which, as of now, is performed totally by the field offices. As soon as the capacity for giving technical assistance is developed in the field (possibly by the end of the current fiscal year) that function will also be transferred.

The concept of local implementation of the law against employment discrimination is very important to the Commission. Furthermore, the field offices function as the Commission's grass roots link with the minority groups and state and local FEP agencies they serve. It is especially important that these offices impart confidence in the efficacy of the government to redress their grievances in the area of employment discrimination. At the present time the Commission is represented in the field by 12 offices located in cities of high minority group concentration. Six Regional Offices were established as part of the initial organization although they did not become operative immediately. A list of these offices, showing the number of employees allocated for each office and the date the office began operations appears below.

Location	Number of Employees	Date Operations began
Dallas[15]	16	January 1966
Atlanta	36	February 1966

[15]Moved to Austin October 30, 1966.

Location	Number of Employees	Date Operations began
Chicago	9	May 1966
Cleveland	13	June 1966
Los Angeles[16]	10	July 1966
New York	14	July 1966

In addition to the six Regional Offices, there are six Area Offices which operate under the administrative direction and supervision of the Regional Offices. The Area Offices were established as a result of the increased workload at the Regional Offices.

Location	Number of Employees	Date Operation began	Supervising Office
New Orleans	22	July 1966	Atlanta
Los Angeles[17]	10	July 1966	San Francisco
Albuquerque	9	August 1966	Austin
Kansas City	9	August 1966	Chicago
Washington, D.C.	16	May 1967	Headquarters
Birmingham	16	October 1967	Atlanta

A staff study conducted in June 1967 by the Office of Program Planning and Review examined the question of regional boundaries of the various field offices throughout

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[16] Moved to San Francisco January 13, 1967.

[17] Formerly a Regional Office.

the country. Some boundary changes were made as a result of this investigation; at the present time there are six Regional and six Area Offices. The map at Appendix D shows the jurisdictional boundaries of each office.

The Dallas Regional Office, the first EEOC field office to be established, opened its door on January 2, 1966. The Director, Lee Williams, was introduced to the Dallas community by Vice Chairman Holcomb, who was long an active participant in Dallas civic affairs prior to his appointment to the Commission. In September of that year, the operations were transferred to Austin. This move was occasioned by the realignment of regional boundaries following Commission decision to establish field offices at Albuquerque, New Orleans and Kansas City. The Regional Office at Austin was to serve Texas and Oklahoma, and the move brought it closer to the large concentrations of Spanish Surnamed Americans in San Antonio, Houston, Corpus Christi and Lower Rio Grande Valley areas.

The Austin Office maintains contact with a wide variety of civic, business, and civil rights groups, as well as with local Federal agencies having contractual

relationships as Predominant Interest Agencies. Of particular interest for that geographic area are the relations with the American GI Forum, the League of United Latin American Citizens, and the Intertribal Council of the Five Civilized Tribes. The success of the office has been in the direction of compliance activities and public relations. The Office has created confidence on the part of the large SSA population of Texas in the integrity and purposefulness of the EEOC. This was accomplished largely through the weekend duty stations which were manned voluntarily by staff members in Texas cities with high SSA concentration.

The Albuquerque Area Office is under the jurisdiction of the Austin Office. The Office, directed by Tom Robles, serves a five-state area, including Colorado, New Mexico, Arizona, Utah, and Wyoming (the last three added to its jurisdiction in January 1968). The Office works closely with state and local fair employment commissions, with the Urban League, NAACP, and the AFL-CIO, and with Federal agencies involved in job programs. In addition to a good record in the compliance area, the Office has been quite

successful in its affirmative action programs. It was instrumental in the formation of a metropolitan employer's council in Albuquerque and was successful in organizing Job Fairs in Denver and Albuquerque. The Office is also active in a Manpower and Development Training Administration's On the Job Training pre-apprenticeship program through which minority group persons are being placed in construction industry apprenticeship programs.

The Atlanta Regional Office employs the greatest number of people. Under the direction of Donald Hollowell, the Office attempts to maintain contact with minority groups (Urban League, NAACP), community civil rights organizations (Greater Atlanta Council on Human Relations, National Alliance of Business, League of Women Voters), local FEP agencies (the Atlanta Human Relations Commission), and local Federal agencies.

The greatest thrust of the Office has been in the area of compliance. However, despite staff limitations, the Office has also been involved in two major technical assistance programs. In a follow-up program of the Textile Forum, the Atlanta Office was able to bring about a 27 percent increase in the utilization of Negroes by certain

textile plants. The Office is also a participant in the New Plants Program.

The New Orleans and Birmingham Area Offices, established in July 1966 and October 1967, respectively, are under the direction of the Atlanta Regional Office. The Birmingham Office, directed by Alan Gibbs, covers Alabama and Tennessee and is the only government agency in the two-state area that deals with employment discrimination. The Office has been able to enlist the cooperation of the U. S. Attorney in Nashville in setting up a panel of lawyers who have volunteered to accept Section 706 cases when the Commission fails to redress grievances through conciliation. Because of the great backlog of charges, the Office has had to restrict its activities to carrying out the compliance functions.

The New Orleans Area Office, which is responsible for Louisiana, Mississippi, and Arkansas, maintains regular contact with private and government groups. According to Area Director Glenn Clasen, the Office works with various local NAACP's, the New

Orleans Urban League (from which the Office has acquired three staff members), and the National Alliance of Businessmen. Through the Federal Executive Association, the Office keeps in touch with most of the Federal agencies, in addition to working closely with the Community Action Program of the Office of Economic Opportunity. The New Orleans Office has been successful in carrying out its compliance functions and, through its informational activities, in generating over 1200 charges from a wide spectrum of industries.

The third Regional Office, the Chicago Office, opened its doors to the public in May 1966. The Office, under the direction of Elmer McLain, works closely with the local Federal agencies particularly the Office of Federal Contract Compliance, the Department of Health, Education, and Welfare and the National Labor Relations Board; with the State Fair Employment Practices Commissions of Illinois, Indiana, Wisconsin, and Minnesota; and with the local commissions of many cities in the four-state region. The Office also maintains liaison with numerous private organizations, notably the local NAACP and Urban League chapters, the National Alliance of Businessmen,

and the Chicago Association of Commerce and Industry. Its most successful operations have been in the investigation area.

Under the supervision of the Chicago Office is the Kansas City Area Office directed by Charles Clark. Opened in August 1966, the Kansas City Office serves the people of Iowa, Kansas, Missouri, and Nebraska. The Office has been very successful in establishing excellent working relations with the four state FEP agencies in its jurisdiction by rendering substantial assistance to them in the development of their own programs, by encouraging their participation in EEOC training programs, and by aiding them in securing better personnel, larger budgets, and, in the case of Kansas, a more effective law.

The Office has also worked with local civil rights and community organizations, including NAACP, CORE, Urban League, American GI Forum, and the National Alliance of Businessmen. In addition, it participates in programs related to equal employment sponsored by other Federal groups, particularly the programs of the Manpower Administration in the Department of Labor and the Job Corps of the Office

of Economic Opportunity. Although the Office has been very successful in its investigation and educational functions, it has fared less well in its conciliation efforts. Mr. Clark attributes this to a disbelief on the part of the respondents that cases will be filed in court.

Chester Gray is the Regional Director of the Cleveland Office which currently serves the states of Kentucky, Michigan, Ohio, and Pennsylvania and maintains contact with their state civil rights commissions. The Office cooperates with Plans for Progress, local offices of the Labor and Defense Departments, various community programs, and has participated in several NAACP conferences. It works very closely with the Area Coordinator for contracts of the Office of Federal Contract Compliance, a relationship which has proved instrumental to the effective enforcement of Executive Order 11246 as it relates to the construction industry. In addition, the Cleveland Office is presently working with the Justice Department on cases of mutual concern and is cooperating with attorneys handling 706(e) cases.

Because of continuing in-training programs, the

Cleveland Office has been highly successful in fulfilling its investigatory functions. In addition, most of its conciliation efforts have resulted in material benefits accruing to the charging parties. Also, education and informational programs have been extremely effective.

The Los Angeles Regional Office, established in July 1966, was transferred to San Francisco in January 1967. Under the direction of Frank Quinn, the Office regularly works with the FEP agencies of California, Oregon, and Washington. The other states in this jurisdiction, Montana, and Idaho, do not have such commissions. On a less systematic basis, the Office also has working relations with the California State Employment Service and several private organizations which supply recruits, including the Bay Area Urban League, Arriba Juntos, and others. The most successful operations in this region have been investigation and conciliation, particularly of certain cases dealing with the construction unions.

The Los Angeles field office, now an area office, is supervised by the San Francisco Office. Headed by

Lorenzo Traylor, the Office works with Los Angeles county and city commissions, with the Nevada FEP agency, and with numerous Negro and Mexican-American private organizations interested in job advancement and training. The Office has moved effectively in the area of investigation. It has had less success in conciliations due in part, the Director believes, to what appears to be the respondents' recognition that the Federal district court in the region has been conservative in decisions rendered on Title VII cases.

Two support programs have been added to the Office's functions. One is an on-the-job training program through which Labor Department funds are utilized as a means of helping companies to integrate their work forces. The other is a legal services program which has recruited a panel of attorneys who have agreed to try 706 suits at no cost to charging parties unable to pay.

The New York Regional Office became operational in July 1966. The geographical area served by this Office embraces the states of New England, and New York, New Jersey, and the Commonwealth of Puerto Rico. The Office is supervised by Acting Director Maurice Lawrence. The Office deals with the state FEP commissions in its area in

deferring cases to them, and in the grant program. It also works with local Federal and state agencies dealing with manpower programs and, of course, with such private groups as the NAACP, Urban League, Puerto Rican Forum, B'nai B'rith Anti-Defamation League. Due to lack of staff and the large area under its jurisdiction, the New York Office has had to detail almost all of its personnel to compliance functions.

The Washington Area Office, directed by Gwendolyn Wells, is under the supervision of headquarters. It has under its jurisdiction the District of Columbia and the States of Virginia, Maryland, Delaware, and West Virginia, and works with the FEP agencies of all these areas (except for Virginia which has no FEP agency). The Office also has liaison with community action programs and civil rights groups in the area it serves. The Washington Office has been effective in investigating charges and in promotion the "New Plants" programs. Its conciliation efforts, however, have been less noteworthy.

Operational Beginnings

The operational beginnings of the Commission were naturally hampered by the massive problems of trying to devise

administrative procedures, recruit, hire, and train staff while, at the same time, operating as a full-fledged agency.

The Commission moved into permanent quarters at 1800 G Street N.W. on August 28, 1965. Since its official beginning on July 2, the staff had occupied temporary offices at 1730 K Street N.W. Prior to the assignment of the temporary quarters persons who were working with the Commission had maintained offices scattered through government buildings, but mostly in the Department of Commerce or the Department of Labor.

A written record of the early operations of the Commission is most informative. In a letter to the President, dated October 29, 1965, Chairman Roosevelt reported that the Commission had "made a sound beginning." A detailed analysis of the Commission's activities during its first 100 days of operations was attached.[18]

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[18]Letter, Franklin D. Roosevelt, Jr. to President Johnson, October 29, 1965.

Chairman Roosevelt reported that the Commission had received 1,383 complaints charging discrimination in employment practices during the period from July 2, 1965, through October 9, 1965. Of that number, the Commission determined that it had probable jurisdiction over 966 complaints. Seventy-three percent (706) of the 966 complaints cited race as a basis of alleged discrimination. Of this number, 680 complaints were from Negroes. Sex as a basis of discrimination was charged in 16 percent (152) of the cases.

Although few cases reached the conciliation stage during the Commission's first 100 days, the ones which did gave sharp focus to the problems the Commission was to face in future efforts to achieve voluntary compliance. Agreements were reached on elimination of segregated facilities, promotion of Negroes to previously all-white departments and elimination of a discriminatory testing program. The points at which conciliators met most resistance in negotiations with employers involved extensive remodeling of facilities, complex problems of seniority lines long entrenched, and the possibility of back pay liability.

Before the Commission became operative, there was some question concerning the advisability of giving opinions on the interpretation of the Act. This initial hesitancy was quickly overcome, and during this first period of operation the General Counsel issued more than 200 legal opinions dealing with matters and inquiries about Title VII.

From the beginning, the Commission endeavored to publicize its mission under Title VII to the greatest extent possible. From July 2 through October 10, 1965, the Commission received 275 requests to participate in seminars, panel discussions, and/or speaking engagements. Of that number only 28 were declined. The organizations addressed included chambers of commerce, human relations commissions, bar associations, personnel and guidance associations, councils of churches, labor unions, civil rights organizations, women's groups, employment agencies and organizations of Spanish speaking people.

A great deal of time and effort during this period went into organizing and preparing for the White House Conference on Equal Employment Opportunity. Section 716(c) provided that the President "as soon as feasible after the

enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective."

Acting upon the above congressional mandate, President Johnson called together the White House Conference on Equal Employment on August 19-20, 1965. The objective of the Conference was not only to set forth the provisions of the law, but also to furnish the key sectors of American society the opportunity to exchange ideas and viewpoints on the major problems of administering the new legislation.

The 600 persons who participated provided the Commission with invaluable practical counsel in planning the direction of the Commission. Vice-President Humphrey gave the keynote address. The participants then divided into seven concurrent workshops, each of which was conducted four times. This enabled each person to attend the four

workshops of his choice.[19] As Chairman Roosevelt indicated the workshops "were frequently marked by sharp debate /however/, there was a sweeping consensus in support of the spirit as well as the letter of the new law.[20]

At noon on August 20, immediately following the conference, a reception for the participants was held in the White House Rose Garden. Here the President spoke of the importance of Title VII, calling it "the key to hope for millions of our fellow Americans. With that key we can begin to open the gates that now enclose the ghettos of despair." But he emphasized that it was only a key. "It will open the gates only for those who are willing to shoulder the responsibilities, as well as the rights, that it offers." He described "the problem of bringing the Negro American into an equal role in our society" as "more complex,...more urgent, and...more critical than any of

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[19]For a list of conference participants and a summary of the workshop findings, see White House Conference on Equal Employment Opportunity, August 19-20, 1965, Report (Washington, D.C.: Government Printing Office, 1965).

[20]Ibid., p. 3.

us has ever known." After discussing his earlier endeavors for civil rights legislation, the role of the Administration in providing equal rights for all Americans, and further struggles in this realm, President Johnson thanked the participants for what they were doing and were going to do to "produce more in a land that we like to call America the Beautiful."[21]

Budget and Expenditures

Following enactment of the Civil Rights Act of 1964, a supplemental appropriation of $2,250,000 was approved for the Commission in October 1964 to cover the initiation of Commission program operations in Fiscal Year 1965. The supporting budget, prepared by the Department of Labor in advance of the appointment of the members of the Commission, was designed to provide an interim operating framework based on tentative planning assumptions. Because staffing was not undertaken until the following June, less than $400,000 was spent from 1965 funds.

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[21] U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Record Service, 1963-), Lyndon B. Johnson, 1965, pp. 897 - 901.

The original 1966 budget was also developed prior to Commission activation. To cover basic staffing and organizational changes approved after the appointment of Commission members, an amended budget was submitted to Congress late in June. Required changes were contained within the originally requested total of $3,200,000.

Final Congressional action on the amended request provided funds of $2,750,000 to finance Commission operations during the first full year of operations. The approved appropriation permitted the activation of proposed headquarters programs but necessitated a curtailment of field staffing.

In January 1966, because of the unexpected volume of complaints, the Budget Bureau approved a supplemental appropriation request of $742,000 which provided for the addition of 45 positions in headquarters and 98 positions in the field. Congress approved $500,000 of the amount requested.

A detailed account of the Commission's budget is available in its annual reports filed in accordance with 705(d) of the Civil Rights Act of 1964. Appendix E includes a brief analysis of estimates and obligations for the

Commission during the years, 1965 - 1969.

The Reporting System

Section 709(c) of the Civil Rights Act requires employers, labor unions, employment agencies, and sponsors of apprenticeship programs, subject to Title VII, to keep records and to file reports on the minority and sexual composition of the work force as prescribed by the Commission after public hearing. Section 709(d) qualifies this by exempting from these obligations those organizations subject to a state or local fair employment practice law.

The interpretation of Sections 709(c) and (d) presented two major issues for the Commission on which policy decisions had to be made. First, does Section 709(d) permit the Commission to impose reporting requirements on employers and others in FEP states which have the authority but do not impose such obligations? And second, should the EEOC require race and national origin designations on personnel records even though some states and the Bureau of Employment Security prohibit them?

On the question of reporting requirements for organizations in FEP states, it appears that Congress did not realize that none of the states has a uniform or

systematic reporting system. Since there was need for a uniform national reporting system in order to implement Title VII, the Commission decided, on advice of General Counsel, that it could require reporting by establishments in FEP states that do not impose reporting burdens. This would not entail duplicate filing for employers in FEP states since the latter did not provide for such reports. The Commission's interpretation that Section 709(d) disallows only dual reporting is supported by statements made during Congressional debate.[22]

Adding further support to the Commission's interpretation of Section 709(d) was the lack of opposition to the EEOC's position at the White House Conference on Equal Employment. The position taken by the Bureau of National Affairs in its published explanation of the Civil Rights Act of 1964 also bolstered the Commission's interpretation.

The second major policy issue the Commission had to decide was whether or not it could legally require the

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[22]U.S., Equal Employment Opportunity Commission, Legislative History, p. 3004.

keeping of records that denoted race, sex, and national origin. The dilemma was twofold. Although the data would be useful in combating discrimination, such records could also be used to facilitate discriminatory activity. Furthermore, civil rights groups had fought for many years against the collection of such data. It was also suggested that such records, though necessary for affirmative action programs, might be in conflict with Title VII. As a result of the controversy the Commission refrained from imposing universal recordkeeping requirements and has imposed such obligations only on apprenticeship programs and referral unions.

The Development of EEO-1 Reports

The Commission assigned the responsibility for the development of a reporting system to the Director of Research, Charles B. Markham. The first reporting form developed by the Office of Research staff was the EEO-1 form for reporting by employers. (EEO-2 refers to forms filed by apprenticeship committees; EEO-3 by labor unions; EEO-4 by employment agencies.) Since the reporting and recordkeeping systems were considered central to the Commission's activities, elementary proposals were

devised in the summer of 1965 as soon as staff was appointed.

The original recommendations of the EEOC staff for reporting and recordkeeping requirements were discussed by Panel Four (the Record Keeping and Reporting Panel) at the White House Conference on August 20, 1965.[23] The panel was chaired by Commissioner Jackson of the EEOC.

At the workshop, the Commission's staff proposed that reports be uniformly required only of employers and that the reports contain data similar to that being asked of Government Contractors by the President's Committee on Equal Employment Opportunity on Form 40 and by Plans for Progress on Form EEO-10. According to the staff, this kind of reporting would serve to:

(a) Measure an employer's compliance with the law;
(b) Indicate cases for Commissioner's complaints or suits to be instituted by the Attorney General;
(c) Suggest opportunities for voluntary corrective action with an industry or geographic area;
(d) Measure the effectiveness of the equal employment opportunity program in the long run.

The proposals for recordkeeping by employers and employment agencies proved to be the most controversial.

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[23] The White House Conference on Equal Employment Opportunity, August 19, 20, 1965, Report (Washington, D.C.: Government Printing Office, 1965), pp. 15 - 17.

Many participants recommended a head count in lieu of written records. The objections came primarily from business groups and some civil rights groups, who suggested that the records could be used to discriminate; that their maintenance would be in conflict with numerous state laws; and that civil rights groups and others had fought for years to eliminate the keeping of such records. Other civil rights groups and the state FEP agencies, which favored the proposal, pointed out that head counts were unreliable and that those who were going to discriminate would do so anyway. The objections raised were, for the most part, responsible for the Commission's decision, on September 7, 1965, not to require recordkeeping by employers and others.

After the post-conference adjustments were made, the EEO-1 system was presented to the Bureau of the Budget Advisory Council on Federal Reports on October 14, 1965. The Bureau, opposed to the idea of a universal reporting system, favored sampling as an alternative. It recommended that the Commission use the Labor Department's Form 40. The Commission, preferring to use Form 40 only as a last resort, began negotiations with Plans for Progress (PFP)

and the Department of Labor's Office of Federal Contract Compliance (OFCC) to set up a joint employer reporting system. EEOC, in conjunction with OFCC, developed the joint reporting form (similar in format to Form 40) tnat was ultimately presented to the public hearing on December 16, 1965. The Joint Reporting Committee, made up of EEOC, OFCC, and PFP was informally constituted to operate the employer reporting system. The chairmanship of the committee rotates semi-annually but the permanent Secretary is the Chief of the EEOC's Reports Division. In actuality, the Committee is under the aegis of EEOC which supplies the funds, personnel, and direction. The Committee, which operates informally with no written agreement, prevents a proliferation of forms and permits the Commission easier access to government contractors' reports than would otherwise be afforded. Its formation resulted in the acceptance by the Bureau of the Budget of the idea of a universal reporting system.

Section 709(c) requires the Equal Employment Opportunity Commission to hold a public hearing prior to the imposition of reporting or recordkeeping requirements. The first such hearing conducted by the Commission was held on

December 16, 1965, to introduce the employer report form and to allow interested parties to make their views known. Procedures were adopted for the hearing by the Commissioners and were used for subsequent hearings as well (29 CFR Sec. 1602.4).

Chairman Roosevelt made the opening remarks on behalf of the Commission to the numerous organizations, government agencies, and businesses represented. After the form was explained, statements were made in support and in opposition to EEO-1. Several specific problems were raised by the participants to which the Commission staff responded. The responses of the staff resulted either in clarifications or changes in the report forms.[24]

The second EEO-1 hearing, held on December 21, 1966, was chaired by Vice Chairman Holcomb. Its purpose was to introduce changes for consideration by interested parties.[25]

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[24] U.S., Equal Employment Opportunity Commission, "Proposed Employer Reporting System," Transcript of Public Hearings, December 16, 1965, Washington, D.C. (Mimeographed.)

[25] U.S., Equal Employment Opportunity Commission, "Hearing for Consideration of Amendment Proposed by the Commission to Subpart B, Chapter XIV, Title 29 Code of Federal Regulation," Stenographic Transcript of Public Hearings, December 21, 1966, Washington, D.C. (Mimeographed.)

Further public hearings were held on June 20, 1967, and on November 8, 1967. At the former, recordkeeping requirements, previously proposed for joint apprenticeship committees were extended to include employers. The period required for maintenance of records was reduced from five to two years because of objections raised.[26]

The November 8, 1967 hearing was held to introduce the proposed changes for the 1968 EEO-1 forms. As in the past, the Commission decided not to require reporting from those who employed less than 100 because of budget and staff considerations. At this hearing, presided over by Chairman Alexander, a separate reporting schedule--apprenticeship Schedule A--was added to the 1968 EEO-1 forms.[27]

The most recent EEO-1 reports to have been received are those for 1968. No substantial changes are contemplated

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[26]U.S., Equal Employment Opportunity Commission, "Official Report of the Proceedings before the Equal Employment Opportunity Commission," Stenographic Transcript of Public Hearings, June 20, 1967, Washington, D. C. (Mimeographed.)

[27]U.S., Equal Employment Opportunity Commission, "Hearing on Apprenticeship Recordkeeping Requirements," Stenographic Transcript of Public Hearings, November 8, 1967, Washington, D. C. (Mimeographed.)

for the 1969 EEO-1; the filing requirement will continue to be for employers of 100 or more persons.

The EEO-1 reporting system has a very crucial place in the operation of the Equal Employment Opportunity Commission.[28] The data are used in raw form or in a computerized format (developed by the Commission) by the headquarters staff and by EEOC Regional Offices. The data are distributed to state and local FEP agencies with whom EEOC has data sharing agreements, to Federal agencies upon request, and to private scholars with whom the Commission contracts research work.

The reporting system is valuable to the functioning of the Commission in many different ways. It serves as EEOC's "calling card" and gives credibility to an otherwise weak statute. It forces self-examination by the employer which often leads to voluntary remedial action to correct discriminatory practices. Analyses of the data are important in showing patterns of discrimination and, thus, areas where

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[28]U.S., Equal Employment Opportunity Commission, "The Role of the EEO-1 Reporting System in the Commission," Washington, D.C., 1967.

affirmative action is needed. Further, these analyses can be used to establish a relative level of equal employment "accomplishment" below which a Commissioner charge can be initiated. Finally the reporting system is important in measuring the effectiveness of the Commission in promoting equal employment opportunity. The EEO-1 forms are used routinely to support conciliations, technical assistance, and Commissioners' charges. The information derived from them is used as supportive material for speeches, public hearings, studies by the Office of Research, programs of other Federal agencies, and other special projects. The Textile Hearings, New York White Collar Hearings, utility and drug meetings, all of which will be discussed later, relied heavily on information from the EEO-1 reporting system. The system is also used to help determine referrals to the Justice Department for 707 suits. Finally, the Commission has compiled the most complete and up-to-date information on minority employment in existence from these reports. In fall 1968, this information will be published by the Commission in a three-volume book entitled Equal Opportunity Employment Report, Number 1.[29]

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[29] Complete citation not yet available.

The development of reporting and recordkeeping requirements for joint apprenticeship committees (EEO-2) took longer than it had for the employer reporting system because of lack of precedent to guide the Commission and because of numerous problems that had to be solved with the interested parties.

On September 30, 1965, the Commissioners approved a proposed apprenticeship form. Numerous meetings with the Construction Industry Joint Conference (CIJC), with AFL-CIO representatives, and with the Labor Department's Bureau of Apprenticeship and Training (BAT) followed. CIJC's suggestion that the Commission authorize methods in addition to the visual survey to identify employees by sex and minority groups was incorporated. The revised EEO-2 form was finally submitted to the Bureau of the Budget in August 1966 for approval. Although EEO-2 was now ready for presentation at a public hearing, the recurring problems of a shortage of money and staff led to the Commission decision to wait until 1967. The reporting and recordkeeping requirements approved by the Commissioners on February 1, 1967, called for reports to

be filed by all joint labor-management apprenticeship committees and by unilateral and/or joint programs in the construction industry. It also required apprenticeship programs to keep, for a two year period, records identifying, in chronological order, the sex and minority group of all applicants.

The development of the labor union reporting system was similarly delayed while many problems were worked out with the unions. The initial staff recommendations in August 1965 did not require unions to file reports for 1966. The rationale for this decision was that industrial unions do not control the hiring process and craft unions would be covered by EEO-2. However, it was suggested that referral unions be required to keep records identifying those on its referral lists by minority group. Despite the objections voiced by business establishments and the United States Chamber of Commerce at the August 1965 White House Conference that unions were not being required to report while employers were, the staff did not amend its recommendations. However, they did recommend that unions operating hiring halls be required to submit a form giving a tally of all referrals by sex and minority group identification.

This recommendation was adopted by the Commission in a policy statement on September 30, 1965.

Subsequently, research was begun on the development of the EEO-3 reporting form. A draft was completed in October 1965 followed by two conferences with the AFL-CIO in November and January which resulted in several changes. As proposed, EEO-3 was to be filed by all labor unions with fifty or more members and by all locals which operated hiring halls. The public hearing for EEO-2 and EEO-3, sponsored jointly by EEOC and BAT, was held on March 21, 1967.

The response to the proposals for reporting and recordkeeping by joint labor-management apprenticeship committees and unions was for the most part negative. There were some positive endorsements to the effect that such systems were essential to the implementation of Title VII. However, most of the statements were in opposition.[30] The adverse reaction at the hearing prompted fears on the

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[30] U.S., Equal Employment Opportunity Commission, "Public Hearing on EEOC's Proposed Apprenticeship Report, Form EEO-2, and Labor Organization Report, Form EEO-3, and Instructions," Transcript of Proceedings, March 21, 1967, Washington, D.C. (Mimeographed.)

part of the EEOC that its interpretation of Section 709(d) would be tested in the courts by the unions or that there would be widespread noncompliance by local unions.

As a result of the hearings and of numerous conferences with representatives of the AFL-CIO and of the Construction Industry Joint Conference, changes in the proposed forms were recommended. As finally devised, EEO-2 was required to be filed annually only by joint labor-management apprenticeship committees that have at least five apprentices and are sponsored by at least one employer with 50 or more workers and one local union which has 50 or more members or operates a hiring hall. The form was to be filed annually on September 30. This date was chosen so that the summer months, which represent the peak session in the building trades, would be the months used to determine the numbers recorded on the EEO-2. The information required by EEO-2 includes the number of apprentices in selected minority groups for each trade and craft and information about standards, selection procedures, and methods of publicizing openings.

The filing of EEO-3 reports is required of all unions with 100 or more members. Referral unions must complete Part I of the form which requires a breakdown, by sex and minority group, of members and of applicants for referrals. Part II, to be filed by nonreferral unions, asks about separate seniority lines and separate classification of jobs. These forms are to be filed annually by December 31.

Recordkeeping requirements were imposed also; administrators of apprenticeship programs, whether business, union, or joint, must maintain records of all applicants noting their sex and minority group identification. In August 1967, this requirement was extended to cover all employers and labor organizations that had programs for apprentices. This requirement supersedes all state and local laws which prohibit such recordkeeping (29 CFR 1602.29).

Objections came from several joint apprenticeship committees which were located in states that already required reporting and/or recordkeeping. The Commission was amenable to suggestions to allow the state to collect the data and in August 1967 an agreement was negotiated with the Wisconsin Industrial Commission to this effect.

Under Title VII (Section 703(b), the EEOC may require private employment agencies to keep records of job applicants. Discussion of this requirement was one of the most controversial issues discussed by Panel Four at the White House Conference on August 20, 1965. The EEOC staff had proposed that these agencies keep records of the minority identification and sex of all applicants. The identifying records, however, were to be kept separately from records used to place personnel.

One legal problem foreseen by the staff was that Section 703(b) prohibited employment agencies from classifying applicants by race. This raised the question of the possible illegality of the Commission to require agencies to make minority and sex designations on records. However, the staff felt that such recordkeeping was necessary to measure progress in equal employment. The opposition of the employment agencies and the fact that three-fourths of the private agencies had four or less employees led the Commission to postpone imposing recordkeeping requirements for employment agencies at that time.

The White Collar Hearings held in New York City,

January 1968, disclosed evidence showing the need to investigate employment agencies. At the Hearings it was revealed that a high percentage of private employment agencies throughout the United States respond to discriminatory job orders. Thus, in June 1968, the Commission announced its decision to develop reporting and recordkeeping regulations for private employment agencies. As of this writing, it is anticipated that the regulations will require employment agencies to report information concerning job orders, applicants, referrals, and other agency operations which have significant influence on the hiring process.

CHAPTER III

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RELATIONS WITH CONGRESS

The Commission's relations with Congress have been extensive and varied as a result of its reliance on Congress for appropriations, legislative enactment, and confirmation of nominations.

The Office of Legislative Affairs has two basic functions in dealing with Congress. The role of maintaining favorable relations with Congress is accomplished by personal visits to key Representatives, Senators, and members of the Commission's relevant legislative and budget committees, prompt and accurate response to Congressional inquiries, and providing materials of an informational nature. Informing Congress of the legislative needs of the Commission, in a semi-initiatory capacity, comprises the second function of this office.

Confirmations of Commissioners

Section 705(a) of Title VII of the Civil Rights Act of 1964 created the Equal Employment Opportunity Commission

and provided that it should be "composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for three years, one for four and the fifth one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman."

From his nominees, President Johnson selected as Chairman Franklin D. Roosevelt, Jr. of New York and Dr. Luther Holcomb of Texas as Vice Chairman.

On May 25, 1965, at 10:10 a.m., Franklin D. Roosevelt, Jr., Aileen Hernandez, Richard Graham, Samuel C. Jackson and Reverend Luther Holcomb appeared before the Senate Committee on Labor and Public Welfare as nominees as

members of the Equal Employment Opportunity Commission.[31]

The only reservation expressed at the hearing was by Senator Winston L. Prouty of Vermont, concerning Mr. Roosevelt's serving "for only a limited period of time."[32]

The five Commissioners, approved as a group by the Senate on May 26, were sworn in on June 1. Eleven months subsequent, on May 11, 1966, Mr. Roosevelt resigned his position as Chairman. The vacancy was filled by Stephen N. Shulman. At his Senate Committee hearing on September 14, 1966,[33] Mr. Shulman was endorsed by Senators Claiborne Pell and Joseph Clark. Confirmed the following day, he was sworn in on September 21, and served until the expiration of Mr. Roosevelt's term, July 1, 1967.

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[31]U.S., Congress, Senate, Committee on Labor and Public Welfare, Nominations, Hearing, before the Committee on Labor and Public Welfare, United States Senate, on Franklin D. Roosevelt, Jr., Aileen Hernandez, Richard Graham, Samuel Jackson, and Luther Holcomb, to be members of the Equal Employment Opportunity Commission, 89th Cong., 1st sess., 1965.

[32]Ibid., p. 3

[33]U.S., Congress, Senate, Committee on Labor and Public Welfare, Nominations, Hearing, before the Committee on Labor and Public Welfare, United States Senate, on Stephen N. Shulman, of Virginia, to be a member of the Equal Employment Opportunity Commission,...89th Cong., 2d sess., 1966.

Mr. Clifford L. Alexander, Jr., the present Chairman and former White House aide, was subsequently nominated and appeared before Senator Hill's Committee on July 27, 1967. Following warm and enthusiastic endorsements by Senators Robert Kennedy and Jacob Javits, Senator Peter Dominick questioned the nominee on Federal versus State relations in the field of civil rights. Mr. Alexander replied to this, the only question asked, that under the authority of Section 706 of Title VII, it is appropriate for the Commission "to get into the business of seeing if it can help" if, after a reasonable period of time, no action has been taken by the State agency.[34]

At the Senate Hearing on the nomination of Mr. Vicente T. Ximenes[35] to fill the term expiring July 1, 1971, Senator Joseph M. Montoya (D.-New Mexico) emphasized the need for a Mexican American Commissioner, and spoke of the distinguished record of the nominee. Senator Robert Griffin addressed his questions to the then pending "cease and desist" legislation.

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[34]U.S., Congress, Senate, Committee on Labor and Public Welfare, Nomination, Hearing, before the Committee on Labor and Public Welfare, United States Senate, on Clifford L. Alexander, Jr., New York, to be a member of the Equal Employment Opportunity Commission for the term expiring July 1, 1972, 90th Cong., 1st sess., 1967.

[35]U.S., Congress, Senate, Committee on Labor and Public Welfare, Nominations, Hearing, before the Committee on Labor and Public Welfare, United States Senate, on Vicente T. Ximenes, New Mexico, to be a member of the Equal Employment Opportunity Commission, for the term expiring July 1, 1971,...90th Cong., 1st sess., 1967.

After winning Senate approval Mr. Ximenes was sworn in by President Johnson on June 9, 1967.

Miss Elizabeth Jane Kuck, of the International Harvester Company, who was appointed to fill the unexpired term of Mrs. Aileen Hernandez, appeared before the Senate Committee on January 25, 1968. Senator Paul Fannin (R-Arizona) questioned Miss Kuck rather extensively regarding her opinion as to which way EEOC more effectively operates--by conciliation or compulsion. In reply, she stated: "Well, Senator, for many years I favored the voluntary approach. I have come around to feeling that it is necessary for EEOC to have the cease-and-desist order in connection with its work. I still prefer to see things worked out on a conciliatory basis, however."[36]

In answer to Senator Fannin's further probes on testing, seniority, and quota systems, Miss Kuck emphasized her belief in advancement based on ability. The Senate approved her nomination on January 26, and she was sworn in on March 15, 1968.

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[36] U.S., Congress, Senate, Committee on Labor and Public Welfare, Nomination, Hearing, before the Committee on Labor and Public Welfare, United States Senate, on Elizabeth Kuck, of Illinois, to be a member of the Equal Employment Opportunity Commission, 90th Cong., 2d sess., 1968, p. 3

Congressional Contact, Inquiries, and Correspondence

The necessity of initiating and maintaining favorable relationships with members of Congress was recognized early in the Commission's history. At the 17th meeting of the Commission, in August 1965, Chairman Roosevelt requested all members of the staff to inform the Director of Legislative Affairs, William Kendrick, of any contacts they might have with Congress. Under Mr. Kendrick, who was personally disposed to considerable personal contact with Members, at least bi-weekly visits were made to the relevant committees in the House and Senate, e.g., the Judiciary Committees and Appropriations Committees of both Houses, and the Senate Labor and Public Welfare Committee. Visits to certain Congressional offices, made by various senior staff for specific purposes, have become vital to the workings of the Commission.

On a more formal level, at the 77th Commissioners meeting, Vice Chairman Holcomb suggested that Mr. Kendrick arrange luncheon meetings of Congressmen and Senators with the Commissioners. Commissioner Graham further suggested that Mr. Kendrick act as Protocol Officer for the Commission, advising the Commissioners of events or

gatherings where it would be helpful for a Commissioner to be present.

In the realm of providing materials of an informational nature, all publications are sent to the Members of Congress before public release. Senators and Congressmen who supported the 1964 Civil Rights legislation were sent information on EEOC's first six months of operation and were asked their assistance in bringing its program to the attention of their constituents. In addition to general information distribution, certain publications are of particular interest to certain Members. Hence, Legislative Affairs utilizes separate mailing lists for information dealing with Mexican Americans, sex discrimination or other specific topics of interest. The Office maintains A "Friends' List," which, as of 1968, comprised approximately 300 Representatives and Senators.

One important means of providing service to members of Congress is the prompt and accurate response to inquiries and requests. The Office of Legislative Affairs estimates that it receives an average of 25-30 telephone calls per day and twice that number during the busiest period of May through August.

Congressional referrals of correspondence and other Congressional mail, totaling about 100 pieces per month, are received and opened in the Office of the Secretary of the Commission, except in the case of personal mail directed to a particular Commissioner. Under previously established policy, the letters are distributed to the specific office in the Commission which has jurisdiction, e.g., complaints concerning the reporting program are referred to the Office of Research for reply; inquiries regarding the status of a constituent's case are directed to Compliance. A great portion of the correspondence involves issues of a substantive nature, i.e., inquiries on guidelines, voluntary programs, relations with state agencies. Once a Congressional office has expressed an interest in a complaint, a policy question, or legal opinion, Legislative Affairs keeps that office up to date on the matter of interest.

Control of Congressional correspondence is handled by the Office of Legislative Affairs, which receives copies of the initial correspondence and keeps account of the replies to see that they are accurate. The replies to the Congressmen are normally sent under the Director's

signature as a matter of uniformity and convenience.

Legislation Affecting Title VII

In accomplishing its second basic function of informing Congress of the Commission's legislative needs, the Office of Legislative Affairs, with the assistance of the General Counsel's office, often drafts the language used in bills; negotiates with EEOC's staff on substance; and consults other interested Federal agencies, e.g., the Civil Rights Division of the Justice Department.

In connection with proposed legislation, Legislative Affairs assists in the preparation of testimony to be heard before legislative committees. Of primary importance in this realm are the Commission's efforts to obtain cease-and-desist powers. While Title VII charged the EEOC with the responsibility to eliminate employment discrimination, it did not provide powers to issue judicially enforceable orders to that end. Since the Commission operations began, efforts have been made to strengthen the Commission through cease-and-desist powers.

The President has urged Congress to enact such legislation. In his Message on Equal Justice, presented to the Congress on February 15, 1967, the President set forth

a seven-point Civil Rights program. He emphasized equal justice in employment and recommended "legislation to give the Equal Employment Opportunity Commission authority to issue orders, after a fair hearing, to require the termination of discriminatory employment practices.... Enforcement power would harmonize the procedures of the Commission with the prevailing practice among states and cities that have had fair employment agencies for many years. It would reduce the burden on individual complainants and on the Federal courts. It would enhance the orderly implementation of this important national policy."[37]

Included in the President's State of the Union Message in January 1968 was a request for Congress to act on "vital pending bills...enforcement of equal employment opportunity."[38] A week later, the President delivered to Congress his Message on Civil Rights, in which he again pleaded with

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[37]U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1963-), Lyndon B. Johnson, 1967, p. 258.

[38]U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1963-), Lyndon B. Johnson, 1968, p. 77.

the "Congress to give the Commission the power it needs to fulfill its purpose."[39]

The so-called "Hawkins Bill," H.R. 10065, the outgrowth of two identical bills introduced by Congressmen James Roosevelt (D.-California) as H.R. 8998 and Ogden R. Reid (R.-New York) as H.R. 8999, was reported out on behalf of the full Committee of Education and Labor by Congressman Augustus Hawkins (D.-California) in the summer of 1965. This piece of legislation, which sought to repeal and replace Title VII, provided for several major alterations to the title:

(1) the stepdown in coverage was changed for employers, unions, and employment agencies to 50 or more persons as of July 2, 1966, and 8 or more as of July 2, 1967 (as opposed to 75 or more as of July 2, 1966, 50 or more by July 2, 1967, and after July 1, 1968, 25 or more);

(2) deferral requirements to the state and local fair employment practices commissions were eliminated;

(3) the Commission could, if voluntary means failed, and after a hearing before the Commission, issue a cease-and-desist order which would be judicially enforceable; and

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[39]U.S., President, Public Papers of the Presidents of the United States (Washington, D.C.: Office of the Federal Register, National Archives and Records Service, 1963-), Lyndon B. Johnson, 1968, p. 119.

(4) cession of jurisdiction to state and local FEPC's in certain categories of discrimination was made mandatory.

The significant omission in the Hawkins Bill, which was basically a remake of Title VII, was the lack of authorization for funds. In essence, then, if the bill had been made into law, the statute would have been unworkable without funds. H.R. 10065, nonetheless, was passed overwhelmingly by the House on April 27, 1966, but died at the end of the 89th Congress, being tabled in the Senate by Senator Dirksen of Illinois.

Mr. Hawkins reintroduced H.R. 10065 as H.R. 680 in 1967, but the House did not act upon it in the 90th Congress. Similarly, two bills almost identical to H.R. 680 (Congressman Ogden R. Reid's (R.-New York) H.R. 4909 and Congressman Jeffrey Cohelan's (D.-California) H.R. 388) were not acted upon.

At the beginning of the 90th Congress, President Johnson sent Congress an omnibus civil rights bill, introduced in the Senate as S. 1026 by Senator Philip A. Hart (D.-Michigan) and 26 other Senators and in the House by Congressman Emanuel Celler (D.-New York) as H.R. 5700. The provisions in these bills, which dealt with the EEOC,

were introduced separately as S.1308, cosponsored by Senators Joseph Clark (D.-Pennsylvania) and Jacob K. Javits (R.-New York). It was Senator Javits' hope that "this splitup will facilitate the passage of the bills separately, as they will go to different committees and have different fates."[40] The prospects at the time for passage of other provisions of the omnibus bill, particularly fair housing legislation, were not encouraging, and it was thought wiser to take EEOC legislation out on its own. Thus S.1308 was introduced and acted upon as a separate measure in an attempt to avoid entanglement in the major civil rights confrontation on the Senate floor.

Senator Javits' comment about "separate fates" was indeed correct! In April 1968, H.R. 2516, the revised version of H.R. 5700 (the descendant of the Administration's omnibus civil rights bill), was signed into law as the 1968 Civil Rights Act.

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[40]U.S., Congress, Senate, Senator Javits speaking for S.1308, 90th Cong., 1st. sess., May 3, 1967, Congressional Record, p. 6226

Title III of the Administration's bill (now S.1308), was designed to give the Commission cease-and-desist powers. It was to be operative upon the finding of an unlawful employment practice by the Commission after a hearing. In addition, the bill empowered the Commission to petition the Federal Court of Appeals for a temporary restraining order in the case of a pending appeal or for a permanent injunction in the case of a final appellate ruling by the court. The pertinent steps of the proposed procedure involved:

(1) the receipt of a verified complaint;
(2) an investigation by the field officers;
(3) a finding of reasonable cause;
(4) attempted conciliation;
(5) hearing before the Commission or a hearing examiner, and;
(6) issuance of a cease-and-desist order.

The decision and issuance of the order were made subject to review by the Federal Court of Appeals. Further, this bill provided for retention of the private suit by an aggrieved party, with EEOC having intervention rights. In spite of EEOC's opposition, litigation was to be handled by the Department of Justice on behalf of the Commission.

On May 3, 1967, Senator Javits introduced S.1667, which was cosponsored by Senators Clifford P. Case (R.-

New Jersey) and Thomas H. Kuchel (R.-California). In describing the bill, Senator Javits stated: "A major feature of the bill which I am now introducing, which is not included in S. 1308, is the strong link it would provide between the EEOC and nationwide resources of the Department of Labor, particularly the investigative manpower of the vast existing network of its Wage-Hour Division....By allowing the Commission to utilize the manpower of the Labor Department for investigatory work, the bill we are introducing would increase its resources immeasurably."[41]

S. 1667 went several steps further than S. 1308. It expanded coverage to employers and unions with eight or more employees or members and to employees of state and local governments. The Commission was authorized to obtain interlocutory relief and a temporary restraining order prior to a final order, so as to prevent irreparable injury to the complainant; a finding of "no probable cause" was made a judicially reviewable event; and conciliation agreements were made enforceable in the courts as EEOC

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[41] Ibid.

final orders. Finally, the private suit would be eliminated, and requirements for deferral to state and local FEP organizations would be removed.

On May 4-5, 1967, hearings were conducted on S. 1308 and S. 1667 by the Senate Labor Subcommittee on Employment, Manpower, and Poverty. Testimony on behalf of the administration was received from Attorney General Ramsey Clark, Secretary of Labor W. Willard Wirtz, Stephen N. Shulman, then Chairman of EEOC, Vice Chairman Luther Holcomb, and Commissioner Samuel C. Jackson. Witnesses representing state and local agencies, charged with the responsibility of eliminating discrimination in employment, strongly endorsed the granting of cease-and-desist powers to the Commission. Representatives of civil rights groups expressed support for the principal purpose of this legislation. Mr. James W. Hunt, labor relations manager of the U. S. Chamber of Commerce, testified in opposition to S. 1308.

Following the termination of the hearings, the subcommittee on July 25, 1967, unanimously reported S. 1308, with amendments, to the full committee. Full committee consideration began on February 15, 1968, and continued until April 25, 1968, when the committee agreed by a

bipartisan majority of 13-2 (Senator Lister Hill (D.-Alabama), Chairman of the Committee, and Senator Paul J. Fannin (R.-Arizona) dissenting) to report favorably its recommendations as an original bill, S. 3465.

S. 1667, some provisions of which were incorporated into S. 3465 was never actually reported out of the subcommittee. The Commission preferred S. 1308 (revised as S. 3465) as the Commission felt it would do more to strengthen the EEOC.

S. 1308, as introduced, and the Committee bill, S. 3465, were basically the same in that they would amend Title VII so as to grant cease-and-desist authority to the Commission and would permit the Commission to seek enforcement of its orders in court. The Committee made a number of changes in S. 1308 as introduced, however. The major amendments made to the original bill were made in subcommittee. The individual private suit remedy was deleted, but the complainant was made a full party to all proceedings before the Commission and provision was added wherein the aggrieved party could seek judicial review of no-reasonable-cause findings by the Commission. Reasonable cause findings were to be made within 120 days after a charge was filed.

Temporary injunctive relief is provided for prior to final orders. Provision is made requiring that conciliation agreements be acceptable to the party aggrieved. Agreements approved by the Commission were made enforceable in the circuit courts. The Commission was given subpoena power to compel the production of evidence and appearance of witnesses, and its recordkeeping requirements could be enforced by an appropriate district court.

In addition to these modifications, S. 3465, as reported by the full Committee, provided for several alterations of the existing law. It provided that the Attorney General would conduct all litigation to which the Commission was a party or in which the Commission had an interest, a provision of which the Commission disapproves. Further, it allowed a reasonable differentiation between male and female employees in pension and retirement plans, provided that such plan was not merely a subterfuge to evade the purposes of Title VII. It modified the provisions relating to testing, in that an employer could give and act upon the results of a professionally developed ability test "which is applied on a uniform basis to all employees and applicants for employment in the same position and is

directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned." A new section was added to provide for a study of the extent to which there is conflict, duplication, or inconsistency among Federal agencies dealing with equal employment opportunity problems. S. 3465 reported out of Committee in April 1968 has seen no further action.

Legislation affecting Title VII was not limited to cease-and-desist powers. Although no amendments to, or changes in, Title VII have yet been enacted, efforts have been made. As an example, S. 2956, which was introduced in February 1966 by Senator Dominick (R.-Colorado) and five other Senators, including Everett Dirksen (R.-Illinois), sought to amend the National Labor Relations Act so as to make it an unfair labor practice for a labor organization to discriminate on account of race, color, religion, or national origin. The EEOC opposed the enactment of S. 2956 because the discrimination which it would prohibit is already prohibited under section 703(c) and (d) of Title VII of the Civil Rights Act of 1964. The Commission took the position that if the enforcement procedures under

Title VII were not satisfactory, the appropriate remedy was not to set up alternative procedures under another statute, but rather to amend Title VII to achieve the desired result.

On March 14, 1966, Senator Clark introduced two bills, S. 3077 to establish an Equal Employment Opportunity Administration in the Department of Labor; and S. 3078 to amend Title VII to prohibit certain unlawful practices committed by states or political subdivisions of a state. The former omitted discrimination based on sex and replaced the EEOC with an Equal Employment Opportunity Administration within the Department of Labor and a five-member Equal Employment Opportunity Board. The Administrator would inherit many of the present functions of the EEOC, e.g., investigation and conciliation of complaints and technical assistance. The board would hear and determine cases, prosecuted before it by the Administrator, and issue cease-and-desist orders and other remedial orders. The Commission did not recommend the separation of the administrative and judicial functions.

Regarding S. 3078, the Commission, although recognizing that Federal review over the personnel policies

of state and local governmental units raisesunique problems in the area of Federal-state relations, nevertheless, favored legislation to achieve equal employment opportunity throughout state and local government.

Other bills relevant to the Commission have been introduced during the 90th Congress, without further action being taken following their referral to committee.

One far-reaching proposal introduced by Congressman John Conyers, Jr. (D.-Michigan), H.R. 14492, proposed expansion of Title VII to bring under EEOC jurisdiction all Federal, state, and local agencies, employers of one or more persons, and private membership clubs. This bill would eliminate the Attorney General's role in Title VII litigation and would enlarge tremendously the role of the General Counsel of the Commission. The cease-and-desist provisions of Conyers' bill were similar to those of S. 3465.

Congressman Charles E. Goodell (R.-New York) introduced his bill, H.R. 17028, to strengthen the enforcement procedures of EEOC on May 16, 1968. This bill, characterized as a compromise bill, made it mandatory for the Attorney General to bring a civil action on a pattern

or practice referral by the Commission. Under the provisions of H.R. 17028, the Commission would be given the power to seek an appropriate remedy in a court of law in the event the mediation and voluntary compliance efforts failed. The charging party would have 90 days to bring a civil action of his own in the event EEOC did not provide adequate relief.

Senator Edward W. Brooke (R.-Massachusetts) and Senator Clifford P. Case (R.-New Jersey) introduced in April 1968, S. 3334, a bill to provide application of Title VII to State and Federal employees. In speaking before the Senate on April 17, 1968, Senator Brooke emphasized that it was "of the highest importance that the instrumentalities of government not be used as vehicles for the denial of equality of employment opportunity. Governments on all levels must provide an example, not seek to evade the application of national policy by means of statutory exemptions."

Under S. 3334, on which no action was taken, an aggrieved employee, after exhausting his remedies under Executive Order 11246 and other applicable regulations, could bring the matter to EEOC whereby a request could

then be made of the President to take such action as is deemed fit to obtain compliance.

Most recently, a move to legislate against the Commission's guidelines disallowing differentiation in retirement age for male and female employees was initiated by Senator Everett Dirksen (R.-Illinois). Senator Dirksen attached a rider to the House-passed bill, H.R. 2767, which deals with tax deductions in soil and water conservation. The amendment to H.R. 2767 was strongly supported by Majority Whip Russell B. Long (D.-Louisiana), when the bill was submitted to the floor following its consideration by the Senate Finance Committee. A move by Senator Vance Hartke (D.-Indiana) and Senator Philip A. Hart (D.-Michigan) to strike the Dirksen amendment was defeated in a 42-12 vote. The Senate passed H.R. 2767, but the House failed to act before adjournment.

Appropriations

The original 1966 budget was developed prior to Commission activation. The President initially requested that Congress appropriate $3.2 million for the Commission for its first year of operation. Since the House hearings on EEOC's budget occurred in March 1965, three months

prior to the appointment of the Commissioners, Congressman John J. Rooney (D.-New York), Chairman of the House Subcommittee on Appropriations, passed over the item without prejudice. The Senate Subcommittee of the Committee on Appropriations, under the leadership of Senator John L. McClellan (D.-Arkansas), held a budget hearing for the EEOC on Thursday, July 1, 1965. Chairman Roosevelt was accompanied by Dr. Holcomb and several Commission staff members, but only Mr. Roosevelt and Mr. Powers actually testified. Senator McClellan made clear his position with regard to the EEOC early in the hearings when he stated: "Frankly, I do not think much of the program. I say that for the record. I think we are invading a field, we are going to blunder through a lot of injustices, do a lot of harm. Congress passed it. I just want the record to show how I feel about it. I feel it is a useless agency, unnecessary, uncalled for. I want the record to show exactly how I feel. Now proceed. If we have it, you have to have money."[42]

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[42]U.S., Congress, Senate, Committee on Appropriations, Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for Fiscal Year 1966, Hearings, before the subcommittee of the Committee on Appropriations, United States Senate, on H.R. 8639, 89th Cong., 1st sess., 1965, p. 943.

The Subcommittee subsequently approved $2.5 million, a cut of $950,000, which was upheld by the full Committee. However, on August 12, 1965, the Senate restored more than half the cut made by the Appropriations Committee, giving the Commission $2.75 million in funds.

In January 1966 because of the unexpected volume of complaints, the Budget Bureau approved a supplemental appropriation request of $742,000, of which $500,000 was approved by Congress, and which provided for the addition of 45 positions in headquarters and 98 positions in the field.

For Fiscal Year 1967 the Commission requested the Bureau of the Budget to approve a $6.6 million budget and 367 positions, an increase of 196 positions and $3,850,000 over the current year base. The Budget Bureau, however, disallowed the total increase proposed for the Office of Research and only authorized a continuation of the Fiscal Year 1966 program. On September 12, 1966, Acting Chairman Holcomb and supporting Commission staff appeared before Congressman

Rooney's subcommittee requesting a total of $5,870,000.[43] The House allowed $5,200,000, a reduction of $670,000 from the budget estimate. By letter dated September 30, 1966, Chairman Shulman informed Senator McClellan that the Commission had decided not to appeal the $670,000 reduction.

Mr. Shulman and those who were witnesses at the House hearing appeared before the Senate subcommittee on October 6 for a short period of questioning. Subsequently, Congress appropriated $5,240,000, including a supplemental appropriation of $40,000 for increased pay costs. As a result of this appropriation, a $700,000 program of state grants, involving 36 FEPC's, was initiated.

EEOC's appropriations for Fiscal Year 1968 did not involve much change. The requested budget of $7,150,000 was cut to $6,500,000 in the House. Chairman Shulman wrote Senator McClellan in order to have the cut restored

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[43] U.S., Congress, House, Committee on Appropriations, Departments of State, Justice, Commerce, the Judiciary, and Related Agencies Appropriations for 1967, Hearings, before a subcommittee of the Committee on Appropriations, House of Representatives, 89th Cong., 2d sess., 1966, p. 337.

and Commissioner Jackson visited Senators Pastore and Javits in this regard. However, no further funds were appropriated, and Mr. Shulman decided against asking for supplemental funds later.

Doubling the request for appropriations for Fiscal Year 1969, however, resulted in a great deal of activity on the Hill and at the Commission. The $13.1 million budget, recommended by the Johnson Administration, was cut in half by the House Subcommittee on Appropriations, chaired by Mr. Rooney, who was not in favor of the cut but was overruled by the Committee. Chairman Alexander appealed to the House of Representatives to restore the President's budget recommendation "or make a mockery of this Nation's commitment to equal job opportunity."

The effort, led by Congressmen Joelson, Reid, and Rooney, to provide a budget of $11.8 million was defeated in the House on May 28, 1968, by a non-record vote of 121 to 113. The House then approved the $6,936,000 voted by the Appropriations Committee. Members trying to increase the funds argued that more staff was needed to wipe out a backlog of complaints and to handle the new segment of employers and labor unions, who would be covered

by Title VII as of July 2, 1968. Opponents said the Administration request that would nearly triple the staff of EEOC was not necessary.

On July 1, the President appealed to the Senate to restore the "cut in funds made by the House of Representatives for this vital agency in its dedicated efforts to carry forward the national purpose." Senator Javits entered the President's statement in the Congressional Record on July 8 and added: "As a member of the Committee on Appropriations and of the State-Justice-Commerce Subcommittee, I shall do all that I can to bring about restoration of the funds cut by the House." Subsequently, on August 1, Congress approved a budget of $8.75 million, largely through the efforts of Senators Javits, Pastore, and Mansfield.

CHAPTER IV

CHAPTER IV

COMPLIANCE ACTIVITY

Investigation and Conciliation

The compliance process, the major enforcement tool the Commission has to bring about the end of discrimination in employment, involves five major steps. In the first step a charge is brought either by private individual(s) or by a Commissioner. The second involves investigation by the Commission to uncover facts relevant to the case. In step three, a Commission decision of a cause or no cause finding, based on the investigative report, is rendered. If reasonable cause is found, the fourth step, conciliation process, is initiated. Finally if conciliation is unsuccessful, the Commission must determine whether to refer the case to the Attorney General for institution of a pattern or practice suit pursuant to Section 707 of Title VII.

These five stages are in conformity with the procedure outlined in Section 706(a) of the 1964 Civil Rights

Act, particularly in the separation of the investigation and conciliation functions with the reasonable cause finding acting as the connecting link. The Commissioners decided at one of their early meetings (February 2, 1966) that investigation and conciliation should be maintained as separate functions.

As a result of the May 1967 decentralization of the compliance function, the investigation and conciliation steps of the process are conducted primarily by the field offices with coordination by headquarters. The initiation of Commissioner charges and the referral of a case to the Attorney General are still the responsibilities of headquarters. The overall process is directed by the Commission's Office of Compliance.

A private charge may be brought by an individual or by a group of individuals who believe that they have been subject to unlawful job discrimination. The Commission makes available printed forms,written in both English and Spanish, to facilitate the filing of a complaint. (See Appendix F.)

When the Commission first opened its doors, the number of charges it received was much greater than had

been anticipated. The Commission was not prepared to handle the volume of complaints that were received. Most of the early cases were from Southern states and involved discrimination because of race. Over one-third of them were stimulated by the NAACP, whose prime concern was with getting cases in a posture to take to court. The Commission, however, did not want cases brought to court before reasonable cause was found and conciliation attempted. In a subsequent discussion with attorneys from the NAACP's Legal Defense and Education Fund, the Association agreed to concentrate on the quality of its charges rather than on the quantity so that the charges would be as strong as possible when they came to the Commission.

After investigation is begun, a copy of the charge is served upon the respondent. It was decided late in 1966 to send a copy to the parent company or union of the respondent. Through agreements with the AFL-CIO, the International Brotherhood of Teamsters, and the

Construction Industry Joint Council, these organizations also receive copies of charges when one of their respective members is involved.

Section 706(a) also permits charges to be brought by an individual Commissioner "where he has reasonable cause to believe a violation of this title has occurred." At the first Commissioner meeting on July 12, 1965, the Commissioners determined under what circumstances they would initiate a Commissioner charge. It was agreed that a Commissioner charge would be filed if one of two conditions prevailed: if there was evidence to support a substantial case, or if an individual complaint could not be submitted because of fear on the part of the aggrieved party. In subsequent meetings it was decided not to issue the name of the Commissioner filing the charge and not to file Commissioner charges without prior discussion with the other members of the Commission.

Because no Commissioner charges had been filed after five months, dissension arose as to the priority to be given to such charges. At the Commission meeting on November 18, 1965, a lengthy discussion on the role of Commissioner charges was held. The problem, as seen by Commissioner Graham,

led him to conclude that the Executive Director "believes that Commissioner charges are not particularly a significant weapon and so as a result they have not had a priority. We [Commissioners Graham and Jackson], on the other hand, feel that they are and, since we feel this and it is our obligation and responsibility to act on what we believe, we want to assign a priority to this..."

Chairman Roosevelt's feeling was that some charges should be filed, but that the Commission should not encumber itself too heavily with such complaints as a quicker and more effective route would be via the Attorney General. He iterated his earlier statement that charges should be filed when fear prevented an individual from bringing a charge.

The matter was temporarily resolved by the Chairman when he directed the Executive Director and other staff members to work on Commissioner charges. The priorities would be, in that order, individual complaints, Commissioner charges, Attorney General suits. Roosevelt himself, however, decided that he would not file any charges so

that he could function in a judicial capacity if hearings should be held as a result of the charge.

Subsequently, Commissioner's policy was established on January 13, 1966. Commissioner charges were to have priority since their objective was usually broader than those in private charges; and staff was to give high priority to the forwarding of complaints to the Justice Department. The policy was amplified further on January 25, 1967, when the procedure was established that Commissioners, proposing to file "important" Commissioner charges, circulate them to other Commissioners so that their recommendations could be made. An "important" charge was defined as one that was "corporate-wide, national or international union-wide, or otherwise involving a significant policy issue in the Commissioner's judgment."

Another controversy arose over Commissioner charges late in 1967. The controversy concerned the large number of charges being filed by certain Commissioners and the lack of uniformity in the processing of Commissioner charges. Commissioner Jackson defended the large number of charges filed by certain Commissioners on the grounds that Commissioner charges more often resulted in reasonable cause findings than did individual charges and that they resulted in more

important conciliation when a pattern was discovered. Of 58 Commissioner charges that were decided by November 1967, 51 resulted in findings of reasonable cause; seven resulted in no cause findings. This was more than double the ratio of cause findings from private charges.

The second issue was resolved with the adoption on November 28, 1967, of uniform procedures for the handling of Commissioner charges. As was provided by Title VII, no restrictions were placed on the right of an individual Commissioner to originate charges or to have the final decision on the issuance of the charge.

The sources of Commissioner charges are numerous. They derive from information developed through field investigation and listed as non-alleged violations; from field offices in cases in which the charging party does not wish to proceed because of fear of reprisal; and from telephone calls, letters, and other channels of communication open to the Commissioners.

Upon receipt of a charge, the Regional Office determines whether or not the alleged act of discrimination occurred in a state to which the EEOC must defer. Title VII makes it mandatory for the Commission to defer to a state

if the type of discrimination committed is a violation of the state law and if an effective state agency exists to deal with the unlawful practice. The Commission now defers to the agencies listed below in cases involving discrimination based on race, religion, or national origin. (Those agencies which have signed a memorandum of understanding with the Commission are indicated by an asterisk(*).)

Alaska*	Kentucky*	Ohio*
California*	Maryland	Oregon
Colorado*	Massachusetts*	Pennsylvania*
Connecticut*	Michigan*	Philadelphia, Pa.*
Delaware	Minnesota*	Pittsburgh, Pa.
District of Columbia*	Missouri*	Puerto Rico
Hawaii*	Nebraska*	Rhode Island*
Illinois*	Nevada*	Utah*
Indiana*	New Jersey	Washington*
Iowa*	New Mexico	West Virginia
Kansas	New York	Wisconsin*
		Wyoming

New Hampshire has a statute that would justify deferral, but no agency to enforce it.

Of those agencies listed, the Commission also defers to a small number of them in cases involving sex discrimination:

Connecticut	Missouri
District of Columbia	Nebraska
Hawaii	New York
Maryland	Utah
Massachusetts	Wisconsin
Michigan	Wyoming

Agencies to which the Commission does not defer because of inadequate enforcement are:

Arizona
Oklahoma
Tennessee

States not deferred to because they provide for criminal remedies only are:

Idaho
Maine
Montana
Vermont

States without Fair Employment Practice Laws are:

Alabama
Florida
Arkansas
Georgia
Louisiana
Mississippi
North Carolina
North Dakota
South Carolina
South Dakota
Texas
Virginia

As indicated above, 23 agencies have signed a Memorandum of Understanding with the Commission. The Memorandum (See Appendix G) sets forth the procedures for coordination between the state agency and the Commission for deferral of cases. Although the Memorandum facilitates cooperation between state fair employment practice agencies and the Commission, the deferral program also works smoothly with other states which have not signed but to whom the EEOC defers.

At the end of the period of deference, the complainant may still use the offices of the Commission if he has not

gained satisfactory relief through the local or state agency. His charge would then be processed as a regular charge and continue through the compliance process.

The investigation of the charge is the foundation on which the subsequent parts of the procedure are built. Several important policy guidelines on investigations have been decided by the Commission. First, it is Commission policy that investigators always interview the charging party prior to visiting the respondent. And second, the Commission decided on May 19, 1966, that an investigation of a private charge should be continued even if the charging party is no longer available or no longer wishes to pursue the case (provided of course that the party would not be harmed by the continuation of the case).

On the bases of the Final Investigative Report and other information concerning the respondent, a finding of either reasonable cause or no cause is made. The Commission decisions, initially written by the Commissioners, are now prepared by the Office of Compliance. The Commission may review a decision only upon its own motion.

The most significant part of the Commission's compliance process is that of conciliation. It is during

this step that an attempt is made to remedy the grievance and to eliminate discriminatory practices. The conciliation stage begins only after a finding of reasonable cause has been made. The cases to be conciliated are analyzed by the Office of Conciliation and then sent to the appropriate Regional Director for assignment to a conciliator. The conciliator's function is two-fold: to obtain prompt relief for the aggrieved party and to find a remedy for the underlying cause of discrimination. If conciliation is successful, the agreement may be signed for the Commission by the Regional Director. Crucial to the conciliation process is the right of the party to institute a charge under Section 706 of Title VII. It is the individual's right to sue which is the legal foundation of his right to settle the case.

Early in its operation, the Commission adopted policies to direct the conciliation process. At first there was some discussion about whether the Commissioners should direct each conciliation agreement. Commissioners Jackson and Hernandez felt that it was important that the Commissioners direct the investigation and conciliation processes since it was through these processes that policy

would be made. Their suggestion that the Commissioner finding reasonable cause should also include suggestions for the conciliation agreement was included in the conciliation policy statement adopted by the Commission on January 19, 1966. In addition, the Commission adopted the following policies:

(1) The Commission should be a legal party to each conciliation settlement, thus enabling EEOC to go to Federal Court to seek enforcement of the agreement.
(2) A conciliation settlement does not have the effect of legal precedent for subsequent disputes.
(3) Two standard conciliation agreements containing standard clauses are to be used (See Appendix H).

Publicity is an important aspect of the conciliation process. Each conciliator attempts to secure permission from the parties involved to release the results of the conciliation agreement. Furthermore, if conciliation is accepted by a respondent who is in direct competition with employers who discriminate, the Commission makes an effort to see that the others comply with the law and that cooperative employers are not placed in competitive disadvantage because of their cooperation.

Changes in the concept of conciliation have occurred during the three years of the Commission's operation.

During the first year, investigation revealed that discrimination was often inherent in the system of the employer. Thus it was necessary to change the system. As a result, many conciliation agreements deal with issues not overtly involved in the original reasonable cause finding. By 1968, the emphasis was being placed on some of the more controversial issues, such as testing, the merging of seniority lines, and affirmative action. In addition, stress was placed on securing completeness of remedy for the aggrieved party. These various trends are reflected in the landmark agreements that the Commission has negotiated.

If the conciliation is unsuccessful, the Commission must determine whether there is sufficient evidence to refer the case to the Department of Justice for a 707 suit.

Of great concern to the Commission is the backlog of pending complaints. There were three major reasons why the Commission was unable to handle efficiently the great number of charges, thus causing the backlog problem.

The primary cause was the tremendous volume of charges that the Commission received when it first began operation. During the first few months, the Commission

was receiving about 200 cases a week; by November 5, 1966, 2,198 cases had been received. The Commission had neither the staff nor the resources to deal with so many cases. The volume of charges has continued to mount without a commensurate increase in staff.

Numerous remedies have been attempted to alleviate the problem. Among the methods that have been instituted are: "outstationing" of personnel, written interrogatories, investigation by telephone where possible, and the detailing of Commission staff to Compliance. Major emphasis was placed on the decentralization of the investigation and conciliation functions as the way to solve the problem of the great number of cases. However, as of August 1968, the volume was still so heavy, that, according to Chairman Alexander, the average case takes 16 months to complete.

A second major cause of the backlog was the inexperience of the investigators and conciliators. According to the first Director of the Office of Compliance, "The real lack has been that of experience in our investigators--they have not been trained for our purposes or in analyzing the arguments of the respondents and getting the facts to answer their arguments."

Some cases had to be reopened for further investigation and others required as long as three weeks for the investigation report to be returned to the Commission.

To solve the problem of poor investigations and conciliations, training programs for investigators and conciliators were instituted. In addition, a detailed field manual (currently being compiled) will detail specific instructions for investigators and conciliators to follow.

The third major cause of the backlog was a "failure in the standard managerial process at all stages," especially lack of guidance from the Commission and a lack of uniformity in operations. This was the conclusion drawn by the Director of Program Planning and Review and his staff after visits to the field office in May 1967.

The statistics compiled by the Office of Compliance for Fiscal Years 1966, 1967, and 1968, indicate the nature of the cases that the Commission receives and the geographical origins of the charges. They also show the considerable accomplishments of the Commission during the three-year period of its operation. (See Appendix I.)

Especially noteworthy are the number of people directly aided by the Commission and the number who are prospective recipients of its work. During the three years of its existence, the Commission has brought immediate benefits to 8,919 aggrieved parties. More significantly, there are over 35,000 prospective beneficiaries, of whom 21,000 are the result of conciliations achieved in Fiscal Year 1968. Altogether, claimants received payments totaling over $235,000. The estimated annual dollar value of the conciliation agreements for claimants and prospective beneficiaries is over $12,000,000.

Landmark Conciliation Agreements

Through the conciliation process, the Commission has negotiated major breakthroughs to eliminate employment discrimination. Many of the conciliation agreements provided remedies never before secured in ending discriminatory practices. The earlier conciliation agreements negotiated by the Commission established working guidelines for future agreements. After three years of operation, however, the Commission is still establishing new precedents in its attempt to obtain equal employment opportunity for minority groups and for women. Although the agreements

which are considered "landmark" are used as guidelines in subsequent cases, they do not establish binding precedents.

The conciliation agreement between the complainants and the Newport News Shipbuilding and Drydock Company, signed on March 30, 1966, was the most extensive and detailed agreement ever negotiated in the field of employment discrimination up to the time. The agreement resulted from charges of discriminatory employment practices brought by 41 Negro employees. The charging parties were supported in their challenge by the NAACP. Both the Department of Defense and the Navy Department aided the Commission in drawing up the final agreement. In conjunction with the Newport News Agreement, a supplemental agreement was signed by the Peninsula Shipbuilders' Association.

The agreement with Newport News was notable for several reasons. Newport News is the largest shipbuilder in the nation. It receives millions of dollars in government contracts annually. The most significant aspect of the agreement was that Newport News agreed to retain the services of an outside expert to review its industrial relations system and to make changes in its wage and pro-

motion system pursuant to the expert's recommendations. Other major terms of the agreement included the opening of new job classifications to Negroes, the desegregation of facilities, and the active recruiting of Negroes for training programs. In addition, the company was required to file reports quarterly for two years with the Commission. Although problems were encountered in the administration of the agreement, 3,890 of the company's 5,000 Negro employees had been promoted by June 1967.

Another conciliation agreement involving race discrimination was negotiated between the complainant and the Richmond, Virginia, subsidiary of Federal Paper Board Company, Inc., in October 1966. This was the first case in which a respondent agreed to hire or to promote Negroes to positions as over-the-road drivers. To make the agreement effective a supplemental agreement was negotiated with the United Papermakers and Paperworkers, AFL-CIO, providing for changes in the lines of progression.

The charge against W. T. Grant and Company also concerned discrimination because of race. The agreement, signed by the company in Augusta, Georgia, served as a guideline for future conciliations in a number of areas.

The agreement in this refusal to hire case provided, as remedies for the complainants, back payment, notification by registered mail of the first openings, and the offer of part-time work if the claimants did not want full-time positions. In addition the company agreed to promote qualified Negroes from within. Most significantly, Grant agreed to take affirmative action to hire more Negroes. The NAACP and other local organizations, as well as Negro high schools, were to be notified when job vacancies occurred.

The United States Pipe and Foundry Agreement of June 1966 included two important, new departures in the area of eliminating race discrimination. Previous agreements had called for desegregation of facilities, but this was the first to include detailed plans to eliminate segregated locker rooms, toilet facilities and other employee facilities. Drawings were included as part of the agreement to show exactly what changes were to be made. Another aspect of the agreement was the extensive arrangement made for apprenticeship and training programs which would ultimately benefit 300 Negro employees.

Another form of race discrimination involves separate seniority lines for black and white employees. A landmark

agreement dealing with this issue was signed by the complainants and by Kaiser Aluminum and Chemical Corporation and Aluminum Workers International Union and Local 205, respondents, in January 1966. By the terms of this agreement, job seniority was replaced by plant seniority for promotion into operating departments from utilityman classifications. This was the first agreement to make an inroad into the problems created when seniority systems are used, intentionally or inadvertently, as a means of perpetuating race discrimination.

Another type of problem that involves race discrimination is that of segregated union locals. This problem, which is restricted primarily to the South, has often impeded conciliation efforts. A landmark case directed to this problem was concluded on May 6, 1968, when the Central Foundry Company of Holt, Alabama, and the International Molders and Allied Workers Union, Local 63, AFL-CIO, signed an agreement with complainants calling for the merger of Locals 63 and 67 into a unitary local union, No. 311. Concurrent with the merger of the locals was the merging of the seniority lines. Previously, each union had handled certain job categories. Thus the

agreement enabled Negroes to enter positions previously closed to them.

The Commission has also negotiated numerous successful agreements concerning discrimination against women. One of the first major breakthroughs in this area was the agreement that the EEOC and individual complainants negotiated with the Dubuque Packing Company of Iowa and the Amalgamated Meat Cutters and Butcher Workmen, AFL-CIO, Local No. 150. The agreement, signed in December 1966, abolished separate male and female seniority lines and opened up 195 new job categories for women. In accordance with the provisions, jobs were reclassified as primarily of interest to men, primarily of interest to women, and of interest to both. However, either sex was free to apply for jobs in any category.

A similar type of agreement was worked out in March 1968 with Warwick Electronic of Illinois in which jobs were classified as "heavy," "medium," or "light." An employee would have the right to choose the classification in which he wished to be placed, regardless of sex.

An agreement of October 1966, notable because of the large financial settlement, allotted $36,700 in backpay

to female employees. In this sex discrimination case, the women, employees of the General Cable Corporation of Monticello, Illinois, had been laid off while male employees with less seniority were retained. The agreement provided for the reinstatement of the 110 women through the process of automatic bidding for job vacancies. The precedent for large settlement and reinstatement of female employees was followed in a more recent conciliation agreement, signed in June 1968 with the Klate Holt Company of Texas.

The conciliation agreement with the Associated Hospital Service of New York is of special interest as it is one of the few cases involving religious discrimination processed through the stage of conciliation. The agreement, signed in May 1968, incorporated the Commission's Guidelines on discrimination because of religion and detailed the manner in which the guidelines would be implemented.

In Fiscal Year 1968, the Office of Conciliation put added emphasis on obtaining complete remedy for the complainant in the conciliation agreements. One of the major breakthroughs in fulfilling this aim occurred in a race case, conciliated in February 1968 with Combustion

Engineering, Inc., Chattanooga, Tennessee. The respondent agreed not only to pay the complainant $4,508.70 for his period of unemployment, but also to continue payments until the company was able to secure suitable employment for the charging party in the Chattanooga area.

The agreement between Lockheed and 24 complainants, negotiated in February 1968 was highly significant in two respects. The agreement was one of the earliest ones to contain detailed guidelines for the use of employment tests including the stipulation that "...Tests will be considered a single increment in the candidate's credentials." Secondly, as a result of the conciliation, the complainants were to be given career counseling and intensive training for immediate promotions. In addition, general career counseling and training provisions were written into the agreements.

The Sandia agreement is one of the more important ones negotiated by the Commission because of its company-wide application. EEOC conciliators negotiated the agreement between the Office and Professional Employees International Union Local 251 and John Abeyta (complainants) and Sandia Corporation (respondent). The agreement, signed in

November 1967, provided equal employment opportunity to all on a company-wide basis.

The Commissioner charge against Cessna Aircraft resulted in a conciliation agreement in August 1967 which was the first to include provision for a sequestered file, i.e., Cessna agreed to maintain a separate file of minority group applicants which would be used to fill future job vacancies as occurred.

Referral of Cases to the Department of Justice

The final stage in the compliance process is to refer cases which the Commission has been unable to conciliate to the Attorney General. This is not a mandatory step in the compliance process. The decision whether to forward a case to the Justice Department is made by the Commission upon the advice of the General Counsel.

During the first ten months of the Commission's operation, only one case (Newport News Shipbuilding) was referred to the Attorney General for suit under Section 707. According to a memorandum by Commissioner Jackson, dated April 25, 1966, a breakdown of staff machinery to identify appropriate cases for Attorney General action and a philosophical difference within the Commission concerning

when a case should be referred to the Attorney General were the reasons that so few cases were referred.

The compliance process is not the only source of cases for referral to the Justice Department. The Commission has referred other cases stemming from its inquiries into employment practices in the textile industry and discrimination in white collar employment in New York City with recommendations for review, investigation, and possible suit by the Attorney General.

As of July 5, 1968, only 62 cases had been referred to the Justice Department for action; in only 12 of these has any action been taken.[44] According to Chairman Alexander, the cumbersome process is responsible for the low number of referrals and for the relatively few pattern or practice suits instituted by the Attorney General. As of July 1968 the Justice Department had brought pattern or practice suits in only nine of the matters referred. Others have been successfully settled, returned to the Commission for further review, or are still under investigation by the Department.

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[44]For a complete list of cases referred to the Department of Justice, see Letter (with attachments), Assistant Attorney General Pollack to Chairman Alexander, July 5, 1968.

CHAPTER V

CHAPTER V

BROADSCALE PROMOTION OF JOB OPPORTUNITIES

When the Commission opened its door on July 2, 1965, it immediately faced an accumulation of cases that had been assembled, for the most part, with the help of the NAACP and other civil rights organizations. The aggrieved individuals who had filed complaints expected action, and certainly those civil rights groups who looked to the Commission as the vehicle to change the employment picture wanted results.

From the beginning there was a division of opinion on whether or not enforcement of the law through provisions of compliance with recourse to the courts was as preferable to wholesale efforts of affirmative action, including greater emphasis on working with business and industry on voluntary programs. But the need to respond to the tremendous case-

load, made academic (temporarily, at least) the debate going on both inside and outside the Commission on the most desirable approach for eliminating employment discrimination. Although it was forced initially to attack the caseload, the Commission sought to avoid taking a single, monolithic approach to its task.

Early in 1966 the Commission began considering the possibility of holding public hearings to investigate the employment policies and practices of various industries. The consensus of those advocating this approach held that given EEOC's limited budget and restricted enforcement powers, such hearings would be the best available technique for focusing attention on the problem of employment discrimination; publicizing the existence and the operations of the Commission; prodding employers to institute affirmative action programs designed to broaden opportunities for minority group members; and informing employees of their rights under Title VII of the Civil Rights Act of 1964. Endorsement of this technique led to the formation of an Ad Hoc Committee on Public Hearings. The committee, headed by Robert Gale, then Director of the Office of Public Affairs, was charged with the responsibility for developing and

directing Commission efforts in this area.

In April 1966 the Commission began to discuss the feasibility of holding one or more public hearings before the end of the year. There was considerable debate as to how many hearings should take place, whether they should be national or regional in scope, when they should take place and where, what industries should be selected and why, what persons should be invited to participate, what format (s) should be employed, and what events, conditions or other factors might affect the scheduling of hearings.

Not a few industries received mention as appropriate targets for examination. New York City, Washington, Chicago, Los Angeles, Charlotte, North Carolina, and Hartford, Connecticut were among the cities which emerged as possible hearing sites. Most persons agreed that because a New York City hearing undoubtedly would receive more coverage and publicity than any other, it should be a very smoothly conducted operation. In order to enhance this likelihood and to iron out wrinkles, the technique needed

a prior trial run in one or more cities.

At a meeting on May 31, 1966, the Commission instructed the Office of Research to make studies, using EEO-1 and other data, of various industries and, based on these studies, to draw up specific recommendations including a timetable. About three weeks prior to this meeting Franklin D. Roosevelt, Jr., had resigned as Chairman of the Commission. Vice Chairman Luther Holcomb immediately informed the Commission that, pending appointment of a new chairman, he would carry on with the programs already in progress. Thus, plans for a hearing went forward.

Mr. Charles Markham, the Director of Research reported back to the Commission by way of a memorandum on August 2. Citing matters taken into consideration, especially availability of and kind of data, he recommended:

> "(a) Immediate appointment of a staff committee to develop an action program in respect to the textile and New York white collar data, and to execute same. The committee should consist of one and possibly two representatives from Research, Technical Assistance and Compliance, who could call upon representatives of other divisions as need arises.
>
> "(b) The Committee should present, no later than Labor Day, a detailed strategy for the action programs, with expected responsibilities of the staff divisions.

> Its first step should be to consult with the FEP agencies in the area involved, to notify them of the intended program and seek their advice as to the form(s) it should take.
>
> "(c) If public hearings are to be held, it is suggested that the textile hearing be held in Charlotte, North Carolina in mid-October, and that the white collar hearing in New York be held between Election Day and Thanksgiving Day; that the textile hearing continue for two days, and the New York hearing three or four days; that both be preceded by at least a half day's briefing session for Commissioners and participating staff."

Mr. Markham further suggested that before EEOC committed itself to any specific approach in the Carolinas or New York City, however, expert advice should be sought from a variety of sources. He further reasoned that should a public hearing prove not to be desirable, the economic data already assembled could be put to a wide diversity of uses, ranging from mere publication of the data to a full-scale technical assistance program. In particular it might develop, he pointed out, that a major program in the textile industry would not be fruitful. Certain factors suggested that this in fact was the case, namely: the industry is not a growth industry in terms of employment; it is subject to rapid technological change which may eliminate jobs in the next decade; it is a low-wage industry; and since 1960, there has been a significant increase in Negro employment. But

factors such as the following enhanced its suitability: heavy concentration of Negro workers in unskilled and semi-skilled jobs; the industry's status as the predominant manufacturing industry in the Carolinas; the fact that whites are being hired out of the industry by higher wages in other industries.

Furnishing other information in support of the recommendations, Mr. Markham called attention to the fact that besides EEO-1 data the Office of Research also had on hand a preliminary background report on the textile industry in the Carolinas, compiled for the Commission by Professor Donald Osburn of North Carolina State University.[45] Similarly, for white collar employment in selected New York City industries, the Office of Research had available both EEO-1 data and a background paper written for EEOC by Professor Dale Hiestand of Columbia University.[46]

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[45] U.S., Equal Employment Opportunity Commission, "Negro Employment in the Textile Industries of North and South Carolina," by Donald D. Osburn, Washington, D.C., 1966. (Typewritten.)

[46] U.S., Equal Employment Opportunity Commission, "White Collar Employment Opportunities for Minorities in New York City," by Dale L. Hiestand, Washington, D.C., 1967. (Typewritten.)

At a meeting held August 4, 1967, the Commission approved the holding of a Carolina textile hearing and a New York white collar hearing. Charlotte, North Carolina, because of its size and central location, was selected as the site of the former and mid-October as the date. As for the latter, New York City was the locale chosen and the date scheduled within the period between November 9 to 23.

The Commission authorized its Executive Director, Herman Edelsberg, to appoint a staff committee, including a representative of the General Counsel and such representatives of other offices as he deemed appropriate, to fashion a format for the hearings by September 9. This committee was also charged with submitting a suggested list of participants. It was agreed that there would be no public announcement of the hearings until after the committee report which would contain a recommendation specifying when information should be released.

Charged with its various responsibilities, the staff committee began to lay the groundwork for the two hearings, concentrating first on textiles. Exploratory interviews and various other inquiries were made of representatives

of most interested and influential segments of the North Carolina community to obtain their reactions to the contemplated hearing. In general, reactions were favorable with no opposition being voiced. However, enthusiasm varied according to the particular interests involved. Certain quarters warmly welcomed the opportunity to air the textile minority employment situation publicly, e.g., the North Carolina Good Neighbor Council (the Governor's FEP agency), located in Raleigh.

Staff committee deliberations of August and early September revealed that the group was not in complete agreement regarding dates, possible role of a new Commission Chairman and other related matters. As did various persons in the concerned states, several committee members felt that neither hearing should take place until after Election Day because of the possibility of its becoming the center of political controversy.

The question as to whether or not a hearing would likely enjoy full, immediate support of the future Chairman caused concern.

The Textile Employment Forum

On September 21, 1966, the new Commission Chairman,

Stephen N. Shulman assumed office. Soon afterwards he began to review the matter of the proposed textile hearings and in the main was favorably disposed towards it. He stated unequivocally that he expected to "get /EEOC/ moving" with a new, broader approach to fighting job bias. The case-by-case "retail" handling of complaints by individuals was to be broadened by what he called a "wholesale" approach of industry-wide anti-discrimination programs. During a meeting of October 12 the hearing was discussed at length. Chairman Shulman appointed, among others, Commissioners Aileen Hernandez and Samuel C. Jackson and the Chief of Conciliations, Alfred Blumrosen, to serve on a committee to determine and to outline the proper scope of the hearing. He instructed the already existing staff committee to work closely with the Commissioners and to give them support. Concern about a later white collar hearing in New York was put aside for the time being.

At a November 1 meeting Commissioners Hernandez and Jackson presented a proposal calling for designation of the proceedings in North Carolina as a "forum" rather than a "hearing." The purpose of this was to assure, along with other safeguards, that the appearance of a

legislative or judicial investigation be avoided. It was hoped that this assurance would help to encourage willingness to participate, especially on the part of the textile community. The Commission approved the proposal, and named December 12-13 as the date. Two weeks later, however, Commissioner Jackson made a progress report in which he suggested that preparations would require a delay until January 12 and 13, 1967.

From this point on efforts to organize the forum began to move forward in earnest. Personal contacts and correspondence soliciting advice, information, cooperation and participation were conducted with state and local government officials, textile and other business leaders, labor union officials, human relations councils (especially the North Carolina Good Neighbor Council), civil rights organizations, community leaders, members of the press, academicians, and allegedly aggrieved individuals.

In the meanwhile the rationale and purpose for the forum had been elaborated in some detail and the format and ground rules were in the process of being worked out. The basic rationale for the Carolina Textile Employment Forum was furnished by the previously mentioned report by

Donald Osburn. While acknowledging that improvements generally are taking place in Negro textile employment, the report called for both more jobs and better jobs.

Aside from the two research reports, the fact that EEOC had received more complaints from North Carolina--many concerning the textile industry--than from any other state also contributed to the area's selection as a fitting site for a forum. During the Commission's first 18 months of existence 13,404 complaints had been lodged, of which 869 came from North Carolina. The figure for South Carolina was 250. The general consensus held that the wide experience and knowledge gained in the investigation of the large number of North Carolina complaints would serve the Commission well in the conduct of a forum.

It should be noted that during the spring of 1966 the NAACP had identified the Carolinas and the textile industry as promising areas for action and in June of the same year had urged EEOC to launch a project quite similar to the one which the Commission was considering.

The avowed purpose of the forum was to bring together all of the forces available, including state and local agencies, business leaders, civil rights groups, selected

complainants and others, to focus attention on discriminatory policies and practices and on significant trends in both the textile industry and the overall Carolina labor market. The object was to increase the total range of job opportunities for minority group members. Not a few Commission personnel saw the forum as a vehicle for enabling EEOC to present an image of an agency deeply concerned about employment problems of minorities and readily willing to pursue whatever course necessary to resolve them. It was hoped that such knowledge would encourage all appropriate community segments in the Carolinas and throughout the country to cooperate with the Commission and to act justly and progressively in the discharge of their rights and responsibilities in this matter.

At a December 14 meeting the Commission approved the format and ground rules for the forum. On this same day the Chairman publicly announced that the forum was forthcoming. Basically, the format called for an opening statement by the Chairman, summary of the Osburn paper by the professor himself, summary of EEO-1 data by the Director of Research, summary of the Commission's multifaceted compliance experience, statements of witnesses and public participants,

and a closing statement on affirmative action programs.

Among other things, the fundamental ground rules stipulated that in order to establish a fixed schedule and to determine priority, all invited public participants must submit their prepared statements five days prior to the opening date of the forum. Persons who failed to submit a copy of their statement in advance had to be interviewed by a representative of the Commission in order that the substance of their remarks could be determined prior to appearing before the forum. No one was to be allowed more than 15 minutes for his statement. Commissioners and staff could question a participant only after he finished his statement and only for a period not to exceed the length of his presentation. Questioning of participants by the general public was not to be permitted. Any charge of discrimination against a specific individual employer, union, or employment agency made in public during the course of the proceedings would be ruled out of order. Commission representatives would be available to hear specific charges in private, however. The transcript of the proceedings was to be held open for a 15-day period following the close of the forum for sub-

mission of any additional statements.

As scheduled, the Textile Employment Forum took place January 12-13 at the Public Library in Charlotte, North Carolina. Each day, overflow audiences attended. Chairman Shulman conducted the proceedings and was assisted by Vice Chairman Holcomb, Commissioner Jackson and other appropriate members of the Commission staff.[47] In addition to the data presented by the Commission, much information was also supplied by representatives of state and local governments, civil rights groups, educational institutions, labor unions, human relations commissions and individual complainants.

Ten leading textile firms were invited to participate in the forum and to present their views and to explain their policies. Originally six accepted the invitation. But in the end, officials of only two firms made statements with one describing his company's hiring policies. Although only two textile representatives chose to speak, many others formed a large part of the audience.

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[47]U.S., Equal Employment Opportunity Commission, "Textile Employment Forum," Transcript of proceedings held in Charlotte, North Carolina, January 12, 1967.

The attitude of the textile industry towards the forum was probably best exemplified by its principal trade association, the American Textile Manufacturers Institute (ATMI). Saying that a "town hall meeting can encourage unfounded and irresponsible accusations," ATMI announced several days prior to the opening that it would boycott the forum. The EEOC technique "implied a punitive approach," added ATMI. At the last session of the forum, ATMI indicated that it wanted to make a statement after all and requested to do so. Chairman Shulman acceded to the request. F. Sadler Love, the Association's secretary-treasurer, then proceeded to defend the textile industry's minority employment record.

The forum did much to focus attention and to shed light on the employment problems of minorities not only in the Carolinas but in general. Surely the forum afforded the Commission great public exposure. Locally, the proceedings were heavily covered by newspaper, radio and television. As a result, area inhabitants were able to acquire considerable knowledge about the Commission, its purpose, its jurisdiction and its operations and programs.

Affirmative action programs and changes in employment patterns resulted from the two-day forum. Following the meeting, the Commission brought together Federal and local agencies with representatives of the Carolinas' textile industry in a cooperative follow-up program to open new job opportunities for minority members. By the end of July 1967, voluntary affirmative action programs among 10 South Carolina Textile mills assisted by EEOC had provided 246 new jobs for Negroes with total annual wages expected to exceed $750,000. The increase represented 41 percent of all new hires among the 10 mills.

The Atlanta Regional Office of EEOC undertook a plant visitation project covering 100 facilities throughout the Carolinas, calling on personnel officers and managers to review hiring, promotion, and job classification procedures. As part of its on-going programs, the Commission pointed out subtle forms of discrimination on the lower supervisory levels which management was not aware existed. In one city, the president of a textile firm organized a meeting between seven of his plant managers and Commission representatives to discuss screening methods for applicants and existing testing procedures to determine if they were

job-related and validated or simply a matter of custom. As a result of the one-day conference, plant managers decided to discard the tests and to develop new ones with greater relevance to job openings.

Among other EEOC affirmative action recommendations was the suggestion that personnel records of minority employees be examined with an eye toward possible promotion. An EEOC contract was developed with the North Carolina Good Neighbor Council providing $28,500 for a similar program in that State, concentrating on textile mills but also including other industries.

In some cases, EEOC brought company representatives in contact with local minority group organizations in an effort to improve recruiting techniques. A manager and personnel director of one plant both agreed that the firm had an "unfavorable" reputation among minority groups. Technical Assistance Officers of EEOC coordinated a community-wide recruitment drive that produced 35 Negro applicants within two weeks; 27 of the applicants were hired.

Another effort to promote community involvement is a privately funded and sponsored program known as TEAM--

Textiles: Employment and Advancement of Minorities. Working from a basic purpose of providing community-level support for the various government activities in expanding textile industry employment, TEAM cosponsored a conference of Negro community leaders from textile areas of western South Carolina and published several informational pamphlets about employment opportunities in the industry.

Probably the most encouraging development of all has been the voluntary undertaking of equal employment affirmative action by various textile mills in both North and South Carolina.

New York White Collar Hearings

From the very start of Commission deliberations on public hearings, considerable support was always expressed for the White Collar Hearings in New York City. Originally scheduled for November or December 1966, these Hearings actually took place in January 1968.

After the successful conclusion of the Textile Employment Forum, serious planning for the New York White Collar Hearings finally got under way. Chairman Shulman set up a White Collar Task Force, headed by Commissioner Jackson, to make all of the necessary preparations and arrangements. On July 1, 1967, while the Task Force was carrying out its mandate, Chairman Shulman completed his term of office.

The new Chairman, Clifford L. Alexander, Jr., took office August 4, 1967. He expressed his approval of the New York White Collar Hearings, and the Commission agreed upon January 15-18 as the date. Plans and preparations now went ahead with greater momentum.

The Commission's opinion that discrimination in white collar employment was an appropriate subject for

the second in its series of public forums or hearings grew out of some very basic considerations. The main thrust of the Federal effort in eliminating job discrimination traditionally had been directed at manufacturing industries and blue collar employment. No major white collar program had ever been initiated. (The term "white collar" spans a broad socio-economic occupational grouping, namely, managerial, professional, technical, clerical and sales job categories). Commission findings indicated that minority representation is at its lowest in white collar jobs; within the white collar categories, minority employees are seldom found in the higher-paying managerial, professional, technical and sales positions. Perhaps the most important consideration was the fact that the white collar sector, particularly professional and technical categories, is the most rapidly growing part of the labor force. Projected employment patterns for the next decade suggest that it will continue to be so, thereby providing a substantial proportion of new job opportunities.

Selection of New York City as the site for the Hearings had much to recommend it; it is the Country's

leading white collar employment center. At the time of the Hearings the New York SMSA had almost a million white collar workers (951,156) covered by Title VII of the Civil Rights Act of 1964. This total exceeded that of any other metropolitan area. White collar jobs represented 64.9 percent of total jobs for reporting companies in New York. This was significantly higher than any other of the nine cities of 500,000 or more population where the Commission had a field office. New York City itself accounted for 810,630 of the total 951,156 white collar jobs in the SMSA reported under EEO-1. New York City in particular, and the SMSA in general, is the location of headquarters offices of hundreds of large corporations. Employment policies and practices at those headquarters have national ramifications.

The New York SMSA has a large minority population. In the 1960 Census, Negroes accounted for 11.5 percent of the population, Puerto Ricans for 5.9 percent. The Commission's 1966 estimate of the Negro population was 14.4 percent. The City accounted for the vast majority of minority population in the SMSA. Negroes, for example, were estimated to number 1,459,900 (18.2 percent of all inhabitants) in New York City in 1966 as compared to

their total of 1,662,600 (14.4 percent) in the SMSA. Puerto Ricans accounted for 7.9 percent of the City's population in 1960 (a 1966 estimate was not available).

EEOC data revealed that in absolute terms a major problem of minority underutilization clearly existed. For example, of the 4,249 reporting establishments in New York City, 1,827 employed not a single Negro in white collar positions and 1,936 not a single Puerto Rican or other Spanish Surnamed American. It should be added that New York City was selected as the site not because the area was judged to be worse than others in utilizing minorities in white collar jobs. On the contrary, according to Commission findings, the New York SMSA ranked relatively high among major metropolitan areas in this regard.

The purposes of the Hearings were essentially the same as those of the Textile Employment Forum held a year earlier in Charlotte, North Carolina. In summary the Commission aimed:

(1) To focus public attention on the problem of discrimination in employment, in this case, the white collar field;
(2) To serve notice on all concerned of EEOC's determination to exercise its legal authority imaginatively and aggressively;
(3) To discover, and lay a basis for, Commission

action to remedy any entrenched discriminatory practices in white collar hiring and upgrading;

(4) To facilitate an exchange of information on existing recruitment and training programs in white collar employment; and

(5) To stimulate by all means available greater affirmative action efforts by major private employers to open white collar jobs to members of minority groups.

At the time when some basic decisions were being made pertaining to what approach the Hearings should take and how best to proceed, there was some disagreement among Commission members over sponsorship of the endeavor. Some felt that EEOC should ask the New York City Commission on Human Rights to become a cosponsor of the Hearings. These persons argued that the joint sponsorship was necessary because of the Human Rights Commission's subpoena powers. Others, including the Director of EEOC's New York Regional Office, were reluctant to engage in a joint undertaking. They warned that the news media would tend to emphasize the role of the New York City Human Rights Commission. In the end, the Commission voted not to

solicit the services of the New York City Human Rights Commission as a cosponsor. Even after this decision was made, there were those who continued to regard it as a serious tactical blunder.

Under Chairman Alexander's signature, more than 160 letters of invitation were mailed to executives of selected firms in New York City (See Appendix J). Approximately 65 persons agreed to appear, of which 25 were scheduled to present testimony.

The Hearing took place as scheduled, January 15-18, 1968, at the U.S. District Court, Foley Square, in New York City. The four-day session, presided over by Chairman Alexander, featured the presentation of white collar employment data on New York City by the Chairman and his staff members; questions and comments by the four Commissioners; testimony by 25 leading white collar employers and by five minority employee witnesses; and a roundtable discussion among representatives of government, business, civil rights and community organizations.[48]

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[48]U.S., Equal Employment Opportunity Commission, Hearings on Discrimination in White Collar Employment, New York, New York, January 15-18, 1968 (Washington, D.C.: Government Printing Office, 1968).

Reflecting the importance of Negroes and Puerto Ricans in the New York population and labor force and the urgency of the national problem of employment discrimination against Negroes and Spanish Surnamed Americans, the EEOC Hearings called attention to discrimination on the basis of race, color or national origin at all levels of white collar employment. In addition, the Commission presented data and received testimony on religious and sex discrimination in executive level jobs, where this type of discrimination is believed to have its greatest impact.

Presentation and testimony focused on several large industries and industry groups which are large sources of white collar jobs: finance and insurance, communications, advertising, and printing and publishing. In addition, 100 major corporations in a variety of industries with headquarters in New York were scrutinized. The Commission cited the facts of minority underutilization as they apply to each industry and industry group as a whole. EEOC data and analyses described a pattern of low minority representation in all white collar jobs and sometimes total exclusion of minority group members from middle

and top echelon white collar positions. Women were also shown to be generally barred from higher level white collar jobs.

Despite the overall pattern of tokenism, there were wide disparities among those industries which did employ minority workers, ranging from 20 percent in some to less than two percent in others. When corporate witnesses attempted to defend their poor records in hiring of minorities with the excuse that enough qualified applicants could not be found, Chairman Alexander pointed to the fact that certain firms drawing on the same labor source managed to find and to utilize minority persons in white collar positions. Through questions, the Chairman and the Commissioners also sought information about the policies and practices which result in underutilization.

The Commission's "case" against white collar employers for the most part was based on analyses of EEO-1 reports. The five studies made by the Commission and the sixth one, previously cited, by Professor Dale L. Hiestand are included in Hearings on Discrimination in White Collar Employment cited above.

The tougher EEOC approach to law enforcement was

clearly in evidence at the White Collar Hearings. The use of hearings for affirmative action, now very much refined, proved to be a powerful weapon. Because of the prominence of the companies represented there, the Hearings received nationwide press coverage. By bringing the glare of public exposure on the companies which did not meet EEOC expectation, those firms, as well as others not directly involved, were no doubt convinced that in the future they must adopt significant changes in their policies and practices regarding the hiring and utilization of minority workers.

Following the Hearings, Commissioner charges were filed against a number of white collar employers. These charges were deferred to the New York State Commission on Human Rights. On the more positive side, a placement program coordinating white collar firms' needs for employees and minority applicants' needs for jobs was initiated.

Press coverage was extensive and for the most part favorable. Later, however, the National Association of Manufacturers was especially critical of the Commission for not making available for the benefit of other employers

the affirmative aspects of the Hearings, particularly those successful programs (detailed by employers) which are being used to recruit, train and upgrade minority employees.[49] Consequently in its NAM Reports, the Association sought to set forth those affirmative ideas that had been offered at the Hearing.[50]

West Coast Hearings

At the present time the Commission is contemplating holding public hearings in Los Angeles and San Francisco in March, 1969. The hearings are to be of the type which took place in New York in January, featuring a combination of complainant witnesses, relatively high minority utilizers and underutilizers. Target industries under major consideration are aerospace and communications in Los Angeles and transportation, retail trade, and large-scale white collar employers in San Francisco.

The Commission selected the above cities and industries from various program recommendations made by the

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[49] A complete transcript of the Hearing, cited above, was subsequently published.

[50] "Opening Equal Job Opportunity," NAM Reports, May 13, 1968, pp. 24-26.

Office of Research during 1968. One arguing point in favor of the West Coast was that the Commission had not yet employed the technique in that section of the country. Another strong argument was that both Los Angeles and San Francisco permit emphasis upon employment problems of Spanish Surnamed Americans as well as those of Negroes. An additional advantage was that the two cities offer opportunity for contrasts and comparisons. Los Angeles has the better mix, enabling examination of white collar and manufacturing employment, but San Francisco is a white collar city. Proportionately twice as many persons are employed in manufacturing in Los Angeles than in San Francisco.

As far as industries are concerned, the large size of the aerospace labor force in Los Angeles and the fact that the Federal Government purchases over 90 percent of the industry's output give great significance to its minority employment patterns. Minorities account for about one-fifth of the total population in Los Angeles but hold no more than 10 percent of the jobs in this industry. The white collar participation rates of 2.0 percent for Spanish Surnamed Americans and 1.6 percent

for Negroes are less than the overall white collar rates for these groups in the Los Angeles SMSA. Although the broadly defined communications industries generate few jobs, they are powerful instrumentalities for shaping public opinion.

San Francisco is a major center for the transportation industries. Minorities hold about 20 percent of the jobs in these industries (about the same as their population ratio) but are heavily concentrated in the lower level blue collar categories. The industries are highly unionized, and there is considerable variation in their utilization of minorities. Retail trade is one of the top three industries in the City. Of note is the fact that employers in this industry rely heavily on arrest records. Typically, such reliance hurts minority group members more than others.

The Drug Industry Meeting

During the spring of 1967 the Food and Drug Administration (FDA) of the U. S. Department of Health, Education and Welfare informed the Equal Employment Opportunity Commission that it was interested in trying to improve minority employment in some area(s) under its

jurisdiction. Apparently, FDA had been hoping to do this for some time but was not certain precisely what could be done or how to proceed. The Commission warmly welcomed this initiative and expressed great eagerness to cooperate with FDA in a joint program effort.

In the ensuing discussions between the two agencies, plans began to take shape. Analyses of the drug industry's hiring practices were to be based on the employer reports (EEO-1) filed with EEOC by drug companies subject to Title VII of the Civil Rights Act of 1964. These findings would then be highlighted at a joint FDA-EEOC meeting with heads of the Nation's leading drug firms. An attempt would be made to persuade these firms to institute affirmative action programs to improve minority representation among their labor ranks.

As suggested above one of the main reasons why EEOC decided to concern itself with the drug industry's employment patterns was the desire of FDA to cooperate in such an effort. Moreover, the drug industry is a most prestigious one and ranks quite prominently in the economy. It experienced rapid growth in the period 1958-65 and long-term growth prospects remain favorable. Admittedly, however, as in the past, employment is likely to increase

at a lower rate than in some other industries. Thus employment alone was not an overriding consideration. But a factor which did enter the picture significantly was the discovery, after preliminary inspection of EEO-1 data, of the industry's poor performance with respect to minority employment.

To set the project in motion, Commission Chairman Clifford L. Alexander created a Drug Industry Task Force, headed by Staff Director Gordon Chase. The Task Force in coordination with FDA was instructed to develop and to work out the details necessary for holding the meeting. It also was to enlist the aid of any other governmental body which might be interested. The Labor Department's Office of Federal Contract Compliance (OFCC) and the Veterans' Administration (VA) pledged their support.

The Office of Research was asked to prepare an in-depth report analyzing the drug industry's minority employment patterns as manifested by EEO-1 data. October 6, 1967, was set as the date for the meeting. Once this was done, Chairman Alexander and FDA Commissioner Dr. James L. Goddard issued invitations to all of the Nation's major pharmaceutical companies. Some declined but most

accepted.

The drug meeting took place on October 6 as scheduled. The closed door affair, not open to the public, was held in the Indian Treaty Room of the Executive Office Building. Twenty-four drug industry executives, representing more than 70 percent of the country's drug business, attended.[51]

Dr. Phyllis Wallace, of the Office of Research, presented an analysis of minority employment in the drug industry based on the Commission's study of EEO-1 reports filed by the industry.[52] Chairman Alexander commented that it was clear from the EEO-1 data that the drug industry, like so many others, exhibited a far-too-common pattern of low utilization of minority groups and their concentration in lower level, low-paying jobs. Emphasizing that

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[51]See U.S., Department of Health, Education, and Welfare, "Joint Federal Agency Meeting with Executives of the Pharmaceutical Industry," Transcript of proceedings held at Washington, D.C., October 6, 1967. (Mimeographed.)

[52]U.S., Equal Employment Opportunity Commission, Employment Patterns in the Drug Industry, 1966 (Washington, D.C.: Government Printing Office, 1967).

EEOC is interested in effective action to alter this situation, he appealed to the executives to promote significant utilization of minority manpower rather than simply to refrain from preventing it. He suggested, however, that no such action is possible without the commitment of top industry management. The Chairman further warned that if the drug industry does not voluntarily recruit more Negro employees and institute training programs for them and other minority groups, the Government will have to forcibly obtain drug industry compliance by means of the time consuming complaint process.

While acknowledging that FDA has no statutory responsibilities in regard to equal employment opportunities, Commissioner Goddard left no doubt that the regulatory agency wanted to see the drug industry improve its record on this score. In order to enhance and facilitate this development, Dr. Goddard assured the group that the FDA stands ready, along with EEOC, to provide technical assistance and other forms of help whenever they are needed.

At the close of the meeting William J. Kendrick, then Director of EEOC's Office of Technical Assistance, emphasized the desirability of technical assistance over

compulsory compliance as a method of assuring equal job opportunities for members of minority groups. He announced that as a follow-up to the meeting, EEOC and the other participating agencies would make technical assistance visits to many of the firms in the drug industry. The purpose of the visits would be to work with management to identify those areas in which action could be taken to promote and to guarantee equal job opportunities for all. Necessary to the process would be the uncovering of employment practices which are exclusionary and which tend to perpetuate inequities against minorities.

Mr. Kendrick advised that during their visits Government representatives would discuss various matters of relevance with company officials such as: the establishment and communication of a clear, concise equal employment policy in each drug facility; the development of relations with minorities living near many of the plants; and preemployment practices, e.g., recruitment, advertising, testing and hiring.

Technical assistance experts from EEOC and FDA, supplied with affirmative action packets for distribution, visited 32 large drug companies, including all those

which participated in the October 1967 meeting. In addition, these companies were obliged to file quarterly interim progress reports. Analyses of these reports are now going on to determine to what extent minority employment has increased. EEOC has avowed continued review on a periodic basis of the minority employment record of drug companies. Persistent poor performance may result in Commissioner charges or referrals to the Attorney General.

As another follow-up measure, FDA provides drug companies, on a monthly basis, items of information designed to increase their interest and expertise in the matter of non-discriminatory employment for minorities.

The Utilities Industry Meeting

Early in 1968, Chairman Alexander and Lee C. White, Chairman of the Federal Power Commission (FPC), met to discuss problems of securing equal employment opportunities for members of minority groups. This discussion led to ultimate agreement between the two to have their respective agencies cosponsor a meeting with executives of the utilities industry to examine that industry's minority employment participation.

According to the agreement, EEOC would make the

presentation of the industry's hiring patterns, as assembled from EEO-1 reports which employers must file with the Commission. FPC would furnish EEOC with certain economic data on the industry itself.

Although other industries have greater employment growth potential than utilities, there still were various sound reasons for focusing attention on the minority employment picture. To begin with, utilities constitute one of America's most vital industries, and as such their record with respect to minority employment is both of national interest and of significance. Another factor prompting scrutiny of the utilities industry was the willingness of FPC to cooperate. The success of the drug industry meeting of October 1967 had demonstrated to EEOC the usefulness of enlisting the aid of a Federal sister agency having regulatory control over the industry. By far the most important rationale entering into the decision to call the utilities industry to account was the fact that EEO-1 summary data alone had disclosed that of 19 major industries employing 500,000 or more workers, its minority participation rates were lowest of any. This was true even though the largest utilities are found in

the largest urban areas where most minorities are also located.

The usual task force headed by the Staff Director was set up to plan and direct EEOC participation in the jointly sponsored meeting and also to coordinate activities with FPC. The Office of Research once again was instructed to prepare an analytical report of EEO-1 data, which was to be the heart of the Commission presentation.

Together EEOC and FPC worked out and divided responsibilities which had to be discharged prior to the holding of the meeting. June 12, 1968, was selected as the date of the meeting which would be held in the Indian Treaty Room of the Executive Office Building. The two agencies issued joint invitations to presidents of 128 privately-owned utilities, presidents of five publicly-owned utilities, major utility trade associations and related unions. The Atomic Energy Commission (AEC) and the Securities and Exchange Commission (SEC) endorsed the meeting, and their respective chairmen promised to participate.

On June 12, 1968, more than 100 utilities executives

attended the closed meeting.[53] The agenda called for opening remarks by FPC Chairman White and EEOC Chairman Alexander; the report of minority employment in the industry by the EEOC Director of Research; additional remarks by Chairman Alexander; and a discussion period. Chairman Glenn T. Seaborg of the Atomic Energy Commission and Chairman Manuel F. Cohen of the Securities and Exchange Commission also were present. The session was chaired by Mr. White.

In his statement, Mr. White asserted that if significant results are to be achieved, equal employment opportunity must be more than just passive company policy. He urged an active, imaginative pursuit of this goal through such measures as the development of training programs tailored to the needs of minorities as well as to the needs of the enterprise. He further informed the gathering that he and the FPC expected them to make an all-out commitment.

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[53]See "Joint Meeting of the Federal Power Commission and Equal Employment Opportunity Commission with Representatives of the Utilities Industry," Transcript of the meeting held in Washington, D.C., June 12, 1968.

Stressing affirmative action programs as the desirable way to eliminate inequities, EEOC Chairman Alexander left no doubt that EEOC is interested in results, not pledges. As did Mr. White, he mentioned the benefits to be gained by specialized training programs for minority group members. He offered governmental technical assistance in this and other related areas. While soliciting voluntary cooperation, Chairman Alexander reminded the utilities executives that equal employment opportunity is the law of the land.

Mr. Markham presented the findings of the research report which graphically depicted the industry's unenviable minority employment record.[54] The report covered 97 percent of all employment in privately-owned utilities. Out of 556,542 employees in 1966, only 3.7 percent were Negro. Almost half of the utility companies did not employ a single Negro. In addition, utilities offer few

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[54]U.S., Equal Employment Opportunity Commission, "Employment Patterns in the Utilities Industry, 1966-67," Washington, D.C., 1968. (Typewritten.)

employment opportunities to the nation's Spanish Surnamed Americans, who held only one percent of the industry's jobs in 1966.

Soon after the meeting, EEOC and FPC drew up a list of 20 cities in which utilities companies will be visited by technical assistance teams to advise company executives on how to develop affirmative action programs to increase the number of minority workers. The two agencies will also put companies in touch with competitors who have found ways to solve some of the problems involved, thereby hoping the companies will share minority employment experiences as they do technological and professional ideas.

Research for Action and Education

In addition to the holding of public hearings where results of Commission research into employment discrimination are discussed in a public forum, the Commission also carries out research which is disseminated through the printed page as well as used for affirmative action programs.

Title VII gives the Commission the power "to make such technical studies as are appropriate to effectuate the purpose and policies of this title and to make the results of such studies available to the public." The

Office of Research, which for the most part assumes this responsibility, conducts the research or, in some cases, contracts for certain studies to be done by scholars outside the Commission. Although much of the material has remained unpublished, it has been reproduced for Commission use as well as for limited outside distribution.

A conference on "Priorities in Job Opportunities Research," was held on February 2, 1966 at Commission headquarters. The group, composed of social science researchers, made recommendations concerning research in equal employment opportunities.[55]

Analyses of EEO-1 data have led to some of the Commission's more effective public awareness efforts. The release of the "Nine City Minority Group Employment Profile"[56] did much to enhance the general public's

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[55]For a list of conference participants and the major recommendations see, U.S., Equal Employment Opportunity Commission, "Recommendations on Research in Job Opportunities Made by the Ad Hoc Research Advisory Group, February 2, 1966," Washington, D.C., 1966. (Typewritten.)

[56]U.S., Equal Employment Opportunity Commission, "Nine City Minority Group Profile," Washington, D.C., 1967. (Typewritten.)

understanding of the severity of the problem of minority underutilization in private industry. The report contained an analysis of EEO-1 reports showing minority group employment in nine metropolitan areas where the Commission has field offices and where the population is over 500,000. The statistical data covered more than five million employees and was considered to be a representative sample of nationwide employment patterns.

A research project which analyzed minority group employment in a specific industry in one geographical area was completed in October 1967. The study on racial employment in the Ohio rubber industry was made by Professor Alan Batchelder of Kenyon College under the sponsorship of the Equal Employment Opportunity Commission and the Ohio Civil Rights Commission.[57] The recommendations of the study were used by the Ohio Commission as the basis for an affirmative action program for the Ohio rubber industry.

At the request of the St. Louis Council on Human

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[57]U.S., Equal Employment Opportunity Commission, "A Nearly Free Market for Ohio Rubber Manufacturers but Not for Ohio Negroes," Washington, D.C., 1967. (Typewritten.)

Rights and the mayor of St. Louis, a research study, funded by EEOC was made by Professor Donald Osburn of Southern Illinois University on Negro employment in St. Louis. The report,[58] which showed Negroes greatly underrepresented in higher paying occupations, will be used to undertake affirmative action programs in St. Louis.

The Document and Reference Text (commonly known as DART)[59] was published in 1967. It is the most comprehensive index to literature on minority group employment ever collected. Produced under a $20,000 Commission grant to the Institute of Labor and Industrial Relations, it lists both published and unpublished documents including books, articles, manuscripts, charts, tables, abstracts, and bibliographies. The more than 5,000 entries deal with employment and employment related problems of Negroes, Spanish Surnamed Americans, American Indians, Oriental Americans and women.

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[58] U.S., Equal Employment Opportunity Commission, "Negro Employment in St. Louis, 1966," Washington, D.C., 1968. (Typewritten.)

[59] Institute of Labor and Industrial Relations, Document and Reference Text (Ann Arbor, 1967).